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SPEARS CASE PUTS SPOTLIGHT ON GUARDIANSHIP

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THE CASE OF BRITNEY SPEARS HAS PROVOKED A NATIONAL DEBATE.
AP FILE PHOTO



Do adult guardianships mean a loss of reproductive freedom in Md.?

The 2020 movie, “I Care A Lot,” and the twists and turns in the Britney Spears saga are shining a critical spotlight on adult guardianships, their necessity and their scope.

In her moving statement to the court, Spears testified that her conservators are — very much against her will — refusing to allow her to remove an IUD to prevent her from having children.

While this statement may seem startling, those familiar with disability and reproductive rights, or those familiar with this nation’s history of forced sterilization, were not particularly shocked.

Spears’ case is one of many in which women have claimed that the government, acting through guardianships, forced sterilization laws and the judicial system has taken away their reproductive freedom and/or right to have a family and raise their children.

The roots of this system are believed to have formally begun in the early 1900s. In 1927 the Supreme Court held in *Buck v. Bell* that a compulsory sterilization law in neighboring Virginia for the “unfit” and “intellectually disabled” that was “for the protection and health of the state” did not violate the 14th Amendment Due Process Clause. This case has never been overturned.

Forced sterilization laws are fundamentally rooted in prejudice and the incorrect belief that intellectual disabilities or mental health disease are inherently “bad” things and will be passed down from generation to generation.

Indeed, Justice Oliver Wendell Holmes, Jr., in writing the opinion to *Buck v. Bell*, was explicitly transparent about the prejudice this decision was rooted in, stating:

“It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their



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imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. [] Three generations of imbeciles are enough.”

The application of these laws and methods is often racist, sexist and classist. Reports have shown that women are more likely to undergo nonconsensual sterilization, with women of color much more likely than either white women or men to undergo sterilization.

While Maryland has never passed a compulsory sterilization law, guardians of adult wards have the authority to consent to or withhold medical procedures on behalf of the ward. This seemingly would include the power to impose birth control on a ward.

Under the statute, Maryland guardians may also be given the power to make medical decisions that involve a substantial risk to life without court intervention if the guardian is, among other things, “familiar with the personal beliefs, values and medical situation.”

However, unlike in D.C., which explicitly addresses this in its statute,

Maryland statutes do not explicitly address whether the guardian may authorize abortion or sterilization.

The Court of Appeals in *Wentzel v. Montgomery General Hosp., Inc.*, sort of addressed the matter, when, in the situation of an incapacitated minor, it held that the state did have the power to authorize sterilization where it is medically necessary.

There, the court articulated that it must be proven by clear and convincing evidence that sterilization is in the ward’s best interest, that the ward is legally incompetent to make this decision and is incapable of caring for offspring, among other factors.

The court ultimately concluded that the evidence revealing that the 13-year-old ward had menstrual pain or could become pregnant was not sufficient to justify that sterilization was in her best interest.

Unfortunately, the current statutory authorities and case law leave it unclear on when and how a ward may for herself fight for her own family planning, including the right to have children – a right which has historically been stripped from a ward under the paternalistic guises of “protection” or the guardian imposing their own moral, ethical or religious choices on the ward.

Having a disability should not in and of itself prevent a person from having a child. Many persons with disabilities are capable of raising a child in a loving home.

Britney Spears was the face of a generation in the early 2000s and is now emerging as the face of disability and reproductive rights. Her case is a strong reminder to Maryland guardians to obtain informed understanding/consent where possible from their wards for medical procedures and in their family planning decisions.

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