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LIFE OR DEATH?

Any of us who deal with conservatorships should review the decision of the 4th District Court of Appeal In re Conservatorship of Wendland (2000) 78 Cal.App.4th 517. When it comes to life support decisions, nutrition and hydration (also known as food and water), and a variety of life sustaining techniques, it appears that the Court does not want to be the final decision-maker.

Probate Code section 2355 sets forth requirements which must be met for a determination that life support will be terminated, but it appears that the conservator, with medical decision-making powers, is the person to make this decision. Therefore, the decision as to who will be appointed conservator is very important and has more significance than just seeing that bills are paid and the conservatee gets day-to-day care.

The Court in Wendland looked to the standard set in Conservatorship of Drabick (1988) 200 Cal.App.3d 185, 245 Cal.Rptr. 840, limiting the Court's role to a review of whether the conservator complied with Probate Code section 2355, acted in good faith, upon medical advice and that the proposed action was necessary. The Court does not decide what is in the conservatee's best interest, but only that the conservator acted in their best interest and in consideration of the conservatee's prior wishes, if any.

In the Wendland case, Mr. Wendland was no longer in a coma, or persistent vegetative state. He was, however, dependent upon a feeding tube, paralyzed on one side, unable to communicate, and, it was arguable whether or not he could recognize anyone.

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Mr. Wendland's mother and sister objected to withdrawal of the feeding tube. Mr. Wendland's wife of 15 years plus was the conservator and the court had ruled against her request to withdraw life support. The Appellate Court reversed, ruling in favor of wife. (Note: The PVP attorney and the hospital's ethics committee supported wife's position.)

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