A Reflection on the Munoz Tragedy

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Many in the pro-life community are reflecting on two tragic stories with very different outcomes: the Munoz situation in Texas and the Benson situation in Canada. In both, the wife and mother was declared brain dead. In the Benson story, Iver Benson, son of Dylan Benson and his now deceased wife, Robyn, has been allowed to live. Read more on the still-developing story at, ***http://www.lifenews.com/2014/02/11/son-is-born-after-husband-keeps-brain-dead-pregnant-wife-alive-to-give-birth/***

In the Munoz situation, the result was the heartbreaking loss of both mother and child. We offer our sincere condolences to both families faced with these tragic situations.

Texas Attorney Jeff Turner is a long-time friend of Life Legal Defense Foundation (LLDF) who has supported our work over the years. His reflection on the tragedy of the Baby Munoz situation is compelling and he has allowed LLDF to share it.

On Friday, January 24, the 96th District Courtroom in Tarrant County, Texas was the stage for a tragic tale, not told by idiots, but still one "full of sound and fury, signifying nothing." And by nothing, I mean a profound absence. The tale is one that will be retold more often as medical technology advances to keep people alive, in this case, Marlise Munoz, who in November 2013 suffered a pulmonary embolism when she was fourteen weeks into her pregnancy. Her husband and her parents asked John Peter Smith Hospital to discontinue all life-sustaining treatment for her, which action indirectly would cause the death of her (and his) child in utero. They contend that the very doctors treating her reported that she was brain dead and recommended the withdrawal of such treatment. The hospital did not oblige their request, relying solely on a provision of the Texas Health & Safety Code that provides that a "person may not withdraw or withhold life-sustaining treatment<u>under this subchapter</u> from a pregnant woman." (emphasis added).

Absent from the courtroom, however, was any mention of God as the Author of all human life, including that of Baby Munoz. The mystery of God's purpose in permitting this tale to unfold will remain that—an impenetrable mystery. What can be known is that He willed Baby Munoz' life into existence and that fact deserves some weight. It is congruent with America's Judeo-Christian heritage that God be included in her judicial determinations. The United States Supreme Court still opens each session with "God save the United States and this honorable court." Edith Jones, Chief Judge of the U.S. Court of Appeals for the Fifth Circuit, placed a replicated Harlan Bible (named after Justice John Marshall Harlan's personal Bible which he donated to the U.S. Supreme Court in 1906) prominently in her chambers "as a reminder to all who visit that we … remember our judgments are ultimately subject to a Divine standard." The "Divine standard" is love: love of God and of neighbor, and love sometimes requires sacrifice of one's own rights, interests, and desires for the benefit of another, like Baby Munoz. Love sometimes requires one to "wait for the Lord with courage." Psalms 27:14. There was no mention of this "Divine standard" in the 96th District Court in determining the fate of Baby Munoz.

Also absent was any advocate for Mrs. Munoz or for Baby Munoz. Larry Thompson, the Assistant District Attorney who represented JPS Hospital, informed this writer that the appointment of an attorney ad litem or guardian ad litem had been considered; however, no such appointment was sought. This decision was a glaring error. An attorney appointed to zealously represent each party would have forced Mr. Munoz' attorneys to prove his case. For example, does Mrs. Munoz's medical condition satisfy the legal definition for "death?" The same Health & Safety Code states that a person is dead "when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions." It further states that "if artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, there is irreversible cessation of all spontaneous brain function. Death occurs when the relevant functions cease." Death must be pronounced before a doctor can discontinue artificial or mechanical means of supporting a person's respiratory and circulatory systems. Because artificial means of support had been initiated when Mrs. Munoz first arrived at JPS Hospital, the fact whether "all" of her spontaneous brain function had stopped became a critical issue.

"Brain death" was introduced in 1968 by an ad hoc committee of the Harvard Medical School in the Journal of the American Medical Association. It was introduced mainly to facilitate "organ harvesting" and to reallocate resources away from patients whose prognosis was unfavorable. Unfortunately, after three decades of clinical implementation, this standard has proven to be "conceptually flawed," according to medical ethicist Dan Wikler of the University of Wisconsin at Madison, a

member of a 1981 presidential commission that recommended a uniform law defining death. There is no reliable way to determine "irreversible cessation of all spontaneous brain function" unless and until the entire brain has been destroyed; but, in order for this destruction to occur, the respiratory and circulatory functions must stop. Cases have occurred in which the patient met the test for "brain death" because an EEG could not detect electrical activity on his brain's surface, but the patient clearly had functioning of the mid-brain and brain stem, and maybe even of the cortex. The brain may not be the exclusive central organizing organ of the human person. Doctors have reported over thirty cases of protracted survival of "brain dead" patients, ranging from one week to fourteen years.

Editor's Note: The fact that this issue is framed in terms of whether the "brain dead" patient "would suffer" is surely cause in and of itself to question the concept of "brain death."

No expert witness was called to testify on behalf of Mrs. Munoz. Instead, the assistant district attorney, representing the state and not Mrs. Munoz or Baby Munoz, simply stipulated that the mother was "brain dead." That stipulation practically decided the case.

An advocate for Baby Munoz not only would have challenged the allegation of "brain death" but also would have raised the equally crucial question of whether his client was viable. Viability refers to the gestational age at which a child in utero has a 50% chance to survive outside the womb. Most doctors believe viability is reached around 24 weeks of gestation. However, there is no hard and fast rule. Amillia Taylor, for example, was born in 2006 at 21 weeks, 6 days of gestation (but under 20 weeks from fertilization). At nine inches and 10 ounces, she faced digestive and respiratory issues and a brain hemorrhage. Today, "she runs, she plays, she does things she's not supposed to do." But, again, the assistant district attorney essentially threw the case by stipulating that Baby Munoz was not viable.

Another gaping absence was any discussion of medical ethics. As soon as a woman becomes pregnant, there are two patients. The first rule of medical ethics is: Do no harm. Removing the ventilator (which supports but does not substitute for the respiratory system) from Mrs. Munoz obviously caused harm to Baby Munoz. He died. The second rule is: Take all reasonable action to give the patient a fair chance to live. All that Baby Munoz needed was 3 to 4 more weeks. This would not have been the first time a brain-dead pregnant woman delivered a baby. In 2012, in Michigan, Christine Bolden delivered twins before her respirator was removed. Dr. Cosmas Vandeven, a specialist in high-risk pregnancies at University of Michigan hospital, said that an important ethical issue in such cases is whether a brain-dead woman would suffer by being kept on a respirator and undergoing a C-section. "Almost every parent would give their life for their child," Dr. Vandeven opined. "But you need to get truly independent opinions: Are we sure we're not causing harm to the mom?" Ms. Bolden's brother said, "I know she wants the babies to be with us. This has brought our family together."

In contrast, the Texas courtroom stage was filled with provocative commentary on Mrs. Munoz' allegedly decaying corpse and the "smell of death." Mr. Munoz' attorneys pursued a backhanded ad hominem attack against JPS Hospital employees by accusing them of engaging in a scientific experiment with Mrs. Munoz' body, thus questioning their motives. The defense failed to offer any alternative argument to its insistence that the Texas Health & Safety Code applies to a pregnant woman, whom it already had stipulated was dead, when the relevant subchapter at issue concerns only "qualified patient[s]" who have been diagnosed with a terminal or irreversible condition, Implicitly, it does not apply to a dead patient.

This writer does not question the motive of either the hospital employees or Mr. Munoz. This writer does question whether Mrs. Munoz or Baby Munoz received a fair hearing and whether all available legal and ethical arguments were presented.

In Shakespeare's play, Macbeth found no meaning or purpose in life after his wife's death. Let us pray that Mr. Munoz will find meaning and purpose after the death of his wife and child. Let us pray further that our culture, including our judiciary, will strive to meet the Divine standard by which we all will be judged.

The author, Jeff Turner, is a lawyer, poet, and human rights activist. This article appeared in Texas for Life Coalition's Blog at ***http://texlife.org/2014/01/rest-in-peace-mrs-and-baby-munoz/. Used with permission.***