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IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

COURT OF PROTECTION

N/C NUMBER: [2023] EWCOP 70 (T3)



No. COP14028041

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday 2 October 2023

**IN THE MATTER OF THE MENTAL CAPACITY ACT 2005
AND IN THE MATTER OF PATRICIA**

Before:

MR JUSTICE MOOR
(In Public)

B E T W E E N :

(1) Z NHS FOUNDATION TRUST
(2) Y NHS FOUNDATION TRUST

Applicants

- and -

(1) Patricia
(2) X NHS FOUNDATION TRUST
(3) V NHS INTEGRATED CARE BOARD

Respondents

REPORTING RESTRICTIONS AND ANONYMISATION APPLIES

MR R HADDEN appeared on behalf of the First Applicant.

MR HALLIN appeared on behalf of the Second Applicant/Second Respondent.

MR PATEL KC appeared on behalf of the First Respondent.

MR V SACHDEVA KC appeared on behalf of the Third Respondent.

J U D G M E N T

(Via Microsoft Teams)

MR JUSTICE MOOR:

1 This is one of the most tragic and sad cases that I have had to deal with on the High Court Bench. I am concerned with Patricia, who is a 24-year-old woman who has suffered from anorexia nervosa of the restricting type for many years. All the treatments that she has had have been unsuccessful. Extremely dedicated doctors and other clinical professionals have done everything they possibly can to assist and help her. None of it has worked. It is quite clear, and has been clear to me for a long period of time, that doing anything against her wishes is counterproductive, unhelpful and distressing to her.

2 Of course, in coming to that decision in my previous judgment, I recognised, with very deep regret, that it probably meant that she would eventually die. That is not something that a judge ever wants in a case that he or she is deciding. The difficulty, however, is that, if a court decides it is not appropriate to force feed someone against their wishes, because it takes the view that it is not in their best interests to do so and is likely to be counterproductive, it may very well mean that the result is that she eventually passes away.

3 I came to the decision, with deep regret, in May 2023 that Patricia should not be force fed again against her wishes. I have been informed that she has been force fed on a number of occasions over the years. I have been told that it has never worked in the long-term. Any weight gain that has occurred as a result of force feeding has, almost immediately, been lost again. Patricia told me on the last occasion that, if I was to force feed her, not only would it distress her enormously and cause her psychiatric and psychological harm, but she would make sure that it would not work and that she would ensure that any resulting weight gain would be lost again immediately. Indeed, that is exactly what has been happening whenever she has been admitted recently, either to a SEDU clinic or to a hospital.

4 Since I decided in May 2023 that she should be given autonomy and she went home from hospital, there was certainly, at least initially, a significant improvement in the sense that she did everything she could to increase her calorie intake. She was able to move, during the course of the proceedings, from a daily intake of 800-odd calories up to 1200 or 1300 per day. Very regrettably, that position has not been sustained and, indeed, her calorie intake has reduced significantly. It may be that she was suffering from oedema, which, as I understand it, is water retention, which meant that she may, in her mind, have thought that she was gaining weight. I do not know if that was a significant factor. In any event, the situation has deteriorated again significantly.

5 Last week, Patricia contacted her solicitor and told her that she did now wish to go into a SEDU clinic. Unfortunately, one of the conditions for admission to a SEDU clinic is that the patient has to have reached a particular level of health for the clinic to be able to take the patient. In Patricia's case, she would have to go through a process of re-feeding to get her back up to a healthier weight.

6 She was admitted to hospital on 29 September 2023 when she was suffering from an infection. She has been treated for that infection, but the situation is still parlous and as bad as it has been at any point in these proceedings. Indeed, I fear that her death may be imminent. Her liver function back in May was very bad. I dread to think what it may be today. She has now said this afternoon that she does not want to stay in hospital. She wants to return to her home. I fear that this may well be a return home to die.

7 I think it is right that this case was brought back before me. Patricia's solicitor, Laura Hobe-Hamsher of Bindmans, takes the view that, because of the very significant deterioration in her health, Patricia now lacks capacity to conduct the litigation, as well as lacking capacity in relation to her medical treatment. I accept that her solicitor knows her very well. The Official Solicitor has accepted that she should step into the solicitor's shoes

and act again as Patricia's litigation friend. I have therefore decided to discharge Bindmans from their position as representing Patricia and I appoint the Official Solicitor to act on her behalf. However, all parties take the view that the overall position has not changed since my decision in May 2023, even though Patricia's health has deteriorated. It was clearly foreseeable in May that this might very well be the case, even though everyone hoped that it would not be.

8 I am clear that, when I made my declaration that it was not in Patricia's best interests to be force fed in May 2023, although the order is dated June 2023, I was intending the declaration to be a general declaration rather than a specific one limited to her then hospital admission. I am quite satisfied that I should, therefore, repeat the declaration and make it clear it applies to all hospital admissions. No advocate objects to my doing so. Although Patricia herself is not present, she does know about the hearing this afternoon. I am absolutely clear that she would take the view that I should make the declaration that I am about to make. Her father and mother are not present either. They also know about this hearing. Although the situation is clearly extremely distressing for them, I take the view that they also really accept the inevitable.

9 I am therefore clear that I should, once again, make the declaration that I made on the last occasion, but expand it slightly. I am going to declare that it is in Patricia's best interests not to receive nasogastric tube feeding with restraint and not to receive any other medical treatment against her wishes. That gives her the autonomy that she has craved. Of course, it would be wonderful if she was prepared to accept treatment and was able to get better. I am a realist though. I do understand that we are almost certainly past that point.

10 I have already said how sad and tragic this case is. I am, however, absolutely clear that the declaration I intend to make is, in reality, the only possible outcome in this case. I cannot conceive that, at this point in time, there could be anything more distressing or upsetting or

detrimental to the health and wellbeing of Patricia than to impose, whether it be by restraint or any other method, treatment on her that she desperately does not want. I have therefore come to my conclusion with a heavy heart, but being clear that it is the right one in the circumstances of this case.

CERTIFICATE

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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*