



Neutral Citation: [2019] EWHC 2989 (Fam)

Case No: FD19P00400

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 25/07/2019

**Before:**

**THE HONOURABLE MR JUSTICE MACDONALD**

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**Between:**

**A Hospital NHS Trust**  
**- and -**

**Applicant**

**LP**  
**-and-**

**First**  
**Respondent**

**TP**

**Second**  
**Respondent**

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**Ms C Watson (instructed by the Legal Department) for the Applicant Trust**  
**The Respondents appeared in person**

Hearing dates: 25 July 2019  
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**Approved Judgment**

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**Mr Justice MacDonald :**

1. This matter comes before the court in the urgent applications list at 4.15 p.m. on the afternoon of Thursday, 25 July 2019, and concerns the welfare of a thirteen-year-old boy called P. Yesterday, very sadly, P was involved in a very serious road traffic accident in which he sustained multiple injuries which are life threatening, those injuries are set out in the report of one of his treating doctors that is before the court.
2. I am required to decide on an urgent basis whether it is in P's best interest, should his condition deteriorate suddenly, to be treated by way of blood or products in circumstances where consent for such treatment cannot be forthcoming either from P, by reason of him being in an induced coma, or from his mother and father, who are committed and conscientious Jehovah's Witnesses. The parents are aware that the application is being made and have attended this hearing by telephone from the hospital.
3. I should say at the very outset of this judgment, that the fact that the parents are not able to consent to the use of blood products should not be taken as indicating that they are in any way being obstructive regarding the care required by P. In an eloquent address to this court, TP made clear to me that he and LP seek the best possible outcome for their son, that they deeply appreciate the efforts being made for P by the medical team in this case and that if, ultimately, all other avenues having been tried, P requires blood products they would not obstruct this. It is within this context that TP and LP make clear that, due to their deeply held religious convictions, they would not be able to give their consent. As TP told me, this position is part of their "very being".
4. The application is brought by a Hospital NHS Foundation Trust. P is admitted to the Intensive Care Unit of the Trust and is currently under the care of Dr G, a Consultant Paediatrician in the Intensive Care team. The court has before it a statement from Dr G dated 25 July 2019. This application is made at short notice and the Trust are represented by Miss Watson of counsel. In the circumstances, I am conscious that the parents are not represented, but as I have already alluded to, I have had the opportunity to hear from them. I am also mindful that P himself is not represented before the court, but I am satisfied in this urgent situation that his interests have been sufficiently articulated before me by both his treating clinicians and his parents.
5. I am also satisfied that the matter is one of urgency for reasons I will come to, but particularly in circumstances where the medical evidence before the court is that P's condition may deteriorate and if it does so, may deteriorate quickly. For those reasons, I am content to deal with the application this afternoon in the urgent applications list and I consider the application properly brought in that context.
6. As I have noted, the background to this matter is an accident yesterday that resulted in P sustaining the following injuries (which I apologise to the parents for articulating) which it is necessary to summarise in this judgment:
  - i) A severe brain injury with intracranial bleeds, both subdural as well as subarachnoid, haemorrhagic contusions extracranial bleeds and basal skull fractures.

- ii) Severe intra-abdominal injuries with a spleen laceration and free fluid in the abdomen, most likely blood.
- iii) Potentially, a cervical spine injury.

Dr G makes clear in her report that given the nature of P's injuries, he may either gradually or acutely suffer from low haemoglobin and/or abnormal clotting which would increase his risk of life-threatening bleeding, oxygen starvation to the brain, any of which would require blood transfusion and/or clotting products.

7. As I have stated already, P is currently in a medically induced coma to allow for maximal neural protection in light of his head injury. He is presently intubated and ventilated. I heard oral evidence from Dr G by way of telephone, which evidence the parents were also able to hear. The key points of that evidence are as follows.
8. P is, as I have said, relatively stable, but Dr G considers his condition may deteriorate suddenly. If there is a sudden deterioration, Dr G is clear that there may be a requirement for blood products to be administered. Dr G considers it is impossible to be certain when any deterioration may occur and is clear that if it does occur, it can occur extremely quickly. Dr G makes the point that children who suffer brain injuries of the type sustained by P and abdominal injuries of the type sustained by P are known to be at risk of deteriorating in this manner. In addition, Dr G told me that serious illnesses consequent on the type of injuries P has can, in any event, lead to a drop in haemoglobin that would require treatment or a drop in oxygen to the brain that, likewise, would require to be treated with blood products. Dr G says that whilst it is believed that P's bleeding is now under control, it is impossible to say whether small bleeds continue or whether a large bleed may occur. Once again, Dr G is concerned that this can happen at any time and that any deterioration could be swift.
9. Within the foregoing context, Dr G was clear in asked questions put by Miss Watson, that there are no alternative medications available to treat P in the event of a deterioration requiring the administration of haemoglobin and other blood products. However, she is equally clear that before any treatment using blood products, the medical team will utilise such other treatments as are available and will turn to blood products only as a last resort.
10. As I have already noted, I also heard from TP on behalf of TP and LP. He gave a calm and considered summary of the parents' views in what must be, for both of them, an extremely difficult and traumatic situation. In particular, he made the following points to the court.
  - i) Entirely understandably, he makes the point that this is a very difficult situation. He makes clear to the court that he and LP do not wish to be difficult or to cause trouble or to seek to be confrontational. They make clear that what they want is the best possible outcome for P. They appreciate the efforts and the concern of the medics and all that is being done for their son.
  - ii) Within this context, TP and LP state that all they ask is that doctors try all other options for P before using blood products. They make clear that they cannot give their consent, but they would understand the position that the doctors may find themselves in if all other options had been tried and failed.

11. I also bear in mind that Dr G's report makes clear that the parents have stated that whilst P has not formally joined as a Jehovah's witness (he being too young), they say that his religious views are in line with those of his parents, and I have borne that very carefully in mind.
12. As to the law, the law is clear that a parent with parental responsibility has the power to give consent for their child to undergo treatment.
13. Where a dispute arises between parents and treating doctors regarding the proper course of treatment for a seriously ill child such as P, the court may grant a declaration declaring that treatment in accordance with the recommendation of the child's doctors can take place, on the grounds that it is in the child's best interests. The jurisdiction of the court to make such an order arises where a child lacks the capacity to make the decision for him or herself. In the context of a disagreement between those with parental responsibility for the child and those treating the child. The court has no power to require doctors to carry out an alternative medical procedure, including a blood transfusion, against their own professional judgment.
14. There are a series of legal principles that I am required to take into account when deciding this case, which it is important to summarise in order to make clear the legal framework which I apply in deciding the application of the Trust in relation to P (drawn from in particular from the decisions in *In Re J (A Minor)(Wardship: Medical Treatment)* [1991] Fam 33, *An NHS Trust v MB* [2006] EWHC 507 (Fam), *Wyatt v Portsmouth NHS Trust* [2006] 1 FLR 554 and *Kirklees Council v RE and others* [2015] 1 FLR 1316). Those principles can be summarised succinctly as follows:
  - i) The paramount consideration of this court is the best interest of the child. The role of the court when exercising its jurisdiction is to give or withhold consent to medical treatment in the best interest of a child. It is the role and duty of the court to do so and to exercise its own independent and objective judgment.
  - ii) The starting point is to consider the matter from the assumed point of view of the patient. The court must ask itself what the patient's attitude to treatment is or would likely be.
  - iii) The question for the court to consider is whether in the best interest of a child patient, a particular decision as to medical treatment should be taken.
  - iv) The term "best interests" is used in its wider sense to include every kind of consideration capable of bearing on the decision. This will include, but is not limited to, medical, emotional, sensory and instinctive considerations. The test is not a mathematical one. The court must do the best it can to balance all the conflicting considerations in a particular case with a view to determining where the final balance lies. In reaching its decision, the court is not bound to follow the clinical assessments of the doctors, but must form its own view as to the child's best interests.
  - v) There is a strong presumption in favour of taking all steps to preserve life, because the individual human instinct to survive is strong and must be presumed to be strong in the patient. The presumption, however, is not irrebuttable, it may be outweighed if the pleasures and quality of life are

sufficiently small and the pain and suffering and other burdens are sufficiently great.

- vi) Within this context, the court must consider the nature of the medical treatment in question, what it involves, its prospects of success, including the likely outcome for the patient of that treatment.
  - vii) There will be cases where it is not in the best interest of a child to subject him or her to treatment that will cause increased suffering and produce no commensurate benefit, giving the fullest possible weight to the child and mankind's desire to survive.
  - viii) Each case is fact-specific and will turn entirely on the facts of the particular case.
  - ix) The views and opinions of both the doctors and the parents must be considered. The views of the parents may have particular value in circumstances where they know well their own child. However, the court must also be mindful and cautious that the views of the parents may, understandably, be coloured by their own emotion or sentiment.
  - x) The views of a child must be considered and given appropriate weight in light of a child's age and understanding.
15. In this case, the absence of parental consent has its foundation firmly in the strongly held religious beliefs of the parents who, as I have already observed, are committed and conscientious Jehovah's Witnesses. Within this context, as I have done recently in *Cardiff & Vale University Health Board v T* [2019] EWHC 1671, in which objection was also taken on the ground of religious belief, it is important to set out clearly the legal principles I apply regarding parental wishes in cases in which the court is charged with taking best interest decisions regarding the medical treatment of children.
16. As I have already set out, the views of the parents may have particular value in a given case in circumstances where they know well their own child. However, within that context, there is no requirement for the court to evaluate the reasonableness of a parent's views before it embarks upon deciding objectively what is in the child's best interests. As Holman J observed in a case called *NHS Trust v MB and Others* [2006] EWHC 507 (Fam):
- "It is important to stress that the references to the views and opinions of the parents, their own wishes, however understandable in human terms, are wholly irrelevant to the consideration of the objective best interest of a child, save to the extent in any given case that they may illuminate the quality and value of a child parent relationship."
17. Having regard to the evidence before the court at this urgent hearing and to the submissions made by Miss. Watson, to the evidence of Dr G and to the careful and considered evidence of TP, I am entirely satisfied that it is in P's best interests, in circumstances where all other reasonable treatments have been tempted to authorise

and consent to the use of blood products if that were to become necessary. My reasons for deciding the case in that manner are as follows.

18. As I have said, P has sadly suffered a very serious accident, the consequence of which has been extremely serious injuries as outlined earlier in this judgment. The medical evidence before the court is clear that the nature and extent of those injuries now place P at risk of gradually or acutely suffering from low haemoglobin and abnormal clotting.
19. In particular in this case, I am satisfied on the evidence of Dr G that there is a risk of rapid and sudden deterioration leading to a situation in which notwithstanding attempts to use alternative medical treatments, the doctors in this case will be faced with a sudden and urgent need to utilise blood products. In those circumstances, it seems to me that it is vital that the position in relation to consent is clear. Within that context, whilst understanding and respecting the views of the parents, I am entirely satisfied that the doctors need clarity in relation to consent in treating this very seriously ill young man.
20. I bear in mind also that any deterioration that may occur, and it is earnestly to be hoped for P that it does not, would be a potentially life-threatening one. That fact, it seems to me, further concentrates the court's mind on the need for doctors to be able to deploy all treatments available on an urgent basis in an effort to ensure P's welfare and, indeed, survival in the knowledge that the position as to consent is settled and certain.
21. Within that context, I have borne in mind also that there is a strong presumption in favour of taking all steps to preserve life, because life has a unique value and the individual human instinct to survive is strong and must be presumed to be strong in P. Within that context, I am satisfied the court must have regard to the fact that there is a strong presumption in favour of preserving P's life. In my judgment, the sanctity of life is a powerful factor in this case.
22. I have borne in mind carefully, of course, in the same way as I have borne in mind carefully the wishes and feelings of the parents, P's wishes and feelings. I do not know from him what they are because he is not, at present, able to tell me. I bear in mind that his parents have informed Dr G that P shares his parents' religious convictions. I afford P's views, as I take them to be on the basis of that evidence, respect, but I am not satisfied that those views can outweigh the other factors that drive me to the conclusion that it is appropriate to grant the application of the Trust.
23. The evidence of the treating clinician, Dr G was, in my judgment, clear and compelling. In those circumstances, it seems to me that I can also conclude that the risks attendant on treatment, given the nature of the treatment that is being considered, are manifestly outweighed by the benefits of such treatment in circumstances where P were to deteriorate.
24. I have, of course, as I have already alluded to, given very careful thought to the views of the parents. It was impossible for the court not to be moved by the contribution of TP and the careful, considered and eloquent way he set out why the parents find themselves, notwithstanding the grave situation that their son is in, unable to consent in this case. He expressed himself in moderate terms and is clearly struggling to fit

the current situation within the framework of their strongly held beliefs. As I noted recently in the *Cardiff & Vale University Health Board* case, within this context, in respect of objections based on religious belief:

“The foregoing principles governing the manner in which the court will treat the views and wishes of parents within the context of applications of this nature will apply regardless of the source of the parental views and wishes. Be that loving concern, a strongly held religious conviction or an irrational and mistaken view of the science involved in the proposed treatment. Within this context, the court's decision involves no judgment on the validity of the parents' beliefs, be they religious or secular in nature. In making the objective best interest decision it is required to in cases of this nature, the court subordinates the views and wishes of the parents to the best interest of a child solely by reason of the fact that responsibility for arriving at that objective assessment of a child's best interest lies exclusively with the court in which assessment the child's best interest are the court's paramount concern.”

25. P's best interest must be assessed objectively in the context of his current parlous condition and the potentially life-threatening consequences of any deterioration he could suffer in consequence in his haemoglobin level and/or clotting, which deterioration may occur at any time and without warning and increase his risk of life-threatening bleeding and oxygen starvation to the brain. Within this context, I am entirely satisfied that it is in P's best interest to grant the order sought by the Trust in the circumstances I have set out above. In those circumstances, I am further satisfied that any sustained view on the part of his parents borne of their deeply-held religious views does not, irrespective of the genesis of those views, act to alter the court's conclusion that such a course of action is objectively and manifestly in P's best interests. I again make clear again that, ultimately, the parents themselves recognise this. They simply cannot consent.
26. For all the reasons I have given I am satisfied in the particular circumstances that P finds himself in, that the balance in this case falls overwhelmingly in favour of the use of blood transfusions to treat his current acute injuries should such products be required. Such a course of action is objectively, manifestly in his best interests.
27. In all the circumstances, and having regard to the terms of the draft order helpfully prepared by Miss Watson, I am content to make the order in those terms. The terms of the order makes clear that the basis on which it is granted is that the doctors will use efforts to utilise alternative treatments before using blood products, but the order permits them to use blood products if that is the form of treatment that P needs.
28. I further direct that a transcript of my judgment be obtained at public expense on an expedited basis.
29. That is my judgment.