



Neutral Citation Number: [2021] EWHC 1651 (Fam)

Case No: NG21C00055

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/06/2021

Before :

MRS JUSTICE LIEVEN

Between :

NOTTINGHAMSHIRE COUNTY COUNCIL

Applicant

and

J (THE MOTHER)

First Respondent

and

K
(a child, by his child's guardian)

Second Respondent

and

L (THE FATHER)

Third Respondent

Mr James Cleary (instructed by **Nottinghamshire County Council**) for the **Applicant**
Ms Lianne Murphy (instructed by **Woodfines**) for the **First Respondent**
Ms Beryl Gilead (instructed by **Tallents**) for the **Second Respondent**
The Third Respondent did not attend and was **not represented**

Hearing dates: **7 May 2021**

Approved Judgment

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MRS JUSTICE LIEVEN

Mrs Justice Lieven DBE :

1. This is an application by Nottinghamshire County Council for a declaration under the Inherent Jurisdiction that it is in K's best interests for him to have spinal surgery. Unusually, I have decided that it is appropriate to determine this matter on the papers before me without an oral hearing.
2. K is a 14 year old boy who is subject to a care order made in December 2016 and who currently lives in foster care. He has a complex disability including cerebral palsy with very great impairment of his gross motor functioning, severe developmental delay and epilepsy. K can only communicate through facial expressions and gestures.
3. His cerebral palsy had caused him to develop progressive scoliosis, a sideways twisting of his back. This in turn causes him a number of difficulties, including twisting of his left side causing the skin to breakdown, and multiple infections. This then limits the amount of time he can spend sitting. If the scoliosis develops then there will be pressure on his lungs and abdomen which will cause increased discomfort and shorten his life expectancy. It could also prevent him from eating normally. The limitation on the amount of time he can sit in his wheelchair limits his social engagement.
4. The evidence suggests that K's condition is worsening quite rapidly as he grows, and that this worsening will continue.
5. K's treating doctors have proposed that he undergo a spinal operation to straighten his spine and prevent further curvature. This operation, if successful, would improve his quality of life in considerable ways.
6. The operation is a complex one with significant invasive treatment. It involves inserting screws and a rod into this spine, together with bone grafts to help the spine fuse. K would have to spend time in intensive care and, assuming that all goes well, he could expect to be discharged in 2-3 weeks.
7. The medical evidence is that the likelihood of a successful outcome is high. There is a 20-25% risk profile for the operation, but the nature of the risks varies considerably. There is a small chance, less than 5%, of a reduction of neurological functioning in the legs. A 5% chance that the operation will fail, and a further operation would be needed. A 10% chance of an infection, though this would be treatable. A chance the screws could impact on neurological functioning of about 5%. A risk of death from the surgery of 2-3%, which is the higher than the normal risk of such surgery.
8. However, the clinical team is entirely clear that the operation is in K's best interests. Dr Patel, the spinal surgeon, considers that without the surgery K's quality of life will be very seriously diminished. The Guardian who has reviewed all the evidence is strongly in favour of the operation taking place.
9. K's Mother was initially opposed to the surgery because of the level of risk it posed to K. However, in the light of all the material, she is now neutral. I adjourned the first hearing with the possibility that the Mother would agree to the surgery going ahead after speaking to the clinical team, however her position continues to be one of neutrality.

10. The law in respect of such a decision is relatively straightforward. The Court has to decide what is in K's best interests. In this case K is incapable of expressing his own wishes and feelings.
11. In my view this is a clear case where the operation should take place. Without the operation, K's quality of life will be seriously reduced. It is likely that his ability to enjoy social interactions, including spending time at school and in activities with his foster carers, will be much reduced. Further, without the operation his physical condition is likely to deteriorate, with more infections, less mobility and potentially serious other problems. Although there are some risks from the operation, those risks are relatively limited.
12. I will therefore make the declaration sought.