IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2020] EWHC 1630 (Fam)

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 3 June 2020

Before:

MRS JUSTICE GWYNNETH KNOWLES

(**In Private)**

B E T W E E N :

BARKING, HAVERING AND REDBRIDGE UNIVERSITY HOSPITALS NHS TRUST
Applicant

- and -

(1) X (A CHILD)
(2) MRS W (MOTHER)

Respondents

MS K. BHOGAL (Solicitor-Advocate, -Hill Dickinson LLP) appeared on behalf of the Applicant.

THE RESPONDENTS appeared in Person.

J U D G M E N T

MRS JUSTICE GWYNNETH KNOWLES:

1 I am concerned this evening with a young person called X, who is nearly fifteen years and five months' old. This matter has come before the court as an out-of-hours application, late on the evening of Wednesday, 3 June 2020. I am required to decide on an urgent basis whether it is in X's best interests to be treated by way of a blood transfusion in circumstances where X's mother, Ms W, and indeed X herself do not give their consent for that treatment, by reason of their belief as committed and conscientious Jehovah's Witnesses.

2 This application is brought by Barking, Havering & Redbridge University Hospitals NHS Trust. X is presently an inpatient at a hospital within the Trust and is currently under the care of Dr A, a consultant paediatrician with a particular interest in intensive care, and in the treatment of sickle cell disease.

3 The court has before it two statements from Dr A, both dated 3 June 2020, the second being a little bit more detailed as to X's medical history, and the consequences of any refusal to have a blood transfusion. I have also read a position statement submitted by Ms Bhogal, a solicitor advocate, who appears on behalf of the Trust. This contains a brief outline of the facts and a more lengthy exposition of the relevant caselaw.

4 Ms W and X are not legally represented in this application, because it is being made on short notice. However, Ms W has been provided with the documents that I have seen, and, at my direction, she has had an opportunity to read them. I was told prior to the hearing that Ms W had indicated that she did not require legal assistance and indeed she confirmed to me in her oral evidence that she did not.

I am very conscious of the fact that X herself does not have the benefit of legal representation, but the urgency of her clinical condition is such that I must make a decision without delay.

I am content that it is right to deal with the application this evening, because treatment by reason of a red blood cell transfusion is said to be very urgent for X.

5 I summarise the background very briefly. X very sadly has sickle cell disease, expressed with one of the severe phenotypes, and experiences significant symptoms. She requires something in the region of five or six hospital admissions a year when she has a crisis. In 2015 X had a chest crisis which required an emergency blood transfusion. Ms W had been advised by the medical team treating X at that time that it was necessary to transfuse her with red blood cells as a life-saving measure. Ms W told me that her decision not to consent to such treatment for X was overridden by the medical team. Despite the absence of consent to treatment, no court order was sought, and Ms W told me that she did not in fact oppose the transfusion for X when it took place.

6 X presented to the paediatric emergency department on 31 May 2020, that is Sunday of last week, suffering from what is described as a severe painful crisis in her sickle cell disease, with pain in her back, abdomen and legs. She has required pain control medication by intravenous infusion. Dr A saw her yesterday, and told me that X had been reasonably well, did not require oxygen, and was not coughing. However, today, when seen by Dr A, X was coughing and required oxygen. Investigation by means of a chest x-ray demonstrated that X had significant abnormalities on the right side of her chest. She required increased oxygen as time went by, and her haemoglobin levels had dropped from 75 on admission, to 67 yesterday, and 63 today. It was Dr A's oral evidence to me that she considered it was likely that X's haemoglobin levels were likely to have fallen further this evening. X's chest crisis required, in the view of Dr A, treatment by a top-up red blood cell transfusion.

7 Dr A has known X since May 2019. Her particular specialism is as a paediatrician, with an interest in intensive care, and in the management, in that context, of sickle cell disease. Barking, Havering and Redbridge University Hospitals Trust also, I am told by Dr A, has one of the highest numbers of sickle cell patients in the country, and therefore Dr A's experience of sickle cell disease is both extensive and intensive.

8 Dr A told me that, given the severity with which X's sickle cell disease presents itself, she would be one of those patients who would likely have been recommended for the regular blood transfusion programme, but this is not possible given her and her family's religious beliefs as Jehovah's Witnesses. Instead, X has been treated with hydroxycarbamide, which she takes daily, and with which she is fully compliant. That has helped with her condition, but it has not obviated the occurrence of sickle cell crises requiring regular hospital admissions.

9 Turning to X's present status, Dr A told me that the consequence of failing to treat X with a top-up blood transfusion this evening would be that X is likely to require a higher level of oxygen than can be delivered through a nasal cannula. X has a nasal cannula at the moment through which she receives oxygen but her increased need for oxygen is such that she may require intubation. In those circumstances, X's condition may become more difficult to manage and, because her blood cells cannot carry sufficient oxygen around her body when she is in crisis, this is likely to lead to hypoxia, that is a lack of oxygen which was life-threatening. Dr A put it starkly to me that, at this moment in time, she ought to be treating X with a transfusion, and that, as time went by, the opportunity for beneficial treatment was being lost.

10 Dr A hoped that a top-up blood transfusion would obviate the need for X to require an exchange blood transfusion. X's present clinical state requires (a) intravenous fluids to manage feelings of sickness, (b) intravenous pain management, (c) oxygen, and (d) the administration of a drug called erythropoietin which had helped X in 2019 when she was also unwell. However, it was Dr A's opinion that, in her present circumstances, none of those interventions would assist in alleviating the sickle cell symptoms which X is now suffering. The clinical picture is stark, and extremely worrying. It is clear, on Dr A's evidence to me, that X finds herself in a life-threatening situation if she does not have this blood transfusion. Dr A has discussed the proposed blood transfusion with other specialist doctors in the field of sickle cell treatment some of whom have been treating X. It is the consensus of medical opinion that the proposed transfusion is that recommended for an acute chest crisis in the clinical circumstances in which X finds herself.

11 I heard from Ms W, who is X's mother. She told me about what happened in 2015 when X had a blood transfusion to manage her chest crisis. Ms W's evidence to me was moderate and dignified. She made it plain to me that she would not stand in the doctors' way if they obtained permission to treat X with a red blood cell transfusion, although she had some doubt as to whether X was perhaps as unwell as Dr A thought. She told me that her beliefs as a Jehovah's Witness were clear and required her to withhold consent to any form of blood transfusion for X. However, she would not resist treatment for X if that was what was thought by the court and by the medical team to be what X required. I found her evidence to be very helpful to me.

12 I also had the great privilege of hearing from X herself. She was present in the room with her mother, and heard everything that was said at this hearing on speaker phone. She expressed to me very clearly that her religious beliefs also precluded her consent to a red blood cell transfusion. She told me that she had faith that if she were to die, she believed

she would be resurrected. Those were absolutely genuine beliefs and sentiments and of that I have absolutely no doubt.

13 X acknowledged that she was scared of the situation in which she found herself, but told me that she wished to be true and firm to her beliefs. She accepted, when I asked her, that life, despite the pain and the difficulties occasioned for her by her sickle cell disease, was also illuminated by many good things: her sister, her family, her friends, all those many good and loving relationships. However, she emphasised to me that despite all those things, her faith came first. X eventually admitted to me that she really was not feeling very well, was in a lot of pain, and feeling quite sick. Like her mother, X accepted that she would not resist if the court decided that a red blood cell transfusion was necessary and in her best interests. Prior to giving this judgment I explained to X what I had decided to do and that I would give a short judgment.

14 I now turn to the law that I must apply. That law is succinctly summarised in a decision by one of my colleagues, MacDonald J, in *Cardiff and Vale University Health Board v T (A Minor)* [2019] EWHC 1671 (Fam), at [12] to [18]. Because the hour is late, and because I am aware that time is pressing, I am not going to read into my judgment everything that he says about the law, though I do apply the principles that he sets out in those paragraphs

15 It is important, however, that X and her mother understand some of the matters which the court must consider in coming to a decision about an issue such as this. First of all, the paramount consideration of the court is X's best interests, and it is the role and duty of the court to either give or withhold consent to medical treatment, and to exercise its own independent and objective judgment about that issue. The starting point is always 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 is likely to be. The question for the court is

whether, in the best interests of the young person who is a minor, a particular decision as to medical treatment should be taken.

16 It is important to understand that the term "best interests" is used in its widest possible sense. It includes every kind of consideration capable of bearing on the decision, and will include but is not limited to medical, emotional, sensory and instinctive considerations. It is not a mathematical test because 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.

17 There is also 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. That 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. The court must consider the nature of the medical treatment in question, what it involves, and its prospects of success, including the likely outcome for the patient of that treatment.

18 Each case is intensely fact-specific. The views and opinions of doctors and parents must be considered. The views of parents have a particular value in circumstances where they know well their own child, however the court must be mindful that the views of parents may understandably be coloured by their own emotion and sentiment. The views of the child must also be considered, and given appropriate weight in the light of the child's age and understanding. It is plain that the court, in suitable circumstances, has the jurisdiction to override the decisions and wishes of a Gillick competent child where it is in the child’s best interests for it to do so.

19 I also say that it is important that the principles that govern the matter, in which the court treats the views and wishes of parents and indeed those of a subject child in the context of applications of this sort, will apply regardless of the source of parental wishes and views, or of a child's wishes and views, be that loving concern, a strongly held religious conviction, or mistaken views of the science involved in the proposed treatment.

I stress that the court's decision involves no judgment on the validity of parents' beliefs, be they religious or otherwise in nature. In making the objective best-interests decision that it is required to in cases of this nature, the court subordinates the views and wishes of parents and sometimes the child itself to the objective consideration of what is in that child's best interests.

20 Looking at the evidence in this case, I have already indicated to X and to her mother that I am going to order that the hospital be permitted to transfuse X this evening with red blood cells. I am entirely satisfied that it is in her best interests to receive treatment by way of blood transfusion. My reasons for deciding that are as follows.

21 X is experiencing an acute chest crisis by reason of her sickle cell disease. She is gravely ill, even though she has been able to speak to me. If not transfused tonight, it is highly likely that she will deteriorate, and will have less likelihood of responding to a simple top-up blood transfusion. The ultimate outcome for X is hypoxia, the lack of oxygen which is essential to preserve life and her bodily functions, which would lead to physical deterioration and death.

22 X's condition can be ameliorated by administering a blood transfusion. The evidence about that is absolutely clear. Her life is at significant risk without such a transfusion. There is a strong presumption in favour of taking this course of action. Though X's life has been burdened by her sickle cell disease, it is plain to me from what she said that life has been

precious to her, because of her relationships with her family, her friends, and her sister. Life is not all dark, it is illuminated by moments of great happiness and joy.

23 The treatment proposed is the consensus of reasonable medical opinion; has been discussed with specialist doctors under whose treatment X is, who have confirmed that the treatment proposed is that recommended for an acute chest crisis in the circumstances of X's case.
In the above context, any risks attendant on treatment are manifestly outweighed by the benefits of it.

24 I have taken into account Ms W's views. She clearly loves her child very much, and is dedicated to her welfare. Her religious convictions are the sole reason for her stance with respect to the administration of a blood transfusion. She has told me that she would not stand in the way of the hospital taking that step, if that were thought to be necessary by the court.

25 Likewise, given her age, I have also taken into account X's views. Despite being very unwell, she expressed those to me clearly. She too shares her mother's religious convictions, and they are the sole reason for her stance in respect to a blood transfusion. She too would refuse that blood transfusion, but she too confirmed to me that she would not resist if that was what was thought to be best for her. Despite her age, I have concluded that X's wishes and feelings cannot be determinative though I have the greatest respect for them. They have to give way to a more powerful welfare consideration, since it is that which takes priority. The upset which X may feel about the imposition of treatment involving the use of blood products forbidden by her faith is, in my view, likely to be eclipsed by the ultimate benefits of this life-saving treatment.

26 For all of those reasons, I have come to the conclusion that in the particular circumstances of X's case, the balance falls overwhelmingly in favour of the use of a blood transfusion to treat her current, acute medical condition. Such a course of action is objectively and manifestly in her best interests. In those circumstances, I will make the order contended for by the hospital Trust.

27 I have made a decision which I know will be a bittersweet one for both X and Ms W, because of their firm religious beliefs. What I do want to say to both X and her mother is to thank them for their participation in the hearing, to acknowledge the dignity with which both have conducted themselves, and to wish them all the very best for the future.

28 That is my decision.

_____

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

Transcribed by ***Opus 2 International Limited***
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital

This transcript has been approved by the Judge / is subject to Judge's approval