



Neutral Citation Number: [2022] EWCOP 4

Case No: Case No: 13866627

COURT OF PROTECTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/02/2022

Before :

MRS JUSTICE ARBUTHNOT

Between :

**MANCHESTER UNIVERSITY NHS
FOUNDATION TRUST**

Claimant

- and -

**WILLIAM VERDEN
(BY HIS LITIGATION FRIEND, THE OFFICIAL
SOLICITOR)**

1st Respondent

- and -

AMY MCLENNAN

**2nd
Respondent**

Helen Mulholland (instructed by **Hill Dickinson**) for Manchester University NHS Foundation
Trust

Bridget Dolan QC (instructed by **the Official Solicitor**) for the **1st Respondent**
Victoria Butler-Cole QC (instructed by **Irwin Mitchell**) for the **2nd Respondent**
Claire Overman (instructed by **the BBC** as the interested party) provided submissions in
writing

Hearing dates: 8th February 2022

EX-TEMPORE JUDGMENT

Mrs Justice Arbuthnot:

1. This is an application by Ms Amy McLennan to vary a Reporting Restriction Order (“RRO”) made on the papers on 31st December 2021 by Cohen J.
2. The background to this application is that Ms McLennan’s son, William Verden, aged 17, suffers from steroid resistant nephrotic syndrome, he is in end stage renal failure and needs ongoing dialysis (currently haemodialysis) or a transplant to stay alive. William has diagnoses of moderate to severe learning difficulties, autism and ADHD with accompanying behavioural disturbances.
3. The Manchester University NHS Foundation Trust has sought declarations in relation to William’s capacity and best interests regarding his treatment options. The Trust’s position in the substantive hearing, which will take place at the end of February, is that they oppose transplant for a series of the reasons they have set out, essentially that William will require sedation and ventilation for possibly up to 6 weeks to ensure that he complies with the interventions post-operatively and that the prospect of recurrence of the steroid resistant nephrotic syndrome is high, about 80%.
4. His mother opposes the Trust’s application. She relies on expert evidence which points more towards a 50% chance of recurrence and the same expert says that a transplant is a feasible option and gives to William a reasonable potential for a good long-term outcome.
5. Everyone agrees in any event that a living kidney donor would be better suited to William’s needs as the transplant process can be planned and William better prepared psychologically for the operation. The mother is looking for an altruistic kidney donation from a member of the public, as none of the family are matches, or a volunteer donor for a chain of donation to take place.
6. It is in the context of that background that the matter earlier came before Cohen J. The Trust’s application was issued on 23 December 2021 and on 31 December there were two agreed orders made on the papers. A reporting restriction order and a directions order.
7. In the Reporting Restrictions Order, made in the usual form, an injunction was imposed with conditions that the following should not be identified: William, any member of his family, where William lives or is being cared for and the names of the Trust, hospital and clinicians treating William or giving second opinions.
8. It was clear from the injunction that it did not prevent persons from reporting or commenting on any proceedings continuing in the COP. In the directions order of the same date, the mother set out that she did not seek anonymity on behalf of her son and that the RRO was an interim measure pending her submissions in mid-January 2022.
9. What Cohen J did not know and had not been told on 31st December 2021, was that there had been extensive coverage in the media about William and his medical situation in the four to six weeks before the Trust’s application. The Official Solicitor had not been given any of the detail either.

10. I can understand how it probably came to happen. The application by the Trust was made on 23rd December 2021 and was considered on the papers on 31st December 2021. This straddled the Christmas period. There was an assumption that the Official Solicitor knew of the detail of the case. It seemed to me that, and I have little doubt about this, that had Cohen J known the full extent of publicity that had already taken place just a few weeks before the order it was agreed he was to make, he may well have come to a different decision, or that at least, the order would have been in different terms.
11. For the future, the expectation, except in very unusual cases, would be for any party applying for a RRO to set out what media coverage had taken place, so the court is not placed in this situation again.
12. Today's application on behalf of the mother is in relation to whether William's case can be reported as she wishes to launch a public appeal for a living kidney donor, as it is agreed that this is more likely to be successful than a transplant from a dead donor. Of course, today's application raises a separate point to the issue the court will be deciding at the end of February 2022 which is whether a transplant is in William's best interests.
13. I have been greatly assisted today by very able written and oral submissions from counsel for the parties and a written argument on behalf of the BBC which is an interested party, but which did not appear in front of me.
14. In essence, the mother wants to publicise her son's condition to be able to encourage an altruistic donor to step forward. This is a time critical and important thing that needs to happen. The Trust is concerned about the effect on William. It suggests the application should be adjourned to take place after the hearing in three weeks or so. It is concerned about the effect on William if he finds out the search attempt has been unsuccessful. It may affect him psychologically and have a bearing on his approach to continuing haemodialysis, and that would make the outcome more difficult for him.
15. The Official Solicitor, whose representative has seen William on two occasions, most recently last week, says that William has communicated with them that he would want media coverage or publicity if it means he will get a new kidney. He was most clear, however, that he did not want anyone to see photographs of himself with the various lines and tubes attached to him during his haemodialysis, nor did he want photographs of him taken when at home.
16. In its submissions, the BBC points out that any RRO would be a disproportionate restriction of Ms McLennan's Article 10 ECHR rights. There is a great public interest in the story, particularly regarding the way that people with disabilities are treated by the NHS and also because the Court of Protection should be scrutinised in the important decisions that it takes.
17. Pulling this all together I have balanced the Article 8 rights of William and the Article 10 rights which are apparent in this case. I note that William supports the media publicity campaign as it may lead to a new kidney donor being identified. I note that this is time critical and that if it is left for three weeks or so there will be less chance

of finding, in a timely way, the right live altruistic donor. William is said to have 12 months left on haemodialysis as his veins will not withstand haemodialysis for longer than that period and it is said that it will take 1-6 months for any potential live donor to be tested, 1 month if urgent, more likely 3-6 months, if not.

18. I note therefore that when a live donor is found it will still take time to carry out the necessary tests and that there is no doubt that the better of the two options is the live donor rather than the dead donor if a transplant is said to be in William's best interests.
19. I note the Article 10 point which is that the story is already out in the public domain. There has been a good deal of publicity about this story including photographs of the family and William from November and December last year. There is great public interest in the way that people with autism are treated by the NHS and I also accept that Court of Protection work needs to be scrutinised by the public because of the crucial life changing decisions the court takes. I also accept the argument that there could be no publicity at all about the substantive hearing in late February 2022 without the public completing, what Mr Farmer of the Press Association, described as a very easy jigsaw.
20. Any reporting of the Court of Protection case would lead to identification of William, his family and the hospital, which is just what the current RRO is designed to prevent. The alternative is no publicity at all which in my judgment is not appropriate or proportionate in this case. Added to that is the mother's reasons for publicity - to find an altruistic donor if the court decides to go down that route. I give more weight to the Article 10 rights relied on by the mother, the Official Solicitor and the interested party.
21. It is important to note when considering William's Article 8 rights that undertakings that have been given by the mother will lessen the risk to William of finding out and being affected by any failure to find a donor and the impact of the continuation of his haemodialysis. He will be protected from that to some extent.
22. In my judgment, it is proportionate in all the circumstances to accede to this application.
23. The application to amend the RRO is allowed in the terms set out in the draft order.