



Neutral Citation Number: [2019] EWHC 1671 (Fam)

Case No: TBA

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21/06/2019

**Before:**

**THE HONOURABLE MR JUSTICE MACDONALD**

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**Between:**

**Cardiff and Vale University Health Board**  
**- and -**

**Applicant**

**T (A Minor)**

**First**  
**Respondent**

**- and -**  
**H**

**Second**  
**Respondent**

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**Mr Ranald Davidson (instructed by the Trust Solicitor) for the Applicant**  
**The First and Second Respondents did not appear and were not represented**

Hearing dates: 21 June 2019  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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## MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

**Mr Justice MacDonald:**

**INTRODUCTION**

1. This matter comes before the court in the urgent applications list at 4.05pm on the afternoon of Friday 21 June 2019 and concerns the welfare of a three and half week old baby called T. Specifically, this court is required to decide on an urgent basis whether it is in T's best interests to be treated by way of blood transfusion in circumstances where consent for such treatment is not forthcoming from his mother, who is a committed and conscientious Jehovah's Witness. The mother has instructed solicitors and those solicitors have been given short notice that this urgent application is being made.
2. The application is brought by Cardiff and Vale University Health Board. T is admitted to the neonatal intensive care unit of one of the Board's hospitals and is currently under the care of Dr C, a consultant neonatologist, and a critical care team. The court has before it a statement from Dr C dated 21 June 2019.
3. I am of course acutely aware that this application is made on only short notice to the mother's solicitors late on a Friday afternoon and that, in the circumstances, the mother is not before the court and nor have her solicitors attended. I am also acutely aware that T is not himself represented. However, against this, the court is faced with evidence that, having this morning suffered one cardiac arrest, treatment for T in the form of a blood transfusion in order to manage his cardiac failure and seek to prevent further arrests is now *extremely* urgent. For those reasons I am content it is right to deal with the application this afternoon on what is, in effect, a without notice basis, albeit the order I make will be of only short duration in the first instance, it being my intention that the matter will return to Court on Tuesday morning.

**BACKGROUND**

4. T has suffered from birth from a congenital disorder which has the following consequences for him:
  - i) Oesophageal atresia, which has been the subject of surgical intervention with the consent of the mother;
  - ii) Cardiac failure secondary to ductus arteriosus;
  - iii) A likely diagnosis of CHARGE syndrome (a genetic syndrome that can result in cardiac defects);
  - iv) Severe combined immune deficiency.
5. Within this context he is currently very unwell and is ventilator dependent with cardiac failure and reduced lung function. An attempt to wean him off the ventilator on Tuesday was not successful. Dr C states that T also has a very high temperature and believes he has an infection. In addition, T has a reduced haemoglobin level and a reducing blood pressure. Within this context, Dr C asserts that T now requires blood transfusions for the following reasons:

- i) To improve his heart and lung function with a view to increasing the chances of weaning him off the ventilator, it being harder, the longer he is ventilator dependent, to wean him off and the greater the risk of infection;
  - ii) To help stabilise him and improve his cardiac function and reduce the risk of further cardiac arrests, which in turn would also help him fight infection in the context of his immune deficiency;
  - iii) To address his anaemia in circumstances where he is acutely unwell and ventilated, and to address his falling blood pressure.
6. As I have noted, the mother's objections to these steps are based on her religious beliefs as a committed Jehovah's Witness. Upon being advised by Dr C on 17 June 2019 that T would likely need blood transfusion in the near future, the mother spoke with the Jehovah's Witness Hospital Liaison Committee. Dr C's statement makes clear that a representative of that Committee asked doctors to consider alternative, non-blood based, products to treat T. The evidence of the Board is that, in the current circumstances and given T's particular difficulties, treatments alternative to that of blood transfusion, and capable of providing the same relief, are not available. Dr C states that this was relayed to the representative of the Jehovah's Witness Hospital Liaison Committee.
7. On 20 June a multi-disciplinary team meeting (MDT) was held. The clear medical consensus at that meeting was that it was in T's best interests to have a blood transfusion and that this should not be further delayed. In her statement of 21 June 2019 Dr C relates that at a subsequent meeting the mother stated that she was not refusing a blood transfusion and was intending to consider completing a form of understanding. This has not yet been done.
8. In addition to the manifest medical difficulties I have recounted, and as I have also noted above, this morning T suffered a cardiac arrest. Dr C opines that this may well have been the result of his cardiac failure. Within this context, Dr C is now of the view that T *urgently* requires a blood transfusion to be administered as a means of managing his cardiac failure and preventing further cardiac arrests. In her statement Dr C reiterates that alternative non-blood based products will not suffice to achieve this outcome and that commencement of an iron preparation has not been successful in addressing these issues.
9. Dr C relates in her statement that the mother contends that she has been informed by a cardiologist that T does not require a blood transfusion. Dr C believes that this may be a reference to advice given to the mother by Dr L at the MDT on 20 June 2019 that one of the operations being contemplated for T in due course can be undertaken without the benefit of a blood transfusion. This afternoon Mr Davidson has handed to the court an attendance note recording a conversation his instructing solicitor has had with Dr L. Dr L confirmed that he had told the mother that should a surgical closure of T's cardiac abnormality be undertaken by way of open heart surgery a blood transfusion would not usually be used as part of that procedure. Dr L confirmed that the different question of whether a blood transfusion should be in T's best interests given his current acute situation was one taken by the MDT as a whole.

10. Within the foregoing context, the mother has not given her clear consent to the administration of blood products to T. No consent has been given by T's father. In the circumstances, where it is plain that T lacks the capacity to consent or refuse medical treatment, at present there is no consent to the urgent course of action that T's treating team now consider to be in his best interests. Within the foregoing context, and in the absence of parental consent, the Board now seeks the permission of this court to administer blood products to T.
11. In her statement dated 21 June 2019 Dr C concludes as follows in respect of the consequences of T of *not* now administering a blood transfusion:

“It has been explained on many occasions that we are trying to minimise blood taking and tolerating a lower Hb than usual. However, T is acutely unwell. In my opinion, as shared by my consultant colleagues, without a transfusion T's life is at very significant risk.”

## LAW

12. A parent with parental responsibility has the power to give consent for their child to undergo treatment (*Re A (Children)(Conjoined Twins: Surgical Separation)* [2001] 2 WLR 480).
13. Where a dispute arises between parents and treating doctors regarding the proper course of treatment for a seriously ill child, 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 (see *Re B (A Minor)(Wardship: Medical Treatment)* (1982) 3 FLR 117). 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 (*An NHS Trust v MB* [2006] EWHC 507 (Fam)). The court has no power to *require* doctors to carry out an alternative medical procedure against their own professional judgment.
14. The law that the court must apply when determining whether to grant the relief in the foregoing context is well settled and can be summarised as follows (drawn from in particular *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:
  - i) The paramount consideration of the court is the best interests of the child. The role of the court when exercising its jurisdiction is to give or withhold consent to medical treatment in the best interests of the 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 be likely to be;
  - iii) The question for the court is whether, in the best interests of the child patient, a particular decision as to medical treatment should be taken;

- iv) The term ‘best interests’ is used in its widest 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 of 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 assessment 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 the 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 and 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 interests of the 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's 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 that the views of the parents may, understandably, be coloured by their own emotion or sentiment;
  - x) The views of the child must be considered and be given appropriate weight in light of the child's age and understanding.
15. In this case the absence of parental consent to date has its foundation in the strongly held religious beliefs of the mother, who as I have observed is a committed and conscientious Jehovah's Witness. Within this context, it is important to set out clearly the law regarding parental wishes with respect to cases in which the *court* is charged with taking best interest decisions regarding the medical treatment of children.
16. The views of the parents may have particular value in a given case in circumstances where they know well their own child. However, within this context, there is no *requirement* for the court to evaluate the reasonableness of the parents' views before it embarks upon deciding, objectively, what is in the child's best interests. In *An NHS Trust v MB* Holman J, in a passage endorsed by the Court of Appeal in *Re A (A Child)* [2016] EWCA 759, said as follows:

“It is important to stress that the reference is to the views and opinions of the parents. Their own wishes, however understandable in human terms, are wholly irrelevant to consideration of the objective best interests of the child save to the extent in any given case that they may illuminate the quality and value to the child of the child/parent relationship.”

17. In the context of the mother’s religious beliefs, in his Skeleton Argument Mr Davidson refers to the decision of the Court of Appeal in *Re A (Children)(Conjoined Twins: Surgical Separation)* in which Ward LJ was dealing with a case in which the parents of conjoined twins cited their belief in following God’s will as an aspect of their refusal to consent to surgery. Within this context, Ward LJ noted that parents have the right to exercise their parental responsibility and, accordingly, their wishes should command very great respect, *however*:

“It gives me no satisfaction to have disagreed with their views of what is right for their family and to have expressed myself in terms they will feel are harshly and unfairly critical of them...But if, as the law says I must, it is I who must now make the decision, then whatever the parents’ grief, I must strike a balance between the twins and do what is best for them.”

18. 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 parents’ beliefs, be they religious or secular in nature. In making the objective best interests decision it is required to in cases of this nature, the court subordinates the views and wishes of the parents to the best interests of the child solely by reason of the fact that responsibility for arriving at that objective assessment of the child’s best interests lies exclusively with the court, in which assessment the child’s best interests are the court’s paramount concern.

## DISCUSSION

19. Having regard to the evidence before the court at this urgent hearing and to the submissions made by Mr Davidson, I am entirely satisfied that it is in T’s best interests to receive treatment by way of blood transfusion. My reasons for so deciding are as follows:
- i) T is now gravely ill. A life-threatening feature of his illness is cardiac failure. This morning that cardiac failure likely manifested itself through a cardiac arrest. It is axiomatic that further cardiac arrests will constitute a grave threat to T’s life. In addition, T is wrestling with a series of other conditions that present a real risk to his health and possibly his life, namely an infection resulting in high temperatures, anaemia and lowering blood pressure. The nature and extent of these conditions, and their prognosis, render urgent action a priority.
  - ii) Each of the conditions that currently constitute a threat to T’s life can, on the evidence before the court, be ameliorated by administering to T a blood transfusion or transfusions. Dr C’s evidence is that such transfusions will help

to address each of the serious and potentially fatal conditions that I have summarised above.

- iii) The medical evidence before the court is clear that without a transfusion T's life is at very significant risk.
  - iv) There is a strong presumption in favour of taking all steps to preserve life because life has unique value and the individual human instinct to survive is strong and must be presumed to be strong in the patient. Within this context, the court must have regard to the fact that there is a strong presumption in favour of preserving T's life. In the circumstances of this case, that presumption is a *very* compelling factor.
  - v) The treatment proposed has been recommended following a multi-disciplinary consideration of T's case and represents the consensus of reasonable medical opinion.
  - vi) Within the context I have set out above, any risks attendant on treatment are manifestly outweighed by the benefits of such treatment.
20. I have of course given careful thought to the views of the mother. I have no doubt, on the evidence provided in the statement of Dr C, that the mother loves T very much and is dedicated to his welfare. Her religious convictions are the sole reason for her stance regarding the administration of a blood transfusion or transfusions to T. Whilst mindful that the court has not yet heard from her, the evidence contained in Dr C's statement that the mother was, at the very least, giving consideration to a blood transfusion, perhaps in the context of having signed a form of understanding in this regard.
21. In any event however, in assessing, objectively, T's best interests in the context of his current parlous and potentially fatal medical condition, I am satisfied that any sustained view on the part of the mother that T should not have a blood transfusion does not, irrespective of the genesis of that view, act to alter the court's conclusion that such a course of action is objectively and manifestly in his best interests.

## CONCLUSION

22. In the circumstances, I am satisfied that, in the particular circumstances of T's case, the balance falls overwhelmingly in favour of the use of blood transfusions to treat his current acute medical conditions. Such a course of action is, objectively, manifestly in his best interests.
23. In the circumstances, I will make orders accordingly and list the matter for a return date on Tuesday morning at which time the Court will give further consideration to the Trust's application.
24. That is my judgment.