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Case No: FD20P00690

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand
London
WC2A 2LL

Date: Thursday 29th October 2020

Before:
SIR JAMES MUNBY
(SITTING AS A JUDGE OF THE HIGH COURT)

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Re X (A Child)

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MISS CLAIRE WATSON (instructed by Hill Dickinson) appeared on behalf of the Applicant NHS Trust
MR SHANE BRADY (instructed by Richard Cook Solicitors) appeared on behalf of X

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JUDGMENT (Approved by the Judge)

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and members of her family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.
SIR JAMES MUNBY:

1. This case comes before the court under the pressure of, on any view, considerable medical crisis. The consequence is that I have not had the time to hear the fuller arguments which would be desirable and there is not time for me to give the fuller judgment which would be appropriate.
2. The case involves the deeply troubling question of whether a blood transfusion should be administered to a young woman who is almost, not quite, 16, against her profound religious beliefs. X is a Jehovah's Witness. She has explained to me, in very powerful and moving words, the basis of her belief and the fact that, recently, she was baptized in accordance with the teachings and the beliefs of her church.
3. These cases always involve enormous difficulty because there is an inevitable tension, at least on the law as it appears to be, between the duty of the court and the heartfelt wishes of the young person who, as in X's case, has what for shorthand I will call '*Gillick* competence'. X is, if she will allow me to say so, mature and wise beyond her years. That is something one frequently comes across in the case of children and young people who, as in her case, because she suffers from severe sickle cell syndrome, has had to endure medical difficulties before her time.
4. The medical evidence, and I have heard, in particular, extensive oral evidence from her treating paediatric consultant, Dr C, who has been both examined and cross-examined before me, is stark. The reality is that Dr C takes the view, and I have no doubt at all conscientiously takes the view, that the blood transfusion, by which I mean what has been called a 'top-up' transfusion, not the other more severe form of transfusion, is imperatively needed and within a timescale measured in hours and not days. At one point, and it was one of those asides which was all the more telling for being an aside, Dr C lamented that four hours had gone by because of the judicial proceedings. The simple fact, according to the medical evidence, is that X's haemoglobin count has been reducing and, since yesterday, has reduced, if the reading is correct, from 71 to 57, which is both a very significant drop and, as I understand it, a drop to a very troubling level.
5. Dr C is very concerned that, absent a further top-up transfusion, X is at risk of suffering potentially catastrophic consequences. Although she was, understandably, pressed by the lawyers, including myself, Dr C, equally understandably, as a medical expert, was very reluctant to express that in numerical terms. The measure of her concern was demonstrated by the fact that she identified the risk as being a risk of potentially catastrophic consequences and, of course, if the consequences in the event of the risk becoming a reality are very grave, then a smaller degree of risk is tolerable than if the consequences will be less serious. At one point in her evidence, Dr C said that X's prospects would be 'far, far higher' in the immediate future, were she to receive a transfusion. The adverse consequences of which Dr C spoke included the risk of stroke, a potentially disabling stroke, and also risk to life itself.
6. It is important to understand that Dr C's evidence and her evaluation of the risk was not exclusively tied to the haemoglobin counts which have been obtained by testing of the blood. She described a number of clinical evaluations and observations which she had undertaken which, in her view, entirely went to support the accuracy of the reading and the

gravity of X's current position: namely, and in particular, scans which had been taken showing the impact of the disease on X's lungs; the extent and the location of the pain which X is currently suffering; and also her physical appearance, which Dr C described as 'pale'.

7. Mr Brady, on X's behalf, very properly probed with Dr C whether there might not be an error in this particular reading, since it was very significantly lower than readings taken over the previous two or three days. However, insofar as there was time to evaluate the matter, I have to say I find Dr C's response to that entirely compelling. If one had regard to the whole picture, including the picture derived, as I have said, from other tests and X's presentation, the case was one for concern and those other indicators very much went to support the validity of a reading of 57.

8. Mr Brady's argument, which is powerful and demands much fuller response than I can give it today, is that to impose this form of treatment on X is to impinge impermissibly upon her autonomy as, I emphasise, a *Gillick* competent child of almost 16. He submits that the law has moved on, not merely in consequence of the Human Rights Act 1998, but in more general developments, so that the position which had seemingly been reached by the Court of Appeal in the two cases of *In re R (A Minor) (Wardship: Consent to Treatment)* [1992] Fam 11 and *In re W (A Minor) (Medical Treatment: Court's Jurisdiction)* [1993] Fam 64 in the early 1990s no longer reflects the law as it is. Those are powerful arguments which deserve full analysis and proper consideration. Unhappily, we do not have time for that today in the light of Dr C's medical evidence. I will return to the consequences of this shortly.

9. Mr Brady also powerfully made the point that, since there was some doubt about the validity of the crucial reading of 57, there should be interposed, before any blood transfusion takes place, another blood test to ensure that the reading was accurate. I can see the attractions of this but it seems to me, with respect to Mr Brady, to come up against two, for present purposes insuperable, obstacles. One is, as I have already emphasised, Dr C's overall assessment, which was based not merely upon the reading, but also upon other clinical observations. The second is that, according to Dr C's unchallenged evidence, to take the blood tests and wait for the results would take up some two to three hours and that is not time she would be at all comfortable in allowing matters to be delayed, given where we are.

10. It seems to me that I have, for the purposes of today, to approach this matter on the basis of the law as it currently appears to be. The law, put very shortly and simply, is that the court pays great respect to, and takes very seriously indeed, the expressed wishes and feelings of a *Gillick* competent child and, in particular, the religious views and the religious faith held by a *Gillick* competent child and her family. That said, the court, which is an essentially secular institution, is not permitted, either by our domestic law or by the law of the European Court of Human Rights in Strasbourg, to enter in to debate upon the merits or demerits of the views of particular religious communities. All are entitled to respect and it is not for the court to embark upon a consideration of whether the views and doctrines of a particular religious community are right or wrong, good or bad or anything else.

11. The standing of the Jehovah's Witnesses, and the view which the courts have adopted in this country, have been established now for at least 45 years since the famous judgment of Scarman LJ in 1975 (*Re T (Minors) (Custody: Religious Upbringing)* (1981) 2 FLR 239, 244-5) when, speaking for the Court of Appeal, he roundly dismissed the argument that the living arrangements for a child should be determined in favour of a father on the basis that the mother was a Jehovah's Witness and the father was not. He spoke very eloquently of the duty of the court to have regard to the fact of religious belief; in particular, he spoke

very strongly and positively about the lives which Jehovah's Witnesses lead and of the fact that they are to be respected.

12. However, and this is where, ultimately, it seems to me, I have to stand today, is that the law has been clear for some time now, and I will mention the authorities very briefly in a moment, that, in the final analysis, there may be situations, particularly where serious risk to health or life itself is concerned, where the duty of the court, although having regard to the views of a *Gillick* competent child, is to decline to give effect to them.

13. The overriding obligation of the court is to act in the best interests of X. In the decisions in the Court of Appeal in *In re R* and *In re W*, and there is more recent authority to the similar effect, it has been made clear that, in the final analysis, the court has to take its own decision as to what is in the best interests of a young person and that, in an appropriate case, even if that young person is *Gillick* competent, it may be appropriate for the court to decide, with regret, but nonetheless firmly, not to give effect to the strongly held views and the strongly held religious beliefs of that young person. That is something the court is very slow to do. It is something the court is very reluctant to do and it will do it only – I put the matter descriptively rather than definitively – where there is clear evidence of a serious risk to health or possible death if the court does not intervene.

14. Mr Brady, in an enormously helpful and detailed skeleton argument for which I thank him, has put together arguments suggesting that this view of the law is in need of urgent re-analysis and review, partly in the light of the Human Rights Act 1998, partly in the light of more general recent legal developments, and partly in the light of the very important decision of the Supreme Court of Canada to which he powerfully drew my attention: *AC v Manitoba* [2009] SCC 30, [2009] 2 SCR 181. These are arguments which require to be dealt with, but it is quite impossible for me, within the timescale that Dr C's evidence sets out, to engage properly with these arguments today. It seems to me that I have no realistic choice, but to take the law as being that which was laid down by the Court of Appeal in the two cases I have mentioned, the best part of 30 years ago, and also in the more decision of the Court of Appeal in 2012 in *Re G (Education: Religious Upbringing)* [2012] EWCA Civ 1233, [2013] 1 FLR 677, where, as it happens, I gave the major judgment.

15. In those circumstances, it seems to me that the answer is that I have to authorise the giving of this blood transfusion. I emphasise it is to be, as I understand Dr C wishes, only the top-up transfusion and not the more significant transfer transfusion. In saying that, and in coming to this conclusion, I emphasise to X, who, as I am saying this, is watching me and listening over the Teams link, that I have very much in mind and have paid very careful attention to everything she has said. I appreciate in particular that, if this order is made, she will, again, have the same reactions as she described in very powerful and moving language she had on the two previous occasions when she had a transfusion. I do not, in any way, minimise the significance of that to her. I do not in any way minimise the profound significance to her of the fact I am overriding her strongly held religious beliefs. However, it does seem to me, in the light of the evidence I have heard, that were I not to take that course, I would be running a very real risk indeed, and an impermissible risk, of really serious harm to, not merely her future health and welfare but, potentially, even to life itself.

16. Therefore, I will make the order sought by the hospital. It will omit, for reasons we have discussed in submissions, paragraph (1) which is wholly inappropriate and paragraph (2) will have to be readjusted to make clear that the order I make is despite the fact that X has refused her consent. However, that is the order I propose to make.

17. There are two things which arise. One is this. In the circumstances I have had time only to give the most attenuated, the most brief, of judgments, and one question I have, though it does not require an answer here and now, and is linked with the other question I raise, is

whether the parties would wish me to give a fuller judgment in due course.

18. The second point is, in a sense, more pressing. It is a matter of profound concern to me that, for whatever reason, this case has come back before the court, having previously been before the court in May (before Gwynneth Knowles J: *Re X* [2020] EWHC 1630 (Fam)), in a tremendous rush and in circumstances approaching medical crisis. Now, there is no point in seeking to explore why that has happened, let alone to apportion blame, but it has had the profoundly adverse consequence, the profoundly troubling consequence, that the court has not been able to deal with it in the way in which, ideally, the court would wish to deal with it.

19. It would be nothing short of intolerable if I were simply to make the order I have made and left the matter to await the next potential crisis, because my understanding of the medical evidence is that a crisis of the sort which has erupted in recent days, like the crisis which erupted in May of this year, may be a recurrent feature of X's condition. It seems to me imperative that the court, sooner rather than later, and before we have the next crisis, is able to give proper attention to Mr Brady's very important submissions so that the next time, if there is a next time and the case comes back to court, there will be a clear legal framework available for the resolution of the next crisis. I would like the parties to consider how best we could deal with that.

20. There is also, although on one view, this is a matter for the next occasion, the question of whether the court should make, as it were, an order covering similar eventualities over the next two years until X reaches the age of 18. That is a matter which needs to be dealt with urgently and as part of this urgent hearing which I have in mind. However, it does seem to me something which is going to require careful argument because, as I indicated during the course of arguments, whereas, at present advised, I have little doubt the court has power to make such an order, I will require considerable persuasion that it is proper for the court to make such an order in this kind of case.

21. It does seem to me that the proper way forward to avoid this unfortunate scramble to justice, because that is all we have been able to achieve today, is to make sure that these important issues that Mr Brady very properly wants to raise, can be dealt with in early course at a hearing where there has been adequate time for preparation, adequate time for argument and adequate time for judicial reflection.

End of Judgment