

Neutral Citation Number: [2020] EWHC 3775 (Fam)

IN THE HIGH COURT OF JUSTICE – FAMILY DIVISION
SITTING REMOTELY VIA SKYPE FOR BUSINESS

Friday, 17th July 2020

Before:
THE HONOURABLE MR JUSTICE FRANCIS

B E T W E E N:

A LOCAL AUTHORITY

and

AA v BB

JUDGMENT
(For Approval)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

This version of the judgment may be published on condition that the anonymity of the child and their family is preserved and that there is omitted any detail or information that may lead to their identification, whether on its own or in conjunction with other material in the judgment. This includes, but not exclusively, the information of location, details of family members, organisations such as schools and hospitals, and unusual factual details. All persons including representatives of the media must ensure that the condition is complied with. Failure to comply will be a contempt of court.

MR JUSTICE FRANCIS:

1. I am the allocated judge in long running care proceedings in relation to a child, K. She is thought to have been born in 2017 on a date that her mother and her father have given and it is the date that is going to be the subject of a declaration by me so that her birth hopefully can now be properly registered.
2. There are listed before me this afternoon three matters on an interim basis. [...]. The third is the application by the mother (supported by the father) to prevent the Local Authority from imposing a programme of vaccinations on K without the consent of the parents. This is my *ex tempore* Judgment in respect of that vaccination issue.
3. [...]
4. [...]
5. The hearing today is taking place by means of Skype for Business. As everybody knows, remote hearings have been the way that we have been dealing with things since, I think, about 20 March this year. Nobody raised any objections to us dealing with the matter this way and indeed given the social distancing rules [...], it would have been impossible for us to convene a fully in-person court hearing.
6. Given that I have not needed to take any oral evidence, I am quite satisfied that we have dealt with this matter effectively and comprehensively today by means of this remote platform; the parents have attended remotely [...].
7. [...]
8. [...].
9. [...]
10. As I have said, the issue that I have got to deal with this afternoon is the issue of whether the child should be vaccinated or, more properly put, the mother's application to prevent vaccination. It may only be a technicality but it is important for me to start by setting out that, of course, the burden of proof is therefore on the mother, as applicant, to persuade me that it is right and in K's best interests for her not to be vaccinated. I am of course guided at all times by the welfare principle, as have been all of the advocates in their submissions to me.
11. The interim care order in this case was made as long ago as [...] 2019, then in the [...] Family Court and it was after that when matters developed that the case was transferred to me to be heard in the High Court.

12. [...]
13. By reason of the interim care order that was made, of course the parents share parental responsibility with the Local Authority. K has not been vaccinated. She has not undergone any of the programme of vaccinations that almost all children in the United Kingdom have, and in accordance with the clear recommendations of Public Health England.
14. The parents have both filed statements. They stand as one in this regard. They both vehemently object to the imposition, as they would see it, of vaccinations on their daughter. Their objections are principled. Having read the statements of both parents it is clear to me that these are intelligent, thoughtful, decent people who have a legitimate concern that they wish to raise. I will turn to the detail of their evidence in a minute but they set out comprehensively the reasons for their objections.
15. The father has exhibited a very long document which, at first blush, as Counsel who represents the Guardian has submitted, reads more like an expert report or an extract from a science journal; but it is in fact effectively a statement by the father which contains a number of hyperlinks to research, some of which I have been able to have a look at and I have now, since we adjourned at about 12.30, this afternoon been able to read, albeit quickly, the whole of the father's document.
16. There is no doubt that it is a carefully considered document but I wish to make it completely clear that it has no status in any sense at all as an expert document. It is his efficient and considered representation. As I have said, it is in effect adopted by both of the parents.
17. Turning to the application itself at page B129, this application was issued [...] this year and its likely issue was advertised at a directions hearing before me, I think shortly before that. What the parents say in this document is:

‘I object to immunisation and inoculation on a number of grounds. (1) Medical safety. (2) Ethical concerns. (3) Religious beliefs. I do not believe it to be in K's best interest to be immunised. Please see supplementary statement’.

18. The parents have, as I have said, filed comprehensive statements. At F19, I refer to an extract from the father's statement in support of this application. [...]
19. In paragraph 55 of his statement on page F19 the father says, ‘I object to vaccination of my daughter on the grounds of the following: (1) Medical Safety’ and then he runs through a number of concerns:

‘(a) Underreporting of serious vaccine adverse reactions by a factor of 10.

(b) Significant declines in the report about those drug reactions by healthcare professionals. (c) A lack of post-marketing surveillance figures defining how many children suffer adverse reactions to vaccines outside of the manufacturing pre-marketing studies and how long these reactions last for. (d) Lack of requirement for the study of vaccine from [co-kinetics?]. (e) Flawed aluminium safety studies relied upon to determine safe levels of aluminium in vaccines. (f) Misrepresentation of vaccine safety, specifically the failure to draw any attention to the cumulative risks associated with multiple doses of vaccines routinely administered as part of the UK vaccine schedule. (g) An increased risk of contracting Covid-19 due to the extremely high likelihood of scheduled immunisations causing upper respiratory tract infections’.

20. I have already mentioned that the father has exhibited a comprehensive document but I have also said, as is obviously the case, that that has no expert status. Of course it cannot have, and it has not been for a moment suggested on his behalf nor on the mother’s behalf that it could have. It is also very important that I refer in this context to the decision as recently as May of this year of King LJ in the Court of Appeal.
21. Counsel for the Guardian reminds me of the importance of the fact that this judgment was given as recently [...] and therefore what might be said to be just about at the height of the Coronavirus/Covid-19 pandemic and so it cannot be suggested by anybody that it does not take into account the issues about Covid-19 to which I have just referred arising out of the father’s statement.
22. One of the things that I have very carefully considered today is whether I should adjourn the application until the hearing proper takes place [...], as presently planned at least, [...]. It seems to me that the scientific objections put forward by the parents are ones to which, whilst I can have due regard and respect, but given that they are not supported by expert evidence, and given that the matter has been dealt with head-on by the Court of Appeal and I will deal with it again in a minute in *Re H (A Child)(Parental Responsibility: Vaccination)* [2020] EWCA Civ 664, I cannot accede to the parents’ application on the basis of their suggested science but the parents go further and the father goes on to set out both ethical concerns and religious beliefs.
23. His ethical concerns are:
 - (a) that vaccine ingredients involve extreme harm and cruelty to animals which are routinely hidden from the patient. (b) The use of cell lines cultivated from aborted human foetuses. (c) The potential violation of my fundamental human right to choose and to avoid a harmful medical product or procedures that involve significant damage to humans and animals alike and to withdraw my support from a product manufactured with grave

indifferences to human and animal life’.

24. I have respect for those ethical concerns. It is not for me as a judge to set out what my own ethical views are but it is appropriate that I record and that the parents hear me recording that I have respect for their ethical concerns.
25. Similarly the parents set out religious beliefs. [...] They wish to exercise their fundamental human right to practise any religion they choose and of course that is their right and nothing that I say or do today is going to affect that right to practise whatever religion they choose.
26. [...]
27. However, for the purposes of this judgment, given as it is at an interim hearing, I make it clear that I have full respect for the parents’ religious beliefs and I accept what they tell me in paragraph three of Father’s statement at page F19.
28. I now need to go to the skeleton argument filed by Counsel on behalf of the father. At paragraph five, Counsel summarises the objections as follows:

‘If vaccination is sought by the Local Authority because of its shared responsibility to safeguard my daughter’s health, does this mean that any parent who chooses not to vaccinate is failing to safeguard their child’s health or is that parent merely exercising his or her right to freedom of choice since vaccination is not mandatory?’

29. Then Counsel says this on behalf of the father:

‘Why should my daughter be vaccinated against my wishes and our family be unfairly discriminated against as a consequence of our being part of a national minority group, i.e. families with children in foster care? Why must we be subjected to these measures when they are not evenly applied across all families in the UK? How is this reasonable or proportionate?’

30. I have, as I have said, considered whether I should put this matter off until the final hearing [...]. The advantage of that would be first of all to see whether I do by the time it finishes make a full care order. [...].
31. It is possible [at the final hearing] that I will not make a care order. It is possible that I will make an order which falls short of a care order but which involves the Local Authority. It is possible that I will make a care order with K living with her parents and it is possible that I will make a care order with K living in foster care. All of those are obvious possibilities.
32. I turn now therefore back to the judgment of King LJ in the case of *Re H* to which I have already referred. Counsel for the Local Authority says in her skeleton argument, and this is correct, that the law in this case is not in dispute. That has been confirmed by Counsel on

behalf of the mother and by Counsel on behalf of the father.

33. The case of *Re H*: It is essential that I say and that the parents hear me say that I am bound by that decision of the Court of Appeal, being the decision of a higher court. It is also essential for me to underline that in that case the decision of the Court applies equally to a child **in the interim care** of a Local Authority as it does to a child the subject of a final care order.

34. Counsel for the Local Authority points out in paragraph seven the following:

‘The exercise of parental responsibility under Section 33 of the Children Act 1989 is subject to several safeguards which include: (a) It is subject to the general duty to safeguard and promote her welfare. (b) Before making any decisions with respect to a looked-after child, the Local Authority must, so far as it is reasonably practical, ascertain the wishes and feelings of the child and his parent regarding the matter to be decided. (c) The Local Authority must not exercise its overriding parental responsibility unless it is satisfied that it is necessary to do so to safeguard and promote the child’s welfare. (d) The Local Authority may not change a child’s religion, agree to his adoption, appoint a Guardian for him, change his surname without written agreement or without going through the prescribed procedure to remove him from the UK from more than a month without written agreement’.

35. In paragraph 55 of her judgment in the Court of Appeal, King LJ said as follows:

‘In my judgement, subject to any credible development in medical science or peer-reviewed research to the opposite effect, the proper approach to be taken by a Local Authority or a Court is that the benefit in vaccinating a child in accordance with Public Health England guidance can be taken to outweigh the long recognised and identifiable side effects’.

36. At paragraph 102 of *Re H*, King LJ said:

‘As must have become clear, I do not share the inhibition felt by the judges in some of the decided cases in expressing their view that the scientific evidence now established is that it is generally in the best interests of otherwise healthy children to be vaccinated’.

37. As Theis LJ said in *F v F* [2013] EWCH 2683 (Fam):

‘With due consideration for established contraindications to vaccination in an individual case, it is otherwise in every child’s interest to be protected. It follows therefore that in my judgement, an application to invoke the inherent jurisdiction or to seek an injunction with a view to preventing the vaccination of a child in care is unlikely to succeed unless there is put before the Court in support of that application cogent, objective medical and/or welfare evidence demonstrating a genuine contraindication to the

administration of one or all of the routine vaccinations’.

38. It is clear to me in this case that I have not had any objective medical and/or welfare evidence demonstrating a genuine contraindication to the administration to one or all of the routine vaccinations.
39. That judgment of King LJ was supported by both McCombe LJ and Peter Jackson LJ so it is the unanimous judgement of the Court of Appeal in May of this year. In other words, only two months ago.
40. I have as I have said considered whether I should put this decision off. [...].
41. [...]
42. I cannot it seems to me therefore allow the current pandemic to influence my decision in any way and nor, as I have said, did the Court of Appeal in the case of *Re H*.
43. Turning to paragraph six of Counsel for the Guardian’s skeleton argument, he refers me also to paragraph 20 of *Re H* where King LJ said this:

‘It is to my mind self-evident that for T, as a healthy young infant, the risks contingent upon not vaccinating him significantly outweigh the benefits. The conditions identified include potential for catastrophic consequences which as illustrated can involve paralysis, seizure, learning disabilities, visual loss, and cancer. T’s Guardian comes to the clear conclusion that as a healthy well grown baby there are no contraindications from the vaccines proposed’.

44. In this case it is important that I stress and it is to the parents’ credit during the time of course that K was with them and now thriving in foster care that K is a thriving [...] child who has met or exceeded all of the relevant milestones for a child of her age and therefore it is right that I regard K as being similar to the child T in the *Re H* case to which I have just referred.
45. It is important that the parents hear me say that I repeat that I recognise their ethical, religious, and firm objections to vaccination. I recognise that they say:

‘Why is it fair when our child might not end up in care that she’s been forcibly vaccinated against our wishes when other children who are not in care are not subjected to that procedure against the wishes of their parents?’

46. I do not know whether there are some Local Authorities that would regard it as a reason for care proceedings because a child has not been vaccinated but what is absolutely clear to me is that the Court of Appeal have said that healthy children should be vaccinated. I am dealing here of course with the rights, with the welfare of a little girl [...]. Her welfare is

my paramount consideration.

47. Of course I have regard to the Article 8 rights of the parents but as Counsel for the Local Authority reminds me, I also have to have regard to the Article 8 rights of K whose rights are independent of her parents.
48. Having regard to everything that has been said and to the very careful argument that has been put on behalf of the parents, I am left in no doubt at all that I should follow the clear guidance of King LJ in the case of *Re H* and that means that I should reject the application brought today by the parents.
49. I have not done it on a narrow burden-of-proof basis. I started by saying that the burden was on them but I make it clear that I have not dealt with this on a technical basis at all. I am very firmly of the opinion that the application must be dismissed and if this were an application brought by the Local Authority for permission to vaccinate, I make it very clear, having heard and read everything as I have, I would have acceded to that application.

End of Judgment

Transcript from a recording by Ubiquis
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

Ubiquis hereby certify that the above is an accurate and complete record of the proceedings
or part thereof