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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION



No. FD21P00478

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 20 July 2021

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF THE SENIOR COURTS ACT 1981

Before:

MR JUSTICE FRANCIS

(In Private)

BETWEEN:

A local authority Applicant

- and -

(1) A mother
(2) A father Respondents

MR T. DONNELLY (instructed by local authority Legal Services) appeared on behalf of the Applicant.

THE FIRST RESPONDENT appeared in Person.

THE SECOND RESPONDENT did not attend and was not represented.

J U D G M E N T

(v i a M i c r o s o f t T e a m s)

MR JUSTICE FRANCIS:

- 1 I have an application before me this afternoon brought by a local authority for orders in respect of W, a boy who was born in 2008. He is therefore 13 years old. I shall refer to his parents simply as “the mother” and “the father”.
- 2 A care order was made by a Circuit Judge on 4 March 2021. The particular circumstances of those proceedings are not relevant to the decision I have got to make this afternoon but what is important to note is that the local authority and the mother share parental responsibility.
- 3 W is known to paediatric services at a Hospital. He was admitted on the paediatric ward in February 2020. He suffers from rapidly progressive neurological regression, refractory epilepsy, unsafe swallow, and recurrent chest infections. He suffers from a neurometabolic disorder and it appears to be a gene relating to Gaucher disease that is causing all of his illnesses. I do not wish to upset the mother by going into any further detail now about his current medical problems.
- 4 On 14 July 2021, that is six days ago, there was a health professionals’ “best interests” meeting. This was attended by his entire medical team, including his lead consultant Dr K. The list of all those who attended is set out in the attendance note of the meeting. The meeting lasted an hour and there was consensus among all those attending. There was a range of health professionals and the attendance note of the meeting explains that this was able to provide a more independent perspective on W.
- 5 In November 2020, the mother agreed with the DNACPR that was in place. In other words, if W’s heart was to stop, there would be no attempt to resuscitate. I am told that on 10 July this year, the mother withdrew her consent to that DNACPR.

6 The mother has attended this afternoon and had the assistance of her interpreter Mr K. The mother is not legally represented today. She was legally represented in the care proceedings but a care order having been made, her legal aid certificate would have expired. Not for the first time, I find myself expressing astonishment that legal aid is not available for parents in the circumstances that this mother is in.

7 I have suggested to the mother that she might wish to adjourn any decision today and see if she can find legal advice. Happily, there are decent advocates around who will do *pro bono* work and I dare say that if Mr Donnelly was to circulate among those that he knows a request from me, somebody might come forward. The mother has said to me now on two separate occasions, and also said to SW1 from the local authority, that she wishes the court to make a decision today. It seems to me that the mother has recognised the painful decision that she has to make, that W is near the end of his life, and that further treatment for him would be futile.

8 What the local authority wishes me to do is, first, to declare that I am satisfied that I have jurisdiction in relation to W based on his habitual residence in England and Wales. Plainly, he is so resident; accordingly the court has jurisdiction in relation to him. The issue now, therefore, is whether the local authority can consent to the course which is now intended.

9 The father is believed to be living in London but he has not responded to efforts by the local authority to contact him by telephone. Accordingly, I am satisfied that it is right to proceed to deal with this case today.

10 The first order I make is that pursuant to section 100 of the Children Act 1989, the local authority is granted leave to apply for the exercise of court's inherent jurisdiction. The second order I make is that the local authority is acting lawfully pursuant to section 33(3) of the Children Act 1989 that it is in the best interests of W for the local authority to consent to the Hospital's advanced care plan. In coming to this decision, of course I apply the best

interests test. I accept that the hospital will do all that they can to provide palliative care for W and always to act in his best interests whilst preserving his dignity.

11 I do not think there is any benefit this afternoon, in what is very much an emergency hearing, in setting out the well-known list of authorities dealing with these sorts of issues suffice to say that those cases are extremely well-known to me and, of course, I have regard to them.

12 The care plan proposes:

- (a) The continuation of high flow oxygen support until such time as it causes distress;
- (b) In the event of cardiac arrest, it would not be appropriate to undertake cardiopulmonary resuscitation;
- (c) In the event of respiratory arrest, it would not be appropriate to attempt intubation or ventilatory support; and
- (d) Thereafter, the administration of only palliative care whereby the doctors and nurses having responsibility for W's care and treatment will, at all times, administer treatment in such a way as to cause him the least pain and distress, and retain the greatest dignity.

13 I know that the mother will recognise that the hospital and all of the treating team have done all that they can to provide treatment for her son. Alas, it seems that he has a condition which is untreatable and my heart goes out to her as his mother.

MR JUSTICE FRANCIS: Mr Donnelly, is there anything that you feel needs to be added to my judgment or my explanation?

MR DONNELLY: No. Thank you, my Lord.

MR JUSTICE FRANCIS:

14 Obviously, I make no order for costs.

CERTIFICATE

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