

# Derek Wyatt v (1) Portsmouth NHS Trust (2) Charlotte Wyatt (By Her Guardian CAFCASS) (2005)

**[2005] 2 FLR 480**

21/04/2005

## **Barristers**

Robin Barda

## **Court**

Family Division

## **Facts**

The court declined to discharge declarations made in respect of the medical treatment of a child suffering from chronic respiratory disease. It was in the best interests of the child that the decision to withhold aggressive treatment should not wait until the onset of a crisis, but the judgment whether to rely on the declarations had to be taken by the hospital in light of all the circumstances at the time of any crisis on the basis of the child's best interests and in close consultation with the parents.

The applicant father (F) applied for the discharge of declarations made by the court ((2004) EWHC 2247) in respect of the medical treatment of his child (C) by the first respondent NHS Trust. C had been born prematurely in the Trust's hospital. She suffered from a severe chronic respiratory disease, which was expected to be fatal and which meant that she was dependent on oxygen delivered in a head box. She also suffered from brain damage and other medical problems. The court had decided that in the event C caught a respiratory infection, it was in her best interests for the hospital not to send C for artificial ventilation or similar aggressive treatment. There was no presumption that the associated declarations should continue and it was accepted by all parties that it was for the Trust to show that they should. Nothing had changed in C's underlying respiratory condition since the declarations were made, although its consequences had improved significantly. F argued that (1) in the event of respiratory collapse, the hospital should attempt aggressive invasive treatment; (2) a decision as to the withholding of aggressive treatment should wait until the onset of a crisis.

(1) The views of the parents had to be accorded profound respect and given weight, but they could not be decisive. All but one medical expert agreed that all treatment should be offered up to, but not including, invasive intensive care. The majority medical opinion had to prevail, bearing in mind the severity of C's chronic respiratory illness, the inherent likelihood of infections and C's reduced resistance caused by her malnourishment. It would not be in C's best interests to die in the course of futile aggressive treatment. In the event of respiratory collapse, all treatment up to, but not including, incubation and ventilation would be in C's best interests. (2) A balance had to be struck between

preserving autonomy and parental decision-making in light of developing circumstances on the one hand and the need to avoid being overwhelmed in a crisis on the other. The decision to withhold aggressive treatment should not wait until the onset of a crisis. It was overwhelmingly probable that such a crisis would occur and it was highly likely that the cause of it would be respiratory infection. It would be wholly contrary to C's best interests for such a crisis to be overshadowed by a major legal conflict, between C's parents and the Trust, which was highly unlikely to raise any issue that had not already been canvassed before the instant court. However, the declarations should be subject to review and the judgment whether to rely on them had to be taken by the Trust in light of all the circumstances at the time of any crisis on the basis of C's best interests and in close consultation with her parents.

Application refused.

### **Permission**

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