

# Portsmouth NHS Trust (Applicant) v (1) Derek Wyatt (2) Charlotte Wyatt (By Her Guardian Cafcass) (Respondents) & Southampton NHS Trust (Intervener) (2004)

**[2005] 1 FLR 21**

07/10/2004

## **Barristers**

Robin Barda

## **Court**

Family Division

## **Facts**

When deciding whether life-prolonging treatment should be withheld from a baby the court had to consider the baby's best interests including the parents' wishes and in the circumstances the court concluded that artificial ventilation or similar aggressive treatment would not be in the baby's best interests.

The NHS Trust applied for an order of the court allowing it, in the event of disagreement between the Trust and the parents (P) of a baby (C), not to send C for artificial ventilation or similar aggressive treatment. C had been born prematurely in October 2003. She had been placed in an incubator and had never left hospital. C had chronic respiratory and kidney problems as well as profound brain damage that had left her blind, deaf and incapable of voluntary movement or response. There was no possibility of significant brain growth. C had had severe respiratory failure requiring ventilation for most of her first three months. Since July 2004 she had exhibited a profound deterioration in her neurological and respiratory functioning. The medical evidence was that C experienced pain and distress but that it was unlikely that she experienced any pleasure. It was agreed by all parties that C's condition should be maintained. However it was highly likely that C would catch a respiratory infection which would require ventilation. The unanimous medical opinion was that artificial ventilation, if and when required, would not be in C's best interests. C was represented by a guardian (CAFCASS) which concluded that ventilation would not be in C's best interests. P contended that such treatment should at least be instituted and could be prepared for.

## **Held**

The court had to decide what was in C's best interests. Best interests encompassed medical, emotional and all other welfare issues. C had the right to life and to her dignity. She also had the right to die peacefully if that was the natural course. P's views also formed part of the best interests consideration. Account had to be taken of the pain and suffering and quality of life which C would experience if life were

prolonged. Where a child was so damaged that the only way of preserving its life was by the continuous administration of painful treatment, the court was entitled in the best interests of the child to say that deliberate steps should not be taken artificially to prolong its life, without there being any question of deliberately ending life, *Re J (A Minor) (Wardship: Medical Treatment) (1990) FCR 370* applied. A valuable guide in the search for the best interests of the baby was for the court to judge the quality of life which the child would have to endure if given the treatment and decide whether in all the circumstances such a life would be intolerable to that child. On that basis any further aggressive treatment, even if necessary to prolong C's life, was not in her best interests. The Trust was granted the authority, in the event of disagreement between it and P, not to send C for artificial ventilation or similar aggressive treatment.

Application granted.

### **Permission**

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