

Simms v Simms and another

[2003] 1 Fam 83

17/12/2002

Court

Family Division

Facts

In two separate cases the patients, an 18-year-old male and a 16-year-old female, were suffering from probable variant Creutzfeldt-Jakob disease ("vCJD"), a rare neurodegenerative disorder in which, inter alia, abnormal prion proteins become deposited in the brain. No recognised effective treatment or cure had yet been found, but overseas medical research had identified a treatment which inhibited the formation of abnormal protein prion in mice. The parents of the patients wished them to receive that treatment, which had hitherto not been tested on humans. They sought declarations that each patient lacked capacity to consent to treatment and that it was lawful as being in their best interests for them to receive the proposed treatment.

On the applications for declarations—

Held

Held, granting the declaration in each case, that neither patient had capacity to make decisions; that there was a responsible body of relevant medical opinion which supported the innovative treatment proposed; that the concept of "benefit" to a patient suffering from vCJD encompassed an improvement from the present state of illness, a continuation of the existing state of illness without deterioration and the prolongation of life; that on the totality of the medical evidence and taking into account medical and non-medical benefits and disadvantages, the broader welfare issues of the patients, their abilities, their future with or without treatment, the views of the families and the impact of the refusal of the applications, there were possible benefits to the patients from such pioneering treatment where there was no alternative treatment available; and that, accordingly, it was in the best interests of each patient that the proposed treatment be carried out (post, paras 47, 51, 57, 58, 60-61, 64, 67).

Per curiam. The Bolam test ought not to be allowed to inhibit medical progress since it is clear that if one waited for that test to be complied with to its fullest no innovative work in medicine would ever be attempted (post, para 48).

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