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Re J (A Minor) (Wardship: Medical Treatment)

[1991] 1 Fam. 33

19/10/1990

Court
Court of Appeal

Facts
J., who was born prematurely in May 1990, suffered perinatal brain damage and required immediate resuscitation by means of mechanical ventilation, an invasive procedure which with the accompanying intensive care procedures was distressing to the child. In September, following convulsions and episodes when he stopped breathing, he was again placed on a ventilator. The most optimistic prognosis suggested that he had a considerably shortened life expectancy, that he would become a serious spastic quadriplegic, probably without sight, speech or hearing, but that his only likely normal reaction was that of pain. There was a possibility that he might at any time suffer respiratory collapse requiring further resuscitation. For reasons unconnected with his clinical condition he had been made a ward of court, the local authority having his care and control. On their application, inter alia, for directions in respect of J.'s appropriate future medical management the judge approved the recommendation of the consultant neonatologist that, in the event of further convulsions requiring resuscitation, J. should not be revived by means of mechanical ventilation unless to do so seemed appropriate to those involved in his care in that situation. By his order the judge directed that the relevant health authority continue to treat J. in accordance with that recommendation.

On appeal by the Official Solicitor:-

Held
Held , dismissing the appeal, (1) that although there was a strong presumption in favour of the preservation of life, no principle of public policy regarding the sanctity of life displaced the paramountcy of the ward's best interests; and that accordingly even where a ward was not terminally ill the court might in appropriate circumstances withhold consent to life-saving treatment (post, pp. 44B-E , 51G-H , 52A-B , 53A , 54E , 55B-D).

McKay v. Essex Area Health Authority [1982] Q.B. 1166, C.A. distinguished.

(2) That, where a child was not terminally ill, the court in determining where his best interests lay would (per Lord Donaldson of Lymington M.R. and Taylor L.J.) take into account the pain and suffering to the child if life-prolonging treatment were given and assess its effect from his position were he able to make a sound judgment, so that where, viewed from such a standpoint, his future life might be regarded as intolerable to him the court acting solely on his behalf might properly choose a course of action which did not prevent his death; that (per Balcombe L.J.) the court would adopt the standpoint of the reasonable

and responsible parent with his child's best interests at heart; that having regard to all the circumstances the judge had erred neither in principle nor in his approach, and the court would not interfere with his decision; but that since the court in wardship proceedings approved or withheld consent in respect of a particular treatment but did not require a specific course to be followed, the form of order should be expressed accordingly and the judge's order would be varied to that extent (post, pp. 46D , H-47A ,48B , D-E , 52D-F , 55E-F , 56C-D).

In re B. (A Minor) (Wardship: Medical Treatment) [1981] 1 W.L.R. 1421, C.A. considered.

Per curiam. There is no question of the court approving a course aimed at terminating life or accelerating death even in the case of the most horrendous disability. The court is only concerned with the circumstances in which steps should not be taken to prolong life (post, pp. 44C-D , 46B-C ,51D , 53B).

Per Balcombe L.J. Any attempt by the Court of Appeal to lay down an all-embracing test applicable to all circumstances is to be deprecated. There does not seem to be any demand by judges of first instance for assistance from this court for any test beyond that which is already the law (post, p. 52C-D).

Decision of Scott Baker J. affirmed.