SERJEANTS' INN

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Appeal judges uphold decision to withdraw life-support for Charlie Gard

Parents argue that decision to seek treatment in US would cause Charlie no significant harm

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The Court of Appeal has upheld the decision by the High Court to withdraw life-support treatment for nine-month-old Charlie Gard.

Parents Connie Yates and Chris Gard were hoping to take Charlie, who suffers from a rare incurable condition, to the US for treatment that has been described as 'pioneering'.

Last month, the High Court said in Great Ormond Street Hospital for Children v Gard that this would not be in the baby's best interests. Palliative care should be provided instead, Mr Justice Francis said, so he could be allowed to die peacefully and with dignity.

Yates and Gard, who raised £1.3m to fund treatment for Charlie in the US, were initially represented pro bono by Bindmans but the couple chose North London firm Harris da Silva and public law specialist Richard Gordon QC to represent them in the appeal.

On Tuesday, the Brick Court Chambers silk argued before Lord Justice McFarlane, Lady Justice King, and Lord Justice Sales that the doctors had usurped the parents' right to decide what was in their child's best interest.

It was arguable, he said, that Charlie's parents decision to take him to the US for treatment caused him no significant harm. In such cases, the court had no jurisdiction and the best interests test did not apply.

Speaking this morning ahead of the decision being handed down, Serjeant's Inn silk Bridget Dolan QC warned that such arguments, if upheld, would be 'serious and far reaching'.

'How would you define significant harm, and how doctors, faced with parents asserting their parental rights, know when and whether to ask a judge to decide? Could parents compel doctors to treat?' she asked. 'And what about the child: how are his or her wishes to be ascertained and are they even relevant?'

At one point, Great Ormond Street doctors considered applying for ethical permission to attempt nucleoside therapy, a treatment which offered potential hope for improvement but that hasn't been used on patients with this form of mitochondrial disorder.

By the time they had decided to do so, however, Charlie's condition had greatly worsened and the view was that his epileptic encephalopathy was such that his brain damage was severe and irreversible.

In his condition, the High Court said, treatment was potentially painful and incapable of achieving anything positive for him.

The US doctor who had offered to treat Charlie was due to provide evidence in the original proceedings but after a conversation with the Great Ormond Street consultant he said he could understand the opinions that any attempt at therapy would be futile and that Charlie would be unlikely to improve with nucleoside therapy.

He also confirmed that he had never treated with nucleoside therapy anyone who had encephalopathy and was therefore unable to say whether a patient with the condition would respond positively to the treatment.

Francis J concluded 'with the heaviest of hearts, but with complete conviction' that subjecting Charlie to nucleoside therapy was unknown territory – it had not even been tested on mouse models – and that he should accede to the hospital's request to withdraw treatment.

Jean-Yves Gilg is editor-in-chief at Solicitors Journal