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IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION  
[2019] EWHC 3516 (Fam)



No. FD19P00598

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday, 25 October 2019

Before:

MR JUSTICE FRANCIS

**(In Private)**

BETWEEN:

OXFORD UNIVERSITY NHS TRUST

Applicant

- and -

- (1) AB (A Minor)
- (2) CD
- (3) EF

Respondents

**REPORTING RESTRICTIONS/ANONYMISATION APPLIES**

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MR M. MYLONAS QC (of Counsel) appeared on behalf of the Applicant.

THE RESPONDENTS appeared in Person.

**J U D G M E N T**

MR JUSTICE FRANCIS:

- 1 There are two orders in this case: The first is a reporting restrictions order and Mr Farmer has already had an opportunity of commenting on that. I have ordered that there is be no identification of anybody in this case by which I mean of either the family involved or the treating clinicians involved. Any reporting of this case can refer to Oxford University Hospital Trust but must not identify the family, the child involved or the treating clinicians.
- 2 I am dealing with AB who is fourteen years old. The order which I am asked to make is that I am asked to declare that the criteria for death have been established and that it is lawful and in AB's best interests for all care and treatment to be withdrawn.
- 3 I do declare that the criteria for death have been established. I do so with great pain, but that is the obvious scientifically correct statement. Therefore, I do declare that it is lawful and in AB's best interests for all care and treatment to be withdrawn.
- 4 The evidence of Dr E is that the legal time of death was confirmed at 10:26 hours on 22 October 2019 and I accept that legal definition of the time of death.

**L A T E R**

- 5 AB is fourteen years old; she is the daughter of CD and EF. She has five siblings. She was found hanging at home on the evening of Thursday 17 October 2019. I know nothing about the build-up to that and nor do I need to because my decision today is only concerning whether and when she died and whether treatment should be withdrawn, and I have already dealt with that.
- 6 Paramedics were called at 18:52 and arrived at the home seven minutes later at 18:59; the helicopter emergency medical service arrived at the scene at eleven minutes past seven. By this time AB was already in a state of cardio-respiratory arrest and cardio-pulmonary resuscitation was ongoing; a dose of adrenalin was given and an i-Gel supraglottic breathing device was placed. At 19:23 a pulse was noted with return of spontaneous circulation. The total estimated downtime was a minimum of thirty-one minutes, but that means in ordinary language that the brain was without oxygen for at least thirty-one minutes.
- 7 At around 5 a.m. on 20 October, AB's pupils were noted to be unequal with the right pupil being slightly larger than the left.
- 8 I have read the evidence of Dr E; he is a Consultant Paediatric Intensivist at the Paediatric Critical Care Unit at Oxford University Hospital's NHS Trust. His qualifications are set out in his statement. He has attended court this afternoon for which the court is grateful. He gave evidence in what must be the most painful of situations for any doctor.
- 9 The parents are unrepresented. I have said before publicly and I say again now - not making any political statement because I cannot and will not do that in my public role - but I regard it as offensive to the decency of a democratic society that people in this position are without legal assistance. I cannot believe that the changes that were made to the Legal Aid system intended this to be the effect; I think it is an accident of the Legal Aid changes.

- 10 Be that as it may, mainly the mother but also the father have asked questions of Dr E. I have helped to break those questions down into the sort of questions that I believe would have been asked on their behalf had they been assisted by advocates.
- 11 I have also had questions from the mother's sister, GH whose English is, I think, better than she says it is but nevertheless it is not her first or even her second language and I think it is painful and unfair that questions should have to be put either by grieving parents or grieving relatives in this way. Nevertheless, it is clear to me what these parents are seeking to establish and it is important that I understand (which I do) and set out briefly the reasons for their objections to the course that I have had said has to be taken.
- 12 The parents are practising Christians with a profound belief. Part of that belief is that it is not right for man to kill another man or for woman to kill another woman. Of course that is one of the basic tenets of all of the major religions of this world and indeed of humanism as well. I hope that I can explain that in this case this is not a question of anybody killing AB. If it were, there is no way that a Judge of this court could begin to sanction it; that is obvious.
- 13 As I have already said, AB's death was confirmed at 10:26 on 22 October; that is almost three and a half days ago now. Therefore, she is already, in effect, dead and I will come to deal with the medical evidence shortly. I do urge the parents as they reflect on this in the days, weeks and months and years to come and as they begin their grieving process to understand that my decision on the recommendation and on the application of this hospital trust is not about killing; it is about removing a ventilator which is artificially sustaining a heart.
- 14 Euthanasia is an act where you deliberately set about causing somebody to die; possibly a mercy killing as some people would call it. But this is not that. Nobody is suggesting this is that. This is removing a machine which sustains a heartbeat.
- 15 I have been referred in this case to the decision of Mr Justice Hayden in a case called *Re A*. His judgment in that case was delivered in February 2015 and the facts of that case are remarkably similar to the facts of this case. He referred there to the Code of Practice which applies to infants, children and adults who are comatose and being ventilated; that Code of Practice defines death as:

“(2.1.) The irreversible cessation of brain-stem function whether induced by intra-cranial events or the result of extra-cranial phenomena, such as hypoxia, will produce this clinical state and therefore irreversible cessation of the integrative function of the brain-stem equates with the death of the individual and allows the medical practitioner to diagnose death.

Three things should be noted in this regard:

First, the irreversible loss of the capacity for consciousness does not by itself entail individual death. Patients in the vegetative state (VS) have also lost this capacity. The difference between them and patients who are declared dead by virtue of irreversible cessation of brain-stem function is that the latter cannot continue to breathe unaided without respiratory support, along with other life-sustaining biological interventions.”

I pause quoting from this at this point to refer to a question very properly and understandably put by the mother which is: “People wake up from comas” and the aunt said: “People can wake up from comas” and Dr E dealt with that by explaining, perhaps in

rather easier to understand terms than I am reading from in this Code of Practice, the difference between being in a coma and someone who has brain-stem death. I go back to reading from the Code of Practice:

“This also means that, even if the body of the deceased remains on respiratory support, the loss of integrated biological function will inevitably lead to deterioration and organ necrosis within a short time.

Second, the diagnosis of death because of cessation of brain-stem function does not entail the cessation of all neurological activity in the brain. What does follow from such a diagnosis is that none of these potential activities indicates any form of consciousness associated with human life, particularly the ability to feel, to be aware of, or to do, anything. Where such residual activity exists, it will not do so for long due to the rapid breakdown of other bodily functions.

Third, there may also be some residual reflex movement of the limbs after such a diagnosis. However, as this movement is independent of the brain and is controlled through the spinal cord, it is neither indicative of the ability to feel, be aware of, or to respond to, any stimulus, nor to sustain respiration or allow other bodily functions to continue.

In short, while there are some ways in which parts of the body may continue to show signs of biological activity after a diagnosis of irreversible cessation of brain-stem function, these have no moral relevance to the declaration of death for the purpose of the immediate withdrawal of all forms of supportive therapy. It is for this reason that patients with such activity can no longer benefit from supportive treatment and legal certification of their death is appropriate.

The current position in law is that there is no statutory definition of death in the United Kingdom. Subsequent to the proposal of the 'brain death criteria' by the Conference of Medical Royal Colleges in 1976,<sup>3,4</sup> the courts in England and Northern Ireland have adopted these criteria as part of the law for the diagnosis of death. There is no reason to believe that courts in other parts of the United Kingdom would not follow this approach.

The irreversible loss of the capacity for consciousness does not by itself establish an individual's death. The difference between patients in vegetative state and patients who are declared dead by virtue of irreversible cessation of brain stem function is that the latter cannot continue to breathe unaided without respiratory support and other life sustaining interventions. The Code of Practice provides:

#### ‘CHAPTER 6: THE DIAGNOSIS OF DEATH FOLLOWING IRREVERSIBLE CESSATION OF BRAIN-STEM FUNCTION

Concern is sometimes expressed over continuing function within the brain-stem, occurring beneath the level at which any motor, somatosensory or breathing reflexes can be elicited and also over continuing function in other parts of the brain. However, as has already been indicated, both are irrelevant when evaluating function against these clinical criteria of death resulting from irreversible cessation of brain-stem function, which demonstrate the permanent

absence of consciousness and thus the ability to feel or do anything, along with the inevitable and rapid deterioration of integrated biological function.”

- 16 The reason why I refer to that Code of Practice is to reassure the parents that, when I heard the evidence that I did from Dr E, this is not something that he is saying is his opinion, this is not some individual interpretation by him, he is applying that Code of Practice.
- 17 I am not going to prolong the agony of the parents for very much longer because it is not fair to do so but it is important that I set out that, on 22 October, a Dr F and Dr G conducted two sets of brain stem testing on AB and they made the following entry:
- “Overnight AB’s clinical deterioration suggested that coning of brain stem had now occurred.”
- They then talked about blood pressure, and temperature:
- “Stimulation on the ulnar nerve using train of four showed regular full strength twitches indicating that AB was not muscle relaxed. Dr G and I attended bed space to conduct brain stem testing. Testing commenced at 09:46hours. No reversal haemodynamic endocrine metabolic causes identified. First apnoea test at PaCO<sub>2</sub> went from 6.4 to 9.3kPa without any respiratory effort after five minutes of continuous observation. Legal time of death was confirmed at 10:26 on 22/10/19.
- Second set of tests confirmed results of the first set.”
- 18 Dr E confirmed that he had a second opinion carried out, very properly, if I may say so, because he wanted the parents to know that there had been this second opinion carried out.
- 19 The mother has very fairly asked:
- “Well, if my daughter, according to you, is already dead and she’s going to rot in the ground anyway [and I use her words and they are not mine for I would not have used such words for fear of offending the parents], why shouldn’t she rot anyway which is what you say is going to happen to her?”
- 20 There are many answers to that. The first is that, as Dr E has identified, it would be beyond anyone’s worst nightmares to witness the complete rotting (which is what it would be) of what is effectively already a dead body with the parents witnessing the gradual collapse and shut down of the internal organs. Dr E is certain, and I accept his judgement, that this would occur. Whether it would be hours or days or more he cannot know and nobody can know, but this would surely happen.
- 21 Secondly, the fact is, as I have already identified, tragically Dr AB is already effectively dead according to the definition from the Code of Practice which I have just read out.
- 22 Thirdly, (and I use the word “futile” only in the correct medical and legal sense), treatment would be futile. Continuing respiration would be futile because it will be pointless; it is impossible that anything will happen to bring AB back.
- 23 AB’s parents have faith. This is not the first case and it will not be the last case where faith has conflicted with science. I am not going to make judgments about that. All I am going to say is that it is completely clear on the basis of the medical evidence, which has been so

properly and completely set out to me, that there is no prospect whatsoever of AB reviving for all of the reasons that I have set out.

- 24 I want to thank the parents for their dignity. There is nothing that I can say which will improve anything at all. But this court sees a lot of grief; it is the business of the Family Division often to deal with grief and tragedy and this is such a case, and the court's profound sympathy goes to them and to their family members.
- 25 I also want to thank the medical team for all that they have done and for being here this afternoon and to thank their legal team as well.

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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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\*\* This transcript has been approved by the Judge \*\*