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Teenager forced into palliative care 'wrongly ignored by doctors'

Parents of Sudiksha Thirumalesh win case about right of patients to make decisions on their treatment in landmark ruling at the Court of Appeal

Sudiksha Thirumalesh died last year after doctors said all life-sustaining treatment should be ended

PA

[Jonathan Ames](#), Legal Editor

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A teenager who died after being prevented from travelling abroad for treatment was wrongly denied the right to speak for herself during a legal row with doctors.

In what lawyers described as a landmark decision, senior judges upheld a posthumous appeal on Wednesday against an earlier ruling that declared that Sudiksha Thirumalesh lacked mental capacity to make decisions about her medical treatment.

Thirumalesh was a 19-year-old A-level student who remained fully conscious while being treated last year by the University Hospitals Birmingham NHS Foundation Trust.

Her parents said that Thirumalesh disagreed with her doctors' opinion that her condition was incurable, which doctors decided was an unreasonable view.

Because medical professionals adopted that position, it was decided that Thirumalesh should have all life-sustaining treatment ended and be put on a palliative care pathway.

Last August, a ruling in the Court of Protection said that the teenager lacked mental capacity and as a result decisions about her treatment could be made without her consent, provided that they were based on an assessment of her best interests.

Thirumalesh died about a month later.



Sudiksha Thirumalesh's brother Varshan Thirumalesh, mother Revathi Thirumalesh and father Thirumalesh Hemachandran
ALAMY

But in a rare move owing to what were viewed as important legal principles in the case, the woman's parents were granted permission to launch a posthumous appeal of the ruling on her mental capacity.

On Wednesday three judges in the Court of Appeal overturned the original decision in a ruling that lawyers said "reaffirms the right of patients to disagree with their doctors without risking being declared mentally incompetent and having their best interests assessed and enforced by the courts".

Advisers to the parents predicted that the appeal decision "potentially affects thousands of patients".

Giving the judgment, Lady Justice King — who sat with Lords Justice Singh and Baker — said that it was "essential always" for those conducting capacity assessments to remember that under the Mental Capacity Act a "person is not to be treated as unable to make a decision merely because he makes an unwise decision".

The appeal judges also ruled that the original judge had made an error in overruling the unanimous view of two psychiatrists, who had independently examined the teenager and concluded that she had full mental capacity.

Welcoming the latest ruling, Sudiksha's parents, Thirumalesh Hemachandran and Revathi Thirumalesh described the original Court of Protection ruling as "irrational and cruel".

In a joint statement, the parents said that "from the moment the judgment was made, it gave the clinicians the power to do whatever they liked, with no respect for Sudiksha's own wishes and treating her family with hostility and contempt".

Wayne Martin, a philosophy professor at the University of Essex, who provided expert analysis in the case, said Wednesday's ruling was "a huge victory, not only for the family of Sudiksha Thirumalesh but for anyone facing tough decisions about their treatment".

Experts said that a crucial element of the appeal hearing came when Vikram Sachdeva KC, who represented the NHS trust, conceded that previously relied upon case law was incorrect and then revised the hospital's earlier submissions to the court.

Martin said that the "hard-won point" would provide "fresh hope to anyone who disagrees with their medical team, or indeed with the medical establishment as a whole".