THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(Family and Children Division)
CHILDREN COURT FYZABAD

Case No. C-SOUTH-AP-1791-2019-1

IN THE MATTER OF THE FAMILY LAW
(GUARDIANSHIP OF MINORS, DOMICILE AND MAINTENANCE)
ACT CHAPTER 46:08

And

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 35 OF THE SAID ACT AND OR THE INHERENT JURISDICTION OF THE HONOURABLE COURT

BETWEEN

SOUTH-WEST REGIONAL HEALTH AUTHORITY
Applicant

AND

ST

Respondent

Before the Honourable Madame Justice Gonzales
Date of delivery June 27, 2019

APPEARANCES:
Ms Scipio for the Applicant
Ms S Singh for the Respondent

JUDGMENT

1. This is an application brought by the South West Regional Health Authority against the Respondent to make the infant of the Respondent a ward of the Court and seeking permission to administer a blood transfusion and/or blood products to the said child. The applicant also

sought orders for permission to take any and every step necessary to save the life of the child and an order restraining the Respondent from removing the child from the care of the Applicant against medical advice.

2. On 16th April, 2019 the Court, having been satisfied that it was in the child's best interest, granted the ex parte orders sought by the Applicant in the interim and ordered that a copy of the proceedings be served on the Respondent. On the 24th May, 2019 the Court over the objections of the Respondent, continued the orders made on the 16th April, 2019 and reserved its reasons for a later date. I now give those reasons.

BACKGROUND

3. The infant of the Respondent was delivered prematurely by Caesarean Section on the 13th April, 2019. She was diagnosed with extreme prematurity, extremely low birth weight, and surfactant deficient lung disease. Infants of low gestational age (28 weeks 6 days) and low birth weight (810g) are prone to having complications such as life threatening bleeding in the brain, lungs and gut. Such infants would eventually require lifesaving treatment which includes blood transfusions.

4. The Respondent is a practising Jehovah's Witness and it is against her religious beliefs to receive blood and/or blood products. While the Respondent has not refused treatment for the child, she has refused to give consent to the Applicant to administer blood and blood products to the infant, if it becomes necessary. The Respondent appears to be the only parent in the child's life at this time.

5. The Applicant did explore alternatives in the form of erythropoietin which is a hormone that works on the bone marrow to assist in the production of red blood cells, however erythropoietin is ineffective in a case of emergency, where there is heavy bleeding. Only a blood transfusion is effective in such cases.

6. Based on the child's diagnosis and fragile medical condition the administration of blood or blood products is a matter of life and death for this child, a situation which the Respondent well understands.

THE RESPONDENT'S POSITION

7. The Respondent is a registered nurse for the past 12 years. She does not deny the medical condition of her infant. She admitted refusing blood transfusion for her child and was informed that the court could override her position. She was aware that at the time of the application the child was doing fine but that could change at any time.

8. The Respondent relied on two grounds for her objection to transfusion.

    (1) Medical grounds

    The Respondent objected to transfusion because of the risk of disease being passed to recipients of blood transfusions and transfusions causing further complications.

    (2) Her religious conviction.

    The Respondent avers that she is a Jehovah's witness and she believes that the bible commands to abstain from blood and transfusion is likened to consuming blood. The Respondent further contended that the "child should not be forced to breach the teachings of the faith into which she was born."

9. The issue the Court had to determine was whether the orders made on the 16th April, 2019 should be discontinued making it unlawful for the Applicant's hospital staff to administer blood transfusion or blood products to the child.

THE LAW

10. The party seeking to have medical treatment discontinued must prove that it is no longer in the best interest of the patient to continue lifesaving treatment. In the case of **RE M (Adult Patient) (Minimally Conscious State: Withdrawal of Treatment**)[1] a case in which an application was made for an order to allow doctors treating a minimally conscious adult patient to discontinue and withhold life sustaining treatment. Baker J said at paragraph 73:

> *"the burden of establishing that discontinuance of treatment is in a person's best interest is always on those who assert that life-sustaining treatment be withdrawn."*

This court finds that there is no practical distinction between life-saving and life preserving treatment and the burden remains the same. The guiding principle in granting an order for treatment and continuing that order is and remains what is in the best interest of the child.

In the case of **SR(A ward of Court)** [2] case where the court had to determine whether to discontinue medical treatment the Court stated that:

> *"It is accepted that, given the importance of the sanctity of human life, there exists in circumstances such as in the present case a strong presumption in favour of authorising lifesaving treatment"*

[1] [2012] 1WLR1653
[2] [2012] 1 IR 305 at p 323 paragraph57

The Court went on to state that the presumption was not irrebuttable and can be deviated from in exceptional circumstances.

11. The religious convictions of the parents are irrelevant to the issue. The position was succinctly expressed by Justice Holman in the case of an **NHS Trust v MB**[3] at paragraph 50:

> "*This case concerns a child who must himself be incapable, by reason of his age, of any religious belief. An objective balancing of his own best interests cannot be affected by whether a parent happens to adhere to one particular belief, or another, or none. I have the utmost respect for … religious faith and belief, and for the faith of Islam which he practises and professes. But I regard it as irrelevant to the decision which I have to take and I do not take it into account at all*."

OBJECTION TO CONTINUED TREATMENT ON MEDICAL GROUNDS

12. The Respondent asked that the orders made on 16th April, 2019 should be discontinued as the child was not getting better as by the 21st April, 2019 the doctor suspected she had necrotizing enterocolitis. The Respondent attributed this condition to the first blood transfusion.

13. The child received two further transfusions, one on the 24th and the other on 27th May, 2019. By the 29th May, 2019 the child had lost 100grams. The Respondent pointed to this as an indicator that the child was not getting better.

14. The Respondent adduced no medical evidence to support her contention that the child was deteriorating. Such a contention must be

[3] [2006] 2 FLR 319

supported by clear medical evidence and not by casual observation. In cases involving lifesaving treatment, the Court should put little weight on the condition of the patient at a particular time, but rather assess the condition of the patient in the context of the diagnosis, the prognosis and the treatment recommended. If the treatment has the potential to save the life of the patient, however slim, then treatment should not be discontinued, even if the patient is as yet, showing no improvement. This approach is in keeping with the well-established principles of the sanctity of life and the presumption in favour of preserving life **RE D(wardship: medical treatment)**[4].

15. The unchallenged medical evidence is that the child was born with a high risk of bleeding and developing infections like Necrotising Enterocolitis due to her prematurity, extremely low birthweight and surfactant lung disease. The mother suffered from ante-natal hypertension and placental problems which also increased the risk.

16. The Court accepted the evidence of the medical practitioner that the transmission of HIV, Human T-Lymphotropic Virus and venereal disease is negligible, as blood is routinely screened for all these diseases. A child has greater risk of contracting the herpes Simplex Virus from a vaginal birth than from transfusion. The child has survived thus far because of the medical intervention and the support from the Respondent and the care from the Applicant's hospital staff. She may require further transfusions to increase her chances of survival.

17. The Court was satisfied that the blood transfusions in the case of emergency continues to be in the best interest of the child. The Court therefore found no basis for discontinuing treatment on medical grounds.

[4] [2000] All ER (D) 967

OBJECTION TO CONTINUED TREATMENT ON RELIGIOUS GROUNDS

18. It is well established that a parent has the right to bring up his child in whatever religion he sees fit. That right is however not absolute. While due respect and consideration must be given to the views of the parent it is for the Court to determine the issue by exercising its own independent and objective judgment. The Court followed the decision of this Court in the decision of **Re JT**[5]. In that case the child required surgery but the surgeon was unwilling to perform the surgery until she was satisfied that should the child require blood in case of an emergency, they could lawfully administer same. The mother being a practicing Jehovah Witness objected to the transfusion and the father supported the mother's position. In granting permission for the child to receive blood and blood products if it became necessary, the court applied the guidelines laid down by Holman J in the case of **NHS Trust v A** [6].

19. In particular, the Court applied the test as laid down at paragraph (v) of the ten point guidelines of Holman J.

> "*That test is the best interests of the patient. Best interests are used in the widest sense and include every kind of consideration capable of impacting on the decision. These include, non-exhaustively, medical, emotional, sensory (pleasure, pain and suffering) and instinctive (the human instinct to survive) considerations."* At paragraph x. Holman J said referring to the views and wishes of the parents "*their own wishes, however understandable in human terms, are wholly irrelevant to the consideration of the objective best interests of the child…"*

[5] C -South-AP-0879-2018-1

[6] [2008] 1 FLR 70

20. On the basis of the medical evidence, the Court was satisfied that the child was at risk for bleeding. The child may be in need of blood and or blood products in case of an emergency to save the life of the child. There were no exceptional circumstances to rebut the presumption in favour of preserving life. This Court was satisfied that the orders made on the 16th April, 2019 were in the best interest of the child and transfusion remained in the best interest of the child. The Court therefore continued the orders.

G Gonzales
Judge