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Case No: Case No: FD17P00694

Neutral Citation Number: [2018] EWHC 818 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/04/2018

Before :

MR JUSTICE HAYDEN

Between :

Alder Hey Children's NHS Foundation Trust

Applicant

- and -

1) Mr Thomas Evans

Respondents

(2) Ms Kate James

(3) Alfie Evans

(A Child by his Guardian CAFCASS Legal)

Michael Mylonas QC (instructed by **Hill Dickinson**) for the Applicant
Paul Diamond (instructed by **The Christian Legal Centre**) for the 1st Respondents
Sophie Roper instructed by **CAFCASS**
Hearing dates: 11th April 2018

Judgment

Mr Justice Hayden :

1. Alfie James Evans was born on 9 May 2016. He has lived most of his short life in the public domain. On 20 February 2018, I gave a Judgment at the conclusion of 6 days of evidence. I emphasised that during the course of the hearing Mr Evans had cross-examined a variety of doctors with conspicuous skill and manifest sincerity. I came to the conclusion, that Alfie's brain had been so corroded by neuro-degenerative disease that his life was futile. I identified the dignity that came from the love and care of his parents, the wider family and the highly committed care delivered by all at the Alder Hey hospital. That Alfie is a much loved little boy is beyond any doubt.
2. Following my judgment, Mr Evans took the case to the Court of Appeal, the Supreme Court and ultimately to the European Court of Human Rights. He had told me, during the course of his evidence, that he would leave no stone unturned in pursuit of his belief as to where Alfie's best interests lay. He was indeed true to his word.
3. Ultimately, my Judgment was upheld. It reflected a consensus of medical expertise from doctors throughout the UK, Germany and Italy. By the time I came to conclude the case, the terrible reality was that almost the entirety of Alfie's brain had been eroded, leaving only water and Cerebral Spinal Fluid. Even by the end of February, the connective pathways within the white matter of the brain, which facilitate rudimentary sensation – hearing, touch, taste and sight, had been obliterated. They were no longer even identifiable on the MRI scan. On an intellectual level, Mr Evans showed himself well able to grasp the complexities of the medical evidence but, on an emotional level, he has been entirely unable to do so.
4. Tom Evans turned 21 years of age just a few days before the February hearing began. He is, at times, hot-headed and impetuous but there is no doubt that he takes absolute delight in his son. In February, I recall that he told me how, when he learned of his girlfriend's pregnancy, he promised himself that he would be a good father and a decent man. He was 18 at the time. It was undoubtedly a watershed moment in his life.
5. The remorseful degeneration of Alfie's brain is profoundly unfair. Mr Evans has had to encounter, at the age of 21, an unfairness which he can do nothing about. His frustration is palpable. He often lashes out verbally in his rage against those that love him most or those who are determined to help him. Doctors at Alder Hey hospital have, from time to time, been the victims of his wrath. It requires to be said that those doctors, who have dedicated their lives to some of the most profoundly ill children, have borne Mr Evans' insults with extraordinary patience, and generosity. Their professionalism and compassion is evident to all who have listened to their evidence and read their statements. It is important to emphasise that Mr Evans has also frequently been warm in his generosity to the doctors and nurses.
6. This case was restored before me on a very limited basis . In her Judgment of 8 March 2018, Lady Justice King recognised that the practicalities surrounding end of life provision in this case had all the potential to be challenging and fraught. It has proved to be so. In her order King LJ made the following express provision:

In the event that the parties are unable to agree, on or before 23 of March 2018, as to the implementation of the recital herein:

- i. The terms of the end of life plan; and/or
- ii. The date for the withdrawal of artificial ventilation

The matter shall be listed before Hayden J upon 48 hours' notice upon the application of either party.

7. It is this issue alone and no other which comes before me today. My remit is constrained to the implementation of the earlier orders. The order of the Court of Appeal does not contemplate the re-opening of the central issues. It is clear that what was envisaged was a mechanism to resolve the details of dispute and nothing further. Mr Diamond now represents the parents. He is one in a long succession of lawyers acting on their behalf. He was brought in to the case late in the day, only days before this hearing. He has not had the opportunity of meeting either parent but has had the benefit of a telephone conference with Mr Evans. He, ingeniously and ambitiously, seeks a writ of "habeus corpus" to release Alfie from his hospital bed at the Paediatric Intensive Care Unit at Alder Hey. This is predicated on the rights of the parents in English law. The argument, with respect to Mr Diamond, is entirely misconceived, not least because it was comprehensively rejected by the Supreme Court on 20 March 2018 when that court refused permission to appeal.
8. As I have already observed, the framework of the law, in this case, is at least easy to state. The test is neither more nor less than what is in Alfie's best interests. As Lady Hale phrased it when refusing permission to appeal to the Supreme Court "*A child, unlike most adults, lacks the capacity to make decisions about future arrangements for themselves. Where there is a dispute, it is for the court to make a decision, as it would in respect of an adult without capacity. This is the **gold standard** by which most of these decisions are reached. It is an assessment of best interests that has been concluded to be perfectly clear.*" (my emphasis)
9. Perfecting the transcript of this judgment, pursuant to the established principles in *Piglowska v Piglowski* [1999] 1 WLR 1360, [1999] 2 FLR 763, HL, it seems to me to be necessary to re-state unambiguously that which is, to my mind, self-evident. The applicable test in this case is what is in Alfie's best interest ('*the gold standard*'). That has been determined. Thus it is Alfie's interests which prevail i.e. not the rights of his parents. The writ of habeus corpus applies only to individuals unlawfully detained or whose civil liberties have been compromised in some way. It is axiomatic, given my conclusions as to where Alfie's best interests lie, that there can be no compromise of his liberty in circumstances where the identified best interests are being met. Mr Diamond's proposition is, with respect to him, as I said in our exchanges, unarguable... at best.
10. This afternoon, I have endorsed the care plan constructed by the Trust, setting out the provisions for the end of Alfie's life. That plan has the approval of Alfie's guardian, who emphasises that it is now long overdue. As is pointed out by Ms Roper, acting on

Alfie's behalf, it is 7 weeks since I declared Alfie's situation to be inconsistent with his best interests.

11. The parents, particularly Mr Evans, have not engaged with the care plan. He cannot face its reality. He continues to hope for some alternative, unrealistic solution - none of this can be reconciled with Alfie's best interests. It is not the terms of the care plan that Mr Evans objects to, it is the plan itself. Accordingly, as I have observed in exchanges with Counsel, there is objectively and on a proper construction, nothing before the Court at all that requires resolution. Certainly, there is no application of the type contemplated by the Court of Appeal. Nonetheless, I have considered the terms and provisions of the plan carefully and I endorse it. The hospital, in my judgment, continues to make every effort to accommodate Alfie's family. Mr Mylonas QC assures me that notwithstanding the beating it has taken there continues to exist a relationship between the parents and the doctors which they all regard as functional if fragile (my phrase).
12. I began this short ex tempore Judgment by reminding myself how much of Alfie's life has been in the public domain, something over which he has had no control over. I would wish to emphasise that which has been stated in the earlier Judgment - Alfie is entitled to peace and privacy at the end of his life. More than anybody else it is his parent's obligation to provide that for him.
13. Much has been said about whether Mr Evans or Ms James will be able to participate in this plan. My hope and, if I may say so, my instinct, is that ultimately they will be able to do so. Their love for their son will guide them through this. In that process they will be very much in all our thoughts.