Neutral Citation Number: [2021] EWHC 2676 (Fam)

Case No: TBA

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Out of Hours

Date: 05/10/2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

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Between:

An NHS Trust	**Applicant**
- and -	
D (A Minor)	**Respondent**

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- -

Nageena Khalique QC (instructed by **Capsticks Solicitors LLP**) for the **Applicant**
The Respondent did not appear and was not represented

Hearing dates: 5 October 2021

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Approved Judgment

I direct that pursuant no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice MacDonald:

1. This matter comes before the court by telephone at 2.50am on the morning of 5 October 2021 in the urgent out of hours list on an application made by an NHS Trust, represented by Nageena Khalique of Queen's Counsel.

2. The application before me concerns D, born in 2005 and now aged 16 years old. D is a looked after child, being accommodated in a children's home by the local authority. The local authority has parental responsibility for D and the Trust has been advised that her parents are not involved with her. As I will come to, whilst the Trust made contact with the local authority to seek its assistance in this matter, the local authority was less than helpful in this regard. Due to the extreme urgency of this matter it has not been possible to secure representation for D.

3. The Trust seeks an urgent order from the court to carry out blood tests and administer treatment to D as described below, should such administration be clinically indicated as a consequence of paracetamol ingestion and toxicity. I am entirely satisfied that the case is an appropriate one to be brought before the court out of hours.

4. On 4 October D is believed to have taken an overdose of paracetamol tablets comprising sixteen 500mg tablets. In her statement to the court, Dr J describes the situation as follows:

> "She reportedly took 16 tablets of 500mg of paracetamol at her care home at 0400am on the 4th October 2021. There was a long delay in presentation and she arrived in the department at 15:32. She refused investigations and she refused the antidote treatment for paracetamol toxicity. She was seen by the CAMHS team and was deemed to have capacity but they wanted to keep her in overnight to "cool off" and to reassess in the morning. The patient left the department at 20:00 and is back at her children's home with her key worker and is refusing to come back."

5. By reference to a toxicological guide calculation, the consultant in the emergency department at Y Hospital, Dr J (from whom the court heard brief evidence) considers this level of paracetamol ingestion to be a very significant dose for D given her age and weight. In her statement to the court, Dr J makes clear as follows:

> "Given her age and the suicidal intent involved, it is our belief as her physicians that she is at risk of liver failure and death if this paracetamol toxicity, if confirmed to be true, were left untreated."

6. Following D leaving hospital after refusing treatment, and as I have noted, the Trust submit that the local authority were less than helpful when contacted by the Trust, a duty solicitor for that local authority indicating that, notwithstanding the situation I have described above, no further action would be taken by the local authority save for observing D in the placement. I am conscious that the local authority is not represented before the court, but on the face of it this is an extraordinary position for a local authority with parental responsibility for a child to have taken in light of the level of concern expressed by D's treating doctors.

7. Dr J advises the court that the optimum window for administering treatment comprising the twenty four hour period following ingestion of paracetamol has almost expired, this matter coming before the court some twenty-two and a half hours after D took the overdose. D is currently refusing to attend hospital for treatment. The police and ambulance service have confirmed they are willing to convey D to the hospital for blood tests and any treatment required once a court order is in place.

8. Dr J is clear that if D is left untreated she is at risk of liver failure, which has the potential to be fatal if treatment is not provided to mitigate the impact of the paracetamol ingested. This view has been confirmed by a second opinion sought from the G Hospital Poisons Unit, which confirmed that delaying treatment for D would lead to a significant risk of liver failure.

9. D has been assessed by the treating clinicians as being Gillick competent with respect to her medical treatment. The medical treatment proposed is described by Dr J in her statement as follows:

> "If a patient with significant toxicity presents after 8 hours, we would start N-Acetyl Cysteine immediately, whilst waiting for the blood investigations to come back even if the patient were asymptomatic and looked well. This is to prevent liver failure which can take 24 to 48 hours to manifest. The treatment would then be stopped if the paracetamol levels were below the treatment line and there were normal liver, kidney, venous gases and clotting tests. It would potentially continue for at least 16 hours if not a number of days if the paracetamol toxicity were confirmed."

10. With respect to the risks and consequences of not providing D with treatment in the event she has taken an overdose of paracetamol, Dr J further states as follows:

> "D was seen by Dr R who was the A&E Consultant in charge for the evening yesterday. I am led to believe that she is likely to require physical restraint in order to take bloods. This may involve giving her an intramuscular injection of sedative to achieve this. We are trained and able to do this. The risk of sedating an uncooperative patient is physical injury from the restraint, respiratory depression from the sedative, paradoxical reaction to the sedative leading to increased agitation and allergic reaction. We would reduce the trauma by attempting to talk to the patient in a non confrontational manner, in a quiet area and only using the minimum amount of force necessary. If her paracetamol toxicity is confirmed, we would then need to place a cannula. This could be done in the first instance and blood levels taken at the same time. However, the most important priority is to confirm the toxicity or liver damage which can be done with simple blood results. If it is confirmed she would likely need to stay for a number of days for NAC treatment, maybe longer depending on the degree of liver injury. Sometimes, patients go into fulminant liver failure and need to be kept for consideration of transplantation."

11. With respect to the legal principles that the court must apply in determining the application before it, doctors may only rely upon common law authority to treat a child with that child's capable consent or the consent of someone with parental responsibility. However, overriding control is vested in the Court exercising its independent and

objective judgment. In *Re W (A minor: Consent to Medical Treatment)* [1993] 1 FLR 1 Balcombe LJ observed as follows:

> "One must start from the general premise that the protection of the child's welfare implies at least the protection of the child's life. I state this as a general and not as an invariable premise because of the possibility of cases in which a court would not authorise treatment of a distressing nature which offered only a small hope of preserving life. In general terms however, the present state of law is that an individual who has reached the age of 18 is free to do with his life what he wishes, but it is the duty of the court to ensure so far as it can that children survive to attain that age. To take it a stage further, if the child's welfare is threatened by a serious and imminent risk that the child will suffer grave and irreversible mental or physical harm, then once again the court when called upon has a duty to intervene."

12. Within this context, the following legal principles inform the discharge of the court's duty:

i) The paramount consideration of the court is the best interests of the child. The role of the court when exercising its jurisdiction is to give or withhold consent to medical treatment in the best interests of the child. It is the role and duty of the court to do so and to exercise its own independent and objective judgment;

ii) The starting point is to consider the matter from the assumed point of view of the patient. The court must ask itself what the patient's attitude to treatment is or would be likely to be;

iii) The question for the court is whether, in the best interests of the child patient, a particular decision as to medical treatment should be taken;

iv) The term 'best interests' is used in its widest sense, to include every kind of consideration capable of bearing on the decision, this will include, but is not limited to, medical, emotional, sensory and instinctive considerations. The test is not a mathematical one; the court must do the best it can to balance all of the conflicting considerations in a particular case with a view to determining where the final balance lies. In reaching its decision the court is not bound to follow the clinical assessment of the doctors but must form its own view as to the child's best interests;

v) There is a strong presumption in favour of taking all steps to preserve life because the individual human instinct to survive is strong and must be presumed to be strong in the patient. The presumption however is not irrebuttable. It may be outweighed if the pleasures and the quality of life are sufficiently small and the pain and suffering and other burdens are sufficiently great;

vi) Within this context, the court must consider the nature of the medical treatment in question, what it involves and its prospects of success, including the likely outcome for the patient of that treatment;

vii) There will be cases where it is not in the best interests of the child to subject him or her to treatment that will cause increased suffering and produce no

commensurate benefit, giving the fullest possible weight to the child's and mankind's desire to survive;

viii) Each case is fact specific and will turn entirely on the facts of the particular case;

ix) The views and opinions of both the doctors and the parents must be considered. The views of the parents may have particular value in circumstances where they know well their own child. However, the court must also be mindful that the views of the parents may, understandably, be coloured by their own emotion or sentiment;

x) The views of the child must be considered and be given appropriate weight in light of the child's age and understanding.

13. With respect to the question of competence, a child will be considered *Gillick* competent in respect of a decision concerning medical treatment if he or she has achieved sufficient understanding and intelligence to understand fully what is proposed (*Gillick v West Norfolk and Wisbech Area Health Authority and Another* [1986] 1 FLR 224). With respect to children over the age of 16, the court has the power to override the decisions of a *Gillick* competent child in this context where it is in the child's best interests for it to do so (see *Re W (A Minor)(Consent to Medical Treatment)* [1993] 1 FLR 1).

14. Within the context of the foregoing legal principles, I accept Ms Khalique's submission that in D's case the balance falls overwhelmingly in favour of authorising treatment capable of saving her life, should such treatment be clinically indicated.

15. As at 2.45am this morning the court has before it evidence that D may have taken an overdose of paracetamol that is potentially fatal if she does not receive treatment and evidence that the window for optimum treatment is closing rapidly. In light of the extreme urgency and the potentially fatal consequences for D if steps taken to treat her are not taken, I am satisfied that the orders sought by the Trust should be granted. Whilst I am conscious that I take this step in respect of D having heard only from the Trust, I am satisfied given the extreme urgency of the situation that every minute spent putting in place arrangements for D to be represented moves D further away from the treatment she required to avoid liver damage, or even death.

16. Within this context, I am satisfied that the following factors demonstrate that the orders sought by the Trust are in D's best interests:

i) There is evidence, that D has taken an overdose of paracetamol. Further, there is cogent medical evidence before the court that the toxic effect of a paracetamol overdose risks serious damage to D's liver, which damage will have an adverse impact on her and, at the extreme end of the spectrum even a risk of death.

ii) There is a strong presumption in favour of taking all steps to preserve D's life. The evidence suggests that her life is at risk. Within this context, the presumption in favour of preserving D's life was a compelling factor in determining this application.

iii) Within that context, the optimum window for taking potentially life preserving measures was limited and is about to come to an end.

iv) The nature of the medical treatment proposed for D is invasive, involving as it does the taking of a blood sample and the insertion of a needle order to administer any treatment shown to be necessary consequent upon the outcome of the blood tests. The treatment would be rendered more invasive the if it becomes necessary to restrain D in order to determine whether she has taken a toxic level of paracetamol and thereafter to treat the consequences of that action.

v) Against the fact that the treatment proposed is invasive, the treatment proposed will confirm the extent to which D has ingested paracetamol and will seek to treat the consequences of such ingestion with the potential for that treatment to prevent damage to D's liver and, in the extreme, save her life.

vi) Dr J is clear that, based on specialist toxicology advice received, that the course of treatment proposed is both necessary and urgent.

vii) It has not been possible to secure the engagement with the Trust of the local authority , which shares parental responsibility for D. D's parents cannot be contacted.

viii) Whilst it would appear that D's wishes are clearly not to have treatment, I am satisfied that those wishes are antithetic to her best interests in circumstances where the treatment proposed is designed to prevent damage to D's liver and, in the extreme, save her life

vi) In circumstances where D has taken an overdose of paracetamol, the available evidence suggests overwhelmingly that testing and treatment is plainly in her best interests in circumstances where such testing and treatment will result in the prevention of liver damage and possible death.

17. In the circumstances, I am satisfied that it is in D's best interests to make the following orders:

i) It shall be lawful and in D's best interests for the applicant Trust to admit D to Y Hospital for urgent blood tests and medical treatment including but not limited to administration of N acetyl cysteine intravenously and such treatment as is clinically indicated for the management of her paracetamol overdose and any associated complications such a liver toxicity.

ii) It shall be lawful and in D's best interests insofar as it is necessary for restraint to be used, whether physical or chemical by the applicant Trust to provide the above treatment, provided that any such restraint is for the minimal amount of time and the least amount of force as is necessary.

iii) It shall be lawful and in D's best interests for the applicant Trust to deprive D's liberty to detain her at Y hospital for the duration of her admission.

iv) It shall be lawful for D to be conveyed to Y hospital from her home accompanied by the police and Ambulance Service and any deprivation of her liberty in such

conveyance is hereby authorised by the court provided the least restrictive options are used at all time.

18. That is my judgment.