



Australia: Consent in hospital and firmly held religious beliefs

Last Updated: 29 January 2016

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Hospital v T [2015] QSC 185

Key Points

- Whether the court should grant the hospital's application for a declaration that it be authorised to administer J (a child) blood during a liver transplant in circumstances where J's parents are Jehovah's Witnesses and oppose the application; and
- The sanctity of a child's life is the court's paramount consideration and more powerful than the need to respect J's parents' sincerely held religious beliefs.

Background

Hospital v T concerned a seven and a half year old boy ("J") who suffered from liver disease and needed a liver transplant. J's condition was such that the transplant would likely cure him, whereas doing nothing would inevitably lead to his death. J's parents were Jehovah's Witnesses and whilst they were concerned for their son's wellbeing, it was against their religious beliefs to consent to their son receiving a blood transfusion during the liver transplant. J was too young to make a decision as to what was in his best interests and so J's treating hospital made an application for a declaration that it be authorised to administer J blood during the liver transplant. Whilst they opposed the application, J's parents indicated that they would obey a court order even if it was inconsistent with their beliefs.

The Law

The court emphasised that its primary concern is the interests of the child stating at [21], "What remains significant as White J pointed out in the Supreme Court of South Australia in *Children, Youth and Women's Health Services Inc v YJL* (2010) 107 SASR 343 is that the welfare of the child is the Court's first and paramount consideration and the Court must make its own independent judgment on any question which involves the interests of the child."

The Court cited Justice Basten in *X v The Sydney Children's Hospitals Network* (2013) 85 NSWLR 294 at 308, paragraph [60] in stating that, "The interest of the state in preserving life is at its highest with respect to children and young persons who are inherently vulnerable, in varying degrees."

Conclusion

The court was fair to state that it must balance different considerations, including religious beliefs, in making its decision. However, in this case, the sanctity of a child's life was the more powerful consideration and therefore the hospital's application for a declaration that it be authorised to administer J blood during the liver transplant was granted.

J's parents sought the hospital's assurance that it would transfuse blood as a last resort and use minimal amounts of blood product should the hospital's application be successful. The court rejected the parents' request.

Lessons Learnt

In the present case, prior to commencing surgery, the hospital applied to the court for a declaration that J consents to a blood transfusion. However, there may be circumstances where time does not allow for legal proceedings to resolve such a dispute and the hospital proceeds with the transplant without the child's parents' consent. In Queensland, section 20 of the *Transplant and Anatomy Act 1979* (equivalent to section 21 of the *Human Tissue and Transplant Act 1982* in Western Australia) authorises a medical practitioner to administer a blood transfusion to a child without his or her parents' consent if it is necessary to preserve the child's life and there is a second medical practitioner or superintendent who is in agreement. Children have always presented curious and difficult situations for hospitals due to their inability to consent. However, as evidenced by the present case, when the court's paramount concern is the interests of the child, many obstacles can be overcome.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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