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Today I cried in court. I was watching 3 lovely, articulate, passionate young women (the older 2 just out of their teens) come to terms with the fact that their Dad was going to die. Doctors believed that continuing life-sustaining treatment was not in his best interests.

The family hoped+believed he would recover. There was a WhatsApp video his wife + brother believed showed P responding to them. Doctors (incl. independent expert) said no - it was involuntary movement. P is in a coma with catastrophic brain (stem) injury following stroke.

The applicant Trust was represented by Nageena Khaliq QC [@serjeantsinn](#) seeking withdrawal of ventilation (+ provision of palliative care). P's brother (rep by [@CounselTweets](#)) argued for continuation of life-sustaining treatment. Official Solicitor (for P) was [@DrBridgetDolan](#)

P's 3 daughters live in Canada where P lived for 20 years, but he recently returned to UK. They've not seen him because of covid restrictions + were hearing full medical evidence for the first time in court. Their Mum (P's ex-wife) was there to support them.

Doctors were compassionate+expressed sorrow but very clear. P has no prospect of recovery. "We're keeping his body alive, but not him". They talk of 'moral distress' at way covid restrictions keep family from bedside+how they can't help families come to terms with dying patients.

Wife says "he's going to be fine". She says "he would want to fight to the end. No way any doctors will turn off the machines on him." Brother says P was scared of hospitals +quotes him saying "if anything happens to me you guys fight for me. He'd want to fight all the way".

Three daughters are together, crying, comforting + supporting each other. One reads out a prepared statement. She's been trying to make travel arrangements, please keep him alive until she can get to him, "I'm begging you from the bottom of my heart. I want to hold his hand"

Another daughter says "I understand my dad wants to fight but I think he's given it everything he has and I think it isn't fair on him to go on fighting".

The youngest (17) says she understand the science + the facts but he's unconscious + not in pain so please can doctors keep him alive until they can travel from Canada to

England to hold his hand + be by his bedside. "Just one hug - we don't want to forget what that feels like".

Hayden J is visibly moved - we all are. The case is not family united against treatment-withdrawal, but heartbroken daughters asking for ventilation to continue long enough for them to see their Dad one last time. Judge calls short adjournment for reflection.

Discussion of practicalities. Flights in+out of Canada, quarantine arrangements in both countries.

Would involve delaying withdrawal for 3 wks.

Doctor explains what would need to be done medically in 3 weeks to keep P's body alive.

Treating clinician says no he won't do it.

Daughters are weeping. Another short adjournment. Daughters ask why, if they were on plane to England, doctors would refuse to do CPR - they've already done CPR twice, why not one more time so that they could see him one more time.

Hayden J intervenes + questions treating clinicians. The girls accept, he says, that there will not be recovery but even if treatment is medically futile, it cld be in P's best interests which is a wider canvas than just medical. P would want daughters to be there at end of life.

"However burdened by treatment, P's opportunity to end his life with his daughters by his side is a facet of his human dignity. Does that meet the ethical quandary presented by delivering treatment which is possibly burdensome + obviously futile?" (Hayden J)

Doctors explain that the clinical situation is that P is very unstable. Current treatment is "not particularly dignified + with each day it becomes less dignified". Describes some indignities. "I'd say remember your Dad the way he was."

Judge asks daughters about another issue. P is an organ donor. Wife and Brother are very surprised about this. Say it's against their religion + find it hard to believe. Daughters are not surprised at all. He's a "kind + selfless" person.

Judge says: "Your Dad's voice may have stopped but it echoes in your voices. You all have a part of him + over the years you will hear that in each others' voices + that's a great gift for him to leave".

10 min break before final submissions + judgment

Counsel for Trust says continued life-sustaining treatment is not in P's best interests + should be withdrawn "as soon as practically possible" - probably Sunday.

Doctors don't feel able to provide treatment + question whether court has power to compel them.

Counsel for brother (clearly NOT representing daughters) says P's wishes + feelings need to be given more weight in BI decision. P's 'clarion call' to his brother was to make sure his treatment continued. Brother (+ wife) fear cost of treatment is an issue. Or beds in pandemic.

Official Solicitor "does not discern that costs or resources are any part of this". Medical evidence is all one way. P is in coma + "precarious" medical state. Cannot infer what P's wishes would be with regard to his daughters.

It might be (says OS) that rather than risk them travelling in pandemic only to find, on arrival, that he's died, he would prefer that they were helped to come to terms with not seeing him. "What daughters want is not to be in the position they're in. That's the cruelty of the case."

OS: Daughters may be willing to take that risk, but would he want them to? And we don't question he said "fight for me" but not clear that means "if my brain stem is damaged irretrievably with no prospect of recovery, preserve my life".

OS position is that further life-sustaining treatment should NOT be provided.

Judge reflects that "to treat a human being when it's not in his medical interests comes very close to requiring - or does require - professionals to do that which they regard as unethical". Reflects that daughters would not want to compromise their father's dignity further.

Oral judgment. Published version next week.

Judge: Impossible not to be moved by the circumstances of this family. Wife is simply unable to engage with medical evidence due to distress and shock "she believes P's strength + personality will conquer this catastrophic injury"

Judge: Brother believes it's his responsibility to strain every sinew to fight for him to be kept on a ventilator + receive treatment however burdensome. Unable ultimately to confront and analyse the realities of the evidence.

Judge: Daughters are 3 very impressive young women who gave outstanding evidence. Their position was so powerfully advanced that I returned to Counsel for Trust to see if it might be possible to achieve that which they desired. Drs gave further evidence.

Judge: Clear that the precariousness of P's medical situation means it's likely he'll need invasive treatment over 3 weeks to allow daughters' visit. I would be compromising his dignity at the end of life.

Judge: "I was deeply moved by the testimony of these young women but unable ultimately to yield to their request. I conclude it is no longer in P's best interests to provide ventilatory support + approve the palliative plan as drafted".

Adjournment so Counsel for Brother can take instruction - if brother wants to appeal this needs to be known NOW given plan to withdraw after 24 hours or so.

Daughters ask to speak to judge. "We appreciate the time you took to hear us out and to be a voice for us. But please, could it not happen on Valentine's Day - any day

except Sunday, please. "To associate a day of love with a day of loss would be too much."

Judge asks Counsel for Trust to get instruction "with a very very very strong steer that this is what the judge considers appropriate". She consults off-line with doctors - returns to say ventilator can be withdrawn on Monday, rather than on Valentines day.

Counsel for Brother reports he does not intend to appeal - but it then becomes clear that Wife DOES want to appeal. She wants delay to enable HER to visit husband before he dies - and adds "my husband is not coming off that ventilator".

Judge asks Counsel for brother to help Wife - she needs to ask CoA to be joined as party and then to appeal this judgment. "That has to be done very quickly because I'm not granting a stay of the order".

By the end of the hearing I'm emotionally exhausted -and all I did was watch.

For the family, the judge, the doctors, the lawyers involved it must have felt gruelling.

I witnessed such care, compassion + courage today.

The court at its best.

[#NotSecretCourt](#)

Finally, the judgment is here:

<https://www.bailii.org/ew/cases/EWCOP/2021/13.html>

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