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Hayden J is proposing hearing the case now - both counsel want to adjourn. "For a multitude of reasons" says Debra Powell QC (for the OS). She'll present reasons why capacity decision shouldn't be made now after lunch break. Restarting 1.40pm.



Referring to 1(3) MCA 2005, Hayden comments "it's possible to overcook- Is all this NECESSARY to decide capacity?"

Counsel responds sharply "In my respectful submission My Lord, oral evidence from a consultant psychiatrist who has recently assessed her capacity is NECESSARY"

P was quoted by P as saying that she wants a vaginal delivery - and if she has to have a caesarean she wants it with an epidural and her partner present. Her least favoured birth option is a caesarean under general anaesthetic (which is what I think the Trust has applied for)

She wants to be awake for the birth. Asked why, she said, "well, it's an important day isn't it".

Counsel described that as "an eloquent and perhaps heartbreaking understatement".

P asked to speak to the judge. She talked movingly about her wishes. Judge summarised: "You're wanting to do as much as I can to see if it's possible for you to have a natural birth".

Before the pandemic and remote hearings, P wouldn't have been in court. Her voice changed the course of this hearing.

...

Judge said he didn't need to hear more from OS. "I think this is a case about best interests as well as about capacity. I don't think it would necessarily flow that if I found her incapacitous that the BI decision would be as straightforward as I did when I read the papers."

Judge: "Her reasoning as to why the birth process is important to her is compelling. So the decision is not purely medical. It requires looking at the individual mother in the round. It's not axiomatic that if she lacks capacity a C-section is in her BI"

And so Hayden J has adjourned the hearing for next week. Counsel need to find a consultant psychiatrist to give evidence on capacity. Then Hayden needs to "perform some alchemy to get a judge for you" in heavily overburdened court lists.

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