



Judgment from Court of Appeal re AH



Hayden J said it was not in AH's BI to continue to receive ventilation.

LJ Moylan gave main judgment: "I have, very regrettably, come to the conclusion that the Judge's decision cannot stand+must be set aside"

There were 5 grounds of appeal. Only one was upheld - the concern about the Judge's visit to AH in hospital after the hearing was finished + before he handed down his judgment.

First ground of appeal: that judge gave insufficient attention to AH's earlier capacious decision on ReSPECT form that she wanted "full escalation" .

But this applies only to "emergency" treatment + current situation is "very far from an emergency".

Second ground of appeal: judge failed to appreciate AH's religious + cultural views.

SC found that judge WAS aware of + took into account AH's religious+ cultural view.
Weight to be given to them is up to trial judge + not for SC.

Not a sustainable ground of appeal.

Third ground of appeal: judge failed adequately to consider AH's past+present wishes + feelings + "ignored" family evidence.

But family evidence showed "differing views" + judge "expressly considered" AH's views.

Not a sustainable ground of appeal.

Fourth ground of appeal: judge failed properly to balance the interference with AH's human rights under the ECHR.

Not sustained - "the balance to be applied in this case is clear + is the balance applied by the Judge"

Fifth ground of appeal: Judge's visit to AH was flawed because no consideration was given to its purpose, as required in COP Guidance.

https://www.familylaw.co.uk/docs/pdf-files/Practice_Guidance_Vulnerable_Persons.pdf

Counsel for family said judge used visit as "evidence-gathering exercise to establish what AH's views were + his visit likely influenced his overall conclusion". This was procedurally unfair because family didn't have opportunity to make submissions on Judge's assessment of visit

Counsel for family also said Judge was not equipped properly to gain any insight into AH's wishes, given her complex medical condition + difficulties of communication.

LJ Moylan accepts what happened when Judge saw AH in hospital is capable of more than one interpretation + could be interpreted as counsel for the family say.

If judge did consider that AH had given him insight into her wishes then judge's decision is undermined because

... (1) given that judge was not properly equipped to gain insight from AH, the validity of his assessment might well require further evidence/submissions
(2) the parties needed to be informed about this + given opportunity to make submissions (procedural fairness)

LJ Moylan: "I do not therefore consider that the Judge's decision can be upheld...."
He allows the appeal + says "there will need to be a rehearing which will have to take place as soon as possible". (para.74)

Other 2 judges (Sir Nicholas Patten + Sir Andrew McFarlane) agree with this judgment.

McFarlane emphasises (as did Moylan) the importance of developing guidance + clarity about the purpose of judicial visits to P.

We will post information about the re-hearing as soon as we know about it.

The rehearing of this case will be on 7th and 8th December before Theis J.

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