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CASE NOTES

EDITED BY JUSTIN GAU
Barrister, Deputy Chancellor of the Diocese of Lincoln
RUTH ARLOW
Barrister, Deputy Chancellor of the Dioceses of Chichester and Norwich
AND WILL ADAM
Rector of Girton, Ely Diocesan Ecumenical Officer

NHS Trust v A (A Child)

High Court: Holman J, July 2007
Medical treatment – parental consent – religious belief

A, aged seven months, suffered from a severe genetic defect in her immune system known as haemophagocytic lymphohistiocytosis. Although at the time the disease was inactive and A was at home and well (as a result of controlling drugs), it was accepted that the disease could become active at any time and that, without a bone marrow transplant, A would die, probably within a year. Medical experts had recommended the transplant: this had a 50 per cent chance of being a successful cure, a 30 per cent chance of not being successful, a 10 per cent chance of significant impairment and a 10 per cent chance of death as a result of the treatment. A's parents, noting that A had already suffered pain during treatment, contended that they did not want her to suffer further and that they wanted to prolong the quality of life she had, believing that the proposed treatment was too harsh and that God had the ability to cure her. They further argued that the certainty or risk of infertility should be taken into account in balancing what was in A's best interests. The NHS Trust applied for a declaration that the transplant be carried out.

The High Court granted the declaration. Holman J held that a broader approach to the balancing exercise and outcome was both appropriate and justified. The risk of infertility could not be properly considered since it would only arise on the assumption that the child survived, was cured and was able to live a normal childhood and become an adult. It was overall in the best interests of A to have the transplant. Otherwise, a very real prospect of a full life, weighed against death, would have been lost for a few months of babyhood. Citing his earlier decision in *NHS Trust v MB (A Child)* [2006] EWHC (Fam) 507, Holman J noted that, although he had utmost respect for the parents' faith, it was irrelevant to the decision that the judge had to take: the child, by reason of her age, was

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incapable of any religious belief and so an objective balancing of the child's own interests could not be affected by the adherence of the parent. Any possibility of a miraculous cure should be left out of the analysis. It was accepted that, although several Articles of the ECHR were engaged in the case, these did not alter or add to the established principles of domestic law in the field.

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Re Warner, Re All Saints, Stand
Manchester Consistory Court: Tattersall Ch, August 2007
Interment – precedent – memorial – lifetime application

Two petitions were before the chancellor. First, a petition by W, a former incumbent of the parish, for his cremated remains and those of his wife to be interred beneath the sanctuary of the parish church after their respective deaths and, second, a petition to erect a memorial plaque above, the wording of which was submitted with the petition. There had been no previous burials within the church. The PCC had unanimously supported the petition and the DAC had offered no objection. The chancellor considered the application for the interment, stating that the major point of principle was whether he should 'authorise the interment of cremated remains for the first time in this church which will inevitably allow others to make similar applications in the future'. He considered the judgment in the similar case in *Re St Peter, Folkestone* [1982] 1 WLR 1283, Commissary Ct. The petition for interment was refused for three reasons. First, following the *Folkestone* case, it would be wiser not to create a precedent that could lead to difficult pastoral decisions as to whose remains could be interred in the church in the future. Second, whilst it might conceivably have been the case that the petitioner's service to the parish was exceptional enough to justify interment in the church, this could not necessarily be said for the petitioner's wife. Third, the chancellor was not prepared to grant the faculty sought prior to the death of the petitioner and his wife. He indicated that he would, however, be prepared to grant a faculty for a memorial plaque in the sanctuary on the basis that it had the support of the PCC and no objection had been raised. [WA]

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