IN THE SUPREME COURT OF THE UNITED KINGDOM

20 APRIL 2018

Before:

Lady Hale
Lord Kerr
Lord Wilson

In the matter of Alfie Evans No.2

AFTER CONSIDERATION of the application filed on behalf of the Appellants seeking permission to appeal the order made by the Court of Appeal on 16 April 2018 and of the submissions made on behalf of the Respondents

THE COURT ORDERED that, for the reasons attached, permission to appeal be REFUSED.

Louise di Mambro.

Registrar
20 April 2018

BETWEEN THOMAS EVANS AND KATE JAMES

AND

ALDER HEY CHILDREN'S NHS FOUNDATION TRUST

AND

ALFIE EVANS (BY HIS CHILDREN'S GUARDIAN)

1. This is a desperately sad case. It is sad principally, of course, for Alfie's parents, for they love their little boy dearly and want to do all in their power to keep him alive. But it is also sad for the people who have been keeping Alfie alive for so long, the doctors and nurses who are treating him in Alder Hey Hospital. Those of us who have to deal with this case dispassionately as a point of law, can feel for their sadness.

2. But they, and we, have to face the facts. Alfie looks like a normal baby, but the unanimous opinion of the doctors who have examined him and the scans of his brain is that almost all of his brain has been destroyed. No-one knows why. But that it has happened and is continuing to happen cannot be denied. It means that Alfie cannot breathe, or eat, or drink without sophisticated medical treatment. It also means that there is no hope of his ever getting better. These are the facts which have been found after a meticulous examination of the evidence by the trial judge.

3. The Supreme Court is not a court of trial. We hear only cases which involve an arguable point of law of general public importance. No-one could deny that this is an important case. But is there an arguable point of law?

4. On the first occasion that an application came before us, we held that Alfie's best interests were the "gold standard" against which decisions about him had to be made. It had been decided, after careful examination of the evidence, that it was not in his best interest for the treatment which sustained his life to be continued or for him to be taken by air ambulance to another country for this purpose. Hence we refused permission to appeal and the European Court of Human Rights found the parents' application inadmissible.

5. This second application for permission to appeal comes before us on an application for habeas corpus. That is the only basis upon which we would have jurisdiction to entertain an appeal. The writ of habeas corpus issues as of right and requires the person having custody of the body of the subject person either to produce the body or to show good legal cause why the body should not be produced or released.

6. In the olden days, the way in which a father could enforce his right to the custody of his child was by way of a writ of habeas corpus. That was because a married father had, at common law, the right to the custody of his child. But that right has been circumscribed in modern times in the interests of the welfare of the child.

7. Thus section 1 of the Custody of Children Act 1891, now repealed, provided that:

   "Power of Court as to production of child.

   Where the parent of a child applies to the High Court or the Court of Session for a writ or order for the production of the child, and the Court is of opinion that the parent has abandoned or deserted the child, or that he has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the child, the Court may in its discretion decline to issue the writ or make the order."

8. This made it clear that parental rights are not absolute. The 1891 Act was followed by section 1 the Guardianship of Infants Act 1925, now replaced by section 1 of the Children Act 1989, both of which make it clear that when any question of the upbringing of a child comes before the courts, the child's welfare is the paramount consideration. As we explained in our earlier decision in this case, the best interests of the child are the "gold standard" which is not only adopted by our law but also reflects the international standards to which this country is committed.

9. It is therefore clear law that the parents do not have the right to use the writ of habeas corpus to acquire the custody of their child if this will not be in his best interests. The decisions of the trial Judge clearly amount to decisions that the parents have no right to direct Alfie's future medical treatment. This is not a criticism of them. How could it be? It simply means that they cannot take Alfie away from Alder Hey for the purpose of transporting him at some risk to other hospitals which can do him no good.

10. There is no reason to suppose that in this respect UK law is contrary, either to the European Convention on Human Rights, or to the law of the European Union.

11. The parents have already applied once to the European Court of Human Rights, which has held their complaint inadmissible. The argument then was that the parents were being unjustifiably discriminated against in their right to respect for their family life under article 8 of the Convention.

12. They now complain that Alfie is being deprived of his liberty contrary to article 5 of the Convention. A person who is unable to move because of the measures which are being taken in intensive care to keep him alive is not deprived of his liberty within the meaning of article 5. It is also seriously open to question whether a baby who is incapable of staying alive without the artificial ventilation, nutrition and hydration currently being provided to Alfie is being deprived of his liberty. But what is not open to question is that those measures can only be imposed, whether on a child or on an adult person who is unable to make the decision for himself, if they are in the best interests of the person concerned. That is the "gold standard". So, if this were "deprivation of liberty", it would not be lawful unless it was in Alfie's best interests.

13. It has been conclusively determined that it is not in Alfie's best interests, not only to stay in Alder Hey Hospital being treated as he currently is, but also to travel abroad for the same purpose. It is not lawful, therefore, to continue to detain him, whether in Alder Hey or elsewhere, for that purpose. The release to which he is entitled, therefore, is release from the imposition of treatment which is not in his best interests.

14. Every legal issue in this case is governed by Alfie's best interests. These have been conclusively and sensitively determined by the trial judge. There is no arguable point of law of general public importance in this case.

15. There is also no reason for further delay. There will be no further stay of the Court of Appeal's order. The hospital must be free to do what has been determined to be in Alfie's best interests. That is the law in this country. No application to the European Court of Human Rights in Strasbourg can or should change that.

Lady Hale

Lord Kerr

Lord Wilson

20 April 2018