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R. (on the application of AB) v Human Fertilisation and Embryology Authority

Queen's Bench Division (Administrative Court)

14 January 2014

Case Analysis

Where Reported

[2014] EWHC 1528 (Admin)

Case Digest

Subject: Health **Other related subjects:** Civil procedure

Keywords: **Assisted reproduction**; Consent; Embryology; Hospitals; Human Fertilisation and Embryology Authority; Interim relief; Persistent vegetative state; Sperm donors

Summary: An order for interim relief permitting the Human Fertilisation and Embryology Authority to retrieve gametes from a man critically ill in a coma was discharged where the hospital where he was a patient was not licensed to store gametes, he had not consented, and no application had been made to the Court of Protection to establish the man's best interests.

Abstract: The applicant authority applied to discharge an order for urgent interim relief made on the application of the respondent (AB) permitting the authority to retrieve gametes from AB's common law husband (P), who was in a coma, and to direct the hospital to store them. P and AB had been together for about six years. P suffered a cardiac arrest and went into a coma then a permanent vegetative state. He had further cardiac arrests. The direction to medical staff was not to resuscitate him. His chance of survival was small. AB sought from the authority a special direction to harvest P's gametes. She contended that, although it was not something he had agreed to, he would have wanted it to happen. The authority refused AB's request. AB made an urgent application to court, and an order was made permitting the hospital trust to retrieve gametes from P and to ensure their future, and authorising the authority to give a special direction to the hospital to store them. No gametes were retrieved, and P's condition slightly stabilised, such that the "do not resuscitate" direction was lifted. The authority challenged the order on the basis that P had not consented, that under the [Human Fertilisation and Embryology Act 1990 s.4\(1\)\(a\)](#) gametes could not be stored without a licence and the hospital where P was had no licence, and without storage retrieval would be of no use.

Application granted. The interim relief order would be discharged pending the expedited substantive hearing of AB's claim. That order should not have been sought urgently or otherwise. The first step should have been to establish what was in P's best interests by an application to the Court of Protection, which had not been done. Further, the hospital was not appropriately licensed. The urgency when the order was made no longer applied. Although P was still extremely ill, his condition had stabilised, and the lifting of the "do not resuscitate" direction showed that the matter was not so urgent. It was common ground that nothing should happen pending the outcome of the substantive hearing. The discharge of the interim relief order did not prevent AB from applying for urgent relief if it became necessary.

Judge: Carr, J.

Counsel: For the applicant: Kate Gallafent. For the respondent:

Richard Alomo.

Significant Legislation Cited

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.4\(1\)\(a\)](#)

Legislation Cited

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.4\(1\)\(a\)](#)

Journal Articles

Consent to medical treatment: application to retrieve gametes from critically ill man

Assisted reproduction; Best interests; Consent; Embryology; Hospitals; Human Fertilisation and Embryology Authority; Interim relief; Persistent vegetative state; Sperm donors.

[P.I. Comp. 2014, Feb, 11](#)

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