

Baby to be treated after parents lose court battle

Published: 6:28AM Sunday September 08, 2013 Source: Fairfax

File image of a baby sound asleep. - Source: Photos.com

A baby will be given life-saving cancer treatment after a court battle between a hospital and her religious parents.

The 10-month-old daughter of a Jehovah's Witness couple has been put into the guardianship of the High Court for nine months so Starship children's hospital doctors could treat her.

The parents accepted the girl needed urgent chemotherapy and surgery, accepted it was in her best interests and agreed to the treatment, but could not consent to transfusion of blood or blood products "by reason of their affiliation with the Jehovah's Witness Church".

The case echoes that of a two-year-old girl last year, whose Jehovah's Witness parents could not consent to her receiving a kidney and liver transplant and was similarly put under the protection of the court.

The girl in the current case, identified in court documents as "A", became unwell in June.

Doctors found a large tumour on the right side of her chest and, after a biopsy, she was diagnosed with neuroblastoma and "stage four widespread metastatic disease involving the bone and bone marrow".

Starship paediatric oncologist Dr Stephen Laughton proposed eight cycles of chemotherapy and then surgery to remove the tumour.

The girl would "almost certainly" require a blood transfusion, he told the court, for either blood cell replacement because of the effect of the cancer on her bone marrow, possible bleeding into the tumour, or as a consequence of the surgery.

The case was rushed to the High Court on August 22 where it was heard by Chief High Court Judge, Justice Helen Winkelmann, who also heard last year's case.

The judge was presented with a stark choice: doctors could not responsibly continue with chemotherapy or surgery without the ability to administer a blood transfusion and "if A is not treated, Dr Laughton anticipates that she will die within weeks or month "With treatment, however, A has an excellent prognosis, with a long-term overall survival rate in excess of 90 per cent."

Jehovah's Witness spokesman George Gray could not talk specifically about the case but he said the issue was never simple.

"We are a people who absolutely love life in every way, but we don't believe it's life at any cost," he said.

"In many ways we are no different from anybody else, except that we have a very strong faith and very strong belief in something far more than what we see in this world around us now."

Notably, the girl had already received a transfusion that violated the Jehovah's Witness faith.

When she was transferred to Starship for a biopsy she was found to have a life-threateningly low red blood cell count. She was given a red cell transfusion without parental consent as it was deemed an emergency situation.

Section 37 of the Care of Children Act allows emergency transfusions without parental consent but the judge said it would not be appropriate to rely on that for on-going care.

A long-term treatment plan would encompass the high likelihood of a transfusion so it could not be deemed an emergency.

Justice Winkelmann drew on a similar 1996 Court of Appeal case which considered the conflict between parents' religious beliefs and the medical needs of the child.

"While parents have a right, recognised by section 15 of the New Zealand Bill of Rights Act 1990, to manifest their religion, that right does not allow acts or omissions likely to place A's life, health or welfare at risk."

The parents were kept firmly in the picture, however, and were appointed "general agents of the court for all purposes other than consenting to the administration of blood and blood products in the course of treatment".

"Their ongoing support and care for A is crucial, and the making of these orders, I hope, resolves the difficult position they presently find themselves in."



The Auckland District Health Board was approached for comment but director of child health Richard Aickin said: "Auckland District Health Board, in line with the parents' wishes and the child's best interests, is declining to comment."

Peter Le Cren, a lawyer at health law firm Claro and former ADHB medico-legal counsel, estimated about one Jehovah's Witness case came to court per year.

"It gives the clinicians and the family involved a lot more comfort having the sanction of the court," he said. "These families are a very difficult situation. They feel hugely torn.

"It [the court ruling] can create clarity and ease of conscience to have the decision placed in the hands of a judge."

Jehovah's witnesses

There are approximately 17,000 Jehovah's Witnesses in New Zealand according to the 2006 Census.

The movement began in New Zealand in 1903 with just two members.

It is a Christian movement but has some fundamental theological differences to other Christian churches on the role of Jesus and the soul.

Witnesses do not celebrate Christmas because they say there is no proof Jesus was born on December 25 and the festival has pagan roots.

It sees itself as a freethinking movement, does not believe in creationism, and regards science and the Bible as compatible.