January 31, 2011

Transfusion without parental consent

January 31, 2011 By admin 4 Comments

Ed Madden, BL,

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, BL, looks at a recent High Court case in which Temple Street Hospital in Dublin sought an order sanctioning a blood transfusion for a baby boy against the wishes of his parents.

In the early hours of the morning of December 27 2010, following a hearing in his own residence, Mr Justice Hogan of the High Court made an order sanctioning the administration of a blood transfusion to a seriously ill, three-month-old baby boy against the wishes of his parents.

The baby was born in September 2010; sadly, his twin sister did not survive the birth. On Christmas Day, and while in hospital, he was very unwell, suffering from acute bronchiolitis. During the course of the day, his condition deteriorated. At one point, he stopped breathing and had to be resuscitated. He also had a hypoxemic episode ð an incident with potentially ominous implications.

In the early hours of December 26, 2010, he was transferred to the Childrenôs Hospital in Temple Street. By early evening, the situation had become critical. While he suffered in any event from low haemoglobin, this level was dropping further by reason of his illness. The fact that the haemoglobin was dropping significantly hindered the capacity of his body to deliver oxygen to his vital organs and to maintain normal neurological functions.

By 9pm, it was clear that the haemoglobin level was on a downward spiral and had reached the point where a transfusion was absolutely necessary. While the childôs parents were anxious for his welfare and sought the very best medical care for him, as committed Jehovah Witnesses they were steadfast in their opposition to transfusion.

High Court order
Faced with this objection from the parents, the hospital decided to apply to the High Court for an order sanctioning the transfusion. Contact was made with the Courtôs Duty Registrar, who in turn

made contact with Mr Justice Hogan shortly after 10pm. It was agreed that an emergency hearing would be held in his home at midnight or as soon thereafter as the parties could assemble.

The hearing commenced shortly before 1am on the morning of December 27, 2011 and concluded at about 2:30am. The hospital was represented by solicitors and counsel. The parents appeared in person; given the time constraints, it had not been possible for them to obtain professional representation.

The treating consultant, **Dr Kevin Carson**, who is Clinical Director of Intensive Care at Temple Street, gave evidence detailing the medical history to date. He confirmed that the childôs life was in danger and that there were no medical alternatives to a transfusion.

For their part, the parents explained that while they wanted the best for their child and were delighted with the quality of the medical care that he had received, given the tenets of their religious faith they could not possibly consent to a blood transfusion.

They seemed resigned, however, to the fact that their religious objections would be overridden by the Court. The High Court had already sanctioned a transfusion in respect of one of their other children.

At the conclusion of the hearing, Mr Justice Hogan granted a declaration to the effect that it would be lawful in the particular circumstances of the case for the hospital to administer a blood transfusion to the child. He said that he would deliver a judgment in open court later, in which he would give the reasons for his decision.

In the course of his judgment, delivered on January 12, 2011, the Judge said that there was no doubt as to the sincerity of the religious beliefs of the parents. They struck him as ñwholesome and upright parentsò who were most anxious for the welfare of their child, yet steadfast in their own religious beliefs. An abhorrence of the administration of a blood transfusion was integral to those beliefs.

Before dealing with the substantive issue, the Judge dealt with the reasons why there had not been a public hearing of the case. This was due to the time constraints involved, the time of year and the fact that the application had to be heard in the early hours of the morning. A further consideration was that heavy snowfalls had blanketed the Dublin region, making travel very difficult.

While it had not been possible to hold the hearing in open court, he hoped that the delivery of the judgment would mitigate this somewhat by providing a record of what transpired.

Turning to the substantive issue, the Judge said that the starting point was Article 44.2.1 of the Constitution, which provides as follows: ñFreedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.ò

Article 44.2.1 protects not only the traditional and popular religions and religious den-ominations, but also provides a vital safeguard for minority religions and religious denominations whose tenets are regarded by many as unconventional. The antipathy of the Jehovah Witnesses to the taking of blood products might well come within the latter category.

In this regard, the Judge said that he would suspect that most Irish people would express ñunease and even disdainò for a religious belief which required its faithful to abjure what is often a life-saving and essential medical treatment. The Witnesses, on the other hand, regard the blood prohibition as one which is not only scripturally ordained but also, when it arises, a practical test of faith.

The Judge said that while the right of a properly-informed adult with full capacity to refuse medical treatment ð whether for religious or other reasons ð is constitutionally protected, different considerations arose in the present case, where a very young baby was involved.

While parents have the constitutional right to raise their children by reference to their own religious and philosophical views, that right is not absolute. The State has a vital interest in ensuring that children are protected ñso that a new cohort of well-rounded, healthy and educated citizens can come to maturity and are thus given every opportunity to develop in lifeò.

However, the right of the State to intervene and thus to override the constitutional right of the parents is expressly circumscribed by the Constitution. The circumstances must be ñexceptionalò and the intervention proportionate to the circumstances.

There must also have been a ñfailureò of duty on the part of parents. There was no doubt, however, that the Court may intervene in a case such as this where the childôs life, general welfare and other vital interests are at stake. The test of whether the parents had failed in their duty under the Constitution is an objective one, judged by the secular standards of society in general and of the Constitution in particular, irrespective of the subjective and religious views of the parents.

Religious objections
Given that the Constitution commits the State to protecting by its laws as best it may the life and person of every citizen, it was incontestable that the High Court is given a jurisdiction, and indeed a duty, to override the religious objections of the parents where adherence to those beliefs would threaten the life and general welfare of their child.

It was for these reasons that he had sanctioned the administration of a blood transfusion in the present case.

This declaration was limited to the particular clinical events and was not to be construed as conferring on clinicians an open-ended entitlement into the future to administer such treatment to the child.

Reference: [2011] IEHC 1

Filed Under: Ed Madden, Opinion Tagged With: blood transfusion, consent, medico-legal

 **About admin**

Comments

1.  *Daniel Haszard* says:
January 31, 2011 at 9:28 am

   Religious dogma is contradictory.

   Jehovahôs Witnesses do not óabstainô from blood, they use all kinds of blood derivatives (that are donated by organisations like the Red Cross that they donôt support). Watchtower society leadership will not allow a Jehovah Witness follower to bank their own blood ahead of surgery, which is (still) the best, cheapest, safest option.

   Reply

2. *Fredrick Davis* says:
January 31, 2011 at 11:50 am

I donôt think parents should be immune from prosecution if they kill their children, or if they make decisions that result in their childôs death. Unfortunately there are parents who engage in all sorts of dangerous behaviors that result in deaths that mightôve otherwise been easily prevented. And I think itôs sad that in some cases, thereôs nothing that can be done legally because laws meant to prevent such abuse include religious exemptions.

http://www.ajwrb.org/basics/abstain.shtml LINK

Reply

3. *William Shaw* says:
January 31, 2011 at 1:31 pm

The issue is really why doctors have to waste time seeking the authority of the courts to save the life of a child who has the misfortune to have seriously mentally ill parents. It should be sufficient for an independent doctor and psychiatrist to sign off on such a procedure. Or are we going to waste another 100 years indulging the pretense that such utter insanity and contempt for the welfare of a child has to be respected because it is someoneôs ñfaithò? When I read about such nonsense I wonder if we are living in the 13th Century.

Reply

Ŭ *Janet Holland* says:
January 31, 2011 at 2:24 pm

Blood transfusion to a Jehovahôs Witness is like psychiatry to Scientologist.

(Mark 3:4) ñThen Jesus asked them, õWhich is lawful on the Sabbath: to do good or to do evil, to save life or to kill?öò Jehovahôs Witnesses is a cult based on rules. God is about life and preserving it, because He is its author. This is just madness.

Reply

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