

Re C (Welfare of Child: Immunisation)

[2003] 2 FLR 1095

30/07/2003

Barristers

Private: Jonathan Cohen QC
Kate Branigan KC

Court

High Court

Facts

The appeal related to two cases with significant similarities. In each case the father had sought a specific issue order for immunisation of the child of the family. In each, the mother was opposed to immunisation. Both children lived with their mothers; both fathers had parental responsibility and contact. The judge ordered each mother to have her child immunised in accordance with a schedule of appointments attached to the order. The mothers' appeal was based on the argument that the judge had misdirected himself in law in applying the wrong test. It was submitted that he had erroneously adopted a two-stage test; first establishing, on the basis of medical evidence, that immunisation was in the girls' best interests, and then asking whether there were sufficient non-medical reasons for refusing to order immunisation.

Held

Held - dismissing the appeal -

(1) The submission that the judge reached the wrong conclusion by adopting the wrong test was without foundation. In all cases where the outcome of the application was dependent upon the judge's resolution of divergent expert opinion, the judge's assessment of the expert evidence was likely to be crucial to the outcome. The judge could not be criticised for making his assessment of and findings on the expert evidence before considering other relevant factors. The judge's function was to consider all relevant factors and to give each its due weight. The order in which such relevant factors were considered was a matter for the judge to decide. The judgment at first instance was manifestly conscientious and comprehensive. The applications were decided according to a consideration of the welfare of the children, and the judge's approach was above criticism (see paras [24]-[26]).

(2) Where parents were in dispute about the immunisation of a child against infectious disease, neither parent had the right to make the decision alone and immunisation should be carried out only where a court decided that this was in the best interests of the child, s. 2(7) of the Children Act 1989 notwithstanding (see paras [16], [17]).

(3) There was no general proposition of law that a court would not order non-essential invasive medical treatment in the face of strong opposition from the child's primary carer (see para [22]).

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