

Re C (Welfare of Child: Immunisation)

[2003] 2 FLR 1167

13/06/2003

Barristers

Kate Branigan KC

Court

Family Division

Facts

The applications concerned two children, aged 4 and 10, neither of whom had received any form of immunisation against infectious disease. In each case the child lived alone with the mother, who was opposed to immunisation, while the absent father supported immunisation. Both fathers applied for a declaration that the child in question should receive immunisation appropriate to her age. Both mothers argued that immunisation involved unacceptable risks, and that the imposition of immunisation against their wishes would cause them undue distress, which would adversely effect their relationships with the children. One of the mothers argued, in addition, that the current application was part of the father's protracted attempt to exercise control over her through use of the legal system.

Held

Held – declaring that appropriate immunisation was in the best interests of the children –

(1) The benefits to the children of immunisation outweighed the risks associated with immunisation, and outweighed the likely impact of the decision upon the mothers' emotional well-being and upon their relationships with their daughters. On the basis of the medical evidence before the court, immunisation against diphtheria, tetanus, polio, meningitis C and measles, mumps and rubella in the form of the MMR triple vaccine was in the best interests of both children, immunisation against whooping cough and haemophilus influenza type B was in the best interests of the younger child, and immunisation against tuberculosis and tubercular meningitis was in the interests of the older child if she proved to be tuberculin-negative (see paras [76], [89], [117], [130], [147], [156], [160], [200], [332], [365]).

(2) Although ordering immunisation contrary to a parent's wishes would constitute a prima facie interference with the right to respect for private and family life guaranteed by Art 8(1) of the European Convention on Human Rights and Fundamental Freedoms 1950, such interference fell within the express exceptions contained in Art 8(2) as being for the protection of health, and did not, therefore, amount to a breach of the European Convention (see paras [327], [365]).

(3) Parents had equal rights before the court. The parent with whom a child was living did not have greater rights than an absent parent, who was entitled to be consulted on major decisions in the child's

life. However, the court recognised the importance of the bond between a child and the parent with whom he or she lived, and would take care to safeguard and preserve it in the best interests of the child. If a course was proposed that was beneficial for the child but might cause damage to that relationship, the court would balance the issue with great care. Such care was even more important where the parent had to care for a child who was to undergo invasive medical treatment to which the parent was opposed. If the benefit were not sufficiently significant or the risk of harm was clear, the court might not make any order, but in neither of the instant cases was the impact on the mothers and their care of the children of such a potential impact as should deter the court from ordering the immunisation (see paras [330], [332], [366]-[369]).

Per curiam : where medical intervention was concerned the more scope there was for genuine debate the less likely the court was to make a decision. Difficult decisions should be taken by parents, but in this case the court had to take a decision because the parents did not agree. This decision should not be seen as a general approval of immunisation for children. Where parents agreed that a child should not be vaccinated, the law and doctors respected their views (see paras [329]-[332], [345], [347], [366], [367]).

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