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Judge rules that baby should be removed from ventilator and given palliative care

Clare Dyer

An eight week old baby should no longer be kept alive on a ventilator and should be given palliative care to spare him the risk of a “painful, agonising death,” a High Court judge has declared.¹

There are no further treatment options for the baby, who was referred to in court as Z, said Mr Justice Hayden. The judge was satisfied that intensive care was futile and that it had “come to place an insupportable burden” on the child.

Hayden granted Sheffield Teaching Hospitals NHS Foundation Trust a declaration that it would be in the best interests of the baby to leave intensive care and to have palliative care only. The trust had hoped to reach agreement with the child’s Muslim parents and avoid a court application. But because of his religious beliefs, the baby’s father was unwilling to agree that his son could come off the ventilator.

The baby was born at just under 34 weeks. Soon after his birth his condition deteriorated rapidly and he was diagnosed with necrotising enterocolitis, which led to the infarction of almost the whole bowel.

Surgeons performed a laparotomy but only part of the bowel was removed because the baby was too sick to prolong the operation. Hayden said the baby’s father, referred to in court as AB, invested “much hope that what remains of the bowel may be functional.”

It was not a case of conflict between doctors and parents, said Hayden. Although their perspectives were different, there was “a high degree of collaboration” between them which was “rooted in mutual respect.”

Kirsteen Mackay, a consultant neonatologist looking after Z, told the court that the baby’s health had deteriorated to the point where further surgery would be life threatening and could not responsibly be undertaken.

The baby had two central lines, one for nutrition and one for fluid and highly concentrated pain relief medication, the court heard. Mackay said that in her 11 years as a consultant, she had never experienced such a strong and complex cocktail of pain relief. Nor had a colleague with 20 years’ experience.

The court heard that the baby’s abdominal wall had broken down and he was in renal failure with a severe liver impairment and producing virtually no urine. There was an excess of fluid beneath his skin, and bleeding into the brain.

At 1 am on the day of the hearing, one of the central lines failed. A consultant surgeon concluded that the child could not withstand surgical intervention to insert another central line.

The baby’s father, AB, told the judge that even if further expert opinion agreed with the treating doctors, he would still not be able to agree to the withdrawal of ventilation. “At this point the medical analysis collides with AB’s religious beliefs,” said Hayden.

“Though the family has agreed to limited interventions they will not agree to the withdrawal of ventilation. Much of that is driven by their profound Islamic beliefs.

“The father believes, and I am sure articulates this on behalf of his wife too, that while there is breath, there is life. And while there is life there is hope.”

The judge added, “I am entirely satisfied that if I were to yield to the father’s suggestion, I risk the real possibility, indeed on my assessment of the evidence a likelihood, of a painful, agonising death for his son. I cannot reconcile that with Z’s best interests in circumstances where the careful and compassionate professional consensus reaches the compelling conclusion that Z’s life is now futile.”

Because of the covid-19 pandemic, the hearing was held by video conference, with Z’s parents, who were with him in hospital, joining by telephone. Hayden said he regretted that he was unable to have eye contact with the parents, but it was a “great privilege” to be taken to Z’s bed remotely. “I should like to thank the parents for inviting me to see him,” he added.

1 Sheffield Teaching Hospitals NHS Foundation Trust v AB and SZ. [2020] EWHC 1606 (Fam). 2020. www.bailii.org/ew/cases/EWHC/Fam/2020/1606.html.