This judgment was delivered in public

Case No: FD17P00694

Neutral Citation Number: [2018] EWHC 953 (Fam)
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/04/2018

Before :

THE HONOURABLE MR JUSTICE HAYDEN

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Between :

Alder Hey Children's NHS Foundation Trust	**Applicant**
- and -	
(1) Mr Thomas Evans	
(2) Ms Kate James	
(3) Alfie Evans	
(A Child by his Guardian CAFCASS Legal)	**Respondents**

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Michael Mylonas QC (instructed by **Hill Dickinson)** for the Applicant
Paul Diamond (instructed by **The Christian Legal Centre)** for the 1st and 2nd Respondents
Sophia Roper instructed by **CAFCASS**

Hearing dates: 24 April 2018

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Judgment

Mr Justice Hayden:

1. Alfie James Evans was born on 9th May 2016. He has been described as 'a fighter', 'resilient', 'courageous' and 'a warrior'. In the last 20 hours he has proved himself, once again, to be worthy of those descriptions. He has lived most of his short life in the Alder Hey Hospital and most of it in the Paediatric Intensive Care Unit (PICU). As Mr. Evans (F) and Miss James (M) have both regularly acknowledged, he has there received a quality of care which, in my view, can only be properly characterised as world class. One of the treating clinicians is here before me today. I have listened to her as once again, in challenging circumstances, she is repeatedly prepared to engage in exploring the range of options that might be available however fragile they might be, however optimistic the aspiration.

2. Alfie is not merely loved by his family, parents and supporters; he is loved by those who have been treating him for so long and so well. With a heavy heart and much reluctance and despite the impressive efforts of F, representing himself and his partner in February this year, I came to the conclusion that Alfie's situation is now futile. That is not the same as saying that it lacks dignity and I drew that distinction in the judgment of [2018] EWHC 308 (Fam). I have no doubt that, in the weeks that have passed, Alfie's dignity has been profoundly compromised by the many videos that have been posted on the internet, some of which are manifestly inappropriate and disrespectful of his privacy. They are, I recognize, posted there in desperation, driven largely by a father whose grief is unbounded and whose sadness, as I have witnessed in this court, has an almost primal quality to it. It is deeply distressing to witness.

3. But I came, on the consensus of every doctor from every country who had ever evaluated Alfie's condition, to the inevitable conclusion (following 7 days of evidence) that Alfie's brain had been so corroded by his Neurodegenerative Brain Disorder that there was simply no prospect of recovery. By the time I requested the updated MRI scan in February, the signal intensity was so bright that it revealed a brain that had been almost entirely wiped out. In simple terms the brain consisted only of water and CSF. The connective tissues and the white matter of the brain that had been barely visible 6 months earlier had now vanished entirely and with it the capacity for sight, hearing, taste, the sense of touch. All that could be offered by the Bambino Gesu Hospital in Rome was an alternative palliative care plan. An end of life plan. And so, on a true deconstruction of the issues, it is that that this case has been about: what is the appropriate end of life plan for Alfie?

4. In my earlier judgment I set out my conclusion. The further preservation of Alfie's life by artificial ventilation with his brain corroded in this was, I found, contrary to his best interests. Both that judgment and my later judgment, addressing an application for Habeas Corpus [2018] EWHC 818 (Fam), have been assessed by the Court of Appeal, the Supreme Court and by the European Court of Human Rights. Their conclusions remain unimpeached.

5. Yesterday this Court received an email from the Italian Ambassador to the Court of St. James, Signor Raffaele Trombetta, advising that the '*Italian Ministry of Foreign Affairs to the Secretary of State for Foreign and Commonwealth Affairs'* had granted Alfie Italian citizenship and was requesting "*his **return** to Italy of an Italian citizen*" (my emphasis). I am sure that the thinking behind the application was well-meaning but, equally, it was misconceived. Alfie has absolutely no connection with Italy at all

nor do his parents. There can be no question of any "return". He has never visited. Nor is there any basis for thinking that the Italian jurisdiction should supercede that of this Court. Though I am sure it was not intended, the application was disrespectful to the very principles of international comity that Mr Diamond sought to rely on in his submissions. I can think of no more important application of the principles of international comity than in the context of vulnerable children. In response Mr. Mylonas QC, on behalf of The Trust, emphasises the established applicable principles relating to issues of jurisdiction. Self evidently this Court has jurisdiction. I do not understand Mr Diamond to be arguing to the contrary. The proposition is uncontroversial and was most recently re-stated in **Re B (A Child) (Habitual Residence: Inherent Jurisdiction)** [2016] UKSC 4 by Lord Wilson at paragraph 27 (emphasis added):

> *"A child's habitual residence in a state is the internationally recognised threshold to the vesting in the courts of that state of jurisdiction to determine issues in relation to him (or her). Article 8 of Council Regulation (EC) No 2201/2003 ("Regulation B2R") provides that the courts of an EU state shall have jurisdiction in matters of parental responsibility over a child habitually resident there at the time when the court is seised. By way of exception, article 12 confers jurisdiction on a state which has other links with the child but only where the parties have accepted its jurisdiction. Article 13 provides that, where a child's habitual residence cannot be established (which means where the child is not habitually resident in any EU state) and where article 12 does not apply, jurisdiction vests in the courts of the state in which the child is present. Article 14, entitled "Residual jurisdiction" provides that, where no court of a member state has jurisdiction under the preceding articles, jurisdiction shall be determined by the laws of each state."*

6. At paragraph 29, Lord Wilson noted:

> *"Regulation B2R extends beyond the identification of jurisdiction as between EU states themselves. It binds each EU state irrespective of whether the other state with potential jurisdiction is an EU state. Thus the Family Law Act 1986 ("the 1986 Act") now provides, by section 2(1)(a), that an order under section 8 of the 1989 Act may be made only if the court has jurisdiction under Regulation B2R or if other conditions, irrelevant for present purposes, are satisfied. By her application issued on 13 February 2014 the appellant applied for leave to apply for orders under section 8 of the 1989 Act and the result is that the court has jurisdiction to determine her application only if B was habitually resident in England and Wales on the date of its issue."*

7. Stating what are no more than the fundamental principles, Mr. Mylonas makes the following written submissions:

"**Regulation 2201/2003 (B2R)**

4. The scope of B2R includes parental responsibility. See:

   Article 1(b)

   1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

   (a) divorce, legal separation or marriage annulment;

   (b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

5. Parental responsibility is defined in Article 2(7)

   "the term 'parental responsibility' shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access;"

6. General Jurisdiction is provided for in Article 8(1)

   The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

7. By Article 8(2), the effect of Article 8(1) is subject to the provisions of articles 9,10 and 12:

   a. Article 9 – provides that where a child moves lawfully from one Member State to another and acquires a new habitual residence, the courts of the original Member State shall retain jurisdiction for three months;

   b. Article 10 – deals with child abduction cases

   c. Article 12 – addresses issues arising on divorce, legal separation or marriage annulment.

None of those provisions deprive this Court of jurisdiction."

8. The application made by Mr. Diamond, as I understood it, was essentially to permit the child's immediate removal to Italy. I refused it. I could identify no cogent argument nor could I, at any point, root Mr. Diamond's argument in any recognised law. I began to hear the case at around 7:30pm last night. Later that evening the Court of Appeal, hearing a further emergency application, upheld the decision.

9. During the course of that telephone hearing and with the assistance of Counsel I attempted to restructure the details of the palliative care plan, treatment and most importantly, the point at which there was to be extubation. I emphasised that it was not to be set in stone. It was to be flexible enough to accommodate the inevitable distress of Alfie's exhausted parents and, if I may say so, the equally exhausted staff at Alder Hey Hospital.

10. The treating clinician, from whom I have heard evidence this afternoon, told me, with manifest sincerity, that her biggest anxiety had been that Alfie's parents would not be with him at the end. I can say readily that has been one of my great anxieties too.

11. That a channel of communication, however fragile, has been maintained between family and hospital has been down to a great many people, not least M and F but, particularly, staff at Alder Hey have been remarkable in achieving this. So too has Mr. Mylonas in creating a bridge between the litigation and the treatment. I remarked in my judgment that, notwithstanding that Mr. Mylonas was presenting the case for Alder Hey, F showed him great courtesy and respect throughout. I also recollect the dignity with which parents and family listened to the entirety of my judgment in open Court on 18th February.

12. Somehow this key relationship has survived and last night, when Alfie was finally extubated, his parents were present. That is, in itself, good news but even better was to follow, for Alfie was able to survive without the ventilator and to trigger the more detailed provisions of the palliative plan.

13. For the first time in many months, Alfie and his parents have been together without the need for him to be ventilated. At the end of his life that is a very special opportunity for all of them. I have been told that M has been able to cuddle Alfie for hours, something she has not been able to do for a long time.

14. Perhaps inevitably, there followed today a yet further application pursued by Mr. Diamond with characteristic fidelity to his instructions. A statement had been prepared bearing the now instantly recognisable hallmark of Mr. Pavel Stroilov, a law student and case worker for Christian Legal Centre (CLC), who yesterday encouraged F to seek to issue a Private Prosecution alleging murder against some of the doctors at Alder Hey. It was properly rejected by the District Judge. Today's efforts by Mr. Stroilov were equally inconsistent with the real interests of the parents' case. The Witness Statement, which Mr. Diamond tells me Mr. Stroilov prepared, is littered with vituperation and bile, critical of those who have done so much to help Alfie, attacking the system generally and the Court in particular. I extract the following paragraphs by way of example:

> *"9. This said, like any patient coming off prolonged ventilatory support, Alfie was coughing and short of oxygen. For some six hours after the extubation, Kate and I begged the Hospital staff to provide some oxygen to him, in accordance with good practice of palliative care. The staff refused to do so for six hours on the grounds that the Court had ordered it was not in Alfie's best interests for his life to be supported.*

Likewise, the Hospital staff refused to provide hydration.

12. It cannot possibly be in Alfie's best interests now to suffocate or to starve him to death. His treatment must be resumed. This is inhumane and Alfie could continue in this state for weeks; this is distress to Alfie.

13. Further, it is clear that Alder Hey has let Alfie down badly, by incorrectly assessing his condition; persisting in that assessment in the face of inconsistent up to date evidence such as the videos, and our observations; and refusing even to talk to an eminent colleague - the president of Bambino Gisu who urgently came to Liverpool yesterday – for the fear she might contradict their view. We feel that Alder Hey would now rather let Alfie die unnecessarily than admit their mistake. We no longer have any trust in Alder Hey, and that trust cannot be restored. In these circumstances, it is not in Alfie's best interests to continue to be treated or cared for at Alder Hey.

15. With the greatest respect, we make similar criticism of the Courts, who have uncritically accepted the 'consensus' expert view. …

16. We feel that we are trapped in a cruel bureaucracy; and we have not received justice…"

15. But perhaps most significant in that Witness Statement is the expression of F's belief that Alfie's condition is "significantly better" than the court had thought:

> *"It is now clear that all orders made by the Court in this matter were based on a false premise. Alfie's condition is significantly better than the Court had thought."*

16. The sad truth is that there has been no significant change, indeed no change at all. The brain stem, absent the entirety of the white matter of the substantive part of the brain, is enabling Alfie, just about, to sustain respiration. A brain cannot regenerate itself, as I have been told, and there is virtually nothing of Alfie's brain left.

17. Mr. Diamond has asked me to set aside my earlier declarations, I think on the premise that Alfie's condition is better than had originally been thought for there could be no other basis for such an application. With no hesitation, I reject that.

18. Having rejected the application, it seems to me that there is an altogether more structured argument that can, and ought to be advanced on behalf of the parents. That is, given that Alfie is now breathing independently, there arises an opportunity to explore creatively, ambitiously and even though it may be a forlorn hope, cooperatively, the options that may now emerge in a palliative care plan which could encompass, at least theoretically, Alfie being cared for, in his final hours or days, at

home or in a hospice, or even on the ward and not in the PICU. Those who may come to read this judgment might think that the progression from PICU to the ward is a small milestone but I have already heard how much that would matter to M and F. As the doctor said, the key to this last and important opportunity is a real acceptance by the parents of the nature of the plan. It says, in my view, a great deal about the skill and compassion of the doctors and nurses that they still hold out for this opportunity.

19. There is in truth, with respect to the efforts of Mr. Diamond, no substance at all to this application. This represents, at least within the court process, the final chapter in the case of this extraordinary little boy.