

# KM, Re



No Substantial Judicial Treatment

## **Court**

Court of Protection

## **Judgment Date**

10 May 2021

## **Where Reported**

[2021] 5 WLUK 89

## **Subject**

Health

## **Keywords**

Best interests; Coronavirus; Death; Hospitals; Life-sustaining treatment; Religion or belief; Withdrawal

## **Judge**

Keehan J

## **Counsel**

For the applicant: Emma Sutton.

For the respondents: Sam Karim QC.

For the official solicitor: Michael Horne QC.

## **Case Digest**

### **Summary**

The court permitted a hospital to withdraw life-sustaining treatment by way of an extra-corporeal membrane oxygenation machine from a 52-year-old man who had been fit and well before suffering a pulmonary embolism and heart failure and contracting COVID-19. The overwhelming medical evidence was that there was no chance of recovery and that he was in pain and distress. His deeply religious family's opposition to withdrawal of treatment was afforded great weight but was not determinative and it was in the man's best interests to remove life-support.

### **Abstract**

The applicant hospital trust applied for permission to withdraw life-sustaining treatment from the first respondent 52-year-old man who had been on life-support for over 3.5 months.

The man had been fit and well with no significant medical history before January 2021 when, after a long-haul flight, he was admitted to hospital with chest pain and shortness of breath. A deep vein thrombosis had travelled to his heart causing pulmonary embolisms and cardiac arrest. He was transferred to the applicant hospital and placed in its cardiothoracic intensive care unit and on to an

extra-corporeal membrane oxygenation (ECMO) machine which replaced the function of his heart and lungs. He was also on a mechanical ventilator and was being treated for various infections. On the day after being placed on the ECMO machine he was diagnosed with COVID-19. If that diagnosis had been known earlier, he would not have been placed on ECMO. Unsuccessful attempts had been made in February to wean him off the machine. Scans of his lungs in January and February indicated that there was not a great deal of damage to them, but a final scan in March showed a very significant deterioration of their condition. A consultant in intensive care told the court that further scans could not be carried out because of the man's perilous state of health. An independent expert in intensive care and COVID-19 said that the infection had greatly exacerbated the damage to the man's lungs and had become the dominant pathology. There was no treatment for the extensive and irreversible pulmonary fibrosis. There was no hope of recovery and no chance that the man could live independently from the ECMO machine. The upper limit for use of the machine was three to four weeks and he had been on it for over 15 weeks. He had lost a considerable amount of weight, and had suffered muscle wastage, pressure sores, and necrosis of his extremities. The medical opinion was that the man, who was sedated rather than unconscious, was in real pain, distress and discomfort and that relief could not be effectively maintained despite best endeavours. The man had been married for 23 years and had three children. He and his family were deeply religious Pentecostal Christians and strongly opposed the application. The man's wife was the second respondent. A son and brother-in-law were interested parties. The family members believed that only God could decide matters of life and death, that they could never give up hope, and that there was a chance of recovery with prayer. They could never agree to the withdrawal of treatment and believed that any pain or distress the man was experiencing had to be accepted as what God had provided. The official solicitor acting as the man's litigation friend said that the family's views had to be respected, but that he supported the hospital's application. The parties agreed that the man lacked capacity to be involved in litigation or to consent to medical treatment.

The hospital submitted that continued treatment would be futile and overly burdensome and that the man should be removed from the ECMO machine the following afternoon after his family had had an opportunity to visit him and that his death was likely to occur within minutes.

## **Held**

Application granted.

The court took account of the presumption in favour of sustaining life where possible. It also afforded great weight and respect to the man's likely wishes and feelings, and those of his family. Nevertheless, those wishes were not determinative, and the court had to make a decision in the man's best interests. The factors in favour of continuing treatment were that it would prolong life and would accord with the wishes and beliefs of the family. Factors to the contrary were that ongoing treatment was futile and burdensome; there were no alternative treatments; permitting the application would provide the man with a dignified death; and the overwhelming medical evidence was that continued use of ECMO was futile and there was no prospect of recovery. To prolong the man's life at the instant stage was only to prolong his death at the cost of enormous pain and

distress. The case was tragic, but it was in the man's best interests to withdraw life-sustaining treatment and move to a palliative care plan.