Life-Sustaining Treatment

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The term "life-sustaining treatment" is any treatment that serves to prolong life without reversing the underlying medical condition, and includes cardiopulmonary resuscitation, mechanical ventilation, haemodialysis, left ventricular assist devices, artificial nutrition and hydration.[1] It can be considered a controversial topic as its appropriate use and/or withdrawal has attracted much debate among healthcare professionals, lawyers, governments, religious institutions and the common folk.

Case alert

Less than two months ago, the English Court of Appeal in *Re PK*[2] handed down its judgment remotely (due to COVID-19 protocols). The case concerned the withdrawal of life-sustaining treatment for a five-year-old child as well as whether an alternative option ought to be preferred. The facts of this profoundly sad case are as follows:

- At 20 months old, the child was diagnosed with a rare and usually terminal condition known as acute necrotising encephalopathy (ANE), from which she suffered very severe brain damage. Her health deteriorated rapidly, and she became totally dependent on mechanical ventilation.

- The child was continuously in hospital over the last two years and was cared for by her mother, who lived in hospital accommodation and spent up to 16 hours a day by her bedside.

- Despite the best efforts of the various healthcare professionals at the hospital, the child slipped into a persistent vegetative state (PVS). Medical evidence showed that she could neither feel pain nor experience pleasure and that there was no prospect of any improvement in her condition. Her mother disagreed, believing that there were signs of improvement.

- As there was disagreement between the doctors and the mother about the child's medical treatment, on 9 March 2020, the NHS Trust (which is responsible for the hospital) applied to court for

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1 Danielle N Ko and Craig D Blinderman, Oxford Textbook of Palliative Medicine (5th Ed)
2 *Re PK (a child) Parfitt v An NHS Trust and another* [2021] EWCA Civ 362

declarations and orders that would permit the withdrawal of life-sustaining treatment.

- The child’s mother opposed the application and instead sought the court's approval for a trial of portable ventilation to establish whether the child was sufficiently stable to be managed in a home environment.

- Shortly before Christmas 2020, the application was heard by the judge, who had the benefit of expert evidence from several highly-respected specialist doctors to guide him in the matter.

Expert evidence

During the proceeding, it was apparent that the child’s treating clinicians as well as the independently instructed experts agreed that the continuation of life-sustaining mechanical ventilatory support and treatment within the Paediatric Intensive Care Unit (PICU) setting was not in the child's best interests and they would therefore each support the withdrawal of treatment. Hence, the central issue was whether the court should authorise a trial of portable ventilation.

According to the independent expert, Dr W, if certain parameters were met, it could be possible to manage the child in a non-intensive care environment. This would require the following:

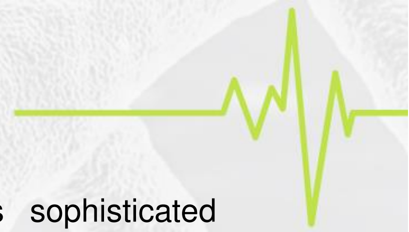
(a) Firstly, the child would need a tracheostomy to safely deliver ventilation.

(b) Secondly, she would need to be transferred to a portable ventilator for use at home that could maintain her respiration.

(c) Thirdly, the child would benefit from a gastrostomy.

(d) Fourthly, the child would need round-the-clock care from trained caregivers, including a nurse, with probably one other trained professional present. They would need to be trained and competent in all aspects of her care, including chest physiotherapy which is not regularly available in a home setting.

However, the child’s treating clinicians were unanimously of the view that the above proposal was contrary to the child’s best interest for, among others, the following reasons:



(a) There was no realistic chance that, with less sophisticated equipment and fewer specialist personnel, the child could survive more than a very short time at home.

(b) An anaesthetic bag used in the PICU to rescue the child when she desaturates cannot be used to administer oxygen at home.

(c) When a child with a tracheostomy tube is in the prone position, it is difficult to monitor whether the tube is still in situ. With unpredictable head and neck movements, the child could dislodge the tube, with catastrophic results.

The law and court's findings

The legal principles on the withdrawal of life-sustaining treatments in England are well established. In a 2013 case concerning an adult patient receiving clinically assisted nutrition and hydration, these principles were succinctly summarised by Baroness Hale of Richmond as follows:[3]

> "…the focus is on whether it is in the patient's best interests to give the treatment, rather than on whether it is in his best interests to withhold or withdraw it. If the treatment is not in his best interests, the court will not be able to give its consent on his behalf and it will follow that it will be lawful to withhold or withdraw it. Indeed, it will follow that it will not be lawful to give it. It also follows that (provided of course that they have acted reasonably and without negligence) the clinical team will not be in breach of any duty towards the patient if they withhold or withdraw it…
>
> The most that can be said, therefore, is that in considering the best interests of this particular patient at this particular time, decision-makers must look at his welfare in the widest sense, not just medical but social and psychological; they must consider the nature of the medical treatment in question, what it involves and its prospects of success; they must consider what the outcome of that treatment for the patient is likely to be; they must try and put themselves in the place of the individual patient and ask what his attitude to the treatment is or would be likely to be; and they must consult others who are looking after him or interested in his welfare, in particular for their view of what his attitude would be." [*Emphasis added*]

Thus, although the judge gave considerable weight to the issue of preservation of life while weighing the best interests of the child, he also added that, "*there is, in law, no rule that life must be preserved in all circumstances and at whatever cost to the child. The presumption that life should be preserved is not a determinative factor and must be considered together with other factors relevant to [the child]'s welfare and best interests*."

[3] *Aintree University Hospital NHS Foundation Trust v James* [2013] UKSC 67

After a comprehensive analysis of the evidence and arguments put forward by both parties, the judge concluded that there was no subjective benefit to the child being kept alive in the PICU and held, *"it would be an error to allow the absence of pain or any sensation to prevent a wider consideration of welfare incorporating a consideration of physical and other harm or detriment to [the child], from her condition, and from the treatments she needs to keep her alive."*

Hence, it was declared lawful and, in the child's best interests that she should not be provided with a tracheostomy; mechanical ventilation should be withdrawn; and that there be clearly defined limits on the treatment provided after the withdrawal of ventilation (with the effect that the child would be allowed to die).

Court of Appeal

Dissatisfied with the decision of the judge, the mother filed a notice of appeal and sought permission to appeal the matter. The Court of Appeal, however, was entirely satisfied that the judge had made no error in his findings and declarations. The decision of the lower court was upheld.

Author's remarks

As with most litigation involving medical treatment, the case of *Re PK* is very fact specific and therefore distinguishable. It is to be kept in mind that this case involved a very young child (who is unable to express her views) and therefore the balancing act and considerations in cases involving adults are likely to differ to some extent.

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