

Neutral Citation Number: [2015] EWHC 4103 (Fam)

Case No. LE15P00456

**IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION**

Royal Court of Justice
Strand, London, WC2A 2LL

26th August 2015

Before:

**MR. JUSTICE KEEHAN
(In Private)**

PD	Applicant
- and -	
SD	
JD	
X COUNTY COUNCIL	Respondents

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**MS. SARAH MORGAN QC and MS. OLIVIA MAGENNIS (instructed by
Johnson Astills) appeared on behalf of the Applicant.**
**MS. HANNAH MARKHAM (instructed by Dodds Solicitors) appeared on behalf
of the 1st and 2nd Respondents.**
MR. MARTIN KINGERLEY appeared on behalf of X County Council.

**HTML VERSION OF JUDGMENT
(AS APPROVED BY THE JUDGE)**

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MR. JUSTICE KEEHAN:

INTRODUCTION

1. I am concerned with one young man, PD, who was born in 1999 and is 16 years of age. He was previously known as HD, but formally changed his name by deed poll in August 2015.
2. The first and second respondents are P's adoptive parents, SD and JD.
3. The third respondent is X County Council. P is placed with local authority foster carers pursuant to Section 20 of the Children Act 1989.
4. In September 2014 P told his parents that he wanted to be a boy. He said he wanted to change his identity to be male. He was referred to the Tavistock Gender Identity Clinic having experienced gender dysphoria.
5. P's parents have struggled to come to terms with P's decision. In the course of direct and indirect contact they called him H, to his very great annoyance and distress.
6. It is in those circumstances that P has come to the very clear and very firm conclusion that he no longer wishes his parents to be involved in his life and does not wish them to receive any information about his day-to-day life, nor about his assessment and possible treatment at the Tavistock Clinic or other medical facility.
7. The parents initially opposed that application. Today, they accept that they should not receive any information about P's medical assessment and/or treatment. They invite the court, however, to permit them to receive quarterly updates on P's life and welfare. I am told by their counsel Ms. Markham, that they live in the hope that a reconciliation will be effected between them and P at some point in the future, and they would like to be appraised of his life and progress in readiness for that eventuality.
8. P does not agree. So strongly held are his views that Ms. Morgan QC told me he would even wish his parents not to be notified if he were required to receive emergency medical treatment. The depths of his wishes are conveyed by his view that if he suffered a serious accident and underwent emergency surgery he would not want to wake and find his parents at his bedside.
9. The local authority simply wishes for clarity on the extent to which it should fulfil its statutory obligations to consult with and give information about P to his parents.

BACKGROUND

10. P was adopted by SD and JD in 2005 when he was six years old.
11. P says he has experienced gender issues from early childhood. When aged 12 he told his parents he was homosexual, but in September 2014 he told them that he wanted a change of identity to be male.

12. In November 2014 P took an overdose of tablets on his way to school and was treated in hospital.
13. He took another overdose in January this year. P was admitted to hospital and was then admitted as an informal patient to GH (a CAMHS residential facility). On admission he was found to be of low mood with suicidal ideation. He complained of poor sleep, loss of appetite and weight loss. He was prescribed medication and after a few days there was a noticeable improvement in his presentation.
14. P was discharged from GH in March and was placed by the local authority with foster carers where he remains to this date.
15. On 6 May this application for declaratory relief was issued.
16. On 7 May P attended his first appointment at the Tavistock Centre.
17. The matter came before me on 24 July when I made P a ward of court and gave directions for this hearing.
18. I am immensely grateful to leading and junior counsel for the helpful skeleton arguments which they have each filed and served.

THE LAW

19. It is agreed by all parties that I have a jurisdiction to grant the declaratory relief sought by P.
20. By virtue of s.8(3) of the Family Law Reform Act, P, now aged 16, can give valid consent to medical and surgical treatment.
21. If P was not provided with accommodation by the local authority and was not a looked after child, the local authority would not be obliged to consult with or give information to P's parents.
22. Since he is a child looked after by the local authority, it is obliged by s.22 and s.26 of the Children Act 1989 to consult with and give information to the parents. Section 22 provides:

"Before making any decision with respect to a child whom they are looking after or proposing to look after the local authority shall, so far as it is reasonably practicable, ascertain the wishes of-

- (a) the child;
- (b) his parents;
- (c) any person who is not a parent of his but who has had parental responsibility for him; and
- (d) any other person whose wishes and feelings the authority consider to be relevant regarding the matter to be decided."

There are further obligations in a similar vein imposed by the provisions of the Care Planning, Placement and Case Review (England) Regulations 2010.

23. The Article 8 Convention rights of P and of his parents are engaged. I take particular account of the decision of the European Court of Human Rights in *Yousef v Netherlands* [2003] 1 FLR 210, that where there is a tension between the Article 8 rights of the child, on the one hand, and the parents, on the other, the rights of the child prevail.

24. In the case of *Re C* (Care: Consultation with Parents not in Child's Best Interests) [2006] 2 FLR 787, Coleridge J decided it was not in the best interests of the subject child for the local authority to consult with or give information to the father. In his judgment he expressed the view that it was only in very exceptional circumstances that such an order would be appropriate. The factual matrix of that case was very different from the circumstances of this case.

25. In my view, rather than considering whether the facts of the case are very exceptional, although in my judgment the facts of this case are very exceptional; I should instead focus on the competing Article 8 rights of P and of his parents.

26. In the case of *Gillick v West Norfolk and Wisbech Health Authority* [1986] 1 AC 112 Lord Scarman said, at 185(e):

"The rights of a parent exist primarily to enable the parent to discharge his duty of maintenance, protection and education until he reaches such an age as to be able to look after himself and make his own decisions."

27. Baroness Hale, in the case of *Campbell v Mirror Group Newspapers Limited* [2004] 2 AC 457 said at p.499:

"It has always been accepted that information about a person's health and treatment for ill-health is both private and confidential. This stems not only from the confidentiality of the doctor/patient relationship but from the nature of the information itself. As the European Court of Human Rights put it in *Z v Finland* [1997] 25 EHRR 371:

"Respecting the confidentiality of health data is a vital principle in the legal system with all the Contracting State parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in health services generally. Without such protection those in need of medical assistance may be deterred from revealing such information of a person and intimate nature as may be necessary in order to receive appropriate treatment and even from seeking such assistance, thereby endangering their own health and, in the case of transmittable diseases, that of the community.""

28. I was referred to the case of *Regina on the Application of Sue Axon v Secretary of State for Health* [2006] EWHC 37 (Admin). During the course of judgment Silber J said, at para.64:

"It is appropriate to bear in mind that the European Court of Human Rights attaches great value to the rights of children. Furthermore, the ratification by the United Kingdom of the United Nations Convention on the Rights of the Child in November 1989 was significantly showing a desire to give children greater rights. The ECHR and the UNC show why the duty of confidence owed by a medical professional to a competent young person is a high one and which therefore should not be overridden except for a very powerful reason. In my view, although family factors are significant and cogent, they should not override the duty of confidentiality owed to the child. It must not be forgotten that this duty was described in *Z v Finland* as a vital principle in the legal system of all Contracting Parties to the Convention."

Then at para.127 he said:

"I am unable to accept Mr Havers' contention that by permitting a medical professional to withhold information relating to advice or treatment of a young person on sexual matters, the Article 8 rights of the parents of the young person were thereby infringed. In considering this issue, it must always be remembered first, that in *Z v Finland* the European Court emphasised the significance and compelling nature of a patient's Article 8(1) right to confidentiality of health information as explained in paragraph 63 above. A similar approach was adopted in *MS v Sweden*, in which it is said at page 337 in paragraph 41 "respecting the confidentiality of health data is a vital principle in the legal systems of all Contracting Parties to the Convention". Although these cases deal with the position of an adult there is no good reason why they could not apply to protect the confidentiality of health information concerning a young person, especially because, as I have explained, that a duty of confidentiality is owed to a young person by medical professionals."

Finally, at para.130 to para.132 he said:

"As a matter of principle it is difficult to see why a parent should still retain an Article 8 right to parental authority relating to a medical decision where the young person concerned understands the advice provided by the medical professionals and its implications. Indeed, any right under Article 8 of a parent to be notified of advice or treatment of a sexual matter as part of the right claimed by Mr. Havers must depend on a number of factors, such as the age and understanding of their offspring. A parent would not be able to claim such an Article 8 right to be notified if their son or daughter was, say, 18 years of age and had sought medical advice on sexual matters, because in that case the young person is able to consent without parental knowledge or consent for the reasons set out in paragraph 1 above. The reason why the parent could not claim such a right is that their right to participate in decision making as part of the right claimed by Mr. Havers would only exist while the child was so immature that his parent had the right of control as was made clear in *Gillick*. In my view, any Article 8 right of the kind advocated by Mr. Havers must be seen in that light so that once the child is sufficiently mature in this way the parent only retains such rights to family life and to be notified about medical treatment if, but only if, the young person so wishes. Indeed, whether there is family life and hence a right to family life of a particular family is a question

of fact. The European Commission on Human Rights has explained the existence of family ties depends upon the real existence and practice of close family ties. It is not clear why the parent should have an Article 8 right to a family life where first the offspring is almost 16 years of age and does not wish it, second where the parent no longer has a right to control the child for the reasons set out in the last paragraph and third where the young person, in Lord Scarman's words, "has sufficient understanding of what is involved to give a consent valid in law". There is nothing in the Strasbourg jurisprudence which persuades me that any parental right or power of control under Article 8 is wider than in domestic law. Parental right to family life does not continue after the time when the child is able to make his own decisions. So parents do not have Article 8 rights to be notified of any advice of the medical profession after the young person is able to look after himself or herself and make his or her own decisions."

29. I respectfully agree with Silver J's analysis of the law and of the relevant legal principles.

DISCUSSION

30. The situation in which P and the parents find themselves is extremely difficult for each party. The parents struggle to understand P's position, feelings and his decision about his gender. He struggles to understand their complete lack of support and understanding. The upshot is that he, at 16 years of age, has decided to completely disengage from family life with them.
31. On the basis of the authorities I have referred to above, that is a decision he is perfectly entitled to reach and is one which this court must respect.
32. There is no issue that P should be afforded privacy in respect of his medical treatment. In any event, I am entirely satisfied that he is entitled to respect of his privacy on these matters as a matter of law.
33. I am pleased to learn that the parents, having expressed a willingness to engage with the Tavistock Centre throughout, will continue to seek guidance and support from the same. I am sure that will be extremely helpful for them. It may well help them to come to an understanding of why P finds it so distressing when they have referred to him as H.
34. Like the parents, I very much hope the time will come when a reconciliation is effected between P and the parents. In my judgment, however, the surest way of seeking to secure that outcome, is to respect P's current wishes and feelings.
35. When balancing P's Article 8 rights against those of the parents I am entirely satisfied the balance falls decisively in favour of P's Article 8 rights. At the age of 16, having decided to disengage from his family in the very sad circumstances of this case, it is for P to decide what, if and when any details about his life are given to his parents. I have taken particular account of the genuine and sincere conviction with which P has expressed his views and wishes. It would, in my judgment, be wholly contrary to (a) his welfare best

interests, (b) his Article 8 rights and (c) any hope of a reconciliation being effected for the court to override his views and permit or require the local authority to provide information about P to his parents.

36. Accordingly, I propose to grant declaratory relief as sought by P.

37. I know that this decision will be a source of real disappointment and distress to the parents. I hope, however, they will understand the reasons for my decision in the fullness of time.

Source: BAILii <http://www.bailii.org/ew/cases/EWHC/Fam/2015/4103.html>