



THE SUPREME COURT

**Appeal No. 131/2020
Appeal No. 132/2020
WOC 10625**

**O'Donnell J.
McKechnie J.
Dunne J.
O'Malley J.
Baker J.**

**IN THE MATTER OF [JJ],
A MINOR (REPRESENTED BY
HIS GUARDIAN AD LITEM)**

Ruling of the Court delivered on the 9th day of March 2021.

1. On the 22nd of January 2021 the substantive issues in this appeal were dealt with in a joint judgment delivered by O'Donnell, Dunne, O'Malley and Baker J.J., and in concurring judgments delivered by McKechnie J. and Baker J. (see *In the Matter of J.J.* [2021] IESC 1). The parties were then requested to file written submissions in relation to the form of the final order and costs. As full agreement has not been reached between them, but no party has requested an oral hearing, the Court now gives its ruling having considered those submissions.
2. The areas of dispute concern the scope of the wardship order, parental consent to specific forms of treatment and/or the withholding of treatment and costs.

Wardship Order

3. As was made clear in the substantive judgments, the Court intends to limit the scope of the wardship order in order to afford greater respect for the role of the parents in making decisions about their son. It is envisaged, for example, that it should not be necessary in the future to obtain the consent of the High Court to an operation such as that carried

out on J's Achilles tendons. However, the Court does not consider that its acceptance of the medical evidence, or the reasoning in the judgments, reflect an intention to limit the wardship to situations where a decision is needed on the administration of medication for the primary purpose of treating the severe breakthrough of neurological symptoms. Accordingly, the High Court's wardship jurisdiction will be exercisable in the limited area relating to the administration of pain-relieving medication and other directions relating to the minor's medical treatment should his condition worsen, as a result of the administration of the medication or otherwise.

Parental consent

4. The parents have agreed between each other that parental authority in the circumstances of this case should be exercised by the mother, who is the Guardian of the Person of the minor, and accordingly there will be no requirement imposed in the order to formally seek the consent of the father in any instance. That does not, of course, mean that he may not express his views or have them taken into account.
5. The objective of the Court in this regard was to respect, so far as possible, the primacy of the parental role. To that end, the mother should be given an opportunity to consent or to withhold or refuse her consent to the administration of medication and to the withholding of life-prolonging treatment. Where this is required in the order, the obligation will be to provide an opportunity so far as is practicable in the circumstances obtaining when or if the decision falls to be made.
6. The Court notes the concerns expressed in the written submissions of counsel to the effect that anything less than an order that the mother's consent must be "sought and refused" will render the mother fearful of leaving her son's room, while concern has been expressed on behalf of the hospital that such a condition might give the mother some form of incentive to make herself uncontactable.
7. In that context, the Court observes that it has seen nothing in the evidence to suggest that either party is likely to treat the other with bad faith. The wording of the order is intended to make the position clear to the parties and it is not to be anticipated that it will be scoured for any form of loophole. All the parties in this case are committed to the welfare of this child. The objective of the wording chosen is to take into account the fact that the timing of developments in medical situations cannot always be predicted, and that it is necessary to provide for emergency situations. Therefore, the Court must

make provision for the possibility that the mother might as a matter of fact be uncontactable at a particular point in time when a decision is needed in the best interests of the child.

Withholding life-prolonging treatment

8. The first issue here is the identity of the medical decision-maker. The hospital and the guardian ad litem support a wording that leaves it to the treating doctors to decide whether the withholding of life-prolonging treatments or supports would be appropriate and in the best health and welfare interests of the minor. The mother proposes that the decision should be made by the clinical director of the hospital.
9. It is true that in paragraph 173 of the joint judgment reference was made to the clinical director. However, that reference must be seen in its context, where it alluded to the medical establishment of the hospital while avoiding the use of its name. There was no indication in the judgments of an intention to make the director solely responsible for decisions in relation to a patient in whose care he might not be involved.
10. The Court must acknowledge the fact that medical emergencies may differ in nature and that clinicians of different areas of expertise may be called upon. Equally, it is desirable that such a consequential decision should be made by a person of appropriate seniority. The order will, therefore, leave the decision to the senior person amongst the doctors treating the minor if circumstances arise that call for the decision to be addressed.
11. The second issue is the identity of the persons covered by the declaration that the withholding of life-prolonging treatment or supports will be lawful. Again, the mother wishes to limit the effect of that declaration to the clinical director. However, the Court agrees with the hospital and the guardian ad litem that it must also be seen as applying to any medical or nursing staff involved in making or carrying out the decision.

Costs

12. The Attorney General and the Irish Human Rights and Equality Commission will bear their own costs. The hospital acknowledges that it must pay the costs of the guardian ad litem, and offers to pay 70% of the costs of the appeal of each of the parents without seeking to disturb the 100% order made in the High Court in respect of their costs in that Court.

13. Having regard to the end result of the appeal, and the Court's findings in respect of the arguments made by the various parties, as well as the significance of the issues, the Court considers that the figure of 70% is appropriate and will so order.
14. The guardian ad litem instructed a second junior counsel for the purposes of the appeal to this Court and seeks to have that counsel included in its costs. The Court acknowledges the valuable contribution made by the guardian in the High Court and appellate process. However, it is not convinced that the extra counsel was necessary for this particular appeal.