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Aysha King – Medical Treatment and the notion of ‘neglect’.

Posted on 04/09/2014



On 3 September 2014 I was interviewed by Helen Blaby of BBC Radio Northampton [1] on the legal and social issues arising from the case of Aysha King.

The story, although not establishing any legal precedent in UK, raises a number of interesting legal and moral issues.

The primary point was whether the parents were entitled to remove their 5 year old son from the hospital care on the basis that the treatment they felt was appropriate for Aysha was not offered in UK by the National Health Service, ('NHS'). Unfortunately, in absence of a Court order that specific medical treatment is provided and which can only be granted in judicial review proceedings, a doctor cannot be lawfully compelled by the parents to provide specific medical treatment at the behest of the parents.

It remains a matter of professional medical judgment as to what treatment is appropriate for a particular patient. However, the parents with parental responsibility powers are entitled to remove their child from the hospital in face of medical advice, similarly to any adult who can discharge themselves from hospital in face of contrary medical advice.

This case is somewhat unusual in that here the parents were unified as to the preferred treatment (proton therapy) for Aysha, and both disagreed with the medical advice and the proposed treatment.

The case also illustrates an interesting international law angle with the use of the European Arrest Warrant by the UK prosecutors to locate the family. The basis for the grant of the warrant was a potential criminal prosecution of the parents for willful ‘...neglect...’ of Aysha under s 1(1) of the *Children and Young Persons Act 1933* [2] for ‘...failing to provide medical aid...’ that is removing the child from the hospital in face of medical advice. Until the father explained on *Youtube* the details of the necessary medical support the parents did in fact provide, the authorities had no information that the child may not be in actual danger caused ‘...willfully...’ by the parents.

The use of the ‘neglect’ provision appears extreme and heavy handed use of the law in a situation such as this, and has attracted a volume of public sympathy for the family. However, it would seem that the police had no choice but to act on the arrest warrant once issued. There is some degree of lack of clarity as to whether any charges were in fact raised or even on the available evidence capable of being laid against Mr and Mrs King. The grant of a warrant in such circumstances could open UK to a claim in damages, for instance under Articles 5 and 8 of the *European Convention on Human Rights* [3].

The 1933 Act is designed to address situations where parents deliberately place their children in danger in full knowledge that harm could come to the child. Ironically, all that Mr and Mrs King were trying to do is to move their child to Czech Republic for the proton treatment, in the belief that Aysha would benefit. It seems that they had put the UK medical authorities on notice that they intended to move Aysha elsewhere for the proton treatment.

Finally, the case was further complicated when the High Court granted a temporary wardship order in favour of Portsmouth City Council so that Aysha can be ‘...presented...’ for treatment at Southampton Hospital. This means that the court must approve any major decisions relating to the welfare of the child, displacing, albeit temporarily, the parents’ parental responsibility rights to have a say in Aysha’s treatment. In approving treatment as advised by medical experts in reaching its decisions the Court will have regard to the paramountcy of the welfare of the child (*Children Act 1989* [4]) and interventions by the parents.

In this instance the law appears to have helped to bring the disagreement between the parents on the one hand, the medical profession and the politics of the allocation of NHS resources on the other, to some sort of satisfactory conclusion in that Aysha is scheduled to receive proton treatment in Prague. However law may not have helped to repair the underlying collapse of public trust in medical advice.

—POSTSCRIPT—

For completeness here is a copy of the Radio Prague interview of 4 September 2014 with Iva Tařounová the Director of Strategy at the Proton Therapy Center explaining a little more about the medical aspects of the case, confirming that the Center has the expertise and capacity to treat Aysha.

Proton centre official hoping little Ashya will not become part of media circus in Prague

Five-year-old cancer patient Ashya King could soon receive proton beam radiation treatment in Prague. The boy has been the centre of media attention in the UK after his parents removed him from a hospital in England in a bid to get better treatment; they were arrested in Spain but have subsequently been released. Now all eyes are on Prague’s Proton Therapy Centre, where Ashya could be admitted in the not too distant future. I discussed the latest situation surrounding his treatment with the institution’s director of strategy Iva Tařounová.

“Yesterday during the night we received all the necessary documentation. At 8 o’clock in the morning yesterday our concilium finally had a chance to review all the documents, because we previously didn’t have them. And we were able to say that Ashya can be treated here.

“Last night we received additional scans. We have communication from the hospital in Southampton. The doctors informed us that they think, they understand from the situation, that the parents would like Ashya to be treated here in Prague.”

For people who don’t know it, why is proton beam radiation treatment particularly suitable for this boy Ashya?

“Well, protons are better for children because they treat tumours with millimeter precision. The proton treatment greatly reduces the radiation exposure to healthy vital organs and tissues.

“Of course it increases the possibility of a complete cure. We can maintain vitality and the child doesn’t have to compromise the quality of life. It also greatly reduces the possibility of secondary tumours later in life.”

When are you expecting him to arrive?

“Dr. Nicolin, his doctor in the UK, is suggesting two cycles of chemotherapy and then he would refer him to Prague. We don’t whether or if this is the case... because they probably don’t have

agreement with the King family as to if this is going to be done. And if, yes, whether, because it can be done in Spain or the UK or here.

“To be specific with the dates, it could be from let’s say Monday until five weeks from now. We don’t know.”

Why are his parents interested in Prague in particular? Why your institution?

“Well, we are the most modern proton therapy centre in Europe. And in the UK this most modern method of proton beam therapy is not available.”

Are you a little concerned that there could be a media circus when he does arrive? Because there’s so much interest in his story in the UK.

“Oh, yes. Our prayers and thoughts are with the family. It must be a very difficult and stressful time for them. And I just hope that everybody will behave correctly and give them some space for their own life and time with their kid. “They are experiencing a very difficult situation in their life, not only with this [media] situation but, you know, having a kid who is sick must be very, very difficult.” [5]

Links:

[1] BBC Radio Northampton <http://www.bbc.co.uk/programmes/p0255f87> at 01:05:32 to 01:14:20

[2] Children and Young Persons Act 1933 <http://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

[3] European Convention on Human Rights http://www.echr.coe.int/Documents/Convention_ENG.pdf

[4] Children Act 1989 <http://www.legislation.gov.uk/ukpga/1989/41/contents>

[5] Radio Prague interview with Iva Tařounová of the Proton Therapy Centre [.cz/en/section/curraffrs/proton-centre-official-hoping-little-ashya-will-not-become-part-of-media-circus-in-prague](http://www.radio.cz/en/section/curraffrs/proton-centre-official-hoping-little-ashya-will-not-become-part-of-media-circus-in-prague) Ian Willoughby 4 September 2014.

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