



Political Affairs Digest

A daily summary of political events affecting the Jewish Community

Contents

Home Affairs

Relevant Legislation

Consultations

Back issues

Home Affairs

Scottish Government

Updated Guidance: Coronavirus (COVID-19): wedding ceremonies and civil partnership registrations

<https://www.gov.scot/publications/coronavirus-covid-19-guidance-for-small-marriages-and-civil-partnership-registrations/pages/purpose-of-guidance/>

High Court (England and Wales)

Manchester University NHS Foundation Trust v Alta Fixsler (By Her Children's Guardian) and Mrs Fixsler and Mr Fixsler

1. ... Alta ... is now 2 years and 4 months old. ... During her premature birth, Alta sustained a severe hypoxic ischaemic brain injury and was born showing no signs of life. Although she was successfully resuscitated by the medical team, it is not disputed that Alta continues to exhibit the symptoms of a catastrophic brain injury, which injury will inevitably result in her death. Alta is currently a patient at the Royal Manchester Children's Hospital Paediatric Intensive Care Unit ... This court is now asked to decide whether it is in Alta's best interests for that life-sustaining treatment to be continued. The inevitable consequence of it being discontinued will be the death of Alta. ...
3. The parents are Chassidic Practising Jews and Israeli citizens. They moved to the United Kingdom in 2014. The parents tell the court that prior to these proceedings it had been their intention to return to Israel. In their first statement, the parents emphasise the fact that being devout members of the Jewish faith means that their faith is not simply a religion but is also a way of life. Within this context, the parents have sought and taken detailed rabbinical advice as to their religious duties and obligations in the context of Alta's medical situation. The parents oppose the application brought by the NHS Trust and instead seek to take Alta to Israel for continued treatment and the exploration of long-term ventilation at home in Israel in due course or, if the court concludes that it is in Alta's best interests for life sustaining treatment to be withdrawn, for that step to be taken in Israel. ...
7. ... No agreement having been reached with respect to Alta's care, on 18 December

2020 the Trust made its application for the orders it now asks the court to make under s.8 of the Children Act 1989 and under the inherent jurisdiction of the High Court. ... Specifically, the Trust seeks ... A declaration pursuant to the inherent jurisdiction of the High Court that it is not in the best interests of Alta for life-sustaining medical treatment to be continued, and that it is in her best interests for a palliative care regime to be implemented ...

8. ... the imaging of Alta's brain shows damage to Alta's brain stem, although she does not meet the criteria for brain stem death. ...
11. There is a consensus of medical evidence that Alta has no conscious awareness. Alta displays no positive interaction with the environment around her, is unable to close her eyes and displays no visual attention or corneal reflex and no response to auditory stimulus.
27. Dr A is clear in her statement of evidence to the court that she, and Alta's clinical team, consider that Alta is in a situation of intractable pain and discomfort. ... "In Alta we know that though both the brain stem and the thalami are damaged they are still partially functional (she is breathing and she does not fulfil the criteria for brainstem death) and so we know that the most critical structures for perception of pain (the receptors, the nerves, the spinal cord and part of the brain stem and thalami) are all still present and therefore she can still perceive pain ... Alta is able to generate a reflex to unpleasant sensations ...but she has no upper brain to derive meaning of this or any further understanding of the pain and similarly to derive any pleasure." ...
33. The parents ... rely on the report of Dr Ross Russell ...
34. ... that given Alta's level of brain damage, signals indicating pain would not be connected to anything that allowed them to be perceived and that, accordingly, the movements exhibited by Alta do not of themselves indicate that Alta can experience pain ...
40. There was no dispute between the treating clinicians and medical experts that the increased need for movement, care interventions and changing environments associated with a transfer will cause additional discomfort for Alta in circumstances where she would not be travelling for medical benefit. ...
46. The unanimous view of Alta's treating clinicians, and the experts instructed by the Trust, is that it would be in Alta's best interests for life-sustaining treatment ...
47. The comprehensive and closely analysed report of the Children's Guardian also concludes that it is Alta's best interests for life sustaining treatment to be withdrawn. ...
49. ... the parents dispute the assertion that Alta experiences pain. Within this context, and having regard to their religious duties and obligations and the rabbinical advice they have received, they cannot, and do not, accept a palliative pathway for Alta's care. It is also clear that the parents' position is informed by factors additional to their deeply held religious convictions. ...
50. With respect to the religious aspect of the parents' objections, the father's statement makes clear that as Chassidic Practising Jews the parents are Ultra-Orthodox and practise religion with traditional values and without compromising on any matter that contradicts the true Torah values and guidance. Within this context, the father informs the court in his statement that the parents have received rabbinical advice that it would be contrary to their Jewish faith to adopt a palliative care pathway. ...
"... We are taught that life is sacred and not only must we preserve life, we also cannot be involved in bringing death closer. We have contemplated this at great length and we have had the benefit of rabbinical support and advice. In our faith we consider that if somebody could live for at least 12 months and that that it cannot be proven that they are suffering constant pain, then it ultimately makes no difference whether they might live for a further 12 months or a further 70 years. They are regarded as being alive and there must not be any steps taken that would shorten a life. In our faith, it is strictly forbidden to actively shorten a life. The only circumstances under which this might be

permissible is where somebody is in constant suffering and pain, but we do not believe that these circumstances apply to Alta." ...

51. ... Rabbi Goldberg helpfully articulates the relevant tenets of the Jewish faith ...
... A central value of the Jewish faith is the sanctity of life, as opposed to the quality of life. ...
In addition to a duty to preserve life, Jewish law also recognizes a duty to alleviate suffering. ...
From the medical perspective there is no difference between withdrawing treatment and choosing not to administer it in the first place. However, from the perspective of Jewish law, the withdrawing of certain treatments can be tantamount to actively hastening death. ...
52. ... "For Alta, a crucial factor is whether she fulfils her purpose in life on Earth: if she passes away without any human intervention she fulfils her role and can go to Heaven. If we intervene, we might interrupt that process" ...
53. ... Rabbi Goldberg was concerned about the spiritual consequences for Alta if it was not possible to *properly* perform the required burial rites in respect of Alta following her death, both in terms of the timing of her burial, which under Jewish law must take place as soon as possible, and the possibility of her not being able to be buried in Israel:
"The majority of God fearing Jews would like to be buried in Israel. The first to come back [on the day of judgment] will be those buried in Israel. Those who are further away will have to go through suffering before coming back to Israel." ...
54. Appended to the parents' statement is a letter dated May 11 2021 from the Chief Rabbi of the State of Israel and President of the Great Rabbinical Court. This court is grateful to the Chief Rabbi for giving the court the benefit of his Halachic opinion. Within the letter to the court, the Chief Rabbi opines as follows:
"In the given situation, the cessation of the ventilator will bring her closer to her death, and that is forbidden. If there is further development in the disease that will cause the need to add life-saving actions to revive her, it may be permissible to not take those acts, but to stop treatment that saves lives - is forbidden. ...
71. ... I have no hesitation in accepting the submission that an assessment of the various dimensions of Alta's best interests must take into account the particular religious, cultural and ethical context of this case provided by the fact that Alta is an Israeli citizen, the fact that the family intended to emigrate with Alta to Israel and the family's Orthodox Jewish beliefs and that the assessment of her best interests must be informed by consideration of the religious and cultural values of the family, and by recognition that religious and ethical frameworks governing these subjective factors differ ...
72. However, within the well-established legal framework ... such matters remain at all times simply factors to be placed into the *overall* best interests evaluation, which factors may or may not drive the outcome of that evaluation depending on the nature and strength of all of the other factors, both medical and non-medical, that fall properly to be placed in the best interest analysis on the particular facts of the case. ...
77. With deep sorrow, I have decided that it is in Alta's best interests for life-sustaining medical treatment now to be withdrawn, and for a palliative care regime to be implemented and that the application of the Trust must therefore be granted. ...
96. ... absent *any* evidence to assist the court in determining the extent to which Alta would adopt wholesale the views of her parents, I am satisfied that the furthest the court can safely go in seeking to place itself in Alta's shoes is to acknowledge that a child's attitude may be, and often is influenced by the views, beliefs and guidance of his or her parents. Within this context, I have held in mind at all times the strict religious credo that the parents adopt and the tenets of that credo as they relate to the withdrawal of life sustaining treatment. ... I am satisfied that, in circumstances where she has not developed any understanding of the faith into which she was born, and giving due weight to the fact that a child's attitude may be, and often is influenced by the views,

beliefs and guidance of his or her parents, it is more likely than not that Alta's point of view would be that continued life sustaining treatment would not be acceptable to her. ...

101. With regret, I am satisfied that I must reach the same conclusion with respect to ... the transfer of Alta to Israel for continued life sustaining treatment at an Israeli medical institution. ...
108. ... whilst I have considered carefully, and accorded respect to, the views of the parents and the evidence of Rabbi Goldberg, I am not satisfied that the strict religious principles to which they hold outweigh the other, compelling, factors that point in the opposite direction ...
113. ... it would, from a human perspective, be unfair to put temptation in the way of the parents and their family. Both parents gave clear, spontaneous evidence to the court that they would respect the court's decision ... However, the formal context of the courtroom is very different to that provided by the embrace of close family and friends. It would not be surprising at all if, having arrived in Israel for the purposes of the withdrawal of life sustaining treatment, the decision of an English judge now over 2000 miles distant were to be overborne by the siren call of friends and family deeply connected to the religious traditions that are a way of life for the parents and their family. ...
118. ... Whilst it is important now to implement the judgment of the court expeditiously in light of the findings I have made with respect to pain and suffering, a little time will need to be given to allow the parents to come to terms with the decision of the court ... Further, if it is to be the case that Alta is to be taken to Israel for burial following her death then, accepting the uncertainties as to the period of survival following the withdrawal of treatment, careful co-ordination of those arrangements with the point at which life sustaining treatment is withdrawn will need to be made. I am satisfied that that planning should form part of the overall plan that governs the withdrawal of treatment. ...

To read the full judgement see

<https://www.bailii.org/ew/cases/EWHC/Fam/2021/1426.html>

TOP

Relevant Legislation ** new or updated today

UK Parliament

Animal Welfare (Sentience) Bill

<https://bills.parliament.uk/bills/2867>

Assisted Dying Bill

<https://bills.parliament.uk/bills/2875>

Charities Bill

<https://bills.parliament.uk/bills/2877>

Education (Assemblies) Bill

<https://bills.parliament.uk/bills/2878>

Higher Education (Freedom of Speech) Bill

<https://bills.parliament.uk/bills/2862>

Online Safety Bill (Draft)

<https://www.gov.uk/government/publications/draft-online-safety-bill>

TOP

Consultations

** new or updated today

Race Equality Action Plan: An Anti-racist Wales (closing date 17 June 2021)

<https://gov.wales/race-equality-action-plan-anti-racist-wales>

Evidence for Equality National Survey (EVENS) (closing date 30 June 2021)

<https://evensurvey.co.uk/>

Protect Duty (closing date 2 July 2021)

<https://www.gov.uk/government/consultations/protect-duty>

Curriculum for Wales Religion, Values and Ethics (RVE) guidance (closing date 16 July 2021)

<https://gov.wales/sites/default/files/consultations/2021-05/consultation-document-curriculum-for-wales-religion-values-and-ethics-guidance.pdf>

Social Distance, Digital Congregation: British Ritual Innovation under COVID-19
(closing date not stated)

<https://bric19.mmu.ac.uk/take-the-survey/>

TOP

The Scottish Council of Jewish Communities (SCoJeC) is Scottish Charitable Incorporated Organisation SC029438