30 October 2013

PRESS SUMMARY

Aintree University Hospitals NHS Foundation Trust (Respondent) v James (Appellant) [2013] UKSC 67
On appeal from [2013] EWCA Civ 65

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Carnwath, Lord Hughes

BACKGROUND TO THE APPEAL

This appeal is concerned with how doctors and courts should decide when it is in the best interests of a patient, who lacks the capacity to decide for himself, for him to be given, or not to be given, treatments necessary to sustain life.

The respondent hospital trust ('Aintree') sought a declaration under the Mental Capacity Act 2005 in respect of the appellant, Mr James, who was admitted to hospital in May 2012. Mr James acquired an infection which was complicated by the development of chronic pulmonary disease, an acute kidney injury and persistent low blood pressure. He was admitted to the critical care unit and placed on a ventilator. In the ensuing months he suffered some severe setbacks, including a stroke and recurrent infections, and his condition fluctuated. After July 2012, deterioration in his neurological state meant he was considered to lack capacity to make decisions about his medical treatment. However, he appeared to recognise and take pleasure in visits from his wife and family and his friends.

In September 2012 Aintree issued proceedings in the Court of Protection seeking declarations that it would be in the best interests of Mr James for specified treatments to be withheld from him in the event of a clinical deterioration. These were painful and/or deeply physical treatments such as cardiopulmonary resuscitation (CPR). Mr James' family took a different view from the clinicians, believing that, while he would never recover his previous quality of life, he gained pleasure from his present quality of life and would wish it to continue.

The Mental Capacity Act Code of Practice provides that it may be in the best interests of a patient in a limited number of cases not to give life-sustaining treatment 'where treatment is futile, overly burdensome to the patient or where there is no prospect of recovery', even if this may result in the person's death. The trial judge interpreted these words as inapplicable to treatments which would enable Mr James to resume a quality of life which he would regard as worthwhile: they did not have to return him to full health. He held that it would not be appropriate to make the declarations sought. The Court of Appeal reversed his decision on 21 December 2012, by which time Mr James' condition had deteriorated further. It held that futility was to be judged by the improvement or lack of improvement which the treatment would bring to the general health of the patient, and 'recovery' meant recovery of a state of health which would avert the looming prospect of death.

Mr James suffered a cardiac arrest and died on 31 December 2012. The Supreme Court gave his widow permission to appeal notwithstanding this, in view of the importance of the issues and the different approaches taken in the courts below to the assessment of the patient's best interests.

JUDGMENT

The Supreme Court unanimously holds that the trial judge applied the right principles and reached a conclusion which he was entitled to reach on the evidence before him. But the Court of Appeal were right to reach the conclusion they did on the basis of the fresh evidence before them. Technically, therefore, the appeal is dismissed. Lady Hale gives the sole judgment, with which Lord Neuberger, Lord Clarke, Lord Carnwath and Lord Hughes agree.

REASONS FOR THE JUDGMENT

S 15 of the Mental Capacity Act 2005 provides that the court may make declarations as to whether a person has or lacks capacity, and as to the lawfulness of any act done or yet to be done in relation to that person. The Act is concerned with enabling the court to do for a patient what he could do for himself if of full capacity, but goes no further. A patient cannot order a doctor to give a particular form of treatment (although he may refuse it) and the court's position is no different [**18**]. However, any treatment which doctors do decide to give must be lawful. Generally it is the patient's consent which makes invasive medical treatment lawful [**19**]. If a patient is unable to consent it is lawful to give treatment which is in his best interests [**20**]. The fundamental question is whether it is in the patient's best interests, and therefore lawful, to give the treatment, not whether it is lawful to withhold it [**21**].

The starting point is the strong presumption that it is in a person's best interests to stay alive [**35**]. In considering the best interests of a particular patient at a 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 is or would be likely to be; and they must consult others who are looking after him or interested in his welfare [**39**]. The judge was right to consider whether the proposed treatments would be futile in the sense of being ineffective or being of no benefit to the patient. He was right to weigh the burdens of treatment against the benefits of a continued existence, and give great weight to Mr James' family life, which was "of the closest and most meaningful kind" [**40**]. He was right to be cautious in circumstances which were fluctuating [**41**]. A treatment may bring some benefit to a patient even if it has no effect upon the underlying disease or disability [**43**]. It was not futile if it enabled a patient to resume a quality of life which the patient would regard as worthwhile [**44**].

The Court of Appeal had been wrong to reject the judge's approach. It had also been wrong to suggest that the test of the patient's wishes and feelings was an objective one, namely what the reasonable patient would think. Insofar as it was possible to ascertain the patient's wishes and feelings, his beliefs and values or the things which were important to him, these should be taken into account because they were a component in making the choice which was right for him as an individual human being [**45**]. However, by the time of the appeal there had been such a significant deterioration in Mr James' condition that the time had indeed come when it was no longer in his best interests to provide the treatments. The prospect of his regaining even his previous quality of life was by then very slim. The Court of Appeal had therefore been correct to allow Aintree's appeal [**46**].

References in square brackets are to paragraphs in the judgment