AIMS For a better birth...

Trust guilty of abuse of power

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Readers of this Journal will know that we have devoted a great deal of space (not to mention time and effort) in the campaign to expose the injustice of enforced caesarean operations. In particular we have supported MS all through her ordeal in the courts. So it was with great joy and relief that we greeted the Court of Appeal's decision in the case of MS. Beverley Beech reviews the case and gives a summary of the Court's decision.

Little did MS, a thirty year-old, 36 weeks' pregnant, veterinary nurse and single parent, realise how dramatically her life would change when she went to register as a new patient with her local GP. She had had a stressful pregnancy and her relationship with the baby's father had recently broken up. The GP considered her high blood pressure an indication of pre-eclampsia and advised her to have immediate medical attention and an induction of labour. MS made it clear that, as a veterinary nurse, she was well aware of the implications of refusing treatment for pre-eclampsia and pointed out that she had every intention of going to her friends in Wales and having the baby at home.

The GP responded by contacting a social worker, Louize Collins, who arranged for MS to be sectioned under the Mental Health Act and taken to Springfield Hospital 'for assessment' (an interesting rationale, as we know of no mental hospital which has facilities for midwifery care of a women allegedly suffering from severe pre-eclampsia).

Shortly before midnight, again against MS's will, and despite her vigorous lengthy protests, she was taken from Springfield Hospital to St George's, Tooting. The following day, the hospital applied to the Family Division of the High Court for MS to be subjected to a caesarean section. The Court granted the Order, without hearing MS's views and the caesarean section was carried out, despite her protests. They delivered a baby girl, which MS immediately rejected. Fortunately, she subsequently sought to be reunited with her baby.

The Court of Appeal

Having got her baby back, MS sought to Appeal the Court s decision, and on the 7th May 1998 Lady Justice Butler-Schloss, Lord Justice Justice and Lord Justice Walker presented their Appeal findings - a damning indictment of the actions taken by Pathfinder Mental Health Services NHS Trust and St George's Hospital, Tooting. They, and the social worker, Louize Collins, employed by Merton Council, were all found to have acted unlawfully.

The judges ruled that:

- The social worker's application to detain MS under Section 2 of the Mental Health Act was unlawful.
- Her detention in Springfield Hospital was unlawful; her transfer to St George's Hospital was unlawful; her detention at St George's Hospital was unlawful.
- The caesarean operation carried out without her consent amounted to trespass to the person, and was unlawful.

The Court of Appeal in considering the application for a Court Order commented that,

"The proceedings before Hogg, J were so extraordinary and unfortunate that we feel it appropriate to restate some fairly elementary points about declararory relief"

They found that when the application was made to the Family Division of the High Court, Lord Justice Hogg, had been "misled". This term appears to be a quaint legalistic term for "lied to". It emerged that the lawyers had been told, and surprisingly, no-one seemed able to determine from where the lie had originated, that MS had been in labour for 24 hours that her life and the life of her unborn child were in danger and that without treatment both she and the fetus would probably die.

The judge understood the lawyer to be saying that, having spoken to the doctor, this was a

"life and death situation and with minutes to spare".

No-one, including the judge, asked questions about MS's capacity to consent, which should have been the major reason for granting a Court Order. The Court of Appeal commented that it was

"most unfortunate that no-one at the hearing appreciated the fundamental importance of this fact."

The judges were not exactly impressed either with the fact that

"nothing was done subsequent to the hearing to make sure that the proper formalities were complied with. Indeed technically no proceedings ever existed, and no affidavit evidence from the hospital confirming what Mr Pitt [the hospital's lawyer] had said to the judge was filed. These omissions should not recur."

They continued:

"In our judgement while pregnancy increases the personal responsibilities of a woman it does not diminish her entitlement to decide whether or not to undergo medieal treatment."

The Appeal Court Judges pointed out that

"Even when his or her own life depends on receiving medical treatment, an adult of sound mind is entitled to refuse it."

In considering the status of the fetus they asked,

"how can a forced invasion of a competent adult's body against her will even for the most laudable motives (the preservation of life) he ordered without irredeemably damaging the principle of self determination?

"When human life is at stake the pressure to provide an affirmative answer authorising unwanted medical intervention is very powerful. Nevertheless the autonomy of each individual requires continuing protection even, perhaps particularly, when the motive for interfering with it is readily understandable, and indeed to many would appear commendable: hence the importance of remembering Lord Reid's warning against making 'even minor concessions'.

"If it has not already done so, medical science will no doubt one day advance to the stage when a very minor procedure undergone by an adult would save the life of his or her child, or perhaps the life of a child of a complete stranger. The refusal would rightly be described as unreasonable, the benefit to another human life would be beyond value, and the motives of the doctors admirable. If however the adult were compelled to agree, or rendered helpless to resist, the principle of autonomy would be extinguished."

MS was awarded damages (yet to be assessed) and costs. Leave to Appeal was refused (Merton Council, representing the social worker, and St George's wanted to appeal), and the previous judgement of Lord Justice Hogg was set aside i.e. over-ruled.

The social worker

For some reason the Appeal Court judges went out of their way to be sympathetic to Louize Collins, the social worker, and acknowledged that she was in a difficult position and

"motivated by a genuine desire to achieve what, in her professional judgement, was best for MS herself and for her baby".

Having considered her professional responsibilities and the requirements of the Mental Health Act at length they concluded that:

"At the time when she [Louize Collins] reached her conclusion she did not suggest that detention was required for the purpose assessing MS'S mental condition or treating her depression. Put another way, If MS had not been suffering from severe pre-eclampsia there is nothing in the contemporaneous documents to suggest that an application for her detention would have been considered, let alone justified."

Louize Collins, in her evidence, described MS as having many difficulties, but she did nothing to help ameliorate those difficulties. She could have contacted a midwife and sought her help. Instead, she accepted the doctors' opinions and approached a psychiatrist. She appeared to be much more concerned to manipulate the Mental Health Act and get MS into hospital.

Social workers often claim that they are damned if they do, and damned if they don't. What they have yet to learn is that the medical profession does not have divine infallibility, and that they need to employ whatever critical faculties they may have to consider the advice they are given, whether or not there are

alternatives, and to respect the rights of individuals.

Where were the midwives?

Throughout this tragic case, little or nothing was heard of any midwifery involvement. MS must have been attended by midwives during her stay at St George's, yet it appears that no-one took any action to help her. The midwives' Code of Practice requires that

"In all circumstances the safety and welfare of the mother and her baby must be of primary importance."

MS was clearly very distressed by her enforced incarceration and there was no evidence that the suspected pre-eclampsia had been properly diagnosed or that she or her baby were in immediate danger. She is an intelligent and articulate woman who was very clear about what she would and would not consent to.

There was plenty of time to discuss alternative treatments, and the midwives could have gained her confidence and, if necessary, persuaded her to the doctor's point of view. Instead, the bandwagon rushed ahead in a determined effort to get this recalcitrant woman to bow to their commands. It appears the midwives did, what midwives frequently do, kept their heads down and their mouths shut.

In this landmark judgement the Court of Appeal has made the rights of patients crystal clear, and the judges deserve our heartfelt thanks. Until this case was heard, AIMS was receiving calls from women who were considering concealing their pregnancies, as they were worried that they too might be forced to have a caesarean operation against their wishes. In America, many women have gone into hiding, and it would be a tragedy if confidence in maternity care in the UK, was eroded to that extent.

In order to ensure that never again will a woman be subjected to a similar course of events, the Court of Appeal has drawn up Guidelines for NHS Trusts, Health Authorities and their clients, and this is expected to be published in the near future. We sincerely hope that this is the last case of the Family Division of the High Court granting an Order to force a perfectly lucid and rational woman to have a caesarean operation against her wishes.