



IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Case No: FD16P00526

[2016] EWHC 2859 (Fam)

10 November 2016

Before :

THE HONOURABLE MR JUSTICE PETER JACKSON

Sitting at the Royal Courts of Justice

Between:

JS

Applicant

-and-

M

1st Respondent

-and-

F

2nd Respondent

Frances Judd QC & Dr Rob George (instructed by Dawson Cornwell) for the Applicant
Stephen Crispin (instructed by Bindmans) for the 1st Respondent
Helen Khan (instructed by Kilic and Kilic Solicitors) for the 2nd Respondent
William Tyler QC & Kate Tomkins (instructed by CAFCASS Legal) as Advocate to the Court
Christina Helden (Hempsons Solicitors) for the Hospital Trust

Hearing dates: 26 September, 4 October, 6 October 2016 Judgment date: 10 November 2016

JUDGMENT: Re JS (Disposal of Body)

IMPORTANT NOTICE

This judgment was delivered in private. This version may be published on condition that the reporting restriction order (see Appendix) is observed and the anonymity of the persons concerned is strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mr Justice Peter Jackson:

1. This judgment falls into three parts. The first part, determining the application, was delivered orally on 6 October. The second part, containing further legal analysis, was handed down on 19 October. The final part, concerning subsequent events, was handed down on 10 November.

PART 1 – 6 October 2016

2. This urgent application comes before the court in sad circumstances and has been considered at hearings on 26 September, 4 October and 6 October.
3. The applicant is a 14-year-old girl, known in these proceedings as JS. Last year, she was diagnosed with a rare form of cancer and now she is a hospital inpatient. Unfortunately, active treatment came to an end in August. JS is now receiving palliative care and she knows that she will soon die. Her case has come before the court because of the novel issues it raises and, particularly, because JS's parents are not in agreement about what is to happen after her death.
4. A reporting restriction order applies in this case. It prevents any reporting until one month after JS dies. After that, it prevents the identification of JS or her family or the hospital trust and its staff on an indefinite basis. Its terms are set out in the *Appendix* at the end of the judgment.
5. JS's parents are divorced. For most of her life she has lived with her mother in the London area, and she has had no face-to-face contact with her father since 2008. For reasons that I need not describe, the relationship between the parents is very bad. Late last year, the father, who himself has cancer, became aware of JS's condition. He brought proceedings to be allowed to see her, but in December 2015 these ended with an order that he should have written contact only. The local authority was granted a Family Assistance Order in order to manage the indirect contact, and so JS has a social worker. JS has herself refused any contact with her father and does not want him to have detailed knowledge of her medical condition.
6. Over recent months, JS has used the internet to investigate cryonics: the freezing of a dead body in the hope that resuscitation and a cure may be possible in the distant future.
7. The scientific theory underlying cryonics is speculative and controversial, and there is considerable debate about its ethical implications. On the other hand, cryopreservation, the preservation of cells and tissues by freezing, is now a well-known process in certain branches of medicine, for example the preservation of sperm and embryos as part of fertility treatment. Cryonics is cryopreservation taken to its extreme.

8. Since the first cryonic preservation in the 1960s, the process has been performed on very few individuals, numbering in the low hundreds. There are apparently two commercial organisations in the United States and one in Russia. The costs are high, or very high, depending on the level of research into the subject's case that is promised. The most basic arrangement (which has been chosen here) simply involves the freezing of the body in perpetuity. Even that will cost in the region of £37,000, according to the evidence in this case – about ten times as much as an average funeral. Although JS's family is not well-off, her maternal grandparents have raised the necessary funds.
9. There is no doubt that JS has the capacity to bring this application. She is described by her experienced solicitor as a bright, intelligent young person who is able to articulate strongly held views on her current situation. Her social worker says that she has pursued her investigations with determination, even though a number of people have tried to dissuade her, and that she has not been coerced or steered by her family or anyone else.
10. JS has written this: *"I have been asked to explain why I want this unusual thing done. I'm only 14 years old and I don't want to die, but I know I am going to. I think being cryo-preserved gives me a chance to be cured and woken up, even in hundreds of years' time. I don't want to be buried underground. I want to live and live longer and I think that in the future they might find a cure for my cancer and wake me up. I want to have this chance. This is my wish."*
11. Her mother supports JS in her wishes. Her father takes a different position, as I shall explain below.
12. Cryonic preservation, whether or not it is scientifically valid, requires complex arrangements involving the participation of third parties. The body must be prepared within a very short time of death, ideally within minutes and at most within a few hours. Arrangements then have to be made for it to be transported by a registered funeral director to the premises in the United States where it is to be stored. These bridging arrangements are offered in the UK for payment by a voluntary non-profit organisation of cryonics enthusiasts, who are not medically trained. Evidently, where the subject dies in hospital, the cooperation of the hospital is necessary if the body is to be prepared by the volunteers. This situation gives rise to serious legal and ethical issues for the hospital trust, which has to act within the law and has duties to its other patients and to its staff.
13. The Trust, speaking through its solicitor Ms Helden, has given outstanding assistance to the court. On 5 October, at my request, a meeting took place between a representative of the voluntary organisation and the doctors, nurses and other representatives of the hospital trust. I have read a note of the meeting, which reviews all the practical aspects of the plan and shows the careful thought that the Trust has given to the matter at a senior level. The outcome is that the hospital is willing to do what it properly can to cooperate for the sake of JS, because the

prospect of her wishes being followed will reduce her agitation and distress about her impending death. The decision centres entirely on what is best for JS. The Trust is not endorsing cryonics: on the contrary, all the professionals feel deep unease about it.

14. It is understood by all that the process can only go ahead if the volunteers have 24-48 hours' advance notice of the likely time of death to allow them to arrive at the hospital. If death occurs without warning, the process cannot take place.
15. The Trust has also drawn attention to the terms of the Human Tissue Act 2004 and has liaised with the Human Tissue Authority ('the HTA'). Advice received from the HTA, for which I am again grateful, confirms that what is proposed in this case is not regulated by the statute and that accordingly the HTA currently has no remit. It is thought that the present situation was not contemplated when the legislation was passed. The HTA would be likely to make representations that activities of the present kind should be brought within the regulatory framework if they showed signs of increasing. It also raises questions about the standing of the voluntary organisation and draws attention to possible public health concerns and the position of the coroner.
16. I have also been taken to the old authorities on the unlawful treatment of dead bodies (see Archbold 2017 at 31.54 onwards) but it does not appear that an offence would be committed in this case; in other words, what JS wants does not seem to be illegal.
17. Enquiries have now been made of the United States authorities, who have confirmed that there is no prohibition on human remains being shipped to the US for cryonic preservation provided that the UK funeral director and the US commercial organisation are in communication to guarantee that local, state and federal requirements are complied with.
18. No objection is raised by JS's social worker or her GP, who has provided information about the manner in which death is likely to be certified.
19. The funeral directors are willing to attend at the hospital to ensure that the transportation of JS's body is appropriately supervised.
20. So, despite all the difficulties, there is no inevitable practical obstacle to JS's body being transported to the United States for cryonic preservation.
21. The father's position has understandably fluctuated. No other parent has ever been put in his position. It is not to be forgotten that he himself is facing serious illness, and is not able to discuss the matter with JS or her mother because of the extreme difficulties within the family. At the start of the proceedings, he was opposed. He was concerned that he might become responsible for the costs. He also wrote: *"Even if the treatment is successful and [JS] is brought back to life in let's say 200 years, she may not find any relative and she might not remember things and she may*

be left in a desperate situation given that she is only 14 years old and will be in the United States of America.” Despite this, during the course of the first hearing, the father, who was then unrepresented, changed his position, saying: *“I respect the decisions she is making. This is the last and only thing she has asked from me. I would like to have written confirmation that I will not have to pay the costs as I have cancer and I live on benefits.”* However, by the second hearing, the father was legally represented and his position had changed again. He said that he was prepared to agree to what JS wanted on four conditions: that he and other members of his family could view her body after death; that the mother would not pursue any financial claims against him; that the mother and her family would not make any contact with him and his family; and that he would not be pursued for any contribution to the costs of the cryonic process. The father’s last statement at this hearing was that he wants the court to know that he respects JS, and that he will respect the court’s decision.

22. The father’s first condition is objectionable to JS.
23. It is no surprise that this application is the only one of its kind to have come before the courts in this country, and probably anywhere else. It is an example of the new questions that science poses to the law, perhaps most of all to family law. Faced with such a tragic combination of childhood illness and family conflict, the court must remember that hard cases make bad law, and that natural sympathy does not alter the need for the application to be decided in accordance with established principle, or with principle correctly established.
24. I have heard arguments from the lawyers representing JS, the mother, and the father. As described above, the hospital trust has also been represented and Mr William Tyler QC, instructed by Cafcass Legal, has acted as Advocate to the Court in relation to the legal issues. I address the detailed legal arguments in more detail below. At this stage, I will state my general approach and my conclusion.
25. The first thing to note is that much of the current problem arises from the fact that JS is a child, albeit a legally competent one. If she was 18, she would be able to make a will, appointing her mother as her executor, and it would then be for the mother to make arrangements for the disposal of JS’s body, no doubt in accordance with her wishes. However, children cannot make wills. My approach is therefore to try to remove the disadvantage that JS is under as result of her age. I do not intend to go further than that, as JS cannot be in a better legal position than she would be if she was an adult.
26. Next, it is important to approach a problem of this kind on the basis of a real situation as opposed to theoretical possibilities. When the application first came before the court, it was not clear that JS’s wishes could be carried out, because there was no information from the hospital or from the US authorities. Now that this and other information has been gathered, there is a practical plan that can be considered.

27. Thirdly, the court is not making orders against third parties. The position of the various organisations and authorities has been set out above. All the court is doing is to provide a means of resolving the dispute between the parents.
28. Fourthly, this case does not set a precedent for other cases. If another health trust was ever to be faced with a similar situation, it would be entitled to make its own judgment about what was acceptable in respect of a patient in its care, and it might very well reach a different conclusion, as might another court. There are clearly a number of serious ethical issues, and I have received information about procedures performed on the body after death that would be disturbing to many people.
29. Fifthly, I am acutely aware that this case gives rise to a large number of issues that cannot be investigated in the course of a hearing of this kind. If regulation is required, there would need to be consultation with a wide range of interested parties. That is a matter for others. This court is faced with a situation that needs immediate determination on the basis of the best available information. For the future, I shall direct that the papers in this case shall be released to the HTA on the basis that the identity of the family and the hospital trust will remain confidential.
30. Lastly, I cannot emphasise enough what this case is not about. It is not about whether cryonic preservation has any scientific basis or whether it is right or wrong. The court is not approving or encouraging cryonics, still less ordering that JS's body should be cryonically preserved.
31. Nor is this case about whether JS's wishes are sensible or not. We are all entitled to our feelings and beliefs about our own life and death, and none of us has the right to tell anyone else – least of all a young person in JS's position – what they must think.
32. All this case is about is providing a means by which the uncertainty about what can happen during JS's lifetime and after her death can be resolved so far as possible. JS cannot expect automatic acceptance of her wishes, but she is entitled to know whether or not they can be acted upon by those who will be responsible for her estate after her death. It would be unacceptable in principle for the law to withhold its answer until after she had died. Also, as a matter of practicality, argument about the preservation issue cannot be delayed until after death as the process has to be started immediately if it is to happen at all.
33. Having considered all the arguments, my conclusion is that the court can and should do what it can to provide a means of resolving the dispute between JS's parents that hangs over the arrangements that are to be made after her death.
34. Mr Tyler QC has presented arguments for and against the proposition that the court has a power that can be exercised now.
35. Against the existence of the power is the fact that a person cannot control the disposition of their body after death (*Williams v Williams*, see below); that there may

be a later change of circumstances that would undermine the decision; and that as a matter of policy the court may not wish to encourage similar applications.

36. In favour of the existence of the power is that all parties are now represented before the court, whilst it will be difficult if not impossible to reassemble effectively after JS's death; that the resolution of the issue now should prevent undignified scenes later; that clarity will help third parties to know how they should act; that the arrangements for JS after death will be particularly complex if she is to be preserved; that JS does not want to be seen after death by her father or his family and the possibility that this might happen causes her present distress; and that consideration of JS's welfare during life, with her dependence on her mother who is herself under considerable stress, favours the ability to provide a resolution at the earliest opportunity.
37. I am satisfied that the court has power to make the order requested by JS for the positive reasons just listed. In relation to the other considerations, a decision entrusting powers to the mother does not contravene the principle in *Williams*. The court is not deciding or approving what should happen, but is selecting the person best placed to make those decisions after JS's death. As to change of circumstances, this is a very deep and long-standing family breakdown and there is in my view no chance of a change in the time between now and JS's death. I acknowledge that this decision might conceivably encourage a small number of other pre-death applications, but if these were wrongly brought they could be dealt with accordingly. The policy concern cannot lead the court to decline to deal with a situation that demands resolution, and in fact the issue of viewing the body has only arisen here as a result of the condition imposed by the father in response to JS's application.
38. Turning to the merits: as to cryonic preservation, I fully understand the father's misgivings. However, his role in JS's life has been extremely limited in recent years. His new request to see JS after her death can only cause her distress in life. His other conditions, some of which have nothing to do with JS, carry no real weight. As to responsibility for payment for cryonic preservation, there is no way in which he could possibly be held liable.
39. As to viewing JS's body, Miss Khan argues on the father's behalf that the court cannot and should not make any decision that prevents him and his family making an application to see JS's body after death.
40. A dispute about a parent being able to see his child after death would be momentous enough on its own if the case did not also raise the issue of cryonic preservation. An order placing the arrangements after JS's death in the hands of her mother will inevitably exclude the father, including by depriving him of the ability to view the body. That is a serious conclusion, but it is justified on the exceptional facts. The intensity of the difficulties between JS and her mother on the one hand and the father and his family on the other makes it impossible to accommodate the father's wishes. The decision would be the same after JS's death and in the

meantime the whole family and those helping them would be deprived of the benefits of clarity.

41. Therefore, both as to preservation of the body and as to the question of who should be permitted to view it, I conclude that the mother is best placed to manage this unusual and difficult situation. I will therefore make orders placing responsibility in her hands and prevent the father from intervening. These orders will consist of:
- (1) A specific issue order permitting the mother to continue to make arrangements during JS's lifetime for the preservation of her body after death.
 - (2) An injunction *in personam* preventing the father from
 - (i) Applying for a grant of administration in respect of JS's estate.
 - (ii) Making or attempting to make arrangements for the disposal of JS's body.
 - (iii) Interfering with arrangements made by the mother with respect to the disposal of JS's body.
 - (3) A prospective order under s.116 of the Senior Courts Act 1981, alternatively under the inherent jurisdiction of the High Court, to take effect upon JS's death, appointing the mother as the sole administrator of her estate in place of the mother and father jointly, and specifying that the mother shall thereby have the right to make arrangements for the disposal of the body, and to decide who should be permitted to view it.
 - (4) An order for disclosure of the papers to the Human Tissue Authority.
42. I will not make a prohibited steps order over and above the injunctions. The father has given an assurance that he will not try to see JS during her lifetime against her will and such an order is not in my view necessary. The real issue here relates to the dispute that would arise after death.
43. I thank everyone in court for the help that they have given. I express my sympathy to JS and to all her family members at this sad time. I hope that the outcome may help JS to spend her remaining days in peace.

PART 2 – 19 October 2016

44. I turn in more detail to the legal issues.

Specific issue order

45. The making of a specific issue order raises no special difficulty. By s.8 Children Act 1989 a specific issue order is “*an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.*” The Act applies to parental responsibility for a child, defined as a person under the age of 18. It does not extend to regulating events arising after the child’s death. See, for example, *R v Gwynedd County Council, ex p. B* [1992] 3 All ER 317, a decision under the Child Care Act 1980; also *Fessi v Whitmore* [1999] 1 FLR 767.

46. The making of a specific issue order is governed by the welfare principle. In this case the predominant features are JS’s wishes and feelings and her acute emotional needs. These are best met by an order granting the mother the right to make arrangements during JS’s lifetime for the preservation of her body after death. In making this order, the court is not approving the choice of arrangements, but it is giving JS and her mother the opportunity to make that choice.

Disposition of a body

47. The law in relation to the disposition of a dead body emanates from the decision of Kay J in *Williams v Williams* [1882] LR 20 ChD 659, which establishes that a dead body is not property and therefore cannot be disposed of by will. The administrator or executor of the estate has the right to possession of (but no property in) the body and the duty to arrange for its proper disposal. The concept of ‘proper disposal’ is not defined, but it is to be noted that customs change over time. It was not until the end of the 19th century that cremation was recognised as lawful in the United Kingdom, and it was in due course regulated by the Cremation Act 1902. Nowadays cremation is chosen in about 3 out of 4 cases in this country.

48. Thus, in English law, there is no right to dictate the treatment of one’s body after death. This is so regardless of testamentary capacity or religion. The wishes of the deceased are relevant, perhaps highly so, but are not determinative and cannot bind third parties. For discussion of the impact of the European Convention on Human Rights on the common law in this respect, see *Burrows v HM Coroner for Preston* [2008] EWHC 1387 (QB) and *Ibuna v Arroyo* [2012] EWHC 428 (Ch).

49. The role of the court is not to give directions for the disposal of the body but to resolve disagreement about who may make the arrangements: see, for example, *Anstey v Mundle* [2016] EWHC 1073 (Ch).

50. A person under the age of 18 cannot make a valid will: Wills Act 1837 s.7. In this case, JS’s parents will each be entitled to a grant of administration over her estate (Non-Contentious Probate Rules 1987 Rule 22(1)(c)) and, absent outside intervention, are therefore equally under a duty to arrange for the disposal of her body.

51. Disputes between executors or administrators about the disposition of a body have been dealt with either in the manner of the resolution of a dispute between trustees (see *Fessi and Hartshorne v Gardner* [2008] EWHC B3 (Ch)) or as an application to displace the administrator of an estate, pursuant to s.116 of the Supreme Court Act 1981 (see *Burrows and Ibuna*).

52. Section 116 reads:

116 Power of court to pass over prior claims to grant

(1) *If by reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this section, would in accordance with probate rules have been entitled to the grant, the court may in its discretion appoint as administrator such person as it thinks expedient.*

(2) *Any grant of administration under this section may be limited in any way the court thinks fit.*

53. Where, as here, more than one person is entitled to a grant of administration, I would interpret this section as permitting the court to substitute one for both. If I am wrong about this, I would hold that the same result could be achieved by the court's use of its inherent jurisdiction. See, for example, *Hartshorne*.

54. I have no doubt that the circumstances of the present case are 'special' within the meaning of the section. In *Buchanan v Milton* [1999] 2 FLR 844, Hale J found this condition satisfied in a case concerning a dispute about the disposal of the remains of man who had been born into an aboriginal family in Australia, but adopted as a child in England. Here, the nature of the family breakdown and of JS's wishes would, I find, qualify as special circumstances.

Prospective decisions

55. Can a prospective order be made in life, to take effect after death? All the cases cited above have involved disputes litigated after the death. In this case, there is no time for litigation after death.

56. There is ample authority for the proposition that the court should not stray into deciding hypothetical questions: *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 at 193-4 (Lord Bridge) and *R (Burke) v General Medical Council* [2005] EWCA Civ 1003 at 21 (Lord Phillips MR). That is not the position here: this is an actual problem that needs to be resolved now, albeit the resolution will play out at a future date.

57. There is authority on the legitimacy of making decisions about situations that are clearly foreseen but yet to arise. In *Curtis v Sheffield* [1882] 21 ChD (CA), Jessel MR stated:

“Now it is true that it is not the practice of the Court, and was not the practice of the Court of Chancery, to decide as to future rights, but to wait until the event has happened, unless a present right depends on the decisions, or there are some other special circumstances to satisfy the Court that it is desirable at once to decide on the future rights. But where all the parties who in any event will be entitled to the property are of age and are ready to argue the case, the reason of the rule departs, and it becomes a bare technicality. The reason of the rule is this, that the Court will not decide on future rights, because until the event happens it does not know who may be interested in arguing the question, and therefore may be shutting out parties who, when the event happens, may be entitled to succeed, but where they are all of age, and every possible party is represented before the Court, as I said before, utility seems to say that there should be a power to determine their rights, as is the case in Scotland and in many other countries.”

58. Mr Crispin has also drawn attention to the decision of Henderson J in a case where trustees had sought advance approval for a planned use of their powers: *Hugh v Bourne* [2012] EWHC 2232 (Ch):

*[15] For their part, the Trustees have made it clear... that they do not wish to surrender their discretion to the court, but are instead asking the court to give its blessing to their proposed course of action. The application therefore falls within the second category identified by Robert Walker J (as he then was) in a judgment given in chambers in 1995 and cited by Hart J in *The Public Trustee v Cooper* [2001] WTLR 922 at 923:*

“The second category is where the issue is whether the proposed course of action is a proper exercise of the trustees' powers where there is no real doubt as to the nature of the trustees' powers and the trustees have decided how they want to exercise them but, because the decision is particularly momentous, the trustees wish to obtain the blessing of the court for the action on which they have resolved and which is within their powers. Obvious examples of that, which are very familiar in the Chancery Division, are a decision by trustees to sell a family estate or to sell a controlling holding in a family company. In such circumstances there is no doubt at all as to the extent of the trustees' powers nor is there any doubt as to what the trustees want to do but they think it prudent and the court will give them their costs of doing so to obtain the court's blessing on a momentous decision. ...”

59. I conclude that, acting with due regard for the above principles, the court has the power to make a decision with prospective effect in the present case. To use the words of Jessel MR, it might be argued that a present right depends on the decision, in that JS's present welfare cannot be adequately protected by the court refusing to entertain the question, whether the right is expressed in terms of Article 8 ECHR or otherwise. It can certainly be said that there are other special circumstances to satisfy the court that it is desirable at once to decide on the future rights. Then, to

use the words of Robert Walker J, there is no real doubt about the way in which the power would be exercised, or about the momentous nature of the decision. There is no likelihood of a change of circumstances and all interested parties are before the court. I find that the power exists and that, taking account of all the considerations listed at paragraphs 35 and 36 above, it should be exercised in this case.

60. I note that the High Court of New Zealand has exercised prospective jurisdiction in somewhat analogous circumstances. In *Re JSB (A Child)* [2010] 2 NZLR 236 (HC), it was held by Heath J that a jurisdiction existed before a child's death to decide appropriate funeral arrangements after death. The child was alive but severely brain damaged, having been injured by his mother. There was a dispute between his grandparents, who were caring for him, and his birth parents as to the funeral arrangements if he were to die.

61. Heath J held (consistently with my conclusion about specific issue orders) that the court had no jurisdiction to make guardianship orders which would take effect only on death, as on death guardianship responsibilities end. However, he continued:

"[55] Parens patriae and administration are two manifestations of the inherent jurisdiction. Together, they demonstrate the existence of jurisdiction applying to a continuum, from the beginning of life until after its end. While the former is directed to the living and the latter to the dead, s.16 of the Judicature Act draws no distinction between aspects of the inherent jurisdiction. The existence of the continuum favours this Court's ability to do such things as are necessary to protect the interests of the living child, after death.

[56] Viewed as a continuum, the inherent jurisdiction covers the very situation that has arisen in this case. Provided that there is justification for the view that an order is required, while JSB is alive, to protect his best interests after death, I hold that the inherent jurisdiction can be used to make such an order. The fact that any order might deal with a topic at the intersection of the two relevant aspects of the inherent jurisdiction is, in my view, irrelevant. The continuum approach militates against a sharp distinction between different aspects of the Court's jurisdiction. Power to make an order arises from a single source: the inherent jurisdiction."

62. In fact, this analysis was not decisive, as Heath J concluded that an order in that case would be premature. His decision was however noted by the New Zealand Supreme Court in *Takamore v Clarke* [2012] NZSC 116, at para 91, a case concerning a disagreement arising after death.

63. In my view, the analysis in *JSB*, focusing on the continuum of the inherent jurisdiction, is best seen in the context of the New Zealand legislation referred to in the judgment: s.16 of the Judicature Act 1908, provides the High Court of New Zealand with "all judicial jurisdiction which may be necessary to administer the laws of New Zealand". There is no equivalent provision in English law, and I would

therefore not conceptualise the matter in the same way. However, it is of note that that court came to the same essential conclusion as to the ability to make prospective orders where necessary.

Conclusion

64. It is by this route that I would justify the making of injunctions limiting the manner in which the father can act not only while JS is alive, but also following her death, and the making of a prospective order investing the mother with the sole right to apply for letters of administration after JS dies.

Postscript

65. On 7 October, the day after the hearing, I received a message from JS through her solicitor saying that she would like to meet the judge who had decided her case. I visited her in hospital that evening in the presence of her mother and we had a good discussion. I was moved by the valiant way in which she was facing her predicament.
66. On 17 October, JS died.

Part 3 – 10 November 2016

67. On 8 November, I received a detailed note from the solicitors for the hospital trust in which the events surrounding JS's death are described from the point of view of the hospital. It records that JS died peacefully in the knowledge that her body would be preserved in the way she wished.
68. However, the note makes unhappy reading in other ways. The Trust expresses very real misgivings about what occurred on the day of JS's death. In brief and understated summary:
- (1) On JS's last day, her mother is said to have been preoccupied with the post-mortem arrangements at the expense of being fully available to JS.
 - (2) The voluntary organisation is said to have been under-equipped and disorganised, resulting in pressure being placed on the hospital to allow procedures that had not been agreed. Although the preparation of JS's body for cryogenic preservation was completed, the way in which the process was handled caused real concern to the medical and mortuary staff.
69. These proceedings have come to an end and I make no findings about the above matters, on which I have in any event not heard other views. I nonetheless approve the intention of the Trust to send a copy of the note and its accompanying documents to the Human Tissue Authority. It may be thought that the events in this

case suggest the need for proper regulation of cryonic preservation in this country if it is to happen in future.

APPENDIX

Extract from Reporting Restriction Order of 6 October 2016

Prohibited publications

Short-term Injunction:

9. Subject to the “**territorial limitation**” above, this order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, social networking website, sound or television broadcast or cable or satellite program service for the purposes of preventing the identification (whether directly or indirectly) of **any information relating to this case**.

This prohibition lasts **until 1 month after the death of the Child**. The applicant’s solicitors are to notify the Press Association that the Child has died as soon as they are aware of that fact.

Continuing Injunction:

10. Subject to the “**territorial limitation**” above, this order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, social networking website, sound or television broadcast or cable or satellite program service (whether directly or indirectly) **until further order of the names, addresses or photographs of, or other information that might identify:**

(a) **the Child** (whose details are set out in paragraph 1 above), or

(b) **the Mother or the Father** (whose details are also set out in paragraph 1 above)

if, but only if, such publication is likely, whether directly or indirectly, to lead to the identification of the child as being:

- i) a child subject of proceedings under the inherent jurisdiction of the High Court; and/or
- ii) a child who was diagnosed with, treated for or died as a result of cancer...; and/or
- iii) a child involved with a proposed future or actual (as the case may be) cryo-preservation process.

11. Subject to the **“territorial limitation”** above, this order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, social networking website, sound or television broadcast or cable or satellite program service of the names and professional addresses **until further order of any of the following individuals or organisations as being concerned in the care and treatment of the Child before and / or after her death:**
- (a) [the hospital trust] or any hospital within that trust
 - (b) [the local authority]
 - (c) any social worker or other employee of [the local authority] directly involved in working with the child or the family
 - (d) any medical professional directly involved in the care or treatment of the child.
12. No publication of the text or summary of this order or the supporting documents (except as provided for below under **“service of this order”**) shall include any of the matters referred to in paragraphs 9, 10, or 11 of this order.

Permitted publications

13. Nothing in this order shall prevent any person from:
- a) publishing information relating to any part of a hearing in a court in England and Wales (including a coroner’s court) in which the court was sitting in public and did not itself make any order restricting publication;
 - b) seeking or publishing information which is not restricted by the section **“prohibited publications”** above;
 - c) enquiring whether a person or place falls within the section **“prohibited publications”** above;
 - d) seeking information relating to the child while acting in a manner authorised by statute or by any court in England and Wales;
 - e) seeking information from the lead solicitor acting for the applicant, whose details are set out under **“the parties”** above;
 - f) seeking or receiving information from anyone who before making of this order had previously approached that person with the purpose of volunteering information (but this paragraph will not make lawful the provision or receipt of private information which would otherwise be unlawful);
 - g) discussing or reporting upon the legal issues arising from the process of cryo-preservation
 - h)

Duration of this order

14. Subject to any different order made in the meantime, paragraph 9 of this order shall as stated have effect until one calendar month following the death of the child.
 15. Subject to any different order made in the meantime, paragraphs 10 and 11 of this order shall have effect until further order of the High Court.
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