Case No: 2018/PL/10809
[2018] EWCA 984 (Civ)

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
(MR JUSTICE HAYDEN)

The Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday, 25 April 2018

Before:

LORD JUSTICE MCFARLANE
LADY JUSTICE KING
and
LORD JUSTICE COULSON

Mr Thomas Evans	**First Applicant**
Ms Kate James	**Second Applicant**
And	
Alder Hey Children's NHS Foundation Trust	**First Respondent**
Alfie Evans	**Second Respondent**

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(Official Shorthand Writers to the Court)

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Mr P Diamond (instructed by the **Christian Legal Centre**) appeared on behalf of the **First Applicant father**
Mr J Coppel, QC (instructed by **Tom Ward of TEW Solicitors**) appeared on behalf of the **Second Applicant mother**
Mr M Mylonas, QC (instructed by **Hill Dickinson**) appeared on behalf of the **Respondent Alder Hey Hospital**
Ms S Roper (instructed by **CAFCASS**) appeared on behalf of the **Children's Guardian**

Judgment

(Approved Judgment)

LORD JUSTICE MCFARLANE:

1. The court has before it what are now two separate applications for permission to appeal against a decision made by Hayden J as recently as yesterday evening, 24 April, in the course of these now long-running proceedings relating to the welfare of a young and profoundly ill child, Alfie Evans. Alfie was born on 9 May 2016 and so approaches now the end of his second year. As the judgments in the court below indicate in full detail, and the neutral citation of the main judgment given by Hayden J on 20 February is [2018] EWHC 309 (Fam), tragically, Alfie, after an entirely normal pregnancy, normal birth and normal early weeks and months of his life, developed a brain condition which is as yet undiagnosed with any precision, which led regrettably and, once it became established, very swiftly to the total disintegration of the substance of his brain. By February 2018, when the judge, in a final attempt to see whether there was the possibility of any change for the better in the child's brain, commissioned yet a further MRI scan, the substance of that scan indicated that there had been at that time yet further disintegration, so that in reality the scan signals indicated an entirely fluid content to the area that would be occupied by the child's brain, the fluid either being water or cerebral spinal fluid.

2. Alfie has been a patient throughout the period leading from the beginning of his decline at the Alder Hey Children's Hospital, and it was their application to the court for a declaration as to his best interests that triggered the proceedings. The decision of the judge, after hearing evidence not only from the treating clinicians but also from independent experts instructed by the court and other medical opinion sought by the parents, was that there was a unanimous medical view that the condition of Alfie's brain was irreversible. If it was possible for it to deteriorate yet further, and no treatment to

bring a turnabout in that condition was identified at all, thus his future was either to continue to have his viability maintained by artificial means, namely the continuation of ventilation and the introduction of nutrition by way of fluids and the administration of other supportive treatments by fluid in a paediatric intensive care unit or that it was in his best interests for that intrusive, intensive treatment to be withdrawn, with the inevitable result (on the medical evidence unanimously before the judge) being that the child would within a short time die. The judge determined that the latter course was in Alfie's best interests.

3. The parents, as is their right, sought to appeal to this court. The court granted permission to appeal, heard the legal arguments then put forward on the parent's behalf but dismissed the appeal. The parents sought permission to appeal from the Supreme Court, but permission was refused. The Court of Human Rights in Strasbourg considered the parents' application but declared it to be inadmissible.

4. Matters moved on. The parents sought an alternative mode of legal challenge, namely issuing a writ of habeas corpus to achieve the release of the child into their care. Their plan has been for a long time now for Alfie to be released from the care of Alder Hey Children's Hospital, so that he might travel to a world-renowned children's hospital in the Vatican, where treatment would be afforded to him which would in effect continue the intensive care regime that he has experienced to date at Alder Hey, but without any further plan to remove that treatment and operate a palliative care regime leading to his death. The habeas corpus application was refused by the judge. An appeal was heard by this court in a different constitution on 16 April and dismissed, and an application for permission to appeal to the Supreme Court was refused later that week on 20 April.

It is of note that in the course of the Supreme Court's decision, and it was the decision of three justices of the court, the President of the court, Lady Hale, together with Lord Kerr and Lord Wilson, the following is said at paragraph 2:

> "But they [the parents], and we, have to face the facts. Alfie looks like a normal baby, but the unanimous opinion of the doctors who have examined him and the scans of his brain is that almost all of his brain has been destroyed. No-one knows why, but that it has happened and is continuing to happen cannot be denied. It means that Alfie cannot breathe, or eat, or drink without sophisticated medical treatment. It also means that there is no hope of his ever getting better. These are the facts which have been found after a meticulous examination of the evidence by the trial judge."

5. And then at paragraph 4:

> "On the first occasion that an application came before us, we held that Alfie's best interests were the 'gold standard' against which decisions about him had to be made. It had been decided, after careful examination of the evidence, that it was not in his best interests for the treatment which sustained his life to be continued or for him to be taken by air ambulance to another country for this purpose. Hence we refused permission to appeal and the European Court of Human Rights found the parents' application inadmissible."

6. And then at the conclusion of the short note of the decision, this:

> "13. It has been conclusively determined that it is not in Alfie's best interests, not only to stay in Alder Hey Hospital being treated as he currently is, but also to travel abroad for the same purpose. It is not lawful, therefore, to continue to detain him, whether in Alder Hey or elsewhere, for that purpose. The release to which he is entitled, therefore, is release from the imposition of treatment which is not in his best interests.
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> 14. Every legal issue in this case is governed by Alfie's best interests. These have been conclusively and sensitively determined by the trial judge. There is no arguable point of law of general public importance in this case.
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> 15. There is also no reason for further delay. There will be no further stay of the Court of Appeal's order. The hospital must be free to do what has

been determined in Alfie's best interests. That is the law in this country. No application of the European Court of Human Rights Strasbourg can or should change that."

7. An application was made immediately by the parents to Strasbourg, but in a very short space of time that too was declared inadmissible.

8. The timetable for the removal of intensive treatment was clarified by the judge, and Alfie was disconnected from the ventilator at 9.45 pm on Monday of this week. We sit now at half past six on Wednesday evening. Alfie is still alive. From the time the ventilator was removed, he breathed, in the sense that his lungs functioned and drew in sufficient air to maintain his viability. After some six or seven hours, at around four o'clock in the morning, the hospital introduced (as part of the planned palliative care plan) modest access to oxygen by two nasal prongs inserted into his nose, connected with a low-pressure oxygen supply to augment the oxygen that he had available to him. In addition some fluids were introduced to him at the same time, and that has been, as we understand it, the regime that has continued. Alfie remains in that condition now so, far as this court understands.

9. The fact that Alfie did not die very soon after the ventilator was removed enabled the parents to say, as undoubtedly I accept will have been their reaction, that this was not what was expected by them. They therefore instructed their lawyers to apply back to the judge in order for the judge to revisit the decision to take their child off the ventilator. They applied to set aside the declaration that he had made in February and asked the court to make ancillary orders allowing the parents to take the child immediately to Italy.

10. In the course of this week a further development should be recorded, namely that on Monday (23 April) Alfie was declared by the Italian state to be an Italian citizen. We have also been told that at this moment the necessary physical facilities and resources are available to take him by air ambulance to, as I understand it, a military plane that is available in this jurisdiction that would fly him immediately to Rome and that, during the course of this process, he would be attended by Italian clinicians. He would then be, we are told, admitted to the intensive care unit at the Vatican Hospital. The parents would be accommodated in suitable accommodation provided for them, and Alfie's care would then be maintained under that regime by the Italian state or the Vatican state, whichever is the appropriate authority.

11. The application to the judge therefore was put on two separate bases, albeit that he had considered the Italian dimension at an earlier short hearing the previous day. The case for the parents before the judge, which is the case mounted now solely on behalf of the father by Mr Diamond albeit that this aspect of the case is supported by the mother, is that these two new developments, namely the fact that Alfie has continued to breathe notwithstanding the removal of the ventilator and his Italian citizenship are changes of events justifying a reconsideration of the judge's order. It is argued that the availability of an alternative plan, that would not lead (as this plan will) to his imminent death, should now be seen as being in his best interests.

12. Hayden J conducted what in the circumstances was a relatively full hearing. He heard submissions of course from all of the parties. He also heard some evidence from the senior treating clinician as to the current circumstances of the child. In the course of his extempore judgment he reviewed the situation. The fact that this was an extempore

judgment does not belie to my mind the quality of it or the insight that the words used by the judge, and the factors to which he refers, indicate in terms the depth of the judge's understanding of the issues, his empathy for the parents' position and his acute awareness of the importance of the decision that he was being called upon to make. That judgment is now, I would understand, available in a form approved by the judge at neutral citation [2018] EWHC 953 (Fam).

13. In the course of the judgment, the judge records in summary terms the evidence that he found established in February, and because this plays into his decision yesterday, it is important to understand what he says:

> "3. But I came, on the consensus of every doctor from every country who had ever evaluated Alfie's condition, to the inevitable conclusion (following 7 days of evidence) that Alfie's brain had been so corroded by his Neurodegenerative Brain Disorder that there was simply no prospect of recovery. By the time I requested the updated MRI scan in February, the signal intensity was so bright that it revealed a brain that had been almost entirely wiped out. In simple terms the brain consisted only of water and CSF. The connective tissues and the white matter of the brain that had been barely visible 6 months earlier had now vanished entirely and with it the capacity for sight, hearing, taste, the sense of touch. All that could be offered by the Bambino Gesu Hospital in Rome was an alternative palliative care plan. An end of life plan. And so, on a true deconstruction of the issues, it is that that this case has been about: what is the appropriate end of life plan for Alfie?"

14. The judge, having heard the evidence and an account of Alfie's existence in the hours leading to the hearing, indicated that in some way this was "good news" (to use the judge's phrase) in that Alfie's last time with his parents would be spent without the inhibition of all the paraphernalia of the ventilator and the intensive care unit, and they could have a more normal time with each other in these awful circumstances. But in terms of the application made before the judge, he was clear in his decision, having

heard the circumstances as I have described them, and having heard in particular Mr Diamond, counsel on behalf of the parents, make the plea to that judge as he has in turn eloquently made to us today, the judge says this at paragraph 16:

> "16. The sad truth is that there has been no significant change, indeed no change at all. The brain stem, absent the entirety of the white matter of the substantive part of the brain, is enabling Alfie, just about, to sustain respiration. A brain cannot regenerate itself, as I have been told, and there is virtually nothing of Alfie's brain left.
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> 17. Mr Diamond has asked me to set aside my earlier declarations, I think on the premise that Alfie's condition is better than had originally been thought for there could be no other basis for such an application. With no hesitation, I reject that."

15. And the judge went on to make some suggestions for further cooperation between the parents and the hospital that might develop the palliative care plan in this final stage of the child's life.

16. The appeal before this court was listed following an indication by Mr Diamond (at that stage, as I understand it, on behalf of both parents) of their desire to seek to appeal the judge's decision. The process plainly is that this court, in the absence of permission to appeal having been given by the judge, must first determine whether permission to appeal should be granted, and that will be granted if the proposed appeal has a reasonable prospect of success or it raises some other matter of importance in terms of practice or principle. Mr Diamond helpfully submitted under a very tight timetable proposed grounds of appeal, to which I will turn in a moment.

17. This afternoon, when the court sat, leading counsel, Mr Jason Coppel QC, appeared instructed by solicitors on behalf of the mother. In response to questions from the

court, it was established that Mr Diamond had been informed by the father that the father understood the mother was now instructing a separate legal team. In questioning Mr Coppel, and on the instructions of his solicitor, Mr Ward, it became apparent at that stage that there had been no direct contact between the mother and her new legal team but there had been some contact with the father and, as it transpired later in the hearing, a lawyer, Mr Bruno Quintavalle, who had acted in a various ways for the parents in the course of these proceedings. During the course of a short adjournment, Mr Coppel was able to have a direct conversation with the mother, and we are satisfied that he himself is satisfied that he now has direct instructions from her.

18. It was only when Mr Coppel came to make his oral submissions that it became apparent that he was addressing a wholly different set of grounds of appeal to those that had been advanced by Mr Diamond. I accept that the tight timetable seems to have generated the following circumstances, namely that Mr Coppel had not seen the grounds of appeal upon which Mr Diamond relied, and equally no party or the court had seen the grounds of appeal that Mr Coppel understood were the grounds that he was supporting by supporting the father's appeal. I will come to those grounds in due course, but it is now the case that the two parents, who thus far have marched together in the course of the proceedings, are now acting separately. Indeed, it is right to record that throughout the proceedings, and so far as one is concerned as a member of the public experiencing the press reporting from time to time in all other ways, whilst it has been the parents who have been opposing the actions of the hospital, it has been largely Alfie's father who has been at the forefront in displaying utter focus and tenacity in leading the campaign to reverse the decision of the judge.

19. I turn therefore now to look first of all at the appeal that is proposed on behalf of the father as advanced by Mr Diamond. Although the grounds of appeal are helpfully divided up into different categories referring to the fact first of all that Alfie still breathes, secondly to the principle of "common humanity", and thirdly to the meaning of "futility", Mr Diamond rightly and understandably moulds all of those together to develop one central theme, and the theme is this: that the events that have followed the removal of the ventilator from this young child represent a change in the circumstances that were within the contemplation of the parties and more particularly the judge at the time that the order was made. The father's case on this is that nobody expected the child to carry on breathing for more than a short period of time, and the fact that after some 20 hours or so in terms of the hearing before the judge yesterday, and now some 42, and he has not passed away, is wholly out of kilter with the evidence before the judge and represents sufficient change to justify the decision being reviewed and reopened.

20. As part of that submission, Mr Diamond refers to the principle of common humanity, which he asserts is established under the common law, and within that the need for an individual's dignity to be respected. He submits that it cannot be acceptable, in terms of dignity and common humanity, in this jurisdiction in the 21st century for an individual, this young child, to be maintained in a hospital without intensive therapy but breathing for an extended period, now measured in nearly two days. With the contemplation that this state of affairs may carry on for further days if not for one or two weeks, as has been suggested to this court. He submits that it is wholly unacceptable for that state of affairs to continue; but more importantly, in the context of the gold standard, namely

the child's best interests, it can no longer be said that this palliative care plan, as it is being acted out in the ward, can be in the child's best interests.

21. In making that submission, Mr Diamond is plain before this court that on behalf of the father there is no attempt now to seek to overturn the underlying decision as to the child's medical condition or to submit that there is any other option but for it to be in the child's best interests for him to die in some way at some stage without further alternative treatment for the underlying condition which is accepted as being irreversible in the terms that I have described. On three or four occasions Mr Diamond stated that. But he submitted that for the treatment to be futile does not mean that life itself is futile, and he sought to advance submissions on that basis, and he submitted that for life to be allowed to carry on and be sustained where it causes no pain to the individual and is of no direct threat to the individual is not contrary to the best interests principle. He said that what has changed is that we now know that Alfie has survived for longer than could have been anticipated, and that therefore calls into question whether it is any longer in his best interests to undergo this period of palliative care.

22. Secondly, in terms of change, Mr Diamond points to the fact that Alfie is now an Italian citizen. He has the support of the Italian state (indeed, there is a representative of the Italian embassy attending this hearing as an observer) and the detail of the plan that would be available were he to move to Italy is now of a different quality to that which was considered before: quality in terms of the amount of detail that the plan has and quality in terms of the overall standard of what is on offer. Those submissions are supported by Mr Coppel on behalf of the mother, albeit the main focus of his case to the court is on the different grounds to which I will turn.

23. For the hospital trust, Mr Michael Mylonas QC, who has represented the trust throughout, submits first of all that the change that is argued for in terms of the continued viability of Alfie and his continued breathing is not a change at all. Mr Mylonas said to the court that the fact that Alfie is breathing may be a surprise to members of the public, but it is not a surprise to the doctors who deal with individuals from whom treatment is withdrawn in these cases. He directly referred to evidence before the judge and the understanding of the treating doctors of there being a period, which it is impossible to measure precisely, during which the palliative care element of a palliative care plan becomes a reality, namely a period of continued existence before death during which a different level (a much lower level) of medical intervention is supplied. He told the court that the parents were advised directly before the ventilator was disconnected by the senior treating clinician that it was impossible to say how long a child may survive. It may be measured in minutes, in days or longer, and he says the Trust's case throughout has always been that you simply cannot say how long this period will be.

24. The hospital is supported by Ms Sophia Roper on behalf of the guardian, who also, as I understand it, has acted throughout the proceedings.

25. Mr Mylonas also submits that, so far as Italy is concerned, the details of the plan may be different but they do not represent a material change. Whilst the aircraft now may be said to be a military-grade aircraft, the plan previously considered by the judge in February was that a Learjet would be provided, and the court was told that a fund had been generated by generous donors that would provide the resources for Alfie to be flown to Italy. The offer of treatment at the Bambino Gesu Hospital always has been

on offer at all relevant stages, and, as the judge records this detail at paragraph 63 of his original judgment, there was always accommodation available for the parents in Rome. There were risks identified with respect to the trip, Mr Mylonas reminds the court, and those risks were agreed as being risks by all of the experts, and the risks were that the very act of transporting this child might trigger additional epileptic seizures, which would in turn further compromise his neurological facilities such as they are, either temporarily or with some permanent consequences, and there was obviously a risk that one or other of those seizures, were they to occur, might prove fatal.

26. Dealing with the father's proposed grounds of appeal, as I have described them, and understanding the genuineness of the plea that is made by these parents for one last chance to have the plan that was endorsed by the court overturned, I am afraid I cannot see that the proposed appeal by the father has any reasonable prospect of success. I come to that conclusion for the following reasons. It is clear from the reading of the material that we have undertaken that it was always in the contemplation of Hayden J that there would be a period of life after removal of the intensive care equipment. That was what the palliative care plan was all about. I accept Mr Mylonas's description of the evidence, which was that the length of that period could not be predicted and that on some occasions it might be measured in days if not for longer. The litmus test for whether this indeed is a change in the landscape sufficient to justify reopening the whole issue arises from the judgment given last night. Hayden J is the judge who has been steeped in the detail of this child's medical condition since February. He has conducted I think some ten (it may be a dozen) hearings in relation to Alfie Evans, and there cannot have been a time in the compass of the last two months when, in the course of a week or a fortnight, he has not been reminded directly of the full detail of

the case. He was told last night of Alfie's condition, how he had continued breathing after the ventilator was removed, and was still breathing at the time of the hearing. As I have already quoted in the judge's judgment, he had no hesitation in rejecting the suggestion that this amounted to a change in the circumstances. Had this turn of events differed from what the judge had understood when he made the order, he would have said so.

27. Secondly, although in lay terms it is easy to understand the submission that Mr Diamond makes, these in the end are medical issues. The question of what the fact that a child is breathing tells us about tomorrow, this evening, next week, is not a matter for us to entertain conjecture about. If this does represent a change in the medical understanding about this condition and the medical viability and the best interests of the child in terms of undergoing the palliative care regime, then there is a need for that submission to be supported by some medical evidence. I stress the word "some" because it would have to have been obtained at very short notice and would necessarily be a very superficial document, but there would have to be in my view some medical evidence to indicate that, contrary to the view that the judge has, which I have indicated is demonstrated by his judgment, contrary to the view that he had on the basis of the expert evidence in February, the fact that Alfie is still breathing is indeed a change. That medical evidence is simply not available to the parents to put before this court and was not available to the judge yesterday in making his decision. Thus it is that, awful for everybody concerned the situation must be, we are in the middle of the palliative care plan which is being progressed in Alder Hey Hospital, and the fact that this is the situation on the judge's findings is not a change. I can identify no basis for holding that the judge was wrong in that view and no evidence to suggest that what is now being

acted out is in some way materially different to what was anticipated when the court, with its eyes open to the consequences of its order, nevertheless made that order.

28. So far as the Italian element is concerned, I accept that submissions that have been made on behalf of the hospital trust. The availability of excellent intensive care in a paediatric unit at the Vatican Hospital has always been a feature of the case as it was before the judge in February. I do not read his judgment as indicating that any aspect of the plan of itself ruled that plan out. There was always going to be a flight by helicopter or plane to Italy. The parents would obviously be accommodated and the child was going to the intensive care unit at the hospital. The fact that now some of the details have changed or that the plan formally has the support of the Italian government and the Pope does not alter the experience as it would be for the child going to hospital. The judge considered that, and he simply ruled that it was no longer in this young individual's best interest to have his life maintained any longer by artificial ventilation. For that matter, the judge, had he been of the view that it was in the child's best interest to continue treatment on a ventilator, had no need to order for his transfer to Italy. He could simply have refused the hospital's application and either Alder Hey Hospital, or another hospital willing to take on the care of the child, would have had to continue providing exactly the same sort of care that now is being offered so generously by the Vatican. The change in any detail in the Italian plan is not, therefore, a change in the evidence or the factors that were before the judge when he made his decision on 20 February.

29. I therefore turn to the case that is now put forward on behalf of the mother. It is put forward on five different grounds of appeal, three of which may be grouped together

under one heading, and the heading relates to the free movement of individuals within the European Union; free movement generally, but more particularly the European Union right, and it is a fundamental right under EU law, to access services (in this case medical services) in any other Member State. Mr Coppel submits that in the hierarchy of EU rights, the right of free movement and the right freely to access medical services in another state is of the highest order, and that for the court of a Member State to prevent an individual (in this case Alfie through the offices of his parents and the Italian authorities) from accessing medical care in Italy involves the need for that to be declared to be a proportionate derogation from that fundamental EU right. Mr Coppel submits that in the course of the evaluation of whether or not it is proportionate to take that step, as a matter of EU law, the welfare of the child would be a primary consideration but would not be the all-determining gold standard paramount consideration which it would be were the issue simply decided under the domestic law of England and Wales. In the course of the first three pleaded grounds of appeal, which were not, I accept, pleaded by Mr Coppel himself, he makes that submission by reference to Article 56 of the relevant EU regulation.

30. A number of points must be made. Firstly, this is the very first time, orally this afternoon, during this hearing, that this legal issue has been raised in these (or to my knowledge any) proceedings relating to the best interests of children in these tragic circumstances. Mr Coppel comes to make the submission without producing any material in support of it. We have not been taken even to the regulation that he relies upon in making the submissions that he makes. The grounds of appeal as they were pleaded complain that the judge in a number of respects was in error in holding that the best interest of the child in some way "trump" (to quote from the grounds of appeal) the

fundamental EU right that is now relied upon. In so far as those grounds are pleaded in that way, Mr Coppel rightly accepts that they are in error. The judge did not make any such holding, because the issue simply was not raised before him.

31. On one basis it would be right for this court simply to rule out those potential grounds on the basis that they are not in reality an appeal from a decision of the judge, because the argument simply was not raised before the judge. But this is a case involving the life of an individual, and it would be wrong simply to rule them out on that basis.

32. The submissions made go wholly and fundamentally against the core principle to which the courts in England and Wales hold in making these decisions. Without labouring the point, Baroness Hale in the course of the short observations of the Supreme Court set the position out. There can be no derogation from the mandatory requirement to apply the gold standard, namely the best interests of the young person concerned, in determining what the outcome of any relevant application is. To submit, as Mr Coppel does, that in some manner that legally entrenched principle should be eroded or adapted where it is possible to contemplate moving the child for treatment elsewhere is one to my mind which can have no merit at all. But, following as best I can the argument without any of the materials upon which Mr Coppel QC relies, if there is a hierarchy of factors to be taken into account, and if the welfare of the child is a primary consideration, when in relation to all the other factors in the case a judge has concluded that it is not in the best interests of that individual to carry on living and it is in the best interests of that individual to be allowed to die, one asks how can it possibly be disproportionate to hold that that person's right to go to a different hospital in a different

country to access treatment should in some way alter the outcome that has been determined.

33. As an adjunct to the submissions that Mr Coppel made, he submitted, so far as I understood it, that, once in Italy, it would be for the Italian court to determine what Alfie's best interests required. This submission was not developed, and indeed in the course of his submissions Mr Coppel made no reference to the aspect of EU law which governs the jurisdiction in these cases, namely the regulation known as the Brussels II Revised Regulation. That makes it plain (as indeed the judge made it plain in his judgment given only last night) that the determining factor in terms of which state, be it Italy, this jurisdiction or another one, has jurisdiction to make these decisions as to children is determined on whether the child is habitually resident in the state. It is clear beyond peradventure that Alfie is and has always been (as his parents have always been) habitually resident in England and Wales. There can be no question under the operation of the Brussels Convention of the Italian court and the Italian authorities having jurisdiction to decide what is best for this child in conflict with a decision made by the home court in the home state, namely here in England. So I hold that the three grounds of appeal relied upon by Mr Coppel in this respect are totally without merit.

34. Under the next ground, it is asserted that the judge was in error in holding that there was no need for new medical evidence. The ground reads:

> "The learned judge erred in holding that there was no need for new medical evidence. The original hearing did not consider the possibility of Alfie surviving the excubation process. The fact that Alfie has survived now requires a medical reassessment of his condition."

35. Mr Mylonas dealt shortly with that ground, and he was right to do so. The assertion that the judge had held that there was no need for medical evidence is wholly erroneous. No application was made for the judge to direct any further medical evidence. No application has been made to this court to sanction further medical evidence, and there is no further evidence, as I have indicated already. Secondly, the assertion that the original hearing did not contemplate the possibility of Alfie surviving the extubation process is, as I have already indicated, also erroneous. Equally, the assertion that now a further medical reassessment is required is, for the reasons I have already stated, not made out. So I would simply refuse permission on that ground.

36. That leaves the remaining ground, which is in terms:

> "The learned judge erred in imposing a course of action on an Italian citizen which would amount to a criminal offence for the laws of Italy and could lead to extradition and prosecution of the clinical staff involved in the matter."

37. That, Mr Coppel told us, is a reference to the fact, as he asserts it be that, under the criminal law of Italy, "The killing of an Italian abroad is a matter within the jurisdiction of the Italian criminal court". Again, Mr Coppel QC produces no material upon which his submission is based. We simply have his assertion as to this matter. Insofar as the ground pleads that the judge erred in imposing this course in some way with his eyes open to the point that Mr Coppel accepts that that, is not sustainable. The matter was simply never put to the judge or raised prior to today. It could only have been raised at some stage after Monday of this week, namely within the last 48 hours, because until that time Alfie was not (if he is) an Italian citizen. Insofar as there may be, and for the purposes of evaluating the prospects of success of a potential appeal, I accept there may

be on Mr Coppel's analysis the potential for some of the clinical staff here to be at risk of an application for extradition and prosecution by the Italian authorities for a criminal offence for any part they may play in the working out of the judge's order, that cannot be, as a matter of English law a relevant consideration. At the risk of repeating myself, the only relevant consideration, the only consideration, is the best interests of this young child, Alfie. The impact of that decision on adults, on professionals, is not a matter that the court could take into account to the extent of reaching a decision other than the one that the judge reached in this case with the evidence that he relied upon in determining where this child's best interests lie. So I refuse permission to appeal on that ground.

38. It follows that the prospective appeals of each of the two parents, as they have been variously argued by their respective counsel, must be refused.

39. Before concluding this judgment, I wish to repeat something I said during the course of submissions. It has again become clear to this court that these two parents have been assisted by supporters in a number of respects but principally from the focus of the court in terms of the preparation of their now two separate legal cases. We were reminded that in the past leading counsel, Mr Stephen Knafler QC, acting then on behalf of both of the parents, deprecated the involvement of legally qualified but not practicing lawyers who introduced (to use Mr Knafler's phrase) a "darker side" to what was otherwise valuable support. It has become apparent to this court, and we referred to it in the postscript to the judgment that we gave on 6 March 2018 in relation to the first appeal, that there was some coordinated organisation of potential medical experts in relation to more than one of these vulnerable families, the same expert being covertly

introduced to Kings College Hospital to examine secretly one child in the paediatric intensive care unit there and the next day to go to Alder Hey, again covertly and secretly, to purport to examine Alfie there.

40. It is not the function of this court now to embark upon an investigation of these matters, but it has become apparent, in particular in terms of the information we have been given about the instruction of the new legal team for the mother today and the drafting of the grounds of appeal upon which Mr Coppel purported to rely at the start of his submissions, (with its unhappy emphasis on prospective criminal proceedings against the staff at Alder Hey) that the representation of the parents may have been infiltrated or compromised by others who purport to act on their behalf. I say no more, but I have in mind the tenuous nature of the direct contact that Mr Coppel and his instructing solicitors had with the mother and yet the clear grounds of appeal that he was instructed to put forward on her behalf, which were, it now transpires, drafted by a lawyer who is not before the court. It may be that some investigation of whether, in this country, at this time, parents who find themselves in these awful circumstances, and are therefore desperate for help and vulnerable to engaging with people whose interests may not in fact assist the parents' case, needs some wider investigation, but I do no more than draw attention to the concern that this court has at what seems to be an unhelpful development which may, in reality, be contrary to the interests of such parents.

41. So, for all the reasons I have given, if my Lady and my Lord agree, I would dismiss these applications for permission to appeal.

LADY JUSTICE KING:

42. I agree.

LORD JUSTICE COULSON:

43. I also agree.

Order: Application refused