

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/09/2013

Before:

THE HONOURABLE MRS JUSTICE THEIS

Between:

F
- and -
F

Applicant

Respondent

Nick Goodwin (instructed by **Crisp & Co**) for the **Applicant**
Peter Mitchell (instructed by **Ashfords LLP**) for the **Respondent**

Hearing date: 31 July 2013

Judgment

THE HONOURABLE MRS JUSTICE THEIS

This judgment is being handed down in private on 5th September 2013. It consists of 9 pages and has been signed and dated by the judge. The judge does not give leave for it to be reported until it has been anonymised by counsel and approved by the judge.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

The Honourable Mrs Justice Theis:

Introduction

1. This matter concerns an application by Mr F (hereinafter referred to as the father) for a declaration and a specific issue order concerning his daughters L and M, who are now 15 years and 11 years respectively. He seeks an order that they both receive the MMR vaccination. This is opposed by their mother, Mrs F (hereinafter referred to as the mother).

Background

2. The parents were married in 1996, the marriage broke down in 2009 and they separated in January 2011. L and M remain living with their mother but have contact with their father on alternate weekends, half the school holidays and occasional weekdays. Agreement regarding financial matters was reached in December 2012 and the decree absolute made in January 2013.
3. L was inoculated, by agreement between the parents, soon after her birth. In 1998 there was great public debate about the MMR vaccine. Much of the controversy surrounded the research paper, published in the Lancet, by Dr Andrew Wakefield which cast doubt on the vaccine's safety and the risks said to be attached to administering it, particularly in relation to the possibility of autism. As a consequence of this the parties decided, in consultation with their GP, that L should not receive her booster and M has had no vaccinations at all.
4. The father now states he was a reluctant participant in the joint decision not to inoculate. He says he has become increasingly concerned that the girls have not been immunised and were not protected. Dr Wakefield's research paper was later discredited. The Lancet subsequently retracted Dr Wakefield's paper and his research was not approved by the General Medical Council. The NHS, General Medical Council, Chief Medical Officer and the World Health Organisation all recommend that children should have this vaccine. He is concerned that the consequences of contracting measles, mumps and rubella are serious. He states the need for the children to have protection has been brought into sharper focus following the recent outbreak of measles in Wales.
5. On 25 January 2013 the father's solicitors wrote to the mother seeking her agreement to the girls being vaccinated, failing which it was indicated he would apply to the court. That agreement was not forthcoming and the father issued this application on 5 April 2013. Following initial directions by the District Judge the matter was listed before me on 25 April 2013. I made directions, including the filing of a CAFCASS report setting out L and M's wishes and feelings. I made further directions on 6 June 2013 listing the matter for hearing on 31 July 2013 and making directions for L and M to discuss this issue with their GP, which took place on 16 July 2013. They came and met me on 25 July 2013 together with Ms Vivian. Ms Vivian filed an addendum report on 26 July 2013, together with a note of our meeting. Both parties have filed updating statements.
6. The meeting I had with L and M was to enable me to explain my role, the process by which decisions are made and that the decision in circumstances such as this is my responsibility. L and M are charming, intelligent, articulate and thoughtful. The questions they asked me were perceptive and well targeted. They both wanted to understand what would happen.
7. The matter was listed for hearing before me on 31 July 2013. In addition to the written material I have, which includes two statements from each parent, I heard the oral evidence from both parents and Ms Vivian. At the conclusion of the hearing I reserved judgment as this not only gave me an opportunity to consider the matter but, in addition, the parents agreed that it was preferable for there to be a delay in the

decision to enable both parents to enjoy their respective summer holidays with L and M.

Legal framework

8. There is no dispute between the parties as to the legal framework for the court. The paramount consideration of the court is L and M's welfare. In considering their welfare the court is guided by the matters set out in the welfare checklist in s 1 (3) Children Act 1989.
9. This issue has come before the court on two occasions before. In *Re C (Welfare of Children: Immunisation) [2003] 2 FLR 1095* the Court of Appeal dismissed the mother's appeal against the decision of Sumner J to order her to have her child immunised with the MMR vaccine. This issue was between two parents. Sumner J heard from a number of experts in paediatric immunology and infectious diseases and he concluded that the benefits of having the vaccinations outweighed the risks. He made it clear that each case was fact specific. In the Court of Appeal Thorpe LJ rejected the '*repeated categorisation of the course of immunisation as non-essential invasive treatment. It is more correctly categorised as preventative healthcare.*' (para 22). In *LCC v A, B, C and D [2011] EWHC 4033* I considered the issue of vaccinations in the context of children who were the subject of final care orders, where there was a dispute between the local authority and the parents as to whether the children should be vaccinated. I concluded the children in that case should be vaccinated. The expert in that case, Dr Ward, comprehensively addressed the link between the MMR vaccine and autism and the consequences of getting these diseases. I set those out at paragraph 16 of that judgment:

'a. Measles, mumps and rubella are serious infections, each of which carried an appreciable risk of dangerous complications in healthy individuals. Vaccination is the only practical way to prevent an individual from contracting infection, and all the evidence is that it is effective and has a very low level of side effects, which are generally mild and transient.....
d. With due consideration for established contraindications to vaccination in an individual case, it is otherwise in every child's interest to be protected against measles, mumps and rubella with the MMR vaccine'

The evidence

10. The mother's opposition to L and M receiving these vaccinations can be summarised as follows:
 - (1) She questions the benefits of the vaccine and remains concerned about any possible side effects;
 - (2) She questions the father's change in position bearing in mind what she considered was the parties agreement that the girls should not be vaccinated;

- (3) She is concerned about the impact of the vaccination being undertaken against the girls wishes, in particular L who has had psychological problems including anxiety issues which she has received counselling for.
 - (4) L is a vegan and part of her objection is based on the content of the vaccine which includes animal based ingredients (e.g. gelatine).
11. In her oral evidence the mother stated the decision not to vaccinate the children was a joint decision taken by both parents following their experience of L's first vaccinations; she considered it was their joint view that they don't always work and there may be side effects. She denied any influence on the children's views. Until this recent application she said both girls had been brought up in a family where there was a consensus between the parents regarding vaccinations. When asked about what her opposition was to the vaccinations she said *'Parents have a choice to do what they feel in their hearts they really believe. I feel both children have grown up in a frame of mind which they were settled in and supported in the same outlook and are now forced to take a different view without more positive reassurance and help given and the recording of ingredients [of the vaccine] is unsatisfactory. They have a right to be informed.'* In relation to the suggestion by the father that the girls need to be protected from the risk of getting either measles, mumps or rubella she said from the NHS guidelines the risk of complications from these diseases is higher if the immune system is compromised in some way; L and M are healthy active children which she considers lowers the risk. If the father's application was granted she said she would feel she had *'not been able to put their [the children's] views across enough'*. In cross examination she said she *'had no view'* on whether the MMR vaccination was effective as she was not trained in reading statistics. In relation to any health benefits of the vaccination being given she said *'I have my doubts, led me and Mr F to come to the decision [not to have the vaccinations]..we both had doubts and these outweighed our perceived benefits.'* When pressed about the health benefits to the girls having the vaccination she considered the children have to have a say. She accepted the girls would have seen her distressed by the father's behaviour and this application, which she described as *'bullish'*. She considers the girls will feel they have let her down if the application is granted. She said that is because *'they will feel they were not able to articulate how it affects our lives. I have one chance to get it right.'*
12. In his oral evidence the father was concerned about the focus by the girls on the ingredients of the vaccine; he said they are a distraction to the benefits. He acknowledged the girls are angry with him regarding this application, they think he is trying to exert control on the mother and using them as a vehicle to do this. He regards his relationship with his daughters as being *'solid and strong'*, although he accepted this issue has caused difficulties in his relationship with them in the short term. His concern, he said, is the risks to them of getting any of the diseases if they do not have the vaccination. It was the Wakefield research that caused the parents to decide not to have any further vaccinations. He accepted M had no vaccinations at all. He was asked about the delay and timing of this application, bearing in mind the parent's relationship broke down in 2009. He said the mother was aware he was unhappy about the situation. He accepted he could have made this application earlier, when the children were younger, but said the Swansea outbreak exacerbated the issue for him. He denied he reacted to what was termed tabloid hysteria. He respected L's views as a vegan, but he said she is still a minor and her parents have parental responsibility to look after their welfare which involves looking at balancing risks and

he regards the risks of getting the diseases far greater; his concern is she does not properly understand the risks of not being vaccinated. He considered M's views are largely influenced by L; they have a very close relationship. He remained clear in his view that L and M should have the vaccination, as only by doing so would the risks of getting any of the diseases be reduced.

13. Ms Vivian's two reports comprehensively set out L and M's wishes following her meetings with them. She has discussed with them the underlying rationale for their opposition to the vaccination. They are both fully aware of their parents' views regarding this application. The focus in their most recent meeting with Ms Vivian was the ingredients in the vaccination, which L said she would '*be so upset if that was in my body*'. When asked by Ms Vivian how they would get better if they became ill with one of the vaccine preventing diseases M responded they would go to the doctor and get medicine and get better. There was no issue about what would be the ingredients in that medicine. L wondered whether they would get treated as the doctors may be scared of getting it too. They said they knew people who had had measles and they '*only get a rash*'.
14. In her most recent report she said '*Despite their good manners and polite demeanour they made it clear to me their frustration at having to speak to me again and I can sympathise with their position. They wish their parents had approached this particular situation in their lives differently. There was a sense from them that they felt as if they had been drawn into a situation that they felt is beyond their control, they know the ultimate decision will not be theirs, but that of the Judge.*' Ms Vivian was concerned about the focus by the girls at their most recent meeting about the vaccine ingredients. She considers they have had access to information that they have researched themselves and she does not consider they have obtained a full and proper picture and are fearful of something being put into their body that they have not been able to properly evaluate. Her recent report conveys concern about the emotional impact on the girls of not being able to have that balanced information and the overt anxiety of their mother on this issue.
15. In her oral evidence Ms Vivian stated it was understandable that L and M have probably been influenced by their mother's views, they have picked up her feelings. She was very concerned, particularly in her more recent interview, of the information the girls had that they did not necessarily understand or were able to consider in a balanced way. She said this was illustrated by her talking through with them if they didn't have the vaccination and got one of the diseases what would happen. They had not considered what may be the ingredients of any medication they may receive and appeared to consider that the doctors may not want to touch them for fear of getting the disease. She did not consider they had any rounded appreciation of the pros and cons of the vaccine and as a result there should be some caution before attaching significant weight to their wishes and feelings. She said one of the difficulties for both girls is their mother is very anxious about this and Ms Vivian considered they will take some responsibility for making her feel okay about that. Following any order made by the court all relationships will have to be managed and she considered this is a task for both parents. In relation to their father she agreed L and M's relationship with their father is strong and loving, but their feeling is he doesn't know or understand what is in the vaccination. They might be re-assured if he was able to tell them he does understand their point of view. Even though the girls are different ages

she did not consider they should be treated differently. She acknowledged there are risks regarding their relationship with their father as she felt they had aligned themselves with their mother. She was asked about the risks to them if their wishes and feelings were overruled, she acknowledged there is always a risk when children are involved to this degree but she did not consider it any different from other welfare based decisions that do not accord with the wishes and feelings of the children concerned. In any situation where the court is making welfare based decisions the parent who did not agree to the issue that may be ordered has to manage that outcome. She said that is what parenting is about; it can take on many different aspects. She considered these particular children to be very bright and have a lot of empathy and respect for their parents and would understand why decisions are made and the parental process. She said they were reluctant to come and see her, but they came as they were told they had to.

Submissions and Discussion

16. Mr Mitchell, on behalf of the mother, submits that the father has not put any evidence before the court as to the benefits of the children having the vaccine. Both parties had the opportunity to adduce expert evidence, which was not taken up. The reason why it was not taken up is because from the medical perspective the evidence all points one way. There was no dispute to the medical position in the *LCC* case as set out in paragraph 9 above.
17. Whilst it is correct the parents presented a united front in relation to their decision about booster injections for L and no vaccinations for M; that has to be looked at in the context of the information that was available at the time. The father suggests the landscape is different now, the combination of the Wakefield evidence being discredited and the recent outbreak of measles has made him re-consider his previous opposition to the vaccinations. He said he had always been pro-vaccine but in the light of the position at the time following L's birth they agreed not to give L any further vaccinations and M had none.
18. I, of course, have to carefully consider and weigh up L and M's expressed wishes. It is submitted on behalf of the mother the views of these children, in particular L because of her age and understanding, should not be overridden without good reason. Weight should be attached to the wishes of mature children. The mother submits if their will is overborne they will suffer harm, they will be traumatised, their sense of personal autonomy will be undermined, their relationship with their father may suffer and they will feel they have let the mother down and may feel resentment and confusion at not having been listened to.
19. The father submits it is in the interest of both girls to receive the vaccine. It is more likely than not that the girls' wishes and feelings have been shaped by their mother's clear views. That is supported by Ms Vivian's observations when she returned L and M to their mother following their meeting with me and that part of the mother's submissions refer to the children feeling they may have let their mother down if the application is granted. He submits M's understanding of the importance of the vaccine is limited and unbalanced. Ms Vivian wondered whether her view was based '*more on her wish to align herself with the views of her mother and sister without really understanding both sides of the argument in order to formulate her own view*'. In

relation to L he accepts her understanding is perhaps greater but lacks balance as to the risks and consequences of getting the diseases.

Decision

20. Both parties agreed following the hearing on 31 July 2013 that L and M would be told that I had heard all the evidence and would not make a decision until early September. They were also able to agree that if the court ordered vaccinations the parties would jointly instruct a paediatrician as mooted in court at the hearing.
21. In reaching my decision I have considered the factors set out in the welfare checklist in section 1 (3) and each child's welfare is my paramount consideration. This is an issue concerning the exercise of parental responsibility that in most circumstances is negotiated between the parents and their decision put into effect. Parents often have to make decisions for children to meet their welfare needs, as Ms Vivian observed that is '*what parenting is about*'. As with many aspects of the exercise of parental responsibility, in particular as children get older, it will often require discussion and explanation by the parents of their decision to their children which may be against their wishes and feelings. This has not been possible in this case as the parents disagree and the court has been asked to step in to make the decision. The court can only make decisions on the evidence that it has in each particular case and by considering the welfare needs of each child. By doing so in this case the court does not in any way dictate how this issue should be decided in other situations, each case is fact specific. This case is only concerned with the welfare needs of these children.
22. I have reached the conclusion it is in the best interests of L and M that they receive the MMR vaccination. I have reached that decision for the following reasons:
 - (1) Whilst I am acutely aware of both L and M's wishes and feelings in relation to this issue, as described in detail in both of Ms Vivian's reports, I consider their views have inevitably been influenced by a number of factors which affects the weight that should be attached to those wishes and feelings. First, from their perspective the parents were initially united in their decision for them not to be vaccinated and they can't understand why their father has changed his mind. As M told Ms Vivian she could not understand how he could say he wants them to be safe (by having the vaccination) yet he didn't feel that before. This perhaps displays a lack of maturity and an appreciation that views can change for a variety of reasons. Second, they have become focussed on the issue of the ingredients of the vaccine without being able to consider and balance the wider picture, and the consequences or actions of them not having it, including medication (and its contents) that would be required in the event of them becoming ill from one of the vaccine preventing diseases. Third, it is not surprising that they are likely to have become influenced by their mother's views. Those views are clearly strongly held and will inevitably have influenced both children. As Ms Vivian said in her oral evidence '*The difficulty for the girls is their mother is very anxious and they will take some responsibility for making her feel okay about that*', she considered they had '*aligned themselves with the mother*'.
 - (2) Whilst the welfare considerations for each child must be considered separately Ms Vivian did not consider the court should treat them differently. L may be better

informed and have a better understanding as she is older, but Ms Vivian considered her views were naive; she considered neither L or M were able to give a balanced view and felt they had become over-focussed on the ingredients without being able to balance that with other considerations. I agree. Their views, whilst understandable in the circumstances, lack the ability to step back and consider the advantages and disadvantages of having the vaccination. The focus was entirely on what they considered were the negative aspects, in particular the ingredients and the side effects. L's focus was on a particular ingredient without any suggestion or consideration by her of balancing that aspect with other factors. This is also illustrated by Ms Vivian's questioning about what they would do if they contracted any of these diseases and what would be the ingredients of that medication. That was clearly something they had not contemplated or considered.

- (3) I have carefully considered the emotional needs of both L and M. They are inevitably caught in the middle of this dispute between their parents. The consequence for them emotionally of the court reaching a decision that does not accord with their wishes is a factor to bear in mind. However, as with most issues concerning the exercise of parental responsibility, whether through discussion and agreement between the parents or by application to the court and the court having reached a decision based on welfare, it is incumbent on the parents to assist and support the girls with the consequences of that decision. It is not a reason not to make that decision, if it is considered in the girls' interests to do so.
- (4) Obviously in reaching this decision I am aware this is against the girls' wishes, but that it not the only factor. It is of course an important factor, particularly bearing in mind their ages but the court also has to consider their level of understanding of the issues involved and what factors have influenced their views. In this case I do not consider there is a balanced level of understanding by them of the issues involved, the focus has been on the negative aspects in a somewhat unfocussed way.
- (5) The medical advice is for children to receive the vaccine even though it is accepted there are risks of side effects of the vaccine. The health risk of getting any of the diseases the vaccine prevents is clear. They are serious diseases that could have long term health consequences. That has not been a live issue in the case. If the mother had sought permission to call any expert evidence then it may have been necessary to consider any evidence required to respond to that. The recent issues raised by the girls regarding the ingredients of the vaccine have not been balanced with these other considerations.
- (6) Both L and M clearly have good, strong and secure relationships with both their parents. This issue has put that under strain. It is unfortunate the parents were not able to reach a consensus on this issue; that would have been best for both the children. In the absence of that the responsibility falls on the court to exercise that parental responsibility for the parents having regard to the welfare interests of each child. Whilst I have carefully considered the effect on them of making a decision that does not accord with their wishes and feelings I am clear that the combination of the secure relationship they have with each parent and the responsibility on these parents to exercise their parental responsibility in the light of the court's decision will ensure that the consequences of the court's decision

will be managed in a responsible way. As Ms Vivian said that is what parenting is about.

23. I will make a declaration that it is in the interests of both L and M to receive the MMR vaccination and that they should do so before 11 October 2013 on a date to be arranged by the parents together with the GP. I agree it would be helpful for them to have a meeting with a paediatrician who has an expertise in vaccinations to answer the questions L and M have. This should be someone whose identity is agreed by both parents with an agreed letter of instruction and the appointment should take place by 27 September 2013. I give permission for that paediatrician to see this judgment and the two CAFCASS reports. This will enable L and M to have a more balanced picture about the risks and deal with any questions they have about the ingredients.
24. The parents' legal representatives should agree an order to submit for my approval by 16 September 2013. If there remains any dispute on the terms of any order proposed I can either resolve that by the parties agreeing I can do that by considering written representations on 16 September 2013 or the matter can be listed for a short directions appointment before me on 18 September 2013 at 9.45 am with a time estimate of 30 minutes.
25. I know this issue is felt deeply by the parents and L and M, but now the court has made the decision I have every confidence, that despite their differences, these parents will be able to manage their parental responsibility in such a way that will ensure the strong and secure relationships that exist between each parent and both children will remain in place.