

111 Nfld. & P.E.I.R. 91

Y. (A.), Re

Newfoundland Unified Family Court

Wells J.

Oral reasons: July 19, 1993

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In the Matter of Child Welfare Act, R.S.N. 1990 c. C-12

In the Matter of Adrian Yeatts, child of Pauline Yeatts and Julian Yeatts

Newfoundland Unified Family Court

Wells J.

Oral reasons: July 19, 1993

Docket: Doc. F/93/0311/93

Counsel: Ms. Veva Moulton, for Director of Child Welfare.

Mr. **David C. Day**, Q.C. for Adrian Yeatts (by Order of Wells, J. made 18 July 1993); and with him, Ms. Anna English-Smith, student-at-law (by Order of Wells, J. made 18 July 1993).

Mr. Julian Yeatts and Ms. Pauline Yeatts, in person.

Mr. Justice Robert Wells:

I. Nature of Proceeding:

1 The Director of Child Welfare (Newfoundland) has applied for Orders under *The Child Welfare Act, R.S.N., 1990, c. C-12*

(1) declaring, under section 14(6) of the Act, that Adrian Yeatts (born: 22 June 1978; present age 15 years) is a child in need of protection as defined by clause 2(b)(ix)(B) of the Act;

(2) returning Adrian Yeatts from apprehension by, and detention in the care and custody of the Director of Child Welfare to the care of his parents, Julian Yeatts and Pauline Yeatts, subject to the supervision of the Director of Child Welfare until Adrian Yeatts' sixteenth birthday, under section 19(1)(a) of the Act; and

(3) authorizing medical treatment in the form of blood and/or blood products be given to Adrian Yeatts under the direction of a duly qualified physician at The Dr. Charles A. Janeway Child Health Centre and such other medical facilities in the Province of

Newfoundland as may be necessary, until Adrian Yeatts' sixteenth birthday.

II. Summary of Facts:

2 Adrian Yeatts, aged 15 years, is the son of Julian and Pauline Yeatts of Paradise, Conception Bay South, Newfoundland who are members of The Jehovah's Witnesses faith. Adrian was being treated for a life-threatening illness at Dr. Charles A. Janeway Child Health Centre in St. John's, Newfoundland. The parents when asked by the Janeway, consented to investigations and treatments for their son, provided no blood or blood products were used in his treatment. They requested that alternatives to blood and blood products be employed if the need arose.

3 A paediatrician treating Adrian regarded the use of blood and blood products, in the event of loss of or damage to blood following intensive chemotherapy, as the most usual and accepted method of treating patients following intensive chemotherapy. Though not yet a member of Jehovah's Witnesses, the boy believes in their teachings, including those forbidding the use of blood or blood products in medical treatment. These beliefs are the basis for his expressed instruction to the treating paediatrician, that no blood or blood products be used in his treatment. The treating paediatrician assessed the boy as being mature enough to have his wishes respected, and accepted from the boy a written consent to treatment, provided that alternatives to blood and blood products were to be used if the need arose. He was on that basis, prepared to proceed in accordance with the boy's wishes.

4 The boy is unmarried and under the age of 16, and therefore, a "child" under provisions of The Child Welfare Act, and a person subject to the jurisdiction of The Director of Child Welfare. The hospital notified the acting Director of the situation. The acting Director responded by apprehending and detaining the hospitalized boy in the belief that he was in need of protection, and then applied for several orders under the Act, including an order for a declaration the boy was in need of protection as defined by Section 2(b)(ix)(B) of the Act, and an order authorizing the use of blood and blood products in his treatment.

5 Section 2(b)(ix)(B) of the Act defines a "child in need of protection" as being a child who is in the care or custody of a person who refuses or fails

.....

to permit ... [proper medical or other recognized remedial] care and treatment to be supplied to the child when it is considered essential by a qualified medical practitioner,

...

6 By section 15(4) of the Act, "treatment", includes the "provision of blood transfusion or injection."

III. Order:

7 For the following reasons, the applications of the Director of Child Welfare are dismissed;

the child is not in need of protection; the use of blood or blood products for the purposes of blood transfusion or injection, have not been demonstrated to be essential, and in the particular circumstances of this case, could be harmful.

8 Unless a change in circumstances necessitates a further order, the use of blood or blood products in his treatment is prohibited; and the boy is declared to be a mature minor whose wish to receive medical treatment without blood or blood products is to be respected.

IV. Reasons for Order: (Edited)

9 I indicated this morning that I would give a decision today, because the matter is of such urgency that were I to adjourn and prepare a written judgment, the delay would cause considerable mental stress and hardship. For that reason I propose to give the decision orally, because time is very much of the essence.

10 First, let me deal with the Director's role. The Act though there may be uncertainties and ambiguities in it, as may occur in legislation, - places a very serious responsibility on the Director or acting Director. I believe, that faced with the situation with which she was faced, Mrs. Elizabeth Crawford the Acting Director, made the right decision in seeking the assistance of the Court.

11 There is a special value in the Court procedure, and it is that those involved can be represented, and can have their say in a formal manner. The Court, - which in this case is a Court of unlimited jurisdiction - can take into consideration what is said, and what is argued. The atmosphere under which such an inquiry takes place has been found in our society to be the most effective way to deal with difficult matters. I think therefore that Mrs. Crawford was wise and correct in submitting this matter for the decision of the Court, so that Adrian himself could have the benefit of obtaining legal advice and being represented - so that all arguments could be put forward and competently argued. That is not to say that she did not have the discretion to take a decision without going to Court. Every case, as Counsel said, must be looked at on the facts and circumstances which surround it. What I do find, is that in this case it was a proper and wise decision.

12 It is impossible to consider this dilemma without considering first and foremost the medical evidence, which has been given here by a highly qualified practitioner in the oncology/haematology - field, namely Dr. Lawrence F. Jardine.

13 As I interpret his evidence, which I will not attempt to reproduce word for word, it is essentially this: that Adrian contracted a cancerous condition some five or six months ago, in March; that that condition was treated in a conservative fashion; that the treatment was not fully effective, but was partially effective only. It kept the illness, while not in remission, at least controlled to some degree for a period of time. Approximately two to three weeks ago, it was found that his condition had worsened and was worsening rapidly, until, as of yesterday the doctor said that without treatment of any kind, Adrian could not be expected to live for more than one to two weeks.

14 He was asked what the effect of intensive chemotherapy treatment would be, and he said; nobody can be absolutely certain of that, but under the best conditions and in the best circumstances, it can be hoped that Adrian has a chance expressed in percentage terms of something between 10 or 20 and 40 percent. That is not a 10, 20 or 40 percent chance of complete recovery and cure. That is a chance that the disease could be - or the progress of the disease could be - arrested to some degree.

15 There is, however, as a result of intensive chemotherapy, the possibility of side effects which can be and probably will be, extremely serious. Even if the progress of the disease is arrested, that arrest will not allow, in his view, for the normal life span to be lived without complications. He said that one can expect recurrences and problems to continue.

16 I am very sad to say, and particularly in the presence of his family, that Adrian's condition is extremely serious, and the prognosis is not good. I think that his family knows that, and Adrian knows that. I think that it is something that has to be accepted as being so.

17 The doctor was then asked: What can be done now? What ought to be done? He said, the only practical thing that can be done now, is to undertake this regime of massive chemotherapy, in the hope that the disease can be arrested or stayed in its progress. He said that one of the results - one of the usual results - of massive chemotherapy of this kind, is that the platelets in the blood - being a component of the blood - are seriously affected, and reduced in number, so that there is a likelihood that the patient, if the platelets fall below a certain level, will suffer internal bleeding into the major organs, which if it occurred would cause death. He said that there are other ways to treat that condition, but they are not proven ways, and the chances of success are not really known. But also, as I understand his evidence, even if blood products were to be provided, there is no guarantee of success, or any measure of success. It is just that at this time it appears to be the best medical course under the circumstances.

18 I use that term "best" narrowly, because the doctor made what I think was a wise observation, that treating a patient involves more than just physical treatment, with chemicals or with surgery - I think his concept is the "holistic" view - and the evidence of the doctor indicated to me that he is looking at the treatment of Adrian, his patient, from the holistic point of view. That leads to the question of Adrian's mental state and how important his mental state is to the entire process of treatment.

19 There is no question that this "young person" is very courageous. I think he has the support of a loving and caring family, and I think he is facing his affliction with a great deal of courage. Part of his religious belief, is that it is wrong for him to use blood products by having them introduced into his body, for whatever purposes, and certainly the only purpose for which they would be introduced into his body, would be for medical purposes.

20 Obviously his beliefs are not shared by everyone, but I think that misses the point. The point is, that if Adrian has that belief, and he believes it with firmness and conviction, then whether that belief is correct or not, in either a medical sense or in a spiritual sense, is beside the

point. The point is that it is his belief and it is a correct belief for him. It is his belief, and it is he who is ill and suffering, and that is what we are concerned with.

21 I make these observations, only to underscore that in the holistic approach which Dr. Jardine mentioned in the treatment of cancer, it is important that the patient have as good, as strong, and as positive a mental attitude as he or she can possibly have, because without such an attitude, the chances of success in any form of treatment are materially reduced. I think that is a most highly significant and important point.

22 I have had the advantage of reading an affidavit that was made by Adrian yesterday, and I have had the advantage of hearing his mother, who gave evidence, and have had the advantage to talking to Adrian himself.

23 I am satisfied that he believes with all his heart, that to take blood would be wrong, and that to be forced to take blood in the circumstances about which we are speaking, would be an invasion of his body, an invasion of his privacy, and an invasion of his whole being, to the extent that it would impact severely on his strength and ability to cope with the dreadful ordeal that he has to undergo, whatever the outcome.

24 I agree that the doctor made eminent sense, when he said that the patient must be in a cooperative and positive frame of mind about chemotherapy and other cancer treatments, in order for there to be any hope, any real hope, of success, and that a patient on whom something is forced contrary to his most deeply held beliefs, would be a patient whose suitability for the treatment would be drastically reduced. That is the message I got from the doctor. It is a message that has been supported by other evidence, particularly from Adrian's affidavit, and from the conversation which I had with him today.

25 That is the framework in which I must exercise the discretion which I have under the Act, and the various other headings of law which have been mentioned this afternoon.

26 When I turn to the question of the medical treatment "when it is considered essential by a qualified medical practitioner," (under clause 2(b)(ix)(B) of the Act), I cannot find in the evidence of Dr. Jardine a statement either directly or by implication that the provision of blood is essential.

27 The chemotherapy is essential. The provision of blood products for the platelets problem is in medical terms the best approach that has been found so far, but it is not the only approach. There was nothing in the doctor's evidence to indicate that it is essential to impose that treatment on an unwilling patient in a way that would damage his faith, which is one of the few things, and perhaps the most important thing, that he has left in life.

28 Rather than being essential, it seems to me that the enforced use of blood products, could, in the circumstances which apply here, be more harmful than beneficial.

29 I am not satisfied on the medical evidence which I have heard, that in this particular case -

and every case is different - I am not satisfied that in this particular case that the use of blood products as a follow up to the chemotherapy, is considered essential by the qualified medical practitioner from whom I have heard, and in whom I have considerable confidence.

30 Rather, taking the holistic approach to the problem, Dr. Jardine, believes that it is better to go the route that satisfies not only Adrian but the doctor also, in the circumstances. He feels so strongly about it, that he said that if it should be ordered that blood products be administered to Adrian, that he himself would not do it, and if it were to be done, somebody else would have to do it. When a qualified and responsible specialist in the field says something like that, I must doubt that he, as a qualified medical practitioner considers such treatment essential.

31 Counsel have pointed out the various heading under which the Court may exercise its discretion, and I take no issue with these. (The exemption from the Act for a mature minor under The Canadian Charter of Rights and Freedoms, or the exercise of *patens patriae* authority to bridge a gap, if one exists, in the Act.) However, as always with matters involving children or young persons who are below the age at which the law allows them to deal with matters independently of officials and courts, what the Court must take into consideration and be guided by, is in all respects the best interests of the child.

32 It's hard to think of Adrian as a child, and that causes me to move to the question of maturity. Maturity is not the same in every case, and maturity can come, with circumstances. A happy, healthy, well-adjusted teenager of fifteen, is concerned usually with school work, with friends, fellow students, and having a good time, which is perfectly permissible, and with developing socially, developing physically through sports; and as well developing intellectually. Most adults would consider fifteen year olds to be immature in most respects, and perhaps they are.

33 However, I think that what has happened to Adrian has matured him to a degree that would be unthinkable for a 15-year-old who is not facing and living with what he is living with, and has to face and is facing. I think that his experience is as bad an experience I can conceive of, and I suspect that their faith is one of the things that is sustaining him and his family. I think that what has happened has made Adrian mature beyond any normal expectation of maturity in a 15-year-old. I think the boy that I spoke to this morning, is very different from a normal 15-year-old, because of this tragic experience.

34 I think he is mature enough to express a cogent view, and he has expressed it to me, and I am satisfied that he is a mature, young adult. I am also satisfied that it is proper under the Act, and in law generally, for me to take into consideration his wishes, and I do so. His wishes are, that blood products not be administered, and I am satisfied also, that if these wishes are countermanded in some fashion by the Director under an order of this Court, that his best interests would be manifestly, and in a very real sense adversely affected, because I believe that his will to oppose the disease and to participate in treatment would be seriously affected. Furthermore, if, and this is very possible, if he should indeed succumb to this disease, he would do so in a state of mind that, taking into consideration his religious beliefs, would be very sad, very unfortunate, and not at all to be desired. I am taking all these things into consideration.

35 I refer to the case of *Re L.D.K.; Children's Aid Society of Metropolitan Toronto v. K. and K. [(1985)]*, 48 R.F.L.(2d) 164 (Ont. Prov. Ct. [Fam. Div.]), Main Prov. J.] which has been quoted to me. I think the words in the written judgment express the situation very well. The Judge in this case, referring to the young girl, as she was, said [at p. 171]:

She has wisdom and maturity well beyond her years and I think it would be safe to say that she has all the positive attributes that nay parent would want in a child. She has a well thought out, firm and clear religious belief. In my view, no amount of counselling from whatever source or pressure from her parents or anyone else, including an order of this court, would shake or alter her religious beliefs.

And, in this case, Adrian's religious beliefs.

I believe that ... [she] should be given the opportunity to fight this disease with dignity and peace of mind. That can only be achieved by acceptance of the plan put forward by her and her parents.

The same applies in this case, and here the plan includes Dr. Jardine who is Adrian's physician.

36 Time is of the essence, and these reasons are not as exhaustive as they might have been had I the time to prepare a written judgment. Nevertheless I have expressed the factors which I feel to be of greatest importance in the case.

37 In all of the circumstances, I feel that it is proper for me to deny the request that blood products be used in Adrian's treatment.

38 I am prepared to hear counsel, and to discuss the question of whether an order should be made placing Adrian in the care of the Director, with the treatment to be given as has been discussed and recommended by Dr. Jardine in consultation with Adrian - falling short, of course, of the use of blood products. Whether counsel feel that that might be a useful way to proceed, so that if necessity arises at some future stage of the treatment, for further consideration of these matters on any particular point - because one never knows what can arise - then I would be prepared to hear submissions.

39 I wish to reiterate, that whether or not an order is made placing Adrian in the care of the Director of Child Welfare, such an order would include a prohibition of the use of blood products on Adrian, certainly at this stage, and until further and different medical evidence, or evidence of a change of mind, is brought before the Court. If therefore you feel that an order should be made in the terms that I have just spoken about, I will hear you now. I take it, Mr. Day that you are asking that no order be made at all, or, that no order is necessary.

40 Day, Q.C.: That is our position. Our position is predicated primarily on the fact the application on which this hearing, in fact an inquiry, proceeded, relied solely on the basis of the acting Director's perception that medical treatment - more to the point, the aspect of medical

treatment that prompted the Director to initiate the application - involving blood or blood products were necessary and had been refused. To put it another way, there is nothing in this application or the evidence to suggest that independently of that part of health care, involving blood or blood transfusions which the Director requested you authorize and which you have refused, there had been any refusal or failure on the part of either Adrian or his parents to accept the medical advice that had been offered at the Janeway Hospital; the strongest evidence of which you had first hand, today, when Adrian indicated at the Hospital that he had started the chemotherapy.

41 Per curiam: My only concern is, and it may be unnecessary, that if in consultation with the doctors, at some point he were to change his mind, then it might be necessary to activate a mechanism that would give effect to a change of mind.

42 Day, Q.C.: If the boy changes his mind and would accept blood - that is an issue Ms. Moulton raised earlier today - the doctor has told you he would regard the resulting treatment to be a form of treatment he feels is desirable. If the boy changed his mind and decided to accept it, his parents would support him. There is nothing to suggest that if there were a change of circumstances in this regard there would be anything in those circumstances that would require an order, because then the boy would be submitting to the form of treatment that was regarded by Dr. Jardine as most desirable. To put it another way: there would no protection issue. I would see no protection issue before the Court if that were to happen. For example, if Adrian were to notify me this afternoon that he had decided, upon reflection, that he was going to accept blood or blood products, and Dr. Jardine has told us he regards him as a mature minor, that treatment would, I assume, proceed. That is not a possibility I am able to anticipate. That is not to say, however, that there might not be several other scenarios that might attract the concern of the Director or Court. Then, it seems to me, the Director has the option of bringing on an application with the same expedition as was done yesterday by notice served quarter to two for a hearing starting half past two. That option is open if the need should arise in future. The only option that I see Your Lordship having available to you in the circumstances would be an order that made the boy subject to the supervision of the Director, but then the question arises: What evidence is there to justify placing the Director in a supervisory capacity between the boy and his parents? That is as much as I can say My Lordship to contribute to the issue you've raised.

43 Per curiam: The only thing I can conceive of, is if Adrian desired a course of action in which the parents were not prepared to acquiesce, although Mrs. Yeatts said to me this morning that she would not stand in his way, whatever course he choses. That is the only circumstance which occurs to me, which may make, or could make, the intervention of the Director and the Court a possibility.

44 Day, Q.C.: In that circumstance my position on behalf of the boy - I cannot speak for the parents - is that he has an understanding with the doctor, independent of his parents. If he were to change his mind, and if there were indications that his parents were attempting to bring to bear on that decision their own views - in other words, "you may want blood but we're opposed to it," - then: Who stands between them and this young man? I do. I stand ready to bring an application at a moment's notice, hopefully as efficiently as the Director did, to deal with any potential for

interference on the part of the parents. Were that to happen - no one is suggesting that it would - I have a duty that even goes beyond the duty to Adrian. I have already indicated that that is my duty to the Court; a duty I regard as being a very serious one. Whether the parents wish to speak for themselves in this regard is a matter for them to decide.

45 Per curium: Having heard Mr. Day's position, Ms. Moulton, have you any comment?

46 Ms. Moulton: My Lord, the Director would be satisfied with a declaration that Adrian is a mature minor.

47 Per curium: I see. I have certainly found that to be so, and I am prepared to declare that he is a mature minor. Perhaps, then, that resolves any such problems, and I think concludes the matter.

48 I wish to thank counsel for their assistance, which has been invaluable, and for the care and sensitivity with which they have dealt with the matter. I express my wish, especially to the parents, that matters turn out as well as possible.

49 Day, Q.C.: I think I would be remiss if I did not, on behalf of my client with whom I spoke but briefly after you left the hospital today, thank you from the bottom of his heart, which is a very big heart, for your having dealt with this matter with expedition and with sensitivity and with great fairness. He is ever so grateful to you My Lord and I wish the record to show that. Thank you.

50 Per curium: Thank you.

Appendix

(Pleadings filed in the proceeding are attached.)

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