



SIGNIFICANT AND NOTEWORTHY JUDGMENTS ■





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In the past year, judges of the Family Court of Australia have handed down judgments at both first instance and appellate levels. The decisions reflect the Court's expansive jurisdiction, the wide variety of issues that it addresses, and its position as a superior specialist Court which deals with the most complex and serious of family law cases. A selection of the more significant and noteworthy of those judgments is published below.

The Court recognises that accessibility of its judgments to the public is very important and it commits the resources required to ensure that every final judgment delivered is anonymised and, consistent with section 121 of the *Family Law Act 1975*, published. Virtually all judgments, after anonymisation, are now published in full text on the Australasian Legal Information Institute (AustLII) website. There is a link to this site from the Court's website (www.familycourt.gov.au). Recent decisions are also published on the Court's website for a period of two months.

This policy has enabled the Court to better respond to community interest and concerns about particular cases highlighted in the media.

Note: The following summaries of Full Court cases are largely based on headnotes by CCH Family Law Editors.

FULL COURT JUDGMENTS

LGM and CAM (Contempt)

[2008] FamCAFC 1, (2008) FLC ¶93–355, (2008) 38 Fam LR 229.

Family law — Appeal — Contempt — Contravention of court order — Sanctions — Whether the trial judge erred in concluding the wife was aware of the terms of the orders — Whether incorrect conclusions drawn — Whether the penalty was plainly unjust — Family Law Act 1975 (Cth), s 112AD(1), s 112AP, s 117.

Full Court of the Family Court of Australia before Bryant CJ, Finn and Warnick JJ, judgment delivered 10 January 2008.

In this case the Full Court had to decide whether the conviction of a wife for contempt of court and the resulting four month prison sentence should be set aside. There was a dispute as to whether the wife was aware of the orders which she had breached and further, as to whether the prison sentence was unjust. The wife also appealed the order for indemnity costs made against her.

The relevant facts can be shortly stated. Interlocutory orders made in 1999 restrained the parties from dealing with any real property in which they had an interest. In 2001 the wife mortgaged real property in which she had an interest. In 2003 the wife sold her interest in another property. The husband brought an application for contempt. The trial judge sentenced the wife to four months' imprisonment and ordered that the wife pay the husband's costs of the contempt proceedings on an indemnity basis.

The wife submitted that the trial judge erred in concluding as a fact that the wife was aware of the terms of the orders made, and instead should have found that the absence of special service by hand of the amended application for contempt resulted in the failure of the application. The wife also submitted that the trial judge drew incorrect conclusions about the wife's attempts to purge her contempt and imposed a plainly unjust penalty. The trial judge wrongly took into account findings central to the conclusion of contempt, for which the wife had already been punished. In relation to the indemnity costs order, the wife submitted that the trial judge failed to take account of the absence of evidence about the basis on which the husband's costs were charged or their quantum.

The appeal was allowed only in relation to the quantum of the costs order against the wife, as no evidence had been led substantiating the husband's costs. The appeal was otherwise dismissed.

Bryant CJ and Warnick J held that the inference drawn by the trial judge (beyond reasonable doubt) was open to him. They found that there was no question of whether or not the wife was aware of the orders and there was no error in the weight that the trial judge gave to relevant factors or in the terms he used to describe them. There was no error in the trial judge's reasons for rejecting a fine, which included not just a consideration of the financial consequences, but the deliberation in and seriousness of the wife's actions 'notwithstanding the mitigating factors'. The fact and term of imprisonment was well in line with penalties imposed. The sentence imposed was not manifestly excessive.

Finn J held that the trial judge did not err in failing to find that the amended application for contempt should fail because of the absence of special service by hand. The conclusion the trial judge arrived at (beyond reasonable doubt) was clearly open to him, particularly in circumstances where the wife had chosen to call no evidence.

There was no error in the trial judge's reasoning or his conclusion concerning the limitations or shortcomings of the wife's endeavours to purge her contempts. There was no basis on which the court would be justified in interfering with the trial judge's decision as to a penalty.

Black & Black

[2008] FamCAFC 7, (2008) ¶FLC 93–357.

Family law — Appeal — Property — Financial agreement — Statutory requirements — Whether agreement complied with statutory requirements — Whether agreement met the requirements of s 90G — Family Law Act 1975 (Cth), s 71A, s 90G.

Full Court of the Family Court of Australia before Faulks DCJ, Kay and Penny JJ, judgment delivered 24 January 2008.

The primary issue for the Full Court in this case was whether to set aside a financial agreement due to the fact that the requirements which make agreements binding under the legislation had not been strictly complied with.

This was an appeal by the husband against an order dismissing his application to set aside a financial agreement entered into by himself and his wife.

The husband initiated proceedings seeking to set aside the financial agreement and sought orders that the assets of the parties be divided 80/20 in his favour, rather than 50/50, to take into account his significantly larger financial contribution. The trial judge concluded there was a binding agreement and none of the matters raised by the husband which might allow him to interfere with the agreement were proven.

On appeal, the husband sought to have the agreement set aside on the basis that it did not comply with the statutory requirements for a binding financial agreement pursuant to s 90G of the Family Law Act (as it was prior to the 2004 amendments).

The Full Court allowed the appeal and set aside the agreement. They noted that s 90G(1)(b) (as it was prior to the 2004 amendments) expressly required that the agreement contain a statement from each party that, before they executed the agreement, they received independent legal advice from a legal practitioner in relation to the matters referred to in (i) to (iv). The section also went on to provide that the agreement must also annexe a certificate executed by that legal practitioner stating that the advice in relation to the matters referred to in (i) to (iv) was provided to that party.

The Court found that the agreement entered into by the parties did not refer to the specific requirements detailed in s 90G, although the certificate did. Such an omission meant that the agreement did not comply with the provisions of s 90G and was not binding upon the parties. Strict compliance with the statutory requirements is necessary to eliminate the court's jurisdiction to make adjustive orders under s 79.

Truman & Truman

[2008] FamCAFC 4, (2008) FLC ¶193–360.

Family law — Appeal — Parenting — Less adversarial trial — Interim proceedings — Right to appeal — Whether r 22.03 precludes an appeal being filed until the last order has been made — Whether the trial judge erred in his approach in determining interim proceedings — Whether the trial judge was obliged to give reasons why he was departing from the orders each party was seeking — Family Law Act 1975 (Cth), s 60CC, s 65DAA, s 68T, s 69ZR, s 93, s 94, s 123, s 125.

Full Court of the Family Court of Australia before Bryant CJ, Kay and Thackray JJ, judgment delivered 21 January 2008.

In this case the Full Court had to determine, amongst other things, whether the Family Law Rules were ultra vires in so far as they purported to prevent an appeal against interim parenting orders made during, but before the conclusion of, the final hearing.

This was an appeal by the father against orders made at the conclusion of the first day of a less adversarial trial (LAT). The father sought that time be extended to permit him to appeal the orders.

The father's appeal raised the question of the extent to which an order had the effect of precluding him from appealing and, if so, whether the court had power to make such an order. Further, to the extent that such an order was made in reliance upon r 22.03(2) of the Rules, whether the rule was ultra vires of the Act and the power of the court.

The father submitted that the trial judge erred in failing to have regard to the material filed by the parties in the interim proceedings. The trial judge was said to err in accepting and relying on the evidence of the mother in circumstances where such evidence was in issue between the parties and there was no testing of the evidence. The father submitted that the trial judge erred in his approach to, and acceptance of aspects of the evidence of the family consultant, and erred in failing to properly apply the principles relevant to interim parenting determinations including s 60CC and s 65DAA.

The Full Court held that the father was permitted to appeal as it was held that r 22.03(2), insofar as it purported to have the effect of precluding either party from lodging an appeal against any order made during the LAT until the entire proceedings are concluded, was ultra vires of the court's power.

However, regarding the substantive appeal, the Full Court held that the trial judge was entitled to exclude the affidavit evidence of both parties. Even though there was an interim issue to be resolved, the decision about what issues required determination and what evidence was to be given by whom and in what manner was an issue that the trial judge had to determine. Furthermore, there was nothing to suggest that the trial judge had placed undue weight on the opinion of the family consultant that the parties had unresolved conflicts on personal issues which impacted on the children. The trial judge correctly followed the legislative framework in s 65DAA.

The substance of the appeal therefore succeeded only in relation to the trial judge's unsupported finding that the mother had altered her position regarding holidays. The trial judge ought to have given reasons for departing from the orders sought by the parties. The matter was remitted to the trial judge for rehearing as part of the continuing LAT process.

Sampson & Hartnett (No 10)

[2007] FamCA 1365, (2007) FLC ¶93–350, (2008) 38 Fam LR 315.

Family law — Appeal — Parenting — Relocation — Power of court to directly or effectively order a parent to relocate — Effect of Constitution on parenting orders requiring or preventing interstate relocation — Family Law Act 1975 (Cth), s 65DAA, s 114(3) — The Constitution, s 92.

Full Court of the Family Court of Australia before Bryant CJ, Kay and Warnick JJ, judgment delivered 22 November 2007.

The members of the Full Court on this occasion had to consider chiefly whether the Family Law Act gives the Court the power to order a parent to relocate to another city in the best interests of the children. There was a further dispute about whether the trial judge had considered all relevant scenarios and all relevant factors required under the Family Law Act.

This was an appeal by the mother against a parenting order which provided that the parents have equal shared parental responsibility for the children, that the children's residence be established in Sydney and that, following relocation of the children's residence to Sydney, the time the children spend with the father be gradually increased to each alternate week.

Following separation, the mother moved from Sydney to Geelong with one child, the second child being born a few months thereafter. At the trial the father indicated he would live in Sydney and the mother indicated she would live in Geelong.

On appeal, the mother submitted that the trial judge failed to have regard to and articulate the matters referred to in s 65DAA of the Act. The mother proposed that the children continue to live with her in Geelong and that they spend time with the father. The father submitted that, in the event the appeal was allowed, the matter be remitted for further consideration by the trial judge.

The appeal was allowed. Bryant CJ and Warnick J held that there is power under s 114(3) of the Act to enjoin a parent from relocating or to relocate, provided that that injunction is no more than is necessary to secure the best interests of a child. However, the strength of factors supporting the mother's proposal in this case reinforced the need for close scrutiny of alternatives. The trial judge only addressed two alternatives. The trial judge did not fully address the prospect that the father's relationship with the children might be advanced by contact over a period in the Geelong area and perhaps

subsequently, for longer periods in Sydney to a stage where, if the mother chose not to return to Sydney to live, the better order might be that the children live with the father. The trial judge did not address the practicality of the mother relocating to and remaining in Sydney.

Kay J held that the orders made by the trial judge were too uncertain and appeared to be incapable of enforcement. The legislative requirement under s 65DAA(5) is mandatory. The obligation of the trial judge is to pay regard to the matters contained therein. The trial judge is also obliged to explain the manner in which she has regard to those matters where she intends to make orders which are not on their face immediately capable of implementation.

Kilah & Director-General, Department of Community Services

[2008] FamCAFC 81

CHILD ABDUCTION – HAGUE CONVENTION – HABITUAL RESIDENCE – whether the children were habitually resident in Australia at the time of their retention – whether the mother had a settled intention not to return to Israel with the children – discussion of Australian, New Zealand and English authorities on the term ‘habitual residence’ – appeal dismissed

CHILD ABDUCTION – HAGUE CONVENTION – FRESH EVIDENCE – where the mother sought to adduce fresh evidence of the children’s acclimatisation in Australia – where the Central Authority sought to adduce fresh evidence of legal proceedings instituted by the father in Israel – applications dismissed

Full Court of the Family Court of Australia before Bryant CJ, Coleman and Thackray JJ

The question for the Full Court was whether children should be ordered to return to Israel under the Hague Child Abduction Convention. The major dispute was whether the children were ‘habitually resident’ in Israel (as required for a return order under the Convention) at the time they were retained in Australia.

This was an appeal by the mother against orders of Kay J requiring her to return to Israel with the parties’ four children pursuant to the provisions of the *Family Law (Child Abduction Convention) Regulations 1986* (Cth) (“the Regulations”). The Central Authority resisted the mother’s appeal. The mother raised a number of grounds on appeal but the majority of the submissions were directed towards Kay J’s alleged failure to find that the children were habitually resident in Australia at the time they were retained there by the mother. Submissions were also directed to the issue of whether Kay J erred in failing to find that the mother’s settled intention, consented to by the father, was that she and the children leave Israel and remain in Australia on a semi-permanent basis. Counsel for the mother submitted that this was sufficient to bring about a loss of habitual residence upon departure from Israel.

The facts are as follows. In May 2006 the mother and children left Israel to travel to Australia with the father’s consent. The mother’s case was that she left on an

understanding that if the father advised her that the marriage was over, she would not be returning with the children and would settle permanently with them in Australia. The father asserted that the mother left for a fixed period only and that he never consented to the children remaining away from Israel on any permanent basis.

On the issue of where the children were habitually resident at the time they were retained by the mother in Australia, the mother relied on two New Zealand authorities, *SK v KP* [2005] 3 NZLR 590 and *Punter v Secretary for Justice* [2007] 1 NZLR 40 in support of her contention that Kay J should have undertaken a broad factual inquiry in determining the children's habitual residence, rather than focussing on the 'settled intention' of the parties. The mother contended that the children's habitual residence in Israel was lost immediately upon their departure from that country. In the alternative, the mother argued that the children had acquired a new habitual residence in Australia after an appreciable period of residence. The mother sought to adduce fresh evidence of the children's circumstances in Australia in support of her alternative ground of appeal.

The Full Court dismissed the applications to adduce fresh evidence and the appeal. They held that when the mother and children left Israel the issue of whether they would return or not was dependent upon the father informing the mother that the marriage was over, and by the time that occurred, the father was already seeking to have the children returned. The communication to the mother that the marriage would not continue did not immediately trigger an expression of unequivocal intention by her to remain in Australia with the children. Many of the events sought to be relied upon by the mother in support of her argument that the children had acquired habitual residence in Australia occurred prior to the mother's departure from Israel and were neither consistent nor inconsistent with the settled intention or the acquisition of a new habitual residence. It was the mother who was seeking to bring about an 'acclimatisation' of the children in Australia in circumstances where she was aware of the father's desire to have them returned to Israel. The Court should be slow to infer a change in habitual residence in the absence of a shared parental attempt to bring it about.

The Full Court did not need to resolve the apparently significant departure of the New Zealand courts from established Australian and English authority in order to determine the appeal.

Karim & Khalid

[2007] FamCA 1287; (2007) FLC ¶93-348; (2008) 38 Fam LR 300

Family law — Appeal — Parenting — Application for return of child — Non-Hague Convention country — Forum non conveniens principles — Best interests of the child — Family Law Act 1975 (Cth), s 67ZC.

In the Full Court of the Family Court of Australia before Finn, Coleman and May JJ, judgment delivered 1 November 2007.

In this case the Full Court had to determine what test should be applied when a parent seeks to take a child out of Australia to a country that is not a party to the Hague Child Abduction Convention.

This was an appeal by the husband against an order, the effect of which was to refuse, on an interim basis, the husband's application for the return to Pakistan of the child of the parties' marriage and to order that the child live with the wife and spend gradually increasing time with the husband.

The wife had brought the child to Australia from Pakistan without the husband's knowledge or consent. Pakistan is not a party to the Hague Convention on the Civil Aspects of International Child Abduction.

On appeal, the husband submitted that an order should be made for the return of the child to Pakistan. His argument essentially was that the trial judge erred in reaching his decision by having regard to the doctrine of *forum non conveniens* and by failing to regard the child's best interests as the paramount consideration.

The wife, supported by the independent children's lawyer, resisted the appeal and asserted that in determining the case the trial judge had applied the principles which he had been requested to apply by both the husband and the wife.

The Full Court dismissed the husband's appeal. Although the trial judge was in error in applying the principle of '*forum non conveniens*' or '*clearly inappropriate forum*', he had been led into error by the parties. The sole principle which governs the determination of an application for the return of a child from Australia to a foreign non-Convention country is the best interests of the child. *Forum non conveniens* principles are not relevant to such an application.

In the course of applying the *forum non conveniens* principles, the trial judge carried out a relatively exhaustive analysis of the matters contained in s 68F(2) of the Act, to which a court must have regard in determining for purposes of the Act what is in the best interests of a child.

The trial judge's findings in relation to s 68F(2) were sufficient to support a conclusion that it would not be in the child's best interest to order, at least on a summary basis, that she should be returned to Pakistan.

Rand & Ors & Rand

[2004] FamCAFC 50; (2008) FLC ¶193–370

Family law — Appeals — Property — Family Trust — Ownership of company shares by trust — Whether the trial judge erred in ordering an allotment of shares in the company be set aside and expunged — Power to make orders under s 90AE of the Family Law Act 1975 (Cth) — Whether the trial judge erred in finding he had power to make orders under s 90AE(1)(b) — Judgement — Adequacy of reasons — Whether the trial judge provided adequate reasons — Family Law Act 1975 (Cth), s 106B, s 90AE.

In the Full Court of the Family Court of Australia before Finn, May and Boland JJ, judgment delivered 29 April 2008.

The dispute before the Full Court centred on the extent and nature of the powers of the Family Court to make orders which impact on third party individuals and corporate entities.

Various third parties appealed orders made in property settlement proceedings between a husband and a wife.

In the first appeal, the husband's parents and two companies associated with the husband's father appealed against orders 1, 5, 6 and 7 of the trial judge.

By order 1, the trial judge ordered that a company of the husband and the wife, in liquidation, and/or its liquidator, assign to the wife any entitlement it had in any debt owed to it by, or cause of action it had against, various third parties.

By order 5, the trial judge restrained, on an interim basis, nine parties from pursuing any claim against the husband, the wife or their company (in liquidation), including claims in relation to directors' loan accounts or asserted insolvent trading.

By order 6, the trial judge ordered, pursuant to s 90AE(1)(b) of the *Family Law Act 1975* (Cth) that the husband be substituted for the wife in respect of any alleged indebtedness of the wife to the nine parties.

By order 7, the trial judge ordered, pursuant to s 106B, that an allotment of shares be set aside and that the shares be expunged from the share register.

The grounds of the first appeal were:

- The trial judge erred in finding he had power to make orders 1, 5, 6 and 7.
- In the alternative, in the event the trial judge had power to make orders 1, 5, 6 and 7, he should not, in the exercise of his discretion, have made those orders.
- The trial judge failed to give any or sufficient weight to the evidence of the appellant.
- The trial judge gave insufficient reasons for orders 1, 5, 6 and 7.

In the second appeal, a company in liquidation in which the husband and the wife were previously the shareholders, and of which they were also the directors, together with the liquidator of that company, appealed against orders 5, 6 and 9.

By order 9, the trial judge ordered, pursuant to s 90AE(1)(b), that the company in liquidation do all acts and things necessary to substitute the husband for any indebtedness to the company by the wife pursuant to any loan account or as a consequence of alleged insolvent trading.

The grounds of the second appeal were as follows:

- ❑ The trial judge erred in finding he had power to make orders 5, 6 and 9.
- ❑ The trial judge erred in finding that it was appropriate to make orders 5, 6 and 9.
- ❑ The trial judge erred in finding that the ground existed to justify the making of orders 5, 6 and 9.
- ❑ The trial judge failed to give any or, in the alternative, any sufficient reasons for orders 5, 6 and 9 that were made

The appeals were allowed.

The findings by the trial judge that the trustee was never on the register of shareholders, and that his appointment as trustee of the family trust was not effective, were not challenged. Thus, there could be no substance in the limited challenge to order 7 based on alleged consent by the trustee to the allotment of shares. However, the trial judge did not explain, as he was bound by the legislation to do, why the orders under s 90AE(1)(b) were 'reasonably necessary to effect a division of property' between the husband and the wife.

An insolvent trading claim under s 588M of the *Corporations Act 2001* (Cth) cannot be categorised as a debt for purposes of s 90AE(1)(b). Therefore, there was no power to make the orders under s 90AE(1)(b) to the extent that those orders purported to extend a claim for insolvent trading.

If the trial judge proposed to make the restraining order which he did, he would have had to have done so under s 90AF and, in doing so, would be required to address the matters set out in s 90AF(3) and s 90AF(4).

FIRST INSTANCE JUDGMENTS

Re Baby A

[2008] FamCA 417

MEDICAL PROCEDURES

Family Court of Australia before Dessau J, judgment delivered 6 June 2008.

The Family Court considered whether it was necessary for parents to seek a Family Court order for experimental treatment on their terminally ill baby. The court noted that the parents may have been seen to have conflicting interests through their involvement in a pharmaceutical company, but also recognised that there was no other known hope for the baby.

Baby A was five weeks old at the date of hearing. She had been diagnosed as suffering an extremely rare and fatal metabolic disorder, molybdenum cofactor deficiency type A. Toxins were building in the baby's body that were causing her progressive irreparable neurological damage. There was no known cure or therapy. The baby was not expected to survive more than weeks or months.

The baby's parents brought an urgent application seeking various orders to enable the administration of an unapproved therapeutic drug, a substance known as 'cPMP precursor Z', as a rescue treatment for the baby. The substance cPMP precursor Z had not yet been used in humans. There had been laboratory testing overseas where it had been shown to be effective in mice. The baby's mother was aware of the drug as she was a PhD biochemist in a company involved in the research and development of pharmaceuticals. The court was provided with a list of possible side effects of the drug, but was told that nobody could be sure what would happen, given that the drug had not previously been used on humans.

The medical experts in charge of the baby's care and treatment were unanimous in supporting the treatment. An independent children's lawyer and the Office of the Public Advocate also supported the parents' application.

The judge noted that, given that no other treatment options existed for the baby, it may have been open to the parents to consent to the treatment without the need for a court order. However, the judge acknowledged that the case did present difficult ethical issues and that the parents could be seen to have a potential conflict of interest given that the mother's company was likely to produce and supply the treatment drug if it was to be used beyond the initial trial.

Orders were made allowing the treatment.

Re Inaya (Special Medical Procedure)

[2007] FamCA 658

Family Court of Australia before Justice Cronin, judgment delivered 27 June 2007.

In this case the judge had to consider whether to permit a bone marrow transplant from a donor child (aged thirteen months at the hearing) to her first cousin (aged approximately eight months at the hearing) in circumstances where State law rendered such a transplant a criminal offence.

The facts can be briefly summarised as follows. A baby boy, given the pseudonym 'Mansour Kamran', was born in September 2006. He suffered from Infantile Osteopetrosis, a hereditary disorder caused by a defect in the cells that normally cause bone resorption. Without a bone marrow transplant, Mansour was likely to die within a time period of between six months and five years. The bone marrow transplant was his only potential cure.

Mansour had a one-year-old cousin 'Inaya Kamran' who had been born in March 2006. Mansour's mother and Inaya's father are siblings. Further, Mansour's father and Inaya's mother were first cousins and the two families had been connected in previous generations. As a result, the genetic make-up of Inaya and Mansour was actually closer than that of first cousins.

Inaya's parents applied to the Court for an order to authorise the taking of bone marrow from Inaya so that it could be transplanted into her cousin Mansour. An independent children's lawyer from Victoria Legal Aid supported the parents' application for the transplant.

The judge noted that Inaya had been identified by testing as the most suitable donor for Mansour. One doctor estimated that Mansour would have a 50-60 per cent chance of successful engraftment and cure were the proposed procedure to go ahead. The judge noted that the expert evidence was that the procedure of bone marrow harvest was not likely to have any long-term effects on Inaya.

The major problem with the proposed transplant was that in Victoria, the Human Tissue Act prohibits the removal of tissue from children for transplantation. It is an offence to do so. There is an exception where a parent consents in writing to the transplantation of the tissue to the body of a brother, a sister or a parent of the child who is likely to otherwise die. However, the judge noted that while this exception would apply to Inaya if she had been Mansour's sister, it could not apply to Inaya as she was in fact Mansour's cousin.

The judge had to consider whether the Court had jurisdiction to make the requested orders in light of the fact that the proposed procedure was an offence under the Human Tissue Act. The judge determined that consenting to the transplant procedure was within the scope of 'parental responsibility' under the Family Law Act. The Family Court therefore had power to make an order regarding that exercise of parental

responsibility. To the extent that the Human Tissue Act purports to prevent an order allowing the procedure, it is inconsistent with the Family Law Act. Section 109 of the Australian Constitution provides that if a State law is inconsistent with a Commonwealth law, the Commonwealth law prevails. The judge noted that the Family Law Act is exclusive and exhaustive in relation to parental responsibility. The judge accordingly concluded that the Family Law Act, rather than the Human Tissue Act, must apply in Inaya's case.

The judge further noted that under the Family Law Act he could only make an order for the transplant if it was in Inaya's best interests, even though the ultimate purpose of the transplant was for another child's benefit. Inaya's parents argued that it was in Inaya's best interests to "grow up in a family where all possible was done within its power to avert grief rather than having experienced the trauma of losing a family member...". The psychologist also urged the Court to consider how Inaya may feel in the event that her non-involvement in the procedure was the "cause" of Mansour's death.

The judge concluded that the relationship between Inaya and Mansour was of particular importance and should be preserved if possible. The judge acknowledged that Inaya may suffer psychological harm derived from guilt, self-blame and exposure to a traumatised and grief-stricken family and community, as well as the loss of important relationships if the procedure was not performed. The judge concluded that in all of the circumstances it was in the best interests of Inaya to enable her parents to lawfully consent to the transplant.