Neutral Citation Number: [2022] EWFC 80

Case No: FD22P00346

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
IN OPEN COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/07/2022

Before:
MR JUSTICE HAYDEN

- -

Between:

BARTS HEALTH NHS TRUST	**Applicant**
- and –	
HOLLIE DANCE	**1st Respondent**
-and-	
PAUL BATTERSBEE	**2nd Respondent**
-and-	
ARCHIE BATTERSBEE (through his 16.4 Guardian)	**3rd Respondent**

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Mr Martin Westgate QC and Ms Fiona Paterson (instructed by **Kennedy's**) for the **Applicant**
Ian Wise (instructed by **Moore Barlow LLP**) for the **First and Second Respondent**
Claire Watson QC (instructed by **Cafcass Legal**) for the **Third Respondent**

Hearing dates: 11th July 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE HAYDEN

The judge has given leave for this version of the judgment to be published.

MR JUSTICE HAYDEN:

1. On the 26th April 2022, the Applicant Trust sought a declaration that it was lawful to undertake brain stem testing and to withdraw mechanical ventilation in relation to their patient, Archie Battersbee, a 12-year-old boy. There was a good deal of anxiety that Archie's medical circumstances were so fragile that the practicalities of undertaking MRI scanning might provoke a crisis. Ultimately, the brain stem testing was attempted, but it was not successful. Archie's doctors considered that many of the signs and symptoms that they could see and evaluate clinically, pointed strongly towards Archie having sustained brain stem death. The Judge who heard the application, Arbuthnot J, was persuaded by this analysis to make a finding of brain stem death by application of the civil standard of proof.

2. The Court of Appeal concluded that such an approach was wrong in law. It strikes me that it is also wrong, clinically. The law and good medical practice will rarely, if ever, diverge. Ascertaining death requires the application of clear clinical guidelines. Where they are not met, brain stem death cannot be identified with the certainty that such a conclusion requires. Brain stem death cannot, at least to my mind, be equated with a diagnosis, though I note, that the guidance by the Academy of Medical Royal Colleges is headed *"The Code of Practice for the Diagnosis and Confirmation of Death"*. Death, it seems to me, is a stage beyond diagnosis and thus it follows, that a differential diagnostic approach (i.e., diagnosis by symptoms) is highly unlikely to be appropriate. This rehearing, directed by the Court of Appeal, proceeds on the premise that Archie Battersbee is alive and that this Court should consider where his best interests now lie. That investigation requires unswerving focus on Archie.

3. The medical evidence filed in the proceedings before Arbuthnot J revealed a consensus both on Archie's condition and in respect of any progress he might make. With that in mind, at a directions hearing on the 4th July 2022, I made orders which included the following recitals:

    i. *That the court indicated that Arbuthnot J's findings in her judgments of 13th May 2022 and 13th June 2022 with regard to the general medical evidence would stand (not including the declaratory order).*

    ii. *That the Court "does not anticipate that clinicians from the Applicant's Trust will be called to give evidence at the hearing*

4. In preparation for this hearing, two further statements have been prepared by Dr F, the treating Consultant Paediatric Neurologist. It has, of course been necessary to review the medical evidence and analyse its significance in the context of my overall best interests' analysis.

5. I will say more, later in this judgment, about what I have learned of Archie's life and personality. At this point, however, it is important that I address what has happened to Archie as well as what has been done to help him. On the 7th April 2022, Archie was found with a ligature round his neck in the home that he lived in with his mother. I do

not know why he did this, nor am I prepared to speculate. His mother was understandably frantic when she made the discovery. She told me that she ran into the street for help and then returned to cut Archie down. The trauma of that day will, I have no doubt, live with her for the rest of her life. She tells me that she has not even begun to process the horrors of that experience. She intimates that is something she will have to address in the future. It is a tragedy of immeasurable dimension for Archie and for his family.

6. Archie suffered catastrophic hypoxic ischaemic brain injury. He has no prospect of recovery. The compelling and unanimous medical evidence is that he has not regained awareness at any time and has now been in a coma, with a Glasgow score of 3/15 (i.e., the lowest) for over 3 months. His mother believes that Archie *'is still there'*. Clinical observations reveal that he has been entirely unresponsive and has not shown any sign at all of being able to sustain breathing independently of the ventilator to which he is attached.

7. It is not necessary for me further to review the medical evidence extensively. It establishes a coherent analysis, across a range of disciplines, from which emerges a bleak but unanimous professional consensus. Some key features of the evidence do however, require to be highlighted.

8. On the 8th April 2022, CT head and angiograms revealed:

> 1. *Worsening of cerebral and cerebellar oedema with increasing tonsillar herniation in devastating hypoxic ischaemic brain injury.*
>
> 2. *Patent intracranial injuries.*

9. Dr Z, the Paediatric Neurologist, assessed the scans as showing:

> "*…increasing brain swelling compared to his previous CT scan with further evidence of injury to the cortex (the outside part of the brain that controls most higher cognitive, sensory and motor functions) and cerebellum (a part of the brain located at the back of the heard that is involved in the control of movement and co-ordination). This suggests that there has been a significant injury to multiple areas of the brain and that Archie had sustained a global injury. There is evidence that the brain swelling is starting to push the brainstem against the base of the skull, but the cerebellar tonsils have not yet been pushed through the foramen magnum (the opening at the base of the skull where the spinal cord exits). The CT angiogram appears to show that the blood vessels within the skull have some flow within them…"*

10. On the 11th April 2022, an external opinion was sought from Dr M, Consultant Adult Intensivist at the Royal London Hospital. Dr M made the following observations:

> *"He has had an EEG demonstrating severe cerebral dysfunction without status. He has been on CFAM [Cerebral Function Analysing*

> *Monitor] monitoring; the raw EEG is currently flat and featureless and the amplitude integrated EEG demonstrates consistently extremely low upper and lower margins, consistent with severe dysfunction or brain death… support to a withdrawal decision if he shows no signs of improvement"*

11. On the 15th April 2022, further MRIs and MR angiograms were reviewed. Dr P, Consultant Neuroradiologist, concluded:

> *"…On the MRA no blood flow can be detected within any of the intracranial blood vessels. This represents a further deterioration compared to his earlier CT scans…"*

12. Dr P further analysed the MRI scans thus:

> "*…The MRI scans performed on Archie showed evidence of severe deterioration of the appearances of the brain of Archie with, now, established severe generalised hypoxic ischaemic brain injury affecting the entire brain; in addition, the brainstem and lower part of the back of the brain (medically called the cerebellum which basically translates as "little brain") had started to abnormally descend and herniate downwards through the bottom of the skull as a result of the severe brain swelling caused by the now absent blood circulation to and through the brain tissues- this herniation or protrusion of brain tissue downwards and out of the bottom of the skull is medically termed 'coning' and was severe on the MRI scan performed on Archie at this stage – this process of 'coning' is a very reliable marker for a point-of –no- return for brainstem function…The MR angiography performed on Archie showed the absence of blood circulation to the brain inside the skull…"*

13. A second opinion undertaken by Dr K, a Consultant in PICU, advised a brain stem test be performed but also emphasised, "*even if the tests did not confirm brain stem death, given the clinical situation, we would likely recommend stopping invasive mechanical support as being in Archie's best interests given the severity of brain injury he has sadly suffered…".*

14. Dr Z, Consultant Paediatric Neurologist, undertook a series of tests on the 20th April 2022:

> *"…A series of audio recordings and music were played to Archie at points during the recording as was application of auditory, tactile and painful stimuli and airway suctioning. No detectable cortical activity was seen under these conditions and there was no discernible response to any of the stimuli applied"*

15. Following the above, proceedings were issued in the Family Division seeking authorisation to undertake brain stem testing. The history of that process is set out in the judgments of Arbuthnot J and in the judgment of the Court of Appeal. It is unnecessary for me to repeat it here.

16. Dr Steven Playfor, Consultant Paediatric Intensivist, was instructed as an independent expert in the proceedings. He examined Archie and spoke at length to his mother and to his older brother's girlfriend. In his report for the Court, dated 10th May 2022, he made the following assessment of Archie's condition and prognosis:

> *"AB has suffered a catastrophic hypoxic-ischaemic brain injury as the result of suspension by the neck and a prolonged out-of-hospital cardiac arrest. It is very likely, in my opinion, that if formally tested, AB would meet the criteria necessary to determine death according to neurological criteria. Even if some residual brain stem function were demonstrated, I cannot envisage any scenario where AB could demonstrate any meaningful neurological recovery."*

17. Sadly, but entirely consistently with the wider canvas of the medical evidence, Dr Playfor considered that Archie had *"no prospect of making any meaningful recovery"*. On his examination, he found Archie to be *"entirely unresponsive with absent pupillary, cough, gag, corneal and ocular-vestibular reflexes"*. He also found that *"there was no respiratory effort during a 2-minute informal apnoea test"*.

18. Dr F, the Consultant Paediatric Intensivist, provides the most recent update on Archie's condition. She gave evidence before the Court. Her view as to Archie's condition and prognosis accords exactly with that of Dr Playfor. Her evidence, however, casts some light on the reality of Archie's day to day experience. She has told me that with brain injury as devastating as that sustained by Archie, the loss of brain function, inevitably, causes adverse cardiovascular, respiratory, endocrine, metabolic and haematological change. This in turn creates instability in organ function and in the heart. In her statement, Dr F lists the treatments that seek to manage or mitigate this instability. They require to be set out here because they reveal the reality that every aspect of Archie's bodily function is maintained artificially through ventilatory support, chemical assistance and the physical care provided by the nurses. This is a remarkable medical achievement but the moral and ethical challenges it creates are obvious. Archie's care requires the following:

- *Standard treatment and care practiced in a neuro-intensive care with round the clock care provided by 1:1 and at times 2:1 nursing (heavily dependent)*

- *Continuous and invasive monitoring to allow target of haemodynamic parameters (monitoring of blood pressure, heart rate and urine output and treatment targeted to keep them within a standard range known to be safe)*

- *Oxygenation and carbon dioxide clearance by the ventilator (breathing machine) as he is unable to breathe for himself*
- *Routine neuro-critical care respiratory management (standard patient positioning, turning, clearance of secretions by suctioning and physiotherapy of the chest)*
- *Regular turning and care to prevent pressure areas developing and bed sores*
- *Regular cleaning and changes to prevent skin breakdown*
- *Support of the blood pressure with medications as needed*
- *Treatment for chest, blood or other infection with antibiotics as required*
- *Continuous Vasopressin administration to control water balance and salt balance within the body based on hourly urine output*
- *Fluid boluses due to large uncontrolled urine output despite treatment as needed*
- *Feeding via a tube into the stomach to give nutrition as tolerated*
- *Loperamide treatment to slow down the passage of food through his gastrointestinal tract due to diarrhoea secondary to gut failure associated with brain failure*
- *Administration of glucose to prevent low blood sugars as needed*
- *Electrolyte disturbance corrections, particularly potassium, (body salts kept within a safe range by regular replacement)*
- *Active warming to prevent the body getting too cold as needed*
- *Steroid replacement and thyroid hormone replacement (hormone replacement needed due to brain damage)*
- *Prophylactic treatment to prevent deep vein thrombosis (clots forming in blood vessels)*

19. As Dr F has explained, a patient with a brain injury of the magnitude of that sustained by Archie becomes unstable without this high level of critical care intervention. In simple terms, this means that Archie's blood pressure may fall to dangerous levels and his heart rate may drop, impeding the blood supply to the major organs and heart. By way of illustration, this lack of oxygen and blood supply to the pituitary gland led to diabetes insipidus, which creates uncontrolled loss of water in the urine due to a lack of a brain hormone called vasopressin. This severe fluid loss and electrolyte

disturbance causes dangerous vacillations in blood pressure. Essentially, Archie receives vasopressin to mirror what the brain would normally do for itself, but however remarkable the medication, it is a second-rate understudy for the main actor i.e., the brain itself. Controlling urine output, fluid balance, control of bodily water, salts and blood pressure has proved to be very challenging. Archie has required additional IV fluid boluses to replete his water stores, given the volume of his urine output. He has also required nifedipine medication to reduce his high blood pressure.

20. A further consequence of the brain's failure is that Archie's gut has also failed. In consequence and despite the incredible efforts of all involved, Archie has lost a very significant amount of weight. Along with his fluid loss has been diarrhoea, which makes it difficult to manage the diabetes insipidus. Archie is treated by loperamide to try and slow down the gut to facilitate better food absorption. Again, the medication is endeavouring to replicate that which would ordinarily be stimulated by brain activity. Archie's nurses and doctors have experimented with feed formulations to see if any are more easily absorbed. They have had some success. Archie now feeds continuously but has ongoing issues with intermittent diarrhoea or constipation. He has become malnourished and this, along with the necessity for repeated blood tests, has led to him becoming anaemic. For this he was treated with an iron infusion, which I have been told, can take two weeks to become effective. Inevitably, anaemia adds to the burdens that have been discussed above. It further increases the risk of infection, intestinal disorders, abnormal heart rhythm and low blood pressure. Archie needs blood tests every hour or two to monitor the acids and salts in his blood. He requires intermittent transfusions.

21. It is distressing to chronical Archie's circumstances in this way and though his family experience the day-to-day reality of his care, I am acutely sensitive to how upsetting it will be for them to read it, set out, as it must be, in such direct terms.

22. Archie has developed yellow necrotic secretions from the lungs. These are suctioned from the breathing tube; this can indicate infection arising from the breathing machine and the plastic tubing going into his airway. Archie's inability to cough, swallow, or move renders him more vulnerable to infection. Though he cannot move himself, he is moved and positioned carefully by the nurses to prevent pressure sores which have very serious consequences in this context. They may become sites for ulcers and infection. Archie's malnutrition also increases the risk of skin breakdown and delayed healing. It is thought that this will also have weakened his bones.

23. Though I do not discount the existence of at least some residual life in Archie's brain stem, there is a professional consensus here that Archie is most likely beyond pain. The corollary to this is that he is also beyond pleasure. He can experience no comfort nor receive soothing from those around him. Though his parents vacillate, for reasons which strike me as entirely natural, in recognising the extremity of Archie's situation, it is inevitable that neurocritical care interventions will eventually fail. Archie has no control over the functioning of any aspect of his body or organs. This has been devolved to the critical care support that I have outlined. Archie's mum believes him to be *'a fighter'* and I have no doubt at all that he was. 'The fight' however, if it can be properly be characterised as such, is no longer in Archie's hands. The damage to

his brain has deprived him of any bodily autonomy. Eventually, Archie's organs will fail and ultimately, his heart will stop. How, when and in what circumstances is impossible to predict.

24. What I have set out above is a bleak prospect but, in invidious circumstances, it is one that his parents are driven to prefer. The alternative is that advanced by those caring for Archie and by his Guardian. It is reasoned that, as Archie has no prospect of recovery, intensive support, on a true construction, now serves only to protract death and not to promote life. This gradual realisation, I have been told, has generated considerable distress for the PICU nurses. Mr Wise QC, acting on behalf of the parents, submits that the reaction of the nurses should play no part in my decision. With respect to him, I disagree. It is crucial that I survey the entire canvas of the available evidence, the reaction of the nurses, as reported to me, is a part of that canvas, particularly when considering what weight should be afforded to respect for Archie's dignity and autonomy.

25. Determining where Archie's best interests lie is not solely a medical issue. It is important that I place him, his personality, his wishes, at the centre of this process. Respect for Archie, as a person, involves a clear recognition that as a human being, he is more than the raft of medical complexity that I have set out above. He is not, in my judgement, simply who he is now, but he is also who he has been throughout his short life.

26. From his earliest months, Archie was a fireball of energy, a tornado of unbridled enthusiasm for life and for people. As his mother told me, this sometimes led him to be rather careless of his safety and he was often in scrapes. She described him as *"a character from day one"*. As a toddler, he quickly worked out how to use the stair gate and he was constantly climbing. He had watched his brother Tom using his *"chin up bar"* and it was lowered for Archie to use. It was quickly realised that Archie had a particular talent for gymnastics but, one way or another, he was always active. Trampolining and boxing, by the age of 4 years.

27. Archie's mother has pursued a media campaign in what she perceives to be a fight against the Hospital Trust. In consequence of this, a great deal of Archie's life is in the public domain. There are many photographs of this extremely photogenic and strikingly handsome young boy. There are also photographs of him in his hospital bed. His mum described Archie as *"a charmer"*. Something of this charm has been communicated to me through both his parents and his Guardian. At 12 years of age, he has already broken a few hearts. I asked mum if Archie recognised that he was a good-looking boy. Without a moment's hesitation, mum told me that he was absolutely sure of it and not least because she told him so every day. Whilst Archie's charm was generated by his effervescent enthusiasm for life and his instinctive kindness for others, his mother signalled to me that he could also deploy it effectively where it was expedient for him. In simple terms, he could turn on the charm when he needed to. In his hospital room, there are cards from 'ex-girlfriends', as well as from his many friends. The room is described as colourful. Archie's family all visit him, but his mother has been in constant vigil staying day and night. I am told that she has not returned to her home at all since the 7th April 2022. Archie has a quilt made by

volunteers. He is a very much-loved young boy. The strength of this love and the sincerity of those who care and pray for him have served to convey dignity upon Archie, in the parlous circumstances that he has found himself in.

28. Although Archie's dad attended this hearing, I was told that he did not intend to go into the witness box. It is not an easy thing to do, however carefully the Court may try to minimise the ordeal. However, to my surprise, dad changed his mind and gave evidence. I am extremely grateful to him. His evidence was natural, spontaneous, and unguarded. He was proud of Archie, though not boastfully so. He told me about Archie's prowess physically. There are photographs of Archie delighting in his well-honed physique. His dad reminded me that he had won a number of medals in his gymnastics. Archie has also been involved in MMA (Mixed Martial Arts). I note that like boxing, which Archie also enjoyed, this too can be a dangerous sport. I was told that dad used to fish regularly with Archie's older brother Tom. When Archie went fishing with his dad, he was predictably a bit of a handful. His mum interjected at this point in dad's evidence to remind him that Archie once ended up in the water.

29. When Archie's parent's relationship broke down, Archie struggled for a while. He was excluded from school and his mother was very angry about it. She told me that he was out of school for 2 years and *"no school would take him"*. She described how she "*took the Local Authority to a Tribunal and won"*. A school was found for Archie and mum told me it was *'brilliant'*. In this period, Archie and his mum were constantly together. When he stayed at his dad's home, as he did every weekend, his dad told me that Archie would be constantly telephoning his mum to check that she was alright. His dad described him as a *"mummy's boy"* though, I emphasise, there was nothing pejorative in the way that he used that term, nor was there any trace of jealousy. On the contrary, I sensed that Archie's dad admired his son's love and concern for his mother. Mr Battersbee struck me as an instinctively good dad, both natural and confident in the role. He told me that he was *"a huggy dad"* who was comfortable in showing affection. Archie is greatly loved by both of his parents and his siblings. Archie's relationship with his older brother has not been in focus. I sense Tom prefers to keep out of the limelight but, if he will permit me to say so, the love of these two brothers, each for the other, is both obvious and delightful and emerges from the evidence.

30. Intermittently throughout his life, Archie's mum told me he spoke about God and life after death. He first raised it when he was 5 years of age, but it was not raised again until much later. Archie was fully aware that MMA can be a dangerous sport. He related to his mum how the MMA fighters prayed for protection when they entered the ring. He requested a crucifix for which he paid £5 a week from his pocket money to buy it. Mum tells me that Archie had frequently requested to be Christened. In the daily bustle of life, they never got round to it. But, in the hospital, the Chaplain has baptised Archie, Tom, his sister and mum into the Anglican Church. I am considering Archie's best interests in the context of a young man who believed in God and whose family believe in God.

31. Though I have not heard from Tom, Archie's mum relates a conversation that is said to have occurred between Archie and his brother. They discussed what would happen

if either of them was in a car accident on a life support machine. My own judicial experience of these kind of conversations, most particularly in the Court of Protection, is that conversations of this kind is that they occur regularly amongst family and friends, with varying degrees of detail. Tom was clear that, for himself, he would want to *"turn the machine off"*. Archie is said to have responded *"I wouldn't want to leave mum and I would try to get out of bed"*. I accept the broad accuracy of this conversation, not least because it resonates entirely with what dad told me about Archie's concern for his mum's welfare. It says a great deal about Archie that when contemplating existence on a life support machine, his thoughts were not for himself at all, but for his mother.

32. My concern is with Archie, but what he might have wanted is integral to my evaluation of his best interests. Archie's mum described him as her *"best friend"*, but for all the reasons considered above, it also strikes me that he also sees himself as her protector, her chevalier. Mum told the Guardian that she *"knows"* that Archie *"would not want to leave her"*. She also told the Guardian that *"I think he would want me to fight for him; for time… think he would be saying I'm going to get there, don't give up on me. That's the fighting spirit. He wouldn't give up… no way"*.

33. Whilst I entirely understand why Archie's mother would wish to cling on to these thoughts, I am required to confront the compelling medical reality that Archie no longer has the agency to fight. His bodily autonomy has been devolved to the clinical machinery, medication, and nursing care.

34. When determining his best interests, I must have regard to the range of Archie's needs and wishes. I must also confront the importance of protecting his dignity. In *North London Clinical Commissioning Group v GU,* ***[2021] EWCOP 59,*** I made the following observations:

> *"[64] Thus, whilst there is and can be no defining characteristic of human dignity, it is clear that respect for personal autonomy is afforded pre-eminence. Each case will be both situational and person specific. In this respect there is a striking resonance both with the framework of the Mental Capacity Act 2005 and the jurisprudence which underpins it. The forensic approach is 'subjective', in the sense that it requires all involved, family members, treating clinicians, the Courts to conduct an intense focus on the individual at the centre of the process. Frequently, it will involve drilling down into the person's life, considering what he or she may have said or written and a more general evaluation of the code and values by which they have lived their life."*

35. It is for these reasons that I have taken care to investigate Archie's life and I am grateful to his parents for opening it up to me. I also regard it as a privilege. I am grateful to Archie's Guardian, who has provided a detailed and illuminating report in circumstances which would have been difficult for all involved.

36. In *North London Clinical Commissioning Group v GU* (supra), I observed the following:

"*Though it is an ambitious objective to seek to draw from the above texts, drafted in differing jurisdictions and in a variety of contexts, unifying principles underpinning the concept of human dignity, there is a striking thematic consistency. The following is a non-exhaustive summary of what emerges:*

i. *Firstly, human dignity is predicated on a universal understanding that human beings possess a unique value which is intrinsic to the human condition;*

ii. *an individual has an inviolable right to be valued, respected and treated ethically, solely because he/she is a human being;*

iii. *human dignity should not be regarded merely as a facet of human rights but as the foundation for them. Logically, it both establishes and substantiates the construction of human rights;*

iv. *thus, the protection of human dignity and the rights that flow therefrom is to be regarded as an indispensable priority;*

v. *the inherent dignity of a human being imposes an obligation on the State actively to protect the dignity of all human beings. This involves guaranteeing respect for human integrity, fundamental rights and freedoms. Axiomatically, this prescribes the avoidance of discrimination;*

vi. *compliance with these principles may result in legitimately diverging opinions as to how best to preserve or promote human dignity, but it does not alter the nature of it nor will it ever obviate the need for rigorous enquiry."*

37. The law in this area is relatively easy to state though often, as here, intensely difficult to apply to the facts.

38. The leading and clearest iteration of the law remains that in *Aintree University Hospital NHS Trust v James [2013] UKSC 67*:

> *"[39] The most that can be said, therefore, is that in considering the best interests of this particular patient at this particular time, decision-makers must look at his welfare in the widest sense, not just medical but social and psychological; they must consider the nature of the medical treatment in question, what it involves and its prospects of success; they must consider what the outcome of that treatment for the patient is likely to be; they must try and put themselves in the place of the individual patient and ask what his attitude towards the treatment is or would be likely to be; and they must consult others who are*

> *looking after him or are interested in his welfare, in particular for their view of what his attitude would be.*
>
> *"[45] Finally, insofar as Sir Alan Ward and Arden LJ were suggesting that the test of the patient's wishes and feelings was an objective one, what the reasonable patient would think, again I respectfully disagree. The purpose of the best interests' test is to consider matters from the patient's point of view. That is not to say that his wishes must prevail, any more than those of a fully capable patient must prevail. We cannot always have what we want. Nor will it always be possible to ascertain what an incapable patient's wishes are. Even if it is possible to determine what his views were in the past, they might well have changed in the light of the stresses and strains of his current predicament. In this case, the highest it could be put was, as counsel had agreed, that "It was likely that Mr James would want treatment up to the point where it became hopeless". But insofar as it is possible to ascertain the patient's wishes and feelings, his beliefs and values or the things which were important to him, it is those which should be taken into account because they are a component in making the choice which is right for him as an individual human being." (per Baroness Hale)*

39. Archie's rights, protected by the European Convention on Human Rights, are engaged. In the present context, the relevant rights are established by Article 2 (the right to life), Article 3 (protection from inhuman or degrading treatment) and Article 8 (the right to respect for a private and family life). As the ECtHR recognised in Burke v UK [2006] (App 19807/06), [2006] ECHR 1212:

> *"the presumption of domestic law is strongly in favour of prolonging life where possible, which accords with the spirit of the Convention (see also its findings as to the compatibility of domestic law with Article 2 in Glass v. the United Kingdom, no. 61827/00, § 75, ECHR 2004-II)."*

40. In this context in *Aintree University Hospitals NHS Foundation Trust v James* (supra) at [22], per Baroness Hale highlighted the following, which seems to me to be particularly apposite in this case:

> *"Hence the focus is on whether it is in the patient's best interests to give the treatment, rather than on whether it is in his best interests to withhold or withdraw it. If the treatment is not in his best interests, the court will not be able to give its consent on his behalf and it will follow that it will be lawful to withhold or withdraw it. Indeed, it will follow that it will not be lawful to give it. It also follows that (provided of course that they have acted reasonably and without negligence) the clinical team will not be in breach of any duty towards the patient if they withhold or withdraw it."*

41. These sentiments were re-stated in *An NHS Trust v Y [2018] UKSC 46* at [92], Lady Black delivering the judgment of the court stated:

> *"Permeating the determination of the issue that arises in this case must be a full recognition of the value of human life, and of the respect in which it must be held. No life is to be relinquished easily."*

42. Archie's Guardian made the following observations both in her evidence and in her report:

> *"Archie is a 12-year-old boy who was physically fit and well before his tragic accident. He is the youngest son of his parents. He has a loving family around him. Ms Dance spoke with me about Archie's religious beliefs. She thinks that Archie would wish more time. He would not want to leave her."*

43. She continued, if I may say so, with great sensitivity, to observe the following:

> *"I have little doubt that if Archie could, he would find his way back to his mother and to his close and loving family. To the life that he so clearly enjoyed up to just a few months ago. But sadly, I do not think that possible. The clinical evidence provided regarding the prognosis is undisputed and overwhelming. He will not get better. I have given great thought to Archie's wishes as reported by his family, and particularly with regard to his religious beliefs, but for the reasons highlighted above I do not consider that he could have in any way foreseen the circumstances where they are being relied upon now. Given what I have been told about him, I would expect him to find the restrictions of his current situation difficult to bear."*

44. It is impossible, for all involved, not to feel the tragic contrast between Archie's boundless energy and enthusiasm which has characterised his past life and his corroded ability to enjoy any aspect of it, either now or in the future. Archie's highly experienced Guardian engaged with the challenging, but in my judgement, unavoidable obligation to evaluate his dignity in his present situation. She said this:

> *"I was impressed with the care that I observed Archie receive from the nursing staff. I am pleased that Ms Dance reports her relationship to be "brilliant" with them. I certainly observed this brilliant relationship when I visited. Whilst I consider all those who care for and treat Archie to be doing so with the greatest of dignity and respect, I have to consider whether his life being sustained indefinitely, in light of the medical evidence would be dignified for Archie and in his best interests.*
>
> *I have outlined the benefits that Archie's family derive from his life being supported in the way it is currently, however the medical evidence finds that for Archie improvement is not possible. Whilst*

> *receiving the highest level of love and care Archie is unlikely to be able to benefit from it and his life is characterised by intensive care with the many interventions and techniques that involves. Furthermore, there is an ever-present risk that Archie may experience a medical event requiring recovery procedures, or that the ability to provide him with the medical intervention his body needs is compromised. There is unfortunately no treatment possible to reverse the damage that has been caused to Archie's brain following his awful accident."*

45. Drawing together these conclusions led the Guardian to the view that it would not be in Archie's best interests for treatment to continue. The Guardian is required, as I have been, to confront the appalling realities of Archie's situation. There can be no hope at all of recovery. Archie's mum, in particular, but the family more generally, recoil from this terrible reality. Nobody criticises them in any way for this. When it comes to evaluating the medical evidence, they have been ambushed by their emotions and overwhelmed by an intensity of grief that has compromised their objectivity.

46. This court has to ask itself whether continuation of ventilation in this case is in Archie's best interests. It is with the most profound regret, but on the most compelling of evidence, that I am driven to conclude that it is not. Accordingly, the Court cannot authorise or declare lawful the continuation of this present treatment. It is obvious from the detail of the treatment that I have set out above that it is intrusive, burdensome and intensive. If there were even a possibility that it could achieve some improvement to Archie's condition, it might be both proportionate and purposeful. Where, as here, the treatment is futile, it compromises Archie's dignity, deprives him of his autonomy, and becomes wholly inimical to his welfare. It serves only to protract his death, whilst being unable to prolong his life.

47. Having come to this conclusion, there emerges the prospect of an end to Archie's life, which reverberates more closely with the way he lived in the past. Arrangements can be made, with which I need not burden this judgment, that afford Archie the opportunity for him to die in peaceful circumstances and in the embrace of the family he loved.