



Neutral Citation Number: [2014] EWHC 2964 (Fam)

Case No: PO14C00645

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 08/09/2014

**Before :**

**THE HONOURABLE MR JUSTICE BAKER**

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**IN THE MATTER OF THE SENIOR COURTS ACT 1981**  
**AND IN THE MATTER OF ASHYA KING (A CHILD)**

**Between :**

**PORTSMOUTH CITY COUNCIL**

**Applicant**

**- and -**

**NAGHMEH KING (1)**

**Respondents**

**BRETT KING (2)**

**SOUTHAMPTON HOSPITAL TRUST (3)**

**ASHYA KING (by his children's guardian,**

**John Mellor) (4)**

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**Lucinda Davis** (instructed by **Local Authority Legal Unit**) for the **Applicant**  
**Alun Jenkins** (instructed by **the Michael Hill Partnership**) for the **1<sup>st</sup> and 2<sup>nd</sup> Respondents**  
**Vikram Sachdeva** (instructed by **Hempsons**) for the **3<sup>rd</sup> Respondent**  
**Melanie Carew** (of **Cafcass Legal**) for the **4th Respondent**

Hearing dates: 5<sup>th</sup> September 2014  
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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 BAKER**

This judgment was delivered in open court and may be published without restrictions.

**THE HONOURABLE MR JUSTICE BAKER:**

1. The plight of Ashya King, a little boy aged five, suffering from a serious form of brain cancer, has been the subject of worldwide publicity for the past two weeks. Late last Friday, 5<sup>th</sup> September, in wardship proceedings, I gave permission, in accordance with his parents' wishes, for Ashya to be taken for treatment to Prague in the Czech Republic. In this judgment, I set out the reasons for my decision.
2. The rights and wrongs of all that has happened to Ashya in the last two weeks have been hotly disputed and debated in the media and elsewhere. This judgment does not purport to give any ruling on those matters, nor on the wider issues that this case has identified. Even if this is the appropriate forum for such an exercise, which is debatable, I am in no position to give any such ruling because the evidence filed in these proceedings is extremely limited. There is, for example, no formal statement from the parents setting out their side of the story and although I have, inevitably, read much of what the parents are reported to have said to the media, it would obviously not be right for the court to pass judgment on the basis of those reports. This judgment, therefore, is confined to the reasons for my decision taken last Friday to allow his parents to take Ashya to Prague.
3. Ashya was born on 5<sup>th</sup> July 2009 so he is just five years old. Until a fortnight ago, he lived with his parents and six older siblings in Hampshire, although the family has a property in Spain and Ashya was, I understand, born in Malaga.
4. In July of this year, Ashya was diagnosed as suffering from a brain tumour, known as a medulloblastoma, at the back of the brain in the area of the cerebellum and posterior fossa. On 24<sup>th</sup> July, he underwent brain surgery for the complete removal of the tumour at the paediatric oncology department at Southampton General Hospital. According to a letter sent to his parents dated 13<sup>th</sup> August, which was disclosed to the court at the outset of these proceedings, an MRI scan carried out after the operation indicated that the tumour had been completely removed (or "resected"). The scan also showed no other evidence of disease in the brain or spine, and a lumbar puncture showed the cerebrospinal fluid ("CSF") to be clear of any tumour cells.
5. At that point, a dispute arose between Ashya's parents and the treating doctors in Southampton as to the treatment to be administered to Ashya thereafter. Everyone agreed that Ashya required both chemotherapy and radiotherapy. The disagreement arose as to the extent of the treatment and, in particular, the type of radiotherapy to be administered.
6. The hospital's proposal was that Ashya should receive conventional X-ray or photon radiotherapy over a six-week period, covering the whole brain and spine with an additional boost to the tumour bed. According to their letter to the parents dated 13<sup>th</sup> August, the radiotherapy had to be extended to include the whole brain and spine because medulloblastomas tend to spread to other areas of the brain via the CSF and it was necessary to cover all the areas where the CSF travels in order to kill any cells that may be circulating. In these cases, it is recommended that radiolotherapy starts within 4-6 weeks of the surgery. Any delay to the start of radiotherapy may affect the success of the treatment. In addition to radiotherapy, the hospital proposed that Ashya should receive chemotherapy – possibly some doses prior to the radiotherapy, then a

weekly dose during the radiotherapy and afterwards eight courses given six weeks apart.

7. In the letter dated 13<sup>th</sup> August, the hospital indicated that this treatment plan might have to be modified in Ashya's case because he had developed a condition known as cerebellar mutism syndrome, also known as posterior fossa syndrome. The doctors described this as a well-known problem with medulloblastomas which can vary in severity. In Ashya's case, the syndrome was said to be at the more severe end of the spectrum and initially left him unable to move his limbs, head or eyes, although with help from physiotherapists some movement returned and further improvement was anticipated. Ashya was also suffering from a significant bulbar palsy, which, as I understand it, is a nervous disorder affecting the mouth and tongue which may make it difficult for the patient to swallow. As a result he was being fed through a nasogastric tube.
8. Notwithstanding the fact that he had developed a brain tumour, undergone serious surgery, and faced the prospect of intensive radiotherapy and chemotherapy, the hospital advised that patients like Ashya with completely resected classical medulloblastomas have a 70-80% chance of surviving five years and that, although survival rates at ten years were slightly lower, if the patient survived to ten years, they would be considered cured.
9. Ashya's parents were very unhappy with aspects of the treatment plan. In particular, they were concerned about the prospect that he should receive the conventional type of radiotherapy which, as set out above, would encompass the whole of the brain and spine, and be administered on a number of occasions over a period of six weeks. They asked the hospital to consider, as an alternative to conventional radiotherapy, a new type of radiotherapy known as proton therapy. In simple terms, the principal advantage of proton therapy is that it causes less radiation damage to other tissues and organs in the body. The therapy is not at present generally available in the United Kingdom, although plans are being implemented to introduce it for certain specific cancers in a few years' time. Proton therapy is, however, already available in a number of other countries, and NHS England has authorised and funded the provision of the treatment to a number of English patients in foreign hospitals, including patients referred by Southampton General Hospital.
10. NHS England does not, however, recommend nor fund the use of proton therapy for cases of medulloblastoma. The doctors in Southampton referred the case to the NHS England Proton Overseas Programme National Clinical Reference Panel. The panel chairman confirmed that medulloblastoma is not included in the list of accepted indications for proton treatment abroad because of concerns around the logistics of offering timely radiotherapy to patients who may not be fit enough to travel. There is thus a risk of increased delay before the start of radiotherapy and hence a reduction in the chance of a cure. In addition, the panel chairman advised that, as the radiotherapy, whether conventional or proton, has to target the whole of the brain and spine, the risks of complications from the radiation were similar and the benefits in terms of reduced toxic effect on other tissues and organs less clear cut. An American specialist in the use of proton therapy, consulted by the team at Southampton, also confirmed that the benefits of such therapy in cases of medulloblastomas were unproven.

11. Nonetheless, Ashya's parents pursued their enquiries and identified a facility in Prague – the Proton Therapy Center – which was able and willing to offer proton therapy to patients with medulloblastomas and had provided the treatments to similar patients in the past. The parents therefore asked the Southampton Hospital to refer Ashya to the Prague Center.
12. It is at this point in the history that the accounts diverge. I am aware of the allegations and counter allegations about what was said and not said in the course of discussions between the parents and the hospital. The hospital has today filed several statements setting out their version of events, but no evidence has been filed by the parents and I am in no position to reach a definitive decision on the issues of fact that are in dispute – for example, as to whether the hospital warned Ashya's parents that it would seek an emergency protection order.
13. Suffice to say that, as is now well known, Ashya's parents, having been permitted to take Ashya out of the ward around the hospital precincts, removed the boy from the hospital on the afternoon of 28<sup>th</sup> August, travelled by road and ferry to France and thence to Spain. When they became aware of what had happened, the hospital staff were understandably very concerned. At the time of his removal, Ashya was still being fed via a nasogastric tube. According to the hospital staff, his parents had not received any training in this method of feeding. Following his removal, the hospital staff informed the local authority, that is Portsmouth City Council, and the Hampshire Constabulary.
14. On Friday 29<sup>th</sup> August, the local authority filed an application in the High Court seeking permission to invoke the inherent jurisdiction, an order making Ashya a ward of court and "directions as to necessary medical treatment". The application came without notice before His Honour Judge Sir Gavyn Arthur, sitting as a deputy judge of the Family Division. The learned judge had before him, in addition to the copy of the letter to the parents dated 13<sup>th</sup> August to which I have already referred, a further letter from the treating consultant oncologist, Dr Nicolin, stating inter alia:

"It is my opinion that Ashya is at very significant risk of harm having been taken away from Southampton Children's Hospital. When he is found, he should be taken to the nearest hospital with children's facilities for an assessment and management. Ashya does not have a safe swallow and is dependent on being fed through a nasogastric tube. He also requires ongoing rehabilitation and further treatment is planned for his brain tumour – namely chemotherapy and radiotherapy."
15. On the basis of this evidence, the learned judge made an order making Ashya a ward of court during his minority or until such time as the order was varied. He further ordered that the parents should immediately present Ashya for medical treatment at the nearest hospital forthwith; that they should, at the appropriate time, to be determined by the medical professionals at his place of treatment, return Ashya to the jurisdiction of this court; that they should cooperate with the medical professionals dealing with the treatment of the child in respect of any advice or treatment received from those medical professionals and, upon the child being delivered to the nearest hospital, they were forbidden to remove him therefrom without the permission of the court (although it should be noted that the order did not prevent the parents visiting

the child in hospital). The learned judge made further directions, including a provision for a further hearing on Wednesday 3<sup>rd</sup> September.

16. In addition to these steps by the local authority and the court, the Hampshire Constabulary applied through the Crown Prosecution Service (“CPS”) for the issue of a European Arrest Warrant. When the family was eventually tracked down in Spain, the parents were arrested and Ashya admitted to the local hospital in Malaga. The parents appeared in court in Malaga on an extradition application and were remanded in custody.
17. Prior to their arrest, the parents had posted items on the internet setting out their case, and voicing certain criticisms of the medical staff in Southampton. Following their arrest, the case was attracting widespread publicity in this country and across the world. There was vociferous criticism of the actions taken by the British authorities, in particular the steps which had led to the parents’ arrest and their consequent separation from their son. As a result, the President of the Family Division, Sir James Munby, who was following developments on leave, directed that the hearing listed on 3<sup>rd</sup> September be brought forward to the previous afternoon and listed before me in open court.
18. Thus it was that the matter came before me on the afternoon of Tuesday 2<sup>nd</sup> September. Prior to the hearing I directed that the local authority and the Hospital Trust attend, together with Mr. John Mellor of the CAF/CASS High Court team, whom I appointed to act as Ashya’s children’s guardian for the purpose of the proceedings, and a representative of CAF/CASS Legal. At my request, the CPS also attended. The hearing duly took place in open court with a substantial attendance by members of the media. The CPS informed me through counsel Miss Mehvish Chaudhry that they were intending to apply for the discharge of the European Arrest Warrants. Furthermore, in the course of the hearing, the Trust indicated that it would not oppose any outcome which permitted Ashya to go to Prague to receive proton therapy, provided it was established that funds were being made available to fund the treatment. At the hearing, I concluded that it was necessary to adjourn the matter for a short time anticipating that the parents would be immediately released and could therefore participate at the adjourned hearing. I expressly recited that it was the court’s view, with which all parties agreed, that the parents should have an opportunity to participate in these proceedings and be represented at all future hearings. I further expressed the view, which I recited in the order, that it was in the interests of Ashya to be reunited with his parents as soon as possible. I therefore listed the matter before me on Monday 8<sup>th</sup> September, six days later, directed that the parents attend the hearing either in person or by video link, and further directed them to file a statement, as soon as possible but in any event by 2 pm on Friday 5<sup>th</sup> September, setting out their treatment proposals and plans for Ashya, the timescales for the treatment, how such treatment was to be paid for and provided and any supporting documentation in support of their proposals. At the hearing I also indicated that, in the event that the parties reached an agreement as to Ashya’s future treatment before Monday 8<sup>th</sup> September, the court was ready at all times to consider the agreement and, if appropriate, give its approval.
19. Following that hearing, the European Arrest Warrants were duly discharged, the extradition proceedings aborted, and Ashya’s parents were released and reunited with their son.

20. On the following day, Wednesday 3<sup>rd</sup> September, it came to my attention that the government was offering to fly out an independent expert oncologist to examine Ashya and make recommendations as to his future treatment. As Ashya was a ward of court, such a course could only take place with the court's permission. I therefore convened a telephone hearing to consider this option that afternoon at which, for the first time, the parents were represented. I indicated that, if the parents were in agreement with this suggestion, I would support the instruction of the independent expert, and I directed the lawyers to take their instructions overnight. In the event, the parents decided that they did not wish to take up this offer and it was not pursued. It should be noted that, in the course of the telephone hearing on 3<sup>rd</sup> September, counsel for the Trust, Mr Vikram Sachdeva, reiterated to the court that the Trust had never opposed the family's decision to obtain proton therapy. The Trust itself was not in a position to offer it, but would support it being provided elsewhere if it could be reliably arranged and funded and the transfer arrangements were safe.
21. Meanwhile, there were ongoing discussions between the medical teams in Southampton, Malaga and Prague. In a letter dated 2<sup>nd</sup> September to the Proton Therapy Centre in Prague, Dr Nicolin, having summarised the original treatment plan, continued as follows:

“We are now in an unusual situation of not having seen Ashya for eight days and he is now in a different country. We feel the treatment plan at this point should be as follows:

- (1) Ashya is transported with a medical escort to the Prague paediatric oncology unit for admission where he will be assessed.
- (2) The paediatric oncologists should make their own assessment of Ashya's clinical status and decide whether he is fit for radiotherapy now or after one or two cycles of chemotherapy.
- (3) If chemotherapy is to be given first, then we would suggest using the chemotherapy according to [UK guidelines]. A suggested regimen for the first course is attached.
- (4) When radiotherapy is given, we suggest it is given according to the radiotherapy section in the UK guidelines (craniospinal with posterior fossa boost).
- (5) When radiotherapy is complete, we suggest giving maintenance chemotherapy of the Packer type, as described in the chemotherapy section of the UK guidelines attached.
- (6) Alongside this, Ashya will require ongoing rehabilitation with physiotherapy, occupational therapy and speech and language therapy.”

22. By the morning of Friday 5<sup>th</sup> September, it seemed that there was a good prospect that the parties would reach an agreement about treatment later that day. In order to avoid a further delay over the weekend, I therefore convened a further telephone hearing at 2.30 that afternoon. At that hearing, the parents' lawyers (who included, for the first time, not only the English lawyers but also the parents' Spanish lawyer, Senor Juan Isidro Fernandez Diaz,) were able to provide some but not all of the information specified in my order of the 2<sup>nd</sup> September, so I therefore adjourned the matter for a further hearing later that afternoon.
23. At that adjourned hearing at 5.15 pm, the court was provided with the following information.
24. First, and most importantly, I had before me in written form evidence from the Proton Therapy Centre in Prague in the following terms:

“Together with the Paediatric and Haematology Clinic and Paediatric Oncology at the University Hospital Motol, Proton Therapy Center Czech proposes a treatment plan that was discussed on September 4<sup>th</sup> by a multidisciplinary team from all the hospitals involved.

Today, the 5<sup>th</sup> September, Proton Therapy Center Czech has requested today and received a couple of minutes ago the treatment plan from the attending physician from Southampton. This treatment plan is acceptable for PTC from radiotherapy point of view.

We are now sending the treatment plan to the Motol Hospital but do not expect disagreement from Motol Hospital side. This is now presented to the cooperating paediatric clinic at the Motol University Hospital.

A decision concerning the type and duration of chemotherapy will be made by the paediatric oncologist when the patient is physically present at Motol University Hospital.

The process of proton therapy will be specified in correspondence with the treatment plan. Irradiation of the craniospinal axis with posterior fossa boost will be applied following internationally accepted protocols concerning the treatment of children.

After a decision has been made concerning transportation of the child to the Czech Republic, it will be necessary to contact the attending physicians in Malaga in order to prepare all that is necessary.

Discussions were made between Czech and UK medical teams yesterday evening (4<sup>th</sup> September) via telecommunication, to ensure that all the necessary procedures are in place to safely and effectively treat Ashya in Prague. Subsequently all of the



necessary answers were provided to the NHS specialists by the PTC Prague and Motol Hospital Prague medical teams. Additionally, the PTC in Prague invites NHS representatives and UK doctors to visit PTC to see the facilities and meet the medical teams themselves.”

25. Secondly, I was informed that a private aeroplane would be made available to fly Ashya from Malaga to Prague, if necessary with nursing staff in attendance.
26. Thirdly, I received evidence that sufficient funds were available to meet the cost of transport and treatment. It is unnecessary to set out the details of the funding. Suffice to say that Ashya’s parents themselves have some assets and, as a result of the widespread publicity, substantial donations have generously been made by the general public. In addition, their Spanish lawyer indicated that he was able to make available funds from a social fund which he administers.
27. With this information, I was therefore in a position to reach my decision.
28. The legal principles to be applied can be summarised as follows.
29. First, and most important, Ashya’s welfare is my paramount consideration.
30. Secondly, I have regard to Ashya’s human rights under the European Convention. In particular, I bear in mind his right to life under Article 2 and his right to respect for a private and family life under Article 8.
31. Thirdly, it is a fundamental principle of family law in this jurisdiction that responsibility for making decisions about a child rest with his parents. In most cases, the parents are the best people to make decisions about a child and the State – whether it be the court, or any other public authority – has no business interfering with the exercise of parental responsibility unless the child is suffering or is likely to suffer significant harm as a result of the care given to the child not being what it would be reasonable to expect a parent to give.
32. When Mr and Mrs King took Ashya from hospital on 28<sup>th</sup> August, the medical staff were understandably very concerned that the boy would suffer significant harm by being removed from the specialist care they were providing. When the local authority was informed about what had happened, and that it was believed that the parents had left the country, the social workers understandably concluded that there were reasonable grounds for believing that Ashya was at risk of suffering significant harm by being driven across Europe without medical assistance at a time when he urgently required post-operative therapy. I therefore conclude that the local authority acted entirely correctly in applying to the High Court, and further that Judge Arthur was right, on the evidence before him, to make Ashya a ward of court. My comments are confined to the matters within the family jurisdiction. I make no comment as to whether or not it was appropriate to seek a European Arrest Warrant. I merely observe that one consequence of this course was that Ashya was separated from his parents and left alone for several days in the Spanish hospital. As I observed at the hearing on 2<sup>nd</sup> September, whatever the rights and wrongs of his parents’ actions, it was not in Ashya’s best interests to be separated from them in such circumstances.

33. The steps taken by the local authority and Judge Arthur on 29<sup>th</sup> August were entirely justified on the evidence then available. As at that date, there were reasonable grounds for believing that Ashya was at risk of suffering significant harm. A week later, the picture had changed and the court was faced with a completely different decision. The parents had put forward a treatment plan that was coherent and reasonable, and made arrangements for funding and transport. The local authority and CAFCASS on behalf of Ashya, did not oppose the plan. The Hospital Trust, whilst not being in a position either to recommend or provide the treatment proposed by the parents, did not oppose the plan in principle, although they invited the court to adjourn making a final decision until receiving express confirmation from the oncology unit in Prague, which was to provide treatment alongside the Proton Therapy Center, that Ashya would be accepted for treatment.
34. Having considered the evidence, I concluded that there was no reason to stand in the way of the parents' proposal. In some cases, this court is faced with a dispute between medical authorities and parents who are insisting on a wholly unreasonable course of treatment, or withholding consent to an essential therapy for their child – for example, a blood transfusion. This is manifestly not such a case. The course of treatment proposed by Mr and Mrs King is entirely reasonable. Ashya has a serious medical condition. Any parents in the position of Mr and Mrs King would do whatever they could to explore all options. Some parents would follow the advice of the local doctors to use conventional radiotherapy, others would prefer the relatively untested option of proton therapy (assuming the funds can be made available to meet the cost of transport and treatment) in the hope that the toxic effects of radiation will be reduced. Both courses are reasonable and it is the parents who bear the heavy responsibility of making the decision. It is no business of this court, or any other public authority, to interfere with their decision. Although I understood the Trust's anxiety that at the time of the hearing the oncology unit in Prague had not expressly accepted Ashya as a patient, I concluded that I could rely on the observations made by the Proton Therapy Center in the passage quoted above that they did not anticipate any disagreement. Accordingly, I gave permission there and then for Ashya to be taken by his parents to Prague. In the event, the oncology unit at the Motol Hospital gave its consent this morning, and Ashya duly flew to Prague earlier today.
35. The order made on Friday was in the following terms:
- “UPON reading the following documents
- (1) a plan setting out the proposed treatment to be administered to Ashya King
  - (2) evidence of the proposed arrangements for transporting Ashya to Prague by plane and
  - (3) evidence of funds available to Mr. and Mrs. King to meet the cost of the treatment and transport
- AND UPON the Court being informed that
- (1) a multidisciplinary team at the Paediatric and Haematology Clinic and Paediatric Oncology at the University Hospital Motol and the Proton Therapy Center in the Czech Republic has considered a treatment plan for Ashya;

- (2) the Proton Therapy Center Czech has considered and accepted the treatment plan from the attending physician from the Southampton Hospital Trust;
- (3) the Proton Therapy Center has sent a copy of the treatment plan to Paediatric Oncology at the University Hospital Motol;

AND UPON Juan Isidro Fernandez Diaz promising the Court that sufficient funds are available to meet the cost of transporting Ashya to Prague and his treatment at the Paediatric and Haematology Clinic and Paediatric Oncology at the University Hospital Motol, Proton Therapy Center

AND UPON the Court concluding that Ashya needs to receive post-operative treatment as soon as possible

IT IS ORDERED that

- (1) Mr. and Mrs. King do have permission to take Ashya to Prague to be treated at the Paediatric and Haematology Clinic and Paediatric Oncology at the University Hospital Motol and the Proton Therapy Center;
- (2) Upon his arrival at University Hospital Motol, the wardship shall be discharged and Ashya shall cease to be a ward of court.
- (3) The hearing on Monday 8<sup>th</sup> September 2014 be listed at 12 noon when the Court will deliver a judgment setting out the reasons for its decision.
- (4) The attendance of the parents at the said hearing is excused.”

36. Shortly before coming into court this afternoon, I have been informed that Ashya has been formally admitted to hospital in Prague. It follows that he has now ceased to be a ward of court.

37. It only remains for me to express the hope, which I am sure is shared by everyone in court and all those who read this judgment, that Ashya makes a good recovery. We all send our best wishes to Ashya and his loving parents.