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LawTalk Blog



Family Court judgment handed down; "re Kelvin" gender dysphoria treatment case

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Date: Wednesday December 13, 2017

The Full Court of the Family Court has handed down a judgment which sees a major change in the way young people with gender dysphoria access treatment.

In the case of *Re Kelvin [2017] FamCAFC 258* the Full Court was asked to decide whether a young person with gender dysphoria required the court's approval to receive treatment of gender promoting hormones.

Facts of the Kelvin case

- Kelvin was assigned female at birth in 2000 but eventually came to identify as male.
- He transitioned socially as a transgender person in 2014.
- Kelvin had not undergone stage one treatment and at the age of 17 wanted to commence stage two treatment, which involves administration of gender re-affirming hormones.
- Kelvin's parents supported the treatment.
- An application was made to the Family Court to declare Kelvin as "Gillick competent" to consent to Stage two treatment.

What is Gillick competence?

Gillick competence is the term that describes the capacity of children to legally consent to medical treatment ([*Gillick v West Norfolk & Wisbech Area Health Authority \[1986\] AC 112*](#)). The test is whether the person possesses the requisite maturity and understanding to comprehend the treatment proposed. If so the child can legally consent to medical treatment.

Previously the court had found that they had to make decisions about a parental child's medical care in special cases. Special cases are characterised as such due to their invasiveness, irreversibility, risk of making a wrong decision and the consequences of a wrong decision being grave ([*Secretary, Department of Health and Community Services v JWB and SMB \(1992\) 175 CLR 218*](#) ('Marion's Case').

In a later case the court determined that because stage one treatment was therapeutic and reversible it did not require court authorisation but stage two, being therapeutic yet irreversible, required a balance of all the risks and benefits to be undertaken by the court ([*Re Jamie \[2013\] FamCAFC 110*](#)).

The Family Court departs from previous judgments

In the Kelvin case, the court found it appropriate to depart from "Re Jamie" so that the law is able to reflect the current state of medical knowledge, especially an increased knowledge of the risks associated with not treating a young person with gender dysphoria; in particular the psychological risks. They found that should stage two treatment be withheld from Kelvin, it was likely that his wellbeing would deteriorate since his mental and physical health was heavily dependent on the perceptions of himself as a male.

Where parents and medical practitioners agree with the treatment, stage two treatment is no longer considered a procedure that requires the court to approve.

The court found that the general rule derived from [*Marion's Case*](#) is that the entirety of the surrounding circumstances determine whether court approval is required for medical treatment and stage two treatment is not one such case. Therefore when there is no disagreement between parents and medical practitioners treating a child with gender dysphoria, stage two gender promoting hormones are no longer considered a special case of medical treatment requiring the court's approval.

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