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LawTalk Blog



Gender Dysphoria cases in the Family Court - update on the case of *Re Imogen*

Author: [Daniella Cutufia](#)

Email: enquiry@andersons.com.au

Phone:

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After the release of [our blog on Gender Dysphoria](#) the Family Court of Australia handed down judgment on 10 September 2020 in the matter of *Re Imogen (No 6)* [2020] FAMCA 761.

This case has provided further guidance to litigants in relation to the circumstances in Gender Dysphoria cases where an application to the Family Court is necessary.

Facts on the matter of *Re Imogen (No 6)* [2020] FAMCA 761

Imogen (formerly known as Thomas) was aged 16 years and 8 months. Imogen had been diagnosed with Gender Dysphoria and had been taking Stage 1 puberty suppression medication. She persistently insisted that she wanted to move to Stage 2 treatment.

The issue at hand was that Imogen's mother did not consent to Stage 2 treatment, which in Imogen's case was the administration of oestrogen.

Issues with the matter of *Re Imogen (No 6)* [2020] FAMCA 761

The case raised the following questions about the current law for children and adolescents presenting with Gender Dysphoria, when there is a dispute about consent or treatment:

- Is an application to the Court mandatory?
- Whether mandatory or not, once an application is made and if a child is found to be Gillick competent, can they make their own decisions about treatment?
- If so, what order, if any, should be made in respect of the issue of *Gillick* competence?
- If a child's consent is not sufficient and the Court is required to make an order that is in the child's best interests, should that order grant the child "parental responsibility" to make their own decision or should an order authorising treatment be made?

Imogen's father made an application to the court that Imogen be granted parental responsibility for herself for the purposes of consent to medical treatment for Gender Dysphoria, or, alternatively, that the court authorise the administration of Stage 2 treatment for Gender Dysphoria.

It was Imogen's mother's argument that Imogen was not *Gillick* competent to make the choice to have Stage 2 treatment. Imogen's mother asserted that Imogen did not have the condition and therefore she did not consent to Imogen having a Stage 2 treatment.

What the Court ultimately held:

In *Re Imogen*, the Court held that if a parent or a medical practitioner of an adolescent disputes:

1. The *Gillick* competence of an adolescent; or
2. A diagnosis of gender dysphoria; or
3. Proposed treatment for gender dysphoria,

An application to the Court is mandatory.

The Court held that once an application to the Court is made, the Court should make a finding about the *Gillick* competence of an adolescent. If the only dispute is as to *Gillick* competence, then the Court should determine that dispute and if a declaration is made, then that is determinative of the only dispute before the court and the adolescent is left to determine their treatment without court authorisation.

However, notwithstanding a finding of *Gillick* competence, if there is a dispute about the diagnosis or treatment, the Court should:

1. Determine the diagnosis;
2. Determine whether treatment is appropriate, having regard to the adolescent's best interests as the paramount consideration; and
3. Make an order authorising or not authorising treatment pursuant to the Act on best interest considerations.

If a parent or legal guardian does not consent to an adolescent's treatment for gender dysphoria, a medical practitioner, who is willing to do so, should not administer treatment to an adolescent who wishes it, without court authorisation.

The court in *Re Imogen* was concerned as to whether there is any role for the Family Court in cases where there is no dispute between parents of a child who has been diagnosed with Gender Dysphoria, and where there is also no dispute between the parents and the medical experts who propose the child undertake treatment for that dysphoria. If the parents, or the medical professionals are unable to agree, then this case shows that there is no doubt that the Court has the jurisdiction and the power to address these issues.

Outcomes of the matter of *Re Imogen (No 6)* [2020] FAMCA 761

Imogen was found to be *Gillick* competent, with the diagnosis of Gender Dysphoria accepted by the court and Stage 2 treatment for Imogen was authorised by order of the Court.

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