Twitter Thread by Lady Justice ■■■■



Lady Justice ■■■■
@RadFemLawyer

Permission to appeal to the Court of Appeal in the Bell v Tavistock case has been refused. 10 grounds of appeal were advanced. None succeeded, including an attempt at an Article 14 (discrimination) point which had not been suggested previously by the Defendant.

Here is a copy of the Order refusing the Defendant's application for permission to appeal.

An application for permission to appeal will now to be made TO the Court of Appeal itself.

https://t.co/SXIaLLsQ5f

That appeal will only be allowed where the court below (the High Court) was wrong or the decision unjust because of some procedural irregularity. The High Court has already said no. Will the CoA?

In other words - permission has been refused by the High Court to appeal up to the Court of Appeal.

The Court of Appeal now gets to decide ITSELF if it will hear the appeal. That we won't know the outcome of for a few months.

Be sure to note you WILL hear about it.

12:43

Tweet



It's quite complicated, actually. But I think what matters less than what I or anyone else thinks SHOULD happen is what actually IS happening - and what IS happening isn't really shaped by that Order.

2 1



Jo Maugham

@JolyonMaugham

Replying to @JolyonMaugham and @ConduitTrans

We have now taken legal advice on the Decision and are actioning that advice. We will make an announcement as soon as we sensibly can. We also have written legal advice from leading Counsel on the issues raised for parents which we are exploring publishing.

12:21 · 07 Dec 20 · Twitter Web App

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High Court view on grounds 1 and 2:

Ground 1. There is no material error of fact in relation to the description of the use of puberty blockers for those with precocious puberty. The judgment deals with what it is necessary for a child to understand in order to be competent to consent to the administration of puberty blockers in connection with a diagnosis of gender dysphoria. Precocious puberty is a different condition. The experience in relation to use of puberty blockers for that condition, however that use is described, is not material or comparable to the different question of consent in this case.

Ground 2. The Divisional Court did not seek to resolve disputes between experts about the efficacy of a treatment. The Court summarised the extent of current knowledge of the consequences and the very limited evidence as to its efficacy – see paragraph 134 – as part of its consideration of what information a child would need to have, retain and understand in order to be competent to give consent to the administration of puberty blockers.

On 3-5 (note the view on Gillick).

Ground 3. The Divisional Court did not conflate the separate consent processes for puberty blockers and cross-sex hormones. It considered the evidence as to the proportion of children who are treated with puberty blocking drugs to halt puberty and who subsequently proceed to take cross-sex hormones. In the light of the evidence, it concluded that children, in order to be competent to consent to the administration of puberty blocking drugs needed to know, amongst other things, that the vast majority of patients taking puberty blockers go on to cross-sex hormones. See paragraph 138.

Ground 4. The Divisional Court has not improperly restricted the decision in *Gillick*. It has sought to apply the requirements of *Gillick* to the treatment at issue in the present case.

Ground 5. The decision is not incompatible with section 8 of the Family Law Reform Act 1969. It recognises that Act as governing the legal position: see paragraph 146 of the judgment.

Grounds 6-8 (including the Article 14 argument)

Ground 6. The Court is not proposing to act contrary. to Article 14 of the Convention read with Article 8 of the Convention. The Court has set out the legal requirements for determining whether a child under 16 can legally consent to the administration of puberty blocking drugs in the context of a diagnosis of gender dysphoria. It has not previously been suggested by the Defendant that a decision governing that matter could give rise to an issue under Article 14. The requirement for a child to be competent to understand proposed medical treatment, and the identification of what a child needs to understand for that purpose, is a proportionate means of achieving a legitimate aim.

Ground 7. The Court has not placed flawed reliance on *Re W.*

Ground 8. This Ground refers to what is said to be different contentions between the Claimants and the Defendant as to whether a child had to have adult knowledge and contends that the Court erred in failing to resolve this issue. The issue for the Court was whether a child would be competent to give consent, It dealt with that in relation to under 6s in paragraph 138 of the judgment and 16s and over at paragraph 146. There is no failure to deal with any issue necessary for the proper resolution of the dispute.

Ground 9 (on Stonewall and Mermaids' attempts to intervene).

Ground 9. The Defendant complains about the absence of a ruling on evidence adduced by the Claimants. First, there is nothing to indicate that the error complained of affects the judgment in any material way. Secondly, the evidence was not used as a means of determining the issues in the case: it was used, as was the Defendant's evidence, as a means of understanding the background to the case.

The Defendant refers to Orders made in relation to proposed interveners. Stonewall and Mermaids were not debarred from taking part because of procedural failings. They applied to intervene by way of evidence but what was advanced did not add to the evidence in the case. They applied to intervene by way of submissions but wished to raise an issue not within the confines of the case. Though given a number of opportunities to do so, they were unable to provide a clear indication (unlike those given permission to intervene) of what they would wish to submit in relation to the issues in the case. S was not debarred from taking part because of procedural failings. He had applied to intervene by way of written evidence and written and oral submissions to ensure that the voice of the child was heard. Shortly before the hearing, it transpired that, though he had not disclosed this when making the application to intervene, he had already made a witness statement (albeit using a different initial) which had been put in

evidence by the Defendant. The voice of the child, and this particular child, was heard.

Reasons were given for the Orders made in respect of these proposed interventions. If seeking permission to appeal on this basis, the Defendant must draw the attention of the Court of Appeal to the relevant chronology and those reasons.

And finally Ground 10 (parental consent).

(This is the same version that is circulating, just with larger font for easy read for everyone).

Ground 10. So far as the question of parental consent is concerned, the Defendant made it clear that it would not refer children for possible prescription of puberty blocking drugs and required the consent of the child. The issue in this case was therefore the circumstances in which a child could consent to the treatment. See paragraph 47 of the judgment.

Note this key part in the Order. The implementation of the decision (i.e. the need for a “Bell Order” to allow puberty blockers for child patient) is stayed (itself paused) pending appeal. This is not unexpected. But it may mean blockers may still be prescribed for now.

3. The implementation of this Order is stayed until 4 p.m. on 22 December 2020. In the event that the Defendant or the First and Second Interveners apply by 4 p.m. on 22 December 2020 for: (a) permission to appeal; and (b) for a continuation of this stay pending appeal if permission is granted, this stay shall continue until the Court of Appeal determines whether to grant both permission to appeal and the stay as applied for.