



I Know What Is Best For My Child- Perhaps Not!

Whilst the media often reports domestic disputes of people from all walks of life, who may ultimately become involved in proceedings under the Family Law Act, an article in a Sydney newspaper by George Williams, a university Professor of Law, drew attention to the unpalatable but necessary power of the Family Court in relation to medical procedures on a child.

Normally, parents are able to make decisions about medical treatment for their children. However, there is an exception which has traditionally placed certain medical treatments outside of the parents' responsibility, and is decided by the Family Court. These are described as special medical procedures. Briefly, such medical procedures have two important elements: firstly, that there is a major invasive medical procedure and secondly, if carried out its effects are irreversible. Under the relevant section the Court has jurisdiction to make an order relating to the welfare of children, the Court must regard the best interests of the child as of paramount consideration.

In a 1992 decision, the case of *Re Marion* (a pseudonym), the parents argued that they could consent to their fourteen year old disabled daughter being sterilized. The argument was rejected, the High Court of Australia holding that some medical procedures fall outside parental responsibility. In such cases the Court and not parents must take responsibility as to ensure the medical procedure is only ordered in the best interests of the child.

The excellent article by Professor Williams highlighted how the very idea of sterilization raises the horrifying spectre of what was known as the eugenics movement, which in general terms favoured the sterilization of disabled people for the protection and the health of the State. As Professor Williams emphasizes Australia's current law has evolved from a different set of values.

This year the Family Court was required to visit the decision made in the case of *Re Marion*: in permitting the sterilization of an eleven year old girl. The child had Rett Syndrome a neurological disorder resulting in severe intellectual impairment and epilepsy. Their daughter was unable to talk, could not control movement and had no bladder control. When the child menstruated it would bring upon epileptic seizures.

Her parents brought the case, seeking judicial approval for the medical procedure, involving the sterilization of their daughter. It was recognised by the Court, that the procedure could only be ordered if it was necessary from a medical perspective and it was in the child's best interests. It was held that the child's quality of life would improve and on the evidence the procedure was "urgent and necessary".

The application for sterilization was upheld, the Court being satisfied that the medical procedure was in the child's best interest.

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