

CASE SUMMARY

Re: Imogen (No. 4) [2020] FamCA 396 (21 May 2020)

FACTS AND BACKGROUND

This case involved an application by the 'D Group' (a pseudonym), an organisation which purports to hold concerns about the current orthodox medical treatment of children diagnosed as having Gender Dysphoria, to intervene in the Family Court proceedings between the mother and father of Imogen, a 16-year-old transgender girl.

Imogen was assigned male at birth but identifies as female. Imogen was diagnosed by her treating doctors as having Gender Dysphoria and received Stage 1 (puberty blocking) gender affirming therapy. Imogen wished to proceed to Stage 2 (hormonal) therapy, a decision supported by her father but opposed by her mother, who successfully sought leave for a medical professional, Dr B, to give expert evidence about the current state of medical thought on treating adolescents with gender dysphoria. Dr B has written academically that gender affirming therapy can 'gloss over' complex relational and psychological difficulties. At the time of the present judgment Imogen was not judicially found to be *Gillick* competent;¹ in a later judgment, the Court found that she was.²

The D Group, an incorporated association and registered charity, sought to intervene pursuant to rule 6.05 of the Family Court Rules 2004, which permits a person to apply to become a party to proceedings. The D Group purports to be associated with a number of medical professionals who have expressed concern about orthodox treatment of gender dysphoria. It also claims to have been contacted by parents deeply distressed about the irreversible harm gender affirming therapies have on their children. D Group's principal solicitor and public officer, Ms G, although not medically qualified, expressed the view that Imogen was experiencing 'Rapid Onset Gender Dysphoria' (ROGD), which posits that gender dysphoria in some cases arises as a 'social contagion'.

If the application to intervene were to be successful, the D Group sought orders, *inter alia*, to prevent Imogen receiving Stage 2 therapy and to refrain Imogen from making any further decisions in relation to her medical treatment without consulting with, and receiving consent from, her mother. D Group's application was opposed by Imogen's father; her mother neither opposed nor consented to the application. Although the Independent Children's Lawyer did not consent or oppose the application, Imogen expressed confusion about why an organisation such as D Group wished to intervene.

REASONING

Before the Court, the D Group submitted that it was uniquely positioned to provide relevant information (including medical information) about international developments in assessing whether gender affirming therapy is in a child's best interests, which otherwise would not be before the Court. The information referred to by D Group in its submissions was vague, relating to purported litigation arising from a former client of a United Kingdom gender affirming clinic, similar developments in Sweden, and 'stories' from the UK, USA, and Sweden not adequately reported and publicised within Australia.

The D Group further submitted that its application to intervene in Imogen's case was distinguishable from other applications in similar proceedings (namely *Re: Kelvin* [2017] FamCAFC 258) because of factors including Imogen's mother's opposition to Stage 2 treatment; that Stage 2 treatment was fast-tracked and may have been commenced unlawfully; that Imogen displayed signs of having ROGD; and that Imogen (at the time) had not been judicially determined to be *Gillick* competent. Further to that, the D Group argued that *Re: Kelvin* treating guidelines recommending gender affirming therapy had come under increasing scrutiny; that

¹ *Gillick* competence relates to the ability of a minor to consent to their own medical treatment, a standard based on the decision in *Gillick v West Norfolk and Wisbech AHA*. (1986) AC 112 ((HL)).

² *Re: Imogen (No. 6)* [2020] FamCA 761 at [199] (Watts J).

recent medical studies purported to show that diagnoses of gender dysphoria were disproportionately being made in respect of those with Autism Spectrum Disorder (ASD); and that these factors when considered together suggest that medical intervention was not an appropriate response. The D Group contended that Imogen's behaviours since infancy suggests a diagnosis of ASD and should be investigated.

The Court disagreed with the D Group's submissions. It held that while the D Group's application did not turn on Imogen's circumstances alone but on the current state of medical knowledge generally, the focus of the proceedings must have been Imogen. The Court gave some weight to Imogen's view that she did not see why an outside organisation such as D Group ought to intervene. Although the state of medical knowledge would be a relevant consideration, the Court deemed that those medical professionals already permitted to give expert evidence in proceedings, namely Dr B and Dr C (a medical professional who assessed Imogen to be *Gillick* competent), to be able to provide an expert opinion as to those issues.

Having regard to these matters, the Court held that it was in Imogen's best interests to constrain the expert medical evidence to those issues necessary to resolve or determine the case, and that such evidence could be adduced without D Group's involvement. The Court accordingly dismissed the D Group's application to intervene.