



CORNWALL STREET

BARRISTERS

Briefing Note

Re JS (Disposal of Body) [2016] EWHC 2859 (Fam) – Briefing Note

by Anna Rohan

The applicant 'JS' was a 14-year-old girl who was suffering from a rare form of cancer. The question for the court was: who would be responsible for deciding what to do with JS's body after her death. This was a significant and unusual case as JS had expressed her wish for her body to be cryogenically frozen with the hope that she could be resuscitated and cured in the future.

JS's parents, who had been divorced for most of JS's life, disagreed about what should happen after her death. JS's mother supported her wish and hoped to have the power to implement the cryogenic process. JS's father, whom she had not seen since 2008, did not agree.

The father's concerns were noted in paragraph 21 of the judgment. He raised issues about the position JS would be in if the process was successful and she was brought back in the future without any family or support. He also raised concerns that he would be held liable for the costs of the process as he himself was suffering from cancer. He, however, did state that he would agree to the process on certain conditions, one of which was that he be allowed to see JS's body after her death. JS had refused to see her father and did not want him to see her body after her death.

LEGAL BACKGROUND

The Judge, The Honourable Mr Justice Peter Jackson, considered the case law and made it clear that he was not deciding what should happen to the body after death, but was deciding who had the responsibility to decide how the body would be disposed of. He noted *Williams and Williams* [1882] LR 20 ChD 659 and *Anstey v Mundle* [2016] EQHC 1073 (Ch).

In determining that the court could decide the issue before JS's death, rather than waiting until after her death, the Judge considered cases such as *Curtis v Sheffield* [1882] 21 ChD (CA). He decided that not only were there 'special circumstances', such as time constraints upon the process, which meant the question should be determined before her death but that her present welfare would not be protected by the Court's refusal to determine the issue before her death.



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The Judge stated that the case was *'the only one of its kind to have come before the courts in this country, and probably anywhere else'*. He also stated that the case did not set a precedent for other cases.

The Judge noted in his judgment that the science behind cryonics is *'speculative and controversial'*. At paragraph 30 he made it clear that the court was not expressing a view regarding the scientific or ethical issues with cryogenic preservation, stating:

'Lastly, I cannot emphasise enough what this case is not about. It is not about whether cryonic preservation has any scientific basis or whether it is right or wrong. The court is not approving or encouraging cryonics, still less ordering that JS's body should be cryonically preserved.'

THE DECISION

The Judge considered various factors including JS's wishes, her family situation, and the welfare principle. He decided that the *'mother is best placed to manage this unusual and difficult situation'*. The Judge gave the responsibility of deciding what to do with JS's body to the mother. He also decided that the father's concerns as to being held liable for costs were ill founded and ordered that the father be prevented from intervening with the process after JS's death.

On the 17th November 2016 JS died and her body was prepared for cryogenic freezing, by a voluntary organisation, as was her wish.

THE JUDGMENT

<https://www.judiciary.gov.uk/wp-content/uploads/2016/11/js-judgment-20161118.pdf>

If you would like further information on this please contact:

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