

## HAY v B AND OTHERS 2003 (3) SA 492 (W)

### Headnote : Kopnota

The applicant, a paediatrician at the G clinic, applied, as a matter of urgency, for an order authorising her to administer a blood transfusion to an infant, the child of the first and second respondents. The applicant testified that, while no guarantee could be given that the infant would survive if the blood transfusion were administered, the probability was that, if a blood transfusion were not administered, the infant would not survive. The first and second respondents were opposed to the administration of the blood transfusion on the grounds that the acceptance of a blood transfusion was contrary to their religious beliefs and that they had concerns relating to the risk of infection associated with blood transfusions. The applicant testified as to the procedures adopted in screening blood and the unlikelihood of the blood transfused being contaminated.

*Held*, that in terms of s 28(2) of the Constitution of the Republic of South Africa Act 108 of 1996 a child's best interests were of paramount importance in every matter concerning the child and was the single most important factor to be considered when balancing or weighing competing rights and interests concerning children. The duty to afford children protection fell on law enforcement agencies, all right-thinking people and ultimately the Court, which was the upper guardian of all children. (At 494I - 495A.)

*Held*, further, that these were the principles that had to apply in dealing with the first and second respondents' objections to the administration of the blood transfusion. (At 495A - A/B.)

*Held*, further, that the right to life was a value that was constitutionally protected. If the blood transfusion was not administered, the death of the infant was imminent. The infant's right to life was an inviolable one and was capable of protection, and it was in the best interests of the infant that this right be protected. (At 495B/C - C/D.)

*Held*, further, that, while the parents' private religious beliefs had to be respected, the evidence established that their beliefs negated the essential content of the infant's right to life. The applicant was adamant that the infant's best chance of survival would be by the immediate administration of a blood transfusion. While the first and second respondents' concerns were understandable, they were neither reasonable nor justifiable. Their private beliefs could not override the infant's right to life. (At 495D - E.)

*Held*, further, that the High Court was the upper guardian of all minors and, where it was in the best interests of such minor to receive medical treatment, an order that the minor receive such treatment was appropriate notwithstanding the refusal by the minor's parents to consent to it. That was not to say, however, that the parents' reasons for refusal should be ignored: proper consideration had to be given to those reasons. (At 495H/I - J.)

*Held*, further, that the interests of the infant in receiving the blood transfusion outweighed the reasons advanced by the first and second respondents in opposing the administration of the transfusion. (At 496A - A/B.) Application granted.