

Forced abortion judge ignored family and human rights, UK appeals court says

Courts in the United Kingdom have released the text of judicial decisions in the case of a disabled woman originally ordered to undergo a forced late-term abortion.

The decisions, made available July 11, reveal that the woman was hours away from being made to undergo the procedure at the time the Court of Appeals heard her case.

On June 21, Justice Nathalie Lieven from the Court of Protection had ruled that a 24-year-old woman, identified in court as "AB", undergo an abortion at 22 weeks pregnant. Neither AB, nor her mother, "CD", wished for her to have an abortion. Both CD and AB are devout Catholics, and are members of the Nigerian Igbo community.

The Court of Protection hears cases related to people who do not possess the capacity to make decisions for themselves. [The Court of Appeal overturned Lieven's decision](#) just three days later, on June 24, finding that Lieven's decision disregarded the assessment and wishes of AB's mother and social worker, and went against her human rights.

"(Lieven)... was in error in failing to make any reference in her ultimate analysis to (the mother's) views about AB's best interests when, as the judge found, she knew AB better than anyone and had her best interests at heart," reads the Court of Appeal's judgment.

"(The mother and the social worker) each know AB better than the assessing psychiatrists could possibly do notwithstanding the lengthy, caring and careful assessments they had carried out. The judge had the expert evidence of the psychiatrists on the one hand and the views of those who know AB best on the other, but she did not weigh them up, the one against the other."

Writing for the three judge panel, Lady Justice Eleanor King concluded that Lieven "went beyond what the evidence could support" in concluding that the woman's circumstances made a forced late-term abortion in her own best interests.

In the Appeal Court summary, AB is described as "a 24-year-old woman with moderate learning disabilities" who "exhibits challenging behaviour and functions at a level of between six and nine years old." AB is also said to have had a mood disorder, for which she is medicated.

"It may be that, on any objective view, it would be regarded as being an unwise choice for AB to have her baby, a baby which she will never be able to look

after herself and who will be taken away from her,” King concluded.

“However, inasmuch as she understands the situation, AB wants her baby. Those who know her best... believe it to be in AB’s best interests to proceed with the pregnancy,” she continued.

“(Lieven’s) conclusion as to what was in AB’s best interests was substantially anchored in the medical evidence. In my judgement, that medical evidence, without more, did not in itself convincingly demonstrate the need for such profound intervention.”

King also noted that, although the woman has developmental disabilities, applicable human rights law had not been considered by Lieven.

Citing applicable case law, King wrote that “a conclusion that a person lacks decision-making capacity is not an ‘*off-switch*’ for (their) rights and freedoms. To state the obvious, the wishes and feelings, beliefs and values of people with a mental disability are as important to them as they are to anyone else, and may even be more important.”

Because the Court of Protection’s original decision was rendered so close to the legal limit for abortion in the U.K. – the 24th week of pregnancy – court documents revealed that AB was being seen at a doctor’s office for the first pre-abortion appointment when her case was scheduled to be heard in the Court of Appeal.

Had the Court of Appeal not overturned Lieven’s decision, AB would have returned to the hospital June 25 for the first part of the abortion procedure. The abortion would have been carried out June 25 and 26, shortly before her pregnancy reached its 23rd week. Both days would have required that AB go under general anesthesia, and she would have been told “in simple terms” that she would no longer be pregnant when she woke up.

According to the care plan submitted by the doctors petitioning for the forced abortion, the woman would be given a baby doll to replace the baby she was carrying.

“To minimize the potential impact of not having a baby girl to take home with her AB can be given a new ‘baby doll’ soon after the procedure to keep with her. AB is known to enjoy keeping a doll. The doll will need to be female, and AB can keep it with her/dress it etc,” read her care plan.

AB is believed to have become pregnant while visiting family in Nigeria over Christmas. It is unknown who is the father of the child, and it is conceded by all parties that she lacks the capacity to consent to sex.

The case generated substantial outcry at the time the decision of the Court of Protection was reported.

The Court of Appeals decision noted that the case turned primarily on the relative trauma AB would have endured, either through an enforced surgical abortion or the likely loss of her child once born.

Had the woman's medical team applied to enforce a termination at an earlier stage, the appeal court found, it "would have thrown up entirely different issues, given that at that stage AB was entirely unaware and had no understanding of the concept of pregnancy, and that the pregnancy could have been brought to an end in a non-invasive way."

While Lieven's conclusion on the balance and weight of evidence was rejected by the appeal court, King nevertheless underscored the right of the court to impose an abortion if the circumstances merit it.

"Carrying out a termination absent a woman's consent is a most profound invasion of her Article 8 (human) rights, albeit that the interference will be legitimate and proportionate if the procedure is in her best interests," King concluded.

Clare McCarthy, spokesperson for Right to Life UK, said in a statement that the decision was a "chilling" reminder of the life and death power of UK courts.

"As the ruling from the Court of Appeal made clear, the right to life of the baby held no weight in court, as the 'the court does not take into account the interests of the foetus but only those of the mother.' This is despite the fact that the baby, this late in gestation, would in some cases have been able to survive outside of the womb," McCarthy said.

"Although it is a major relief that the Court of Appeal came to this decision, and that the forced abortion did not take place, it is a chilling case that demonstrates the power the court holds over life and death."