

IN THE QUEEN'S BENCH DIVISION

Case No. – None Allocated -

Courtroom No. 37

The Royal Courts of Justice
Strand
London
WC2A 2LL

10.40am –11.00am
Monday, 14th May 2018

before

THE HONOURABLE MR JUSTICE GARNHAM

MR ALLMAN

- v -

MR EVANS

MR ALLMAN appeared In PERSON
MR EVANS did not appear and was not represented

WHOLE HEARING

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1 **Case called at 10.40am.**

2 JUSTICE GARNHAM: Yes, Mr Allman?

3 MR ALLMAN: Yes, My Lord.

4 JUSTICE GARNHAM: Come forward.

5 MR ALLMAN: I apologise about my dress, I haven't slept in my own bed for eight nights.

6 When I left home I wasn't expecting to be here today doing this.

7 JUSTICE GARNHAM: It does not matter. Tell me what this is all about Mr Allman.

8 MR ALLMAN: Right.

9 JUSTICE GARNHAM: I have just been given a bundle and I have only flicked through it.

10

11 MR ALLMAN: Sure. My Lord, you will have heard, I expect, about Alfie Evans.

12 JUSTICE GARNHAM: Yes.

13 MR ALLMAN: I wrote two days before my birthday, just roughly, via a web form to the

14 Coroner's office, just saying I would like to be kept informed when the inquest
15 would be.

16 JUSTICE GARNHAM: What interest do you have in this Mr Allman, legal interest?

17 MR ALLMAN: My interest in this is a member of the public. No more than that. Not
18 related to the family but I have followed the case and I have read the judgments of
19 the senior courts with great interest.

20 JUSTICE GARNHAM: Yes.

21 MR ALLMAN: It struck me that a lot of the discussion that was taking place on the
22 internet about this case was ill-informed...

23 JUSTICE GARNHAM: Yes.

24 MR ALLMAN: And that discussion would be a lot better informed if Alfie were to die and
25 there were a post-mortem and then the post-mortem would definitively say what
26 had been wrong with him, rather than undiagnosed condition and relying upon
27 prognosis. So it would be a completely different quality of evidence as to what was
28 wrong with him. Not 'we think this is going to happen in the future'...

29 JUSTICE GARNHAM: Yes.

30 MR ALLMAN: But, 'this has actually happened now let's find out why it happened.'

31 JUSTICE GARNHAM: Yes.

32 MR ALLMAN: So I was interested in this and I was interested in also the legalities of it
33 and when I wrote to the coroner...

34 JUSTICE GARNHAM: Which coroner did you write to?

35 MR ALLMAN: If you go to page...my correspondence with the coroner begins in the

1 bundle, there's the witness statement and have you had time to read that, My Lord?

2 JUSTICE GARNHAM: I have flicked through it, yes.

3 MR ALLMAN: If you look at the...page....I think it would be eight, nine, page nine.

4 JUSTICE GARNHAM: Yes, that is a blog of yours.

5 MR ALLMAN: It's a blog but if you go down to the second page, so page 10 I think now.

6 JUSTICE GARNHAM: Yes.

7 MR ALLMAN: Two of 28 it says at the bottom as well, with a picture on the same page.

8 My initial inquiry simply said I would like to receive about the inquest.

9 JUSTICE GARNHAM: And they said what is your connection?

10 MR ALLMAN: Thank you for your enquiry. So I explained...

11 JUSTICE GARNHAM: So who were you writing you to? Writing to which address,

12 which coroner?

13 MR ALLMAN: I was writing to the coroner's office. The reply came...

14 JUSTICE GARNHAM: Which coroner? Liverpool?

15 MR ALLMAN: Liverpool, yes. The reply came from the Senior Coroner and...but I

16 explained my interest in that, so Mr Rubello [?] is the Senior Coroner.

17 JUSTICE GARNHAM: Yes.

18 MR ALLMAN: He replied, 'Alfie Evans died from a natural cause of death and there was

19 no duty for a coroner to investigate under the Coroners and Justice Act 2009 or

20 under any other legislation.

21 JUSTICE GARNHAM: Yes.

22 MR ALLMAN: That statement, I know is incorrect.

23 JUSTICE GARNHAM: Right.

24 MR ALLMAN: Because there was a court order in the case, issued by I think the High

25 Court, confirmed by the Court of Appeal and again by the Supreme Court and then

26 further proceedings...

27 JUSTICE GARNHAM: Yes, I know about that.

28 MR ALLMAN: And so on and so forth. To try to release Alfie from state custody in

29 effect.

30 JUSTICE GARNHAM: Not at all. As I understand it, he was not in state custody, he was

31 simply being treated in hospital.

32 MR ALLMAN: No, there was a court order in place from the highest court of the British

33 state, the Supreme Court...

34 JUSTICE GARNHAM: Yes.

35 MR ALLMAN: Saying he had to stay in that hospital, his parents could not discharge him.

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JUSTICE GARNHAM: No. That is not state custody though.

MR ALLMAN: Well, it's not custody but the Act doesn't speak, I'm abridging, the Act speaks of if there is a death and the deceased dies while in custody...

JUSTICE GARNHAM: You are referring to which Act?

MR ALLMAN: Section 1 of the Coroners and Justice Act 2009.

JUSTICE GARNHAM: Yes.

MR ALLMAN: I'm hoping you'll be able to...I didn't manage to get a bundle of authority...

JUSTICE GARNHAM: I am reasonably familiar with it but I do not have it in front of me.

MR ALLMAN: It expressly says that there has to be an inquest...

JUSTICE GARNHAM: If a person dies in custody?

MR ALLMAN: If a person dies in custody or otherwise detained by the state. He was in a public sector hospital and could not be moved there by order of a public authority, namely the Supreme Court.

JUSTICE GARNHAM: Right.

MR ALLMAN: Even to Italy, of which he was also a citizen.

JUSTICE GARNHAM: Yes.

MR ALLMAN: Parliament's intention when enacting that wording, 'or otherwise detained', was to avoid nit-picking arguments about what custody was...

JUSTICE GARNHAM: It would be useful to have a copy of that, you have not brought a copy of that?

MR ALLMAN: Unfortunately, My Lord, I forgot there was no internet here and I forgot to download the Act.

JUSTICE GARNHAM: Well, I...

MR ALLMAN: I can assure you I have studied the...this is a matter for judicial review in the future. I will be making an application....

JUSTICE GARNHAM: Just a moment. Usher, could you telephone my clerk please and ask if she can bring down from my shelves The Coroner's Inquest book I wrote?

MR ALLMAN: I have had advice of a barrister who actually works for the Christian Legal Centre, which represents the parents against whom I'm applying for today's injunction. They can't make this application because they have a conflict of interest. I, without their, opposition but without their open approval, I have stepped into the breach. I have no idea whether they will be pleased or disappointed that

1 I've done that but they are...

2 JUSTICE GARNHAM: The funeral is taking place this morning, is it not?

3 MR ALLMAN: Precisely, My Lord.

4 JUDGE GRAHAM: So you are inviting me to issue an injunction in the High Court to
5 stop that funeral?

6 MR ALLMAN: I'm not asking you to issue an injunction that will stop the funeral in the
7 sense of the ceremony that takes place, I believe, in a church in Liverpool. I am
8 asking you to make an order that says, 'unless the parents know something that I
9 don't know and you don't know, and apparently the Christian Legal Centre doesn't
10 know either, at least they haven't told me, and which the coroner may know but
11 which he refused to tell me, unless there has been a post-mortem and a toxicology
12 test to definitively ascertain the cause of death scientifically, then...

13 JUSTICE GARNHAM: What do you want? What is it you are asking me to do?

14 MR ALLMAN: I am asking you to just...the burial or cremation after the funeral service
15 must be delayed, unless the parents are aware that there has been a post-mortem.

16 JUSTICE GARNHAM: Do you know whether it is going to be a burial or a cremation?

17 MR ALLMAN: No.

18 JUSTICE GARNHAM: Because if it is a burial and if there was any merit at all...

19 MR ALLMAN: You could do an exhumation.

20 JUSTICE GARNHAM: Yes.

21 MR ALLMAN: In which case, then you make an order saying that there can be a burial but
22 there cannot be a cremation.

23 JUSTICE GARNHAM: I see.

24 MR ALLMAN: And then we're covering the most dangerous option.

25 JUSTICE GARNHAM: Yes, I see. In legal terms, you have to have what is called
26 standing or *locus* in application on this. What is your standing to interfere the
27 arrangements for the burial or cremation of this child?

28 MR ALLMAN: Funeral. This is the weakest part of my case, I understand that My Lord.

29 JUSTICE GARNHAM: Yes.

30 MR ALLMAN: I will try to explain that. My standing in the forthcoming future judicial
31 review against the coroner to establish that he should not have used the short circuit
32 he did when a death had taken place of somebody detained by the state, which I
33 think is indisputable.

34 **Crosstalk.**

35 MR ALLMAN: My standing in that is very good. Parliament said there has to be an

1 inquest, it is a public process, it is for the benefit of the public, that they may have
2 confidence in the legal system and the recognition of their right to give and receive
3 information.

4 JUSTICE GARNHAM: Are you saying any member of the public could make this
5 application?

6 MR ALLMAN: Any member of the public can make the judicial review application. Any
7 member of the public would be wise to make this application because it would be a
8 pyrrhic victory to establish in a few weeks' time that the coroner shouldn't have
9 used the shortcut that he did because the Act doesn't allow it when the deceased
10 died whilst detained by the state, as the facts will be established. So what I'm
11 saying is, it would be a pyrrhic victory if I didn't succeed today in preventing the
12 destruction of the most important evidence to inform that future inquest that I hope
13 there will be as a result of a future application which, and this correspondence
14 shows, that I have put the coroner on notice, I have invited him...

15 JUSTICE GARNHAM: Let me just read what you have said to the coroner.

16 MR ALLMAN: Yes, of course.

17 JUSTICE GARNHAM: Have a seat if you want.

18 **Pause.**

19 **Crosstalk.**

20 JUSTICE GARNHAM: I now have a copy of the Act in front of me, thank you.

21 MR ALLMAN: You will see...

22 JUSTICE GARNHAM: Let me...you say I should look at...let me just find it...the
23 Coroners and Justice Act, Section 1.

24 MR ALLMAN: You probably need Section...

25 JUSTICE GARNHAM: The deceased died while in custody or otherwise in state
26 detention.

27 MR ALLMAN: Otherwise in state detention is a very broad...

28 JUSTICE GARNHAM: That is what you were referring to?

29 MR ALLMAN: No equivalent of that...it wasn't technically custody...

30 JUSTICE GARNHAM: Let me just read your letter then.

31 MR ALLMAN: Yes. But in Section 2 you need, or that will be needed for the judicial
32 review because there is a power there to cut short an investigation without an
33 inquest but it doesn't apply after a death in custody or when otherwise detained by
34 the state. So that's the mistake...

35 JUSTICE GARNHAM: This is in Section 2, you say?

1 MR ALLMAN: I think it's Section 2, it might be Section 4. And the coroner uses the
2 form 100A and he explains that in the email so you could go there.
3 Pause.
4 JUSTICE GARNHAM: There are a lot of letters here. What are you referring to
5 Mr Allman? Which one do you want me to...where is the reference to Section 2 or
6 4?
7 MR ALLMAN: Okay...in the...
8 JUSTICE GARNHAM: Give me a page number please.
9 MR ALLMAN: Yes, of course, My Lord. Where he mentions the 101A procedure.
10 JUSTICE GARNHAM: Page?
11 MR ALLMAN: I think it is...101...
12 JUSTICE GARNHAM: Page 13, I have found it.
13 MR ALLMAN: You have. What's the little page number on the bottom of that, My Lord?
14 JUSTICE GARNHAM: 528.
15 MR ALLMAN: 528. Yes. It's right at the bottom of the page. The full 101A procedure,
16 which is one outcome from a coroner's preliminary investigation is a decision not
17 to hold an inquest.
18 JUSTICE GARNHAM: Yes.
19 MR ALLMAN: The Section of the Act which you have, which I don't have in front of me,
20 concern...says that that 101A procedure cannot be used when the deceased died
21 whilst otherwise detained by the state. My argument is that Parliament intended no
22 quibbling as to whether someone was technically in custody or not. If somebody
23 was being prevented from moving and the agent that was doing it was an emanation
24 of the state, that's good enough and the combination of a public sector NHS
25 hospital and the Supreme Court is certainly the state.
26 JUSTICE GARNHAM: That is plainly right, that the Supreme Court is the state. There is
27 no doubt about that but there is no detention and no otherwise...
28 MR ALLMAN: Yes there was, My Lord. There was an order that he couldn't be moved.
29 That is detention...
30 JUSTICE GARNHAM: That is in his interest. That was the court. Just a moment please.
31 That was the court...
32 MR ALLMAN: I'll stand up, My Lord.
33 JUSTICE GARNHAM: Please let me speak.
34 MR ALLMAN: Sorry.
35 JUSTICE GARNHAM: That was the court acting in the position in the stead of the child,

1 saying that it was in the child's best interest not to be moved. That is not detention.
2 That is simply the court standing in the shoes of the child.

3 MR ALLMAN: Well, that may have made the decision of the Supreme Court correct but
4 every tyrant will say, 'we're doing this for you own good', on occasions, 'you're
5 being detained in mental hospital under the benevolent Mental Health Act, you're
6 being detained for your own benefit'...

7 JUSTICE GARNHAM: That is hopeless, Mr Allman. The situation you are comparing it
8 with is where somebody, a tyrant as you put it, directs his or her attention towards
9 somebody who is capable of speaking for themselves. Alfie was not. The question,
10 therefore, was who could make the decision on Alfie's behalf. That was the central
11 issue that went to the Supreme Court and the decision was, it is a matter for the
12 court acting in the best interest of the child.

13 MR ALLMAN: I understand and I'm not impugning the decision of the Supreme Court at
14 all but I am saying the fact that there was this intervention by the Supreme Court
15 saying that Alfie could not be moved means that Alfie was, whether we like it or
16 not, being detained by the state.

17 JUSTICE GARNHAM: Yes, thank you very much.

18 MR ALLMAN: On the plain meaning of the word, My Lord. But that is an argument for
19 the judicial review that I intend to bring.

20 JUSTICE GARNHAM: Thank you.

21 MR ALLMAN: And I would ask you to proceed on the basis that is the arguable because
22 that is the legal opinion that I've had from a very experienced human rights
23 barrister.

24 JUSTICE GARNHAM: Yes, thank you very much. Please have a seat.

25 **Judgment transcribed separately.**

26 JUSTICE GARNHAM: Thank you, Mr Allman.

27 MR ALLMAN: May I apply for a transcript at public expense?

28 JUSTICE GARNHAM: No. You can have a transcript, but it will be at your own expense.
29 This is hopeless Mr Allman, and I am not going to encourage you to pursue it. If
30 you want a transcript, then you will need to apply for one yourself.

31 MR ALLMAN: Thank you, My Lord.

32 JUSTICE GARNHAM: Thank you very much.

33 **End of hearing.**

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291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com