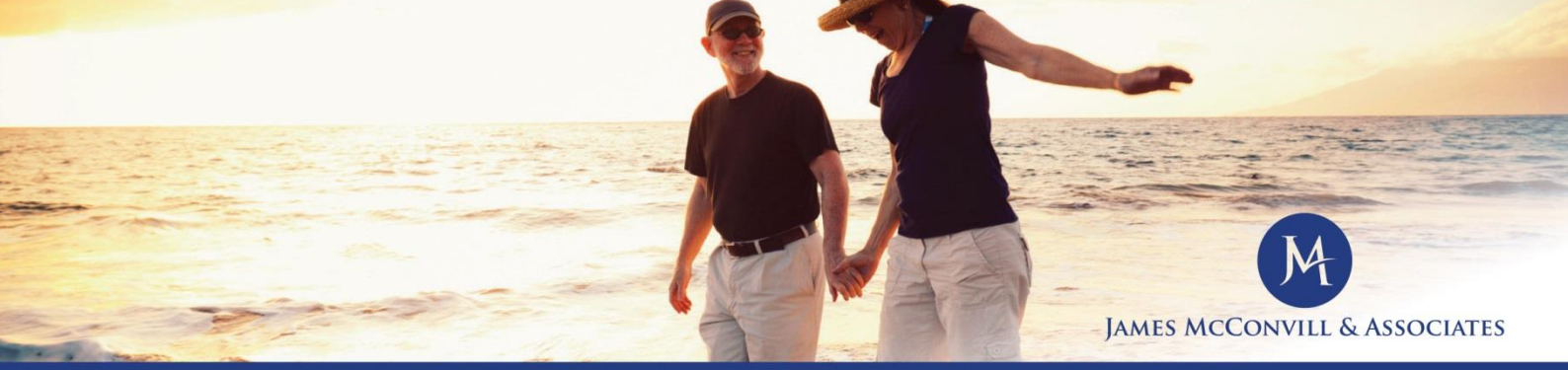


Family Court Rules That Teenager Experiencing Gender Dysphoria could Undergo Reversible and Irreversible Surgery

Court Authorises the Parents of Teenage Child to Proceed with Bilateral Mastectomy for Child

INTRODUCTION

In *Re: Quinn* [2016] FamCA 617 (29 July 2016) the mother and father ("the Applicants") are the parents of "Quinn", who was born in 2001. Quinn, who was born a girl, but identifies as male, was seeking to have a bilateral mastectomy, which is often referred to as "top surgery". The Applicants had requested that the Family Court determine whether Quinn was competent himself to authorise the surgery. Failing that, they sought for the Court to make an order that they, the Applicants, could authorise the surgery. Australia is currently the only jurisdiction in the world that requires young people to seek the permission of the Family Court before embarking on stage two treatment for gender dysphoria.

The WPATH Guidelines

In *Re: Quinn*, the Court considered the World Professional Association for Transgender Health, Standards of Care ("the guidelines"). These guidelines set out the generally accepted interventions:

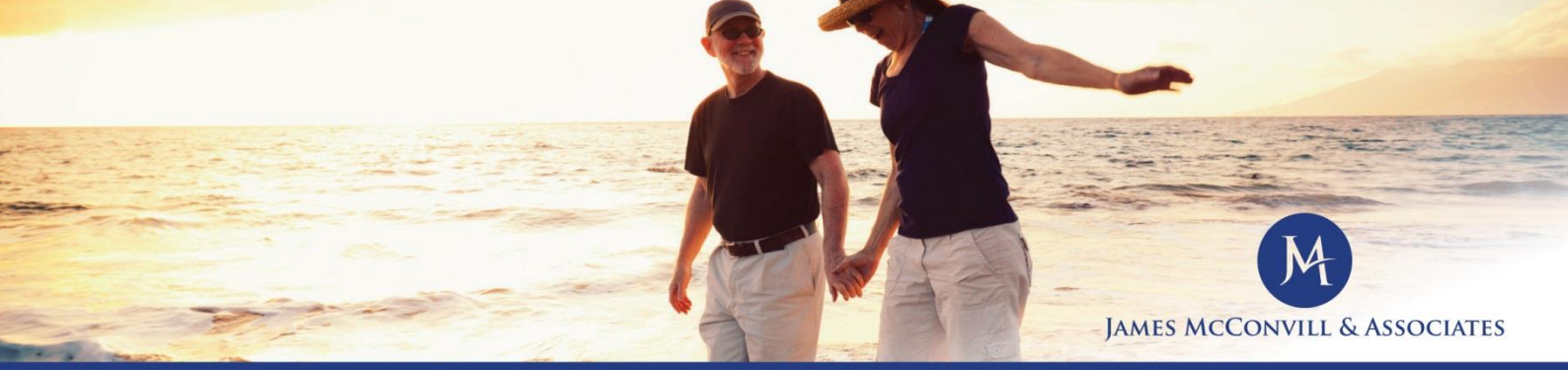
- Stage 1 involves fully reversible interventions. These comprise the use of Gonadotropin-releasing hormone, which is used to suppress oestrogen or testosterone production and thus delay the physical changes of puberty.

- Stage 2 involves partially reversible interventions. These include hormonal therapy to either masculinise or feminise the body. Some of these changes may require reconstructive surgery to reverse the effect; and lastly

- Stage 3 involves irreversible interventions. These are surgical procedures.

These guidelines recommend a staged process, which enables young people to keep their options open. Additionally, this staged process allows for the adolescents and their parents to assimilate fully the effects of the earlier intervention before moving onto the next stage. Quinn had not yet started stage two treatment, but his treating doctors recommended that he should undergo stage three treatment, "top surgery", immediately.

The Secretary of the relevant Government Department had been served with the application. An Independent Children's Lawyer ("ICL") had also been appointed for Quinn.



The Law – *Gillick* Competency

In the earlier case of *Re Jamie* [2013] FamCAFC110, the role of the Family Court of Australia in cases of childhood gender identity disorders had been decisively explored. In looking at cases where the intended treatment was irreversible, the issue for the Court to determine was whether the child was "competent within the decision in *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] UKHL 7, known as "*Gillick* competent". If the child was found to be *Gillick* competent, the Court's authority was not required to endorse the procedure.

Further, in *Re Jamie*, Chief Justice Bryant stated that stage one of the treatment was not a medical procedure that would fall under the jurisdiction of the Family Court pursuant to section 67ZC of the *Family Law Act 1975* (Cth)("the Act"). But if there was a dispute about whether treatment should be given, and what form it should take, in stages one or two, then it was appropriate for it to be determined by the Court under section 67ZC.

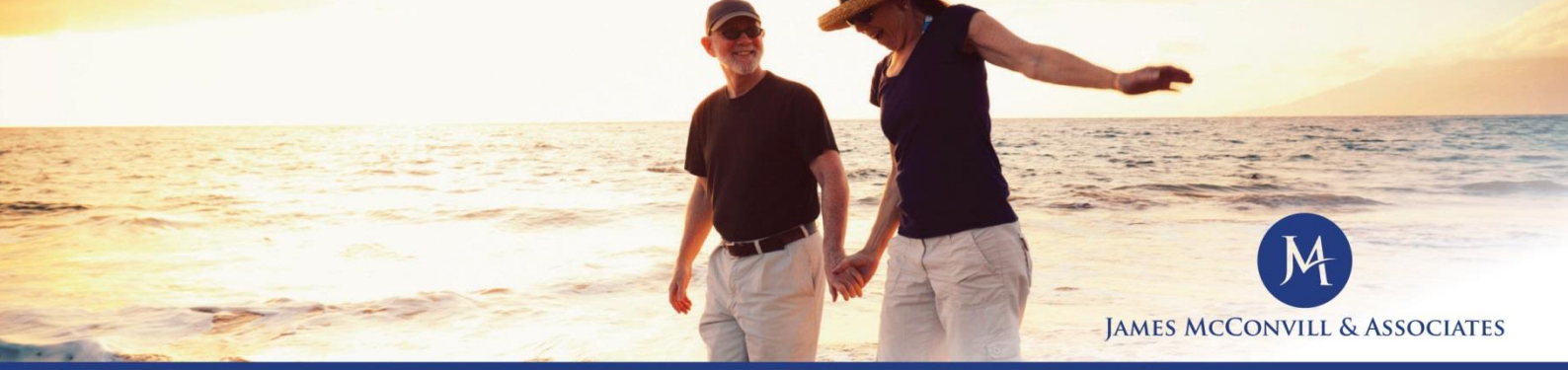
In terms of stage two treatment, court authorisation was appropriate unless the child was *Gillick* competent. The decision of whether a child was *Gillick* competent was a matter for the Court to determine. If the child was found to be *Gillick* competent, the child could consent to the treatment, and the Court's authorisation was not required, unless there was controversy. In such a case, the Court would need to make an assessment on authorising treatment, with the best interests of the child as the paramount consideration.

In making such a decision, significant weight was placed on the child's view in accordance with his or her age and maturity.

Was Quinn *Gillick* competent?

According to his mother, Quinn had been dressing as a boy since he was four years old. She also stated that Quinn was very aware of the implications of surgery, the pain and discomfort it would entail, and the fact that it would affect his ability to breastfeed should he change his mind. She deposed that he had never faltered in his desire to have the operation and had become increasingly depressed as surgery had been put off pending the outcome of court processes. He had also independently researched hormone therapy and wanted to start testosterone treatment within the next twelve months. She deposed that she was confident that Quinn was "taking an intelligent, mature and measured approach to his future …"

Quinn's father and some of his treating doctors also provided evidence in terms of Quinn's *Gillick* competence. Dr H had provided a report to the Court in which he deposed that "Quinn had done his own research … He is aware of the risks and complications of the surgery, and he's able to describe why this particular operation has the best chance of giving him an excellent aesthetic result". Dr R, a counsellor and clinical supervisor, reported that Quinn understood that the surgery would completely remove his breasts, and was aware that there would be significant post-operative pain, and limited mobility. Quinn was able to describe to her the advantages of the treatment, including the fact that post-surgery he would no longer have breasts but would instead present as having a male chest. He would be able to go swimming, play sport, and feel better, and identify more as himself.



What Did The Court Find?

Justice Rees considered whether there was a dispute or controversy. Although Quinn wished to have irreversible surgery, termed a stage three intervention, prior to commencing stage two treatment, there were guidelines by WPATH for instances when deviation from the stages may be suitable. This was to be determined by looking at the circumstances of the individual child and the opinion of the child's medical treating team.

In Quinn's particular situation, he had not yet embarked on stage two treatment, which he wanted to start once he turned sixteen, but he wanted to have "top surgery" as soon as possible.

The independent children's lawyer ("ICL") considered whether Quinn's case was one where deviation was justified. The ICL had sought the opinion of Dr D, Quinn's consultant psychiatrist in terms of whether there were advantages or disadvantages in proceeding in this way. And if there were any disadvantages, could they be mitigated in some way? In his report, Dr D wrote that the advantages of the surgery before stage 2 treatment, would greatly improve Quinn's quality of life, in terms of reducing his gender dysphoria as well as decreasing the physiological and physical pain he was experiencing due to his large bust. Moreover, the stage 2 hormonal treatment would masculinise Quinn's appearance, creating a hairy face and chest. The Court acknowledged this by saying "[t]his would be incongruent with a person with an E cup breast and would certainly contribute to and potentially provoke abuse and stigmatisation" which could have a detrimental impact on Quinn's mental state.

Justice Rees agreed with Dr D's report. His Honour felt that although society had begun to accept transgender individuals, nevertheless it may be less inclined to accept an individual with large breasts, who also had facial and chest hair. This could create more confusion for Quinn, as he would have a mix of both male and female secondary sexual characteristics.

The primary disadvantage for Quinn in proceeding with "top surgery" prior to stage 2 treatment, is that the hormonal treatment is usually undertaken for 12 months, giving the person time to become socially accustomed to his new gender, before undertaking surgical procedures that are on the whole irreversible. However, Quinn's case was unique in that his large breasts caused him both physical and psychological pain. And once he embarked on hormonal treatment, his breasts would still be noticeable, exacerbating his gender dysphoria. Quinn also had a history of depression and anxiety, and self-harm. The Court found that any risk of proceeding with the surgery was outweighed by the benefits that Quinn would derive from it.

The Court therefore held that it had no concerns about Quinn undergoing the stage 3 surgery, rather it was concerned about the impact on Quinn should surgery be delayed. The Court was required to provide its consent for Quinn to undergo the stage 3 surgery.