

Baby blood donor vaccine battle: Judge rules in favour of Te Whatu Ora, child placed under court's guardianship for surgery

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A High Court judge has ruled in favour of health authorities who sought court guardianship of a gravely ill baby boy after his parents refused a blood transfusion and instead wanted a court order to receive blood from exclusively unvaccinated donors.

The court delivered its ruling just after 6pm in the landmark case of a gravely ill baby needing a blood transfusion as part of life-saving surgery.

The potentially precedent-setting decision is expected to have wide ramifications and draw a strong reaction in the anti-vaccine movement, where the case became a cause-celebre for those opposed to the vaccine.

Justice Ian Gault delivered his ruling on the contentious case after a lengthy hearing the previous day, where Health NZ and Sue Grey, representing the parents, locked horns in the High Court at Auckland as anti-vax protesters gathered outside.



The baby's parents outside court on Wednesday. Photo / RNZ / Mohammad Alafeshat

Justice Gault ordered the baby, who has automatic suppression, is to be placed under the guardianship of the court “from the date of the order until completion of his surgery and post-

operative recovery to address obstruction to the outflow tract of his right ventricle and at latest until 31 January 2023”.

His ruling said the baby’s parents remain his legal guardians aside from the medical matters covered in the order. The judgment requires two Starship hospital doctors to at all times keep the parents informed of their baby’s condition and treatment.

Justice Gault had reserved his decision following the marathon hearing where Paul White, lawyer for Te Whatu Ora, sought an order granting the court guardianship in respect of the six-month-old boy’s medical care.

The baby has a heart valve disorder requiring urgent surgery. Medical experts have said he would normally have been treated long ago and the pressure building up behind his ear.

“His survival is actually dependent on the application being granted,” White said.

Justice Gault also declined an order sought by Grey for the NZ Blood Service to establish a tailored donor service for the six-month-old boy to receive blood exclusively from unvaccinated donors.

A lawyer for the blood service, Adam Ross KC, on Wednesday described the request for that order as exceptional and without precedent. Ross said it would jeopardise the integrity of the donor service and open the door to ethically and clinically bankrupt requests regarding donor blood.

”It is a concern that an order like this can damage and will damage an excellent blood service,” he said.

”There’s also a slippery slope element to it.”



A crowd gathered outside the High Court at Auckland for the hearing. Photo / Michael Craig

White said the safety of the vaccine has been proven medically and by the courts.

He said specialists believed the child's heart is suffering damage because of the delay in surgery due to the build-up of blood resulting from pulmonary valve stenosis.

The parents and the baby, who was born two months premature, were in the packed public gallery for a short time on Tuesday morning.

The scope of Justice Gault's order enables medical professionals to make an assessment as to whether it is safe for the baby to leave the hospital ward before and after surgery. The baby was taken to court on Tuesday by his parents against the advice of medical professionals.

In his conclusion of the 23-page judgment, Justice Gault said he accepted the parents of the baby had genuine concerns about the risk of using blood from vaccinated donors.

"However, the issue here is what is in [the baby's] best interests," Justice Gault said.

The parent's alternative proposal was not viable, the judge said.

"I cannot conclude it is a safe alternative that is in [the baby's] best interests."

"For these reasons, and given that [the baby] needs urgent surgery, an order enabling the surgery to proceed using [NZ Blood Service] blood products without further delay is in [the baby's] best interests."

The judgment also traverses the fact, revealed in court on Tuesday, that the baby boy has already had a blood transfusion of the type opposed by his parents, in October this year.

“After the procedure, [the baby’s] parents were distressed to hear that clinicians had needed to give [the baby] ‘a top up’ of blood. Although they had consented, [the baby’s] parents told the team that if any further procedures were to be done going forward, they would have to find an alternative as the parents’ wish was not to have any blood other than blood that did not contain the Pfizer vaccine, mRNA, the spike protein or any other associated contaminants that may cause myocarditis or clotting.”



Lawyer Sue Grey (left) with the family. Photo / Alex Burton

Justice Gault’s judgment repeatedly said the parents are loving and want what is best for their child.

However, it also describes a meeting with a doctor at Starship hospital where a “support person” hijacked a meeting with the parents. The person pressured the specialists with theories about conspiracies in New Zealand and went as far as to claim infants were dying from transfusions at Starship hospital, the judgment said.

The ruling is already drawing a furious reaction from the anti-vaccine movement.

Former TV host Liz Gunn, now an anti-vaccine activist, appeared in court beside the parents when they took their baby to the hearing against medical advice.

She later addressed the crowd of supporters [outside](#). In an audio message posted to social media shortly after the decision, she sounded near to tears and also revealed she had been trespassed from Starship hospital for 48 hours on Wednesday morning on what she claimed were spurious grounds.

”New Zealand I have absolutely devastating news,” she said.

”Little [baby] is going to be handed to Starship hospital. This is wrong on every level.”

The *Herald* has sought comment from Grey but her phone is going straight to voicemail.

The NZ Freedom and Outdoors Party, of which Grey is co-leader, said on social media in response to the ruling it was “a bad day in NZ law and medicine and human rights and logical sense.”

White had earlier argued applications for court guardianship for ill children whose parents refused blood transfusions most commonly occurred with Jehovah’s Witnesses, who believe it is God’s will not to receive blood.

About a decade ago, there were two cases where the courts granted temporary guardianship of Kiwi Jehovah’s Witness children so they could receive critical medical care.

“What we have is loving parents ... with beliefs that contrast with the medical profession’s views based on science,” White said.



Protesters outside the courthouse. Photo / Alex Burton

During the hearing, Grey cited information provided in an affidavit by Dr Byram Bridle, an associate professor in viral immunology at a veterinary college in Canada.

The material was critical of the Pfizer Covid-19 vaccine and centred on his controversial claims of heart inflammation from spike proteins.

Last year Bridle's claim the spike protein was harmful or toxic was circulated widely online, drawing strong criticism from experts.

William Matchett, a University of Minnesota Medical School vaccine expert, told the Associated Press the spike protein causes an immune response but is not toxic. Matchett said Bridle selectively quoted or misquoted studies to support his claim.

In his ruling, Justice Gault found the evidence of Bridle did not overcome the evidence of Dr Sarah Morley, Chief Medical Officer of the New Zealand Blood Service.

"Dr Morley's evidence (including her reply affidavit) is that there is no scientific evidence there is any Covid-19 vaccine-related risk from blood donated by donors previously vaccinated with any New Zealand approved Covid-19 vaccine, and there are no known or suspected harmful vaccine-related effects of blood from a vaccinated individual to a recipient of any age, after millions of transfusions around the world," Justice Gault said.

"There is no evidence that trace amounts of vaccine in blood or blood products could cause myocarditis. If there is any spike protein at all in blood, it will be in the picogram range (one trillionth of a gram)."

Ross, the lawyer for the blood service, had earlier taken aim at the evidence and credentials of Bridle.

He is a doctor "of the PHD variety" not a medical doctor and lacked direct knowledge or expertise of the baby's case, Ross said.

Justice Gault, in his ruling, also declined a request by Grey to join the NZ Blood Service to the guardianship proceedings to enable another order she sought regarding a bespoke blood service with unvaccinated donors for the baby.

He reserved any order as to costs. The judge also reserved leave to the parties of the proceedings to apply to the court for a review of the orders.