



## In re MB (medical treatment)

[1997] EWCA Civ 3093

**Country:** United Kingdom

**Region:** Europe

**Year:** 1997

**Court:** Court of Appeal, Civil Division

**Health Topics:** Health care and health services, Informed consent, Mental health, Sexual and reproductive health

**Human Rights:** Right to bodily integrity, Right to health, Right to privacy

### Facts

A health authority applied for a High Court declaration that it would be lawful to undertake an emergency caesarean operation on MB whose foetus was found to be in the breech position after MB agreed to have the operation theoretically but refused in practice due to her fear of needles. The declaration was granted, and that same night, MB appealed on the ground that, inter alia, the judge was wrong to find that MB lacked the capacity to consent or refuse treatment.

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[Adapted from INTERIGHTS summary, with permission]

### Decision and Reasoning

The Court held that there is a rebuttable presumption that every person has the capacity to consent to or to refuse medical treatment and it is a criminal or tortious assault to carry out invasive medical treatment without consent. A competent woman who has the capacity to decide may, for any reason, whether rational or irrational, refuse treatment, even if this may cause her or her foetus's death, unless some impairment or disturbance of her mental functioning renders her unable to understand or to make a decision. Therefore, the unborn child up to the moment of birth does not have any separate interests capable of being taken into account by the court and the court cannot order medical intervention to protect the unborn child even at the point of birth. If a woman is capable of understanding and making a decision, whatever the outcome of that decision, to force medical treatment would be an unwarranted invasion of the woman's right to decide. Nonetheless, temporary factors may operate to such a degree that the woman is unable to decide and careful scrutiny must be undertaken of the evidence in such cases. In the present case MB wanted and consented to a caesarean operation, but immediately preceding the operation she was overcome with such panic that her decision making capability was disabled. The judge's decision to grant the declaration was justified in the circumstances and the appeal is dismissed.

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### Decision Excerpts