

TRANSCRIPT OF PROCEEDINGS

Ref. PR18C00234

IN THE FAMILY COURT AT BLACKBURN

64 Victoria Street
Blackburn

Before HIS HONOUR JUDGE BOOTH

IN THE MATTER OF

RE A, B, AND C (CHILDREN)

MS K AKERMAN appeared for the Local Authority

MR C HEALY appeared for the Mother

MR N ALLERTON appeared for the Father

MS A BENTLEY appeared on behalf of the Children through their Guardian

APPROVED JUDGMENT

14th JUNE 2019, 15.40-17.11

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JUDGE BOOTH:

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1. This is my judgment in the final hearing of care proceedings brought by a Local Authority in respect of three children: A, born on the 25th of October 2016, so aged two years and seven months; B, born on the 2nd on of February 2018, so now aged 16 months; and C, born on the 22nd of April 2019, aged seven weeks. The care proceedings in respect of A and B were issued on the 14th of May 2018 and those in respect of C issued immediately following his birth. Placement proceedings have been issued in respect of all three children.
2. The local authority has been represented by Ms Akerman; the mother by Mr Healy; the father by Mr Allerton and the children, through their guardian, GG, by Ms Bentley. I am grateful to all of them for their help with this case.
3. On the 7th of May 2018 B - then 13 weeks old - was taken to hospital in obvious distress. His right leg was not moving in the same way as his left leg. An x-ray was carried out which revealed that he had a fracture of the femur, close to his hip, but also a healing fracture of his right tibia. Further investigations were carried out of B, which revealed three other fractures: a fracture of his right ulna, near the wrist; a fracture of a left rib, both of those fractures showing signs of healing; and a more recent fracture of his of a right rib.
4. The first part of the exercise I have been conducting is to try to find out how it came about that B sustained five separate fractures at a time when he was not able to move himself and entirely dependent on others for his care.
5. As the evidence has emerged, the following has become irrefutable: firstly, that the two children A and B were cared for exclusively by their parents; secondly, neither parent has put forward any explanation of how those injuries occurred, save in relation to the injury to the femur; thirdly, that although B had sustained serious injuries, on examination A was found entirely unharmed.
6. The local authority seeks findings against the parents that B's injuries were inflicted injuries, inflicted by one or other of his parents. They go on to seek a finding that the parent who did not inflict the injury would have known about it, either by witnessing what happened to B, or handling him after injury had been inflicted, or noting his response to being injured by him crying or screaming, and that, thereafter, the effect of the injury - whichever one it was - could, and should, have been noticed by the other parent, and that both parents - including the parent who injured B and the parent who did or could have known about the injury - failed to seek appropriate medical help. It would be a very unlucky child indeed who had two parents who inflicted injury upon them.

7. The local authority case here is that the evidence does not permit the identification of the one who inflicted the injuries and, therefore, the court should find that the injuries were inflicted by one or other of the parents and the other one failed to provide the appropriate protection for B as he sustained his various injuries.

The background

8. The children's father was born in Pakistan. He was brought up from his early years in Holland. He moved to the UK to work in a factory, working long hours. The children's mother was born in Pakistan. She described a happy childhood, in a high-achieving family, where she has both her Bachelor of Arts and a Master's Degree in Islamic studies. Theirs was an arranged marriage, arranged by their respective fathers who had known one another from their own school days.

9. The couple were married in Pakistan and A was conceived. The process of getting permission for mother to come to the UK took some time, following which she travelled over to join her husband when A was four months old. Simultaneously with her arrival the children's father moved from the lodging house he had occupied to a rented terraced house.

10. I have heard a significant amount of evidence about the layout of the family home. The front room was kitted out, to a limited extent, for the benefit of the mother and her children. The furnishings in the room consisted of a double bed, a single mattress and a microwave oven. There was a second downstairs room, described as a "living room." Also on the ground floor was a kitchen and a bathroom. Upstairs, were three bedrooms, one occupied by the father and the other two used for storage.

11. At the time mother arrived in the UK the father was working seven days a week. The mother knew no one, had a small child to look after and, it would appear, commenced a life of social isolation.

12. When, in due course, B was born, the effect on the mother was even more containing: the family only had two single buggies; she could not manage both together, so she rarely left the home, and when she did, it was only in company with the father to go shopping. She described a situation in the home - something denied by the father - that she did not have permission to use the other rooms in the house and spent her days in the front room with her children. Perhaps not surprisingly, she describes herself as "bored and unhappy."

13. By the time of B's birth, the father had changed jobs and was working less hours. He worked a shift pattern of four days at work, four days off, but a pattern that required him to sleep during the day. Mother described - again denied by father - that he would shout at her

if the children were not quiet and that he would complain about the way she was failing to properly look after his children.

14. Father presented a different picture, referring to a wife who was independent, with friends who would visit her and who she would visit, and who was regularly out with the children, living a fairly normal western life-style.

15. The mother had one friend at the time B was small. ZH was a neighbour who lived approximately 12 houses away down the street. She had started to befriend the mother because she recognised that the mother was socially isolated.

16. Again, the evidence of the parents was not consistent, in this instance as to who was doing what with the children. There was no doubt - not least because of the father's working pattern - that the primary carer of both children in March, April and May 2018 was the mother: she was responsible for feeding the children; she was responsible for changing them; she was responsible for stimulating them during the day.

17. The father's case has varied: in his written evidence to the court he claimed to be a fully involved parent; in his oral evidence he told me he had never, ever changed a nappy.

18. Where the parents agree, is that he helped at bath time, the bathing being carried out in a plastic baby bath on the floor in the living room, where both parents were involved.

19. Both parents agreed that father carried out a form of baby massage on B, usually following bath time. This was something father did, he said, at the behest of his mother-in-law, but for which he had no training.

B's early few weeks

20. The records relating to him show that he was seen by a health visitor on the 15th of February 2018, the 25th of February 2018 and the 13th of March 2018. The 13th of March was his four to six-week visit. The next time he was seen was on the 29th of March, when he received a BCG vaccination. Father's description of that is that B's leg was exposed and that that is where he was injected.

21. On the 5th of April 2018 there was a visit to the clinic for vaccinations - a similar procedure prevailed.

Circumcision

22. On the 22nd of April 2018 B underwent a circumcision. That was carried out by a general practitioner - supported by a nurse - in circumstances that have been the subject of considerable investigation.

23. In these proceedings the parents have asserted that something went drastically wrong during B's circumcision. His father asserts that the operation was carried out not by a doctor, but by the nurse; that B cried out in pain, to such an extent that, firstly, father intervened by entering the room where the operation was being performed, and that the next family who had a child due to undergo the procedure took flight and left the building.

24. There were applications on behalf of father - made on two occasions - to have the doctor and the nurse made interveners to these proceedings to answer the case that during whatever it was that went on in the circumcision B sustained at least four of the fractures that he suffered. I refused those applications as they lacked any evidential basis.

25. I heard evidence from both parents and from the doctor and the nurse about what happened on the 22nd of April 2018. The difficulty for the doctor and the nurse was that on that day 11 circumcision procedures were carried out by that doctor at the clinic. He did not have an independent recollection of B, nor did the nurse. Both relied entirely on the notes that were kept at the time. Those notes indicated that B's procedure had gone entirely as planned and that nothing untoward had happened.

26. Father gave conflicting evidence as to what happened on the day: variously, he had himself entering the room; opening the door to the room; or wishing he had intervened when he did not.

27. No mechanism was advanced as to how it was that B might have suffered broken bones during the circumcision procedure.

28. It was father's case that following the circumcision procedure B cried a lot and was obviously in pain. The mother's case was that he had a loud cry and that he had always cried the same way both before and after the procedure.

29. It is likely that at the time he underwent the circumcision B had a fracture to his left ninth rib and a fracture to his right ulna. It was his mother who undressed him ahead of the circumcision procedure and he was placed on a mat, with straps to hold his arms and legs in place to restrict his ability to interfere with the operation he was to undergo. It is, therefore, perhaps understandable why the doctor and the nurse would not necessarily be aware that they were dealing with a child who was injured.

30. Events in the family home continued until the 1st of May 2018, when B was taken to the clinic for his second immunisation. Again, his leg was exposed. He received the injection and there was no wider examination of him. But by that stage he had, additionally, suffered a fracture to his right tibia. Nothing was said about his circumcision.

7th May 2018

31. Much of the evidence has concentrated on the events of the 7th of May 2018. On that day, father was at home, having worked the previous night, and was asleep during the morning until, I am told, at approximately one in the afternoon. The parents both tell me that during the afternoon they went shopping. They both agree that, later in the afternoon, the children were given a bath, though they have given differing accounts as to when the bath occurred. They have each described the process of bathing B, with father holding him around his trunk and mother pouring water over him to clean him. They agree that thereafter he was dried, but each claim the other did the drying. They differ as to if B had a sleep. They agree that at one point his mother went to prepare him a feed. Where they both agree is that B was crying during the early evening. They do not agree entirely as to whether that was his normal cry or something more than normal.

32. At some time after eight o'clock mother made the decision to take a biryani that she had made to the home of her friend, ZH. She left the house in her house shoes, and says she was holding B against her left shoulder with her right hand, dressed in a zip-up blanket, and with A holding onto the finger of her left hand. She had the biryani slung from her right forearm.

33. In evidence to the court she told me that she set off and that A - who had only just learnt to walk - let go of her hand and set off down the hill ahead of her. I am told - and readily accept - that the street concerned is has a particularly steep slope. She says that in reacting to A's letting go she made a move towards him, stumbled and fell. As she fell, she endeavoured to protect B and he landed on the floor but protected by her arm, which was against his back. She thought he might have banged his head on the ground, but there was no medical evidence to suggest that he had. She continued the few yards down the hill to her friend's address. When she got to her friend's address, it was obvious to ZH that B was in pain and was crying hard.

34. I heard evidence from ZH, who told me that she began an investigation into what was wrong with B, asking mother and then investigating whether he had some sort of infection because of the circumcision. That involved undressing him. As he was undressed, it became obvious to her that he was not moving his right leg properly. She wondered whether he had sustained some sort of a hip dislocation. There was no mention by mother of a fall and nothing concerning mother to alert ZH that mother had only just had a fall in the street. Her advice, as an experienced parent, was that B needed to be seen by a doctor straightaway.

35. After some delay, while the mother consulted with the father, having returned home to do so, ZH made a 111-phone call seeking help for B. That led to the chain of events that caused him to be in hospital, to be x-rayed and for his five fractures to be discovered.

The law

36. Before I go any further, let me set out the law. I do so at this stage in relation to the threshold findings.

- a. It is now well-established that the burden of proof lies at all times with the local authority and that the standard of proof is the balance of probabilities.
- b. Findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence, but not on suspicion or speculation.
- c. When considering cases of suspected child abuse the court must consider all the evidence and consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvass. A judge in these difficult cases must have regard to the relevance of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence to come to the conclusion of whether the case put forward by the local authority has been made out to the appropriate standard of proof.
- d. The evidence of the parents, and any other carers, is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability.
- e. It is common for witnesses in these cases to tell lies during the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, distress and maybe out of fear that the truth will not speak loud enough. The fact that a witness has lied about some matters does not mean that he or she has lied about everything.
- f. The legal concept of proof on a balance of probabilities must be applied with common sense.
- g. The court should have regard to the inherent probabilities that this does not affect the legal standard of proof.
- h. The fact that the parents fail to prove, on a balance of probabilities, an affirmative case that they have chosen to set up by way of defence does not of itself establish the local authority's case.

- i. Parents may, in some respects, be good parents - that does not necessarily mean that they are willing and able to protect their children in the way that might otherwise be expected.
- j. Where repeated accounts are given of events, the court should think carefully about the significance, or otherwise, of reported discrepancies. They may arise for many different reasons, such as lies, faulty recollection or contamination from other sources. They may simply be the effect of the human reaction of unconsciously filling in the gaps.
- k. It is in the public interest that those who cause non-accidental injuries to children should be identified. The court should not strain the evidence to identify on a simple balance of probabilities the individual who inflicted the injuries. If it is clear that if the identification of the perpetrator is not possible the court should reach that conclusion.
- l. The court's function is to make the findings of fact that it is able on the evidence and then analyse those findings against the statutory formulation. The gloss imported by the use of unexplained legal, clinical or colloquial terms is not helpful to that exercise. The threshold is concerned with whether the objective standard of care which it would be reasonable to expect for the child in question has not been provided so that the harm suffered is attributable to the care actually provided.

37. Some of those propositions require a little further detailed consideration. As I will be finding both parents have lied about important matters concerning them and their children. As was emphasised by McFarlane LJ in *H-C (Children)* [2016] EWCA Civ 136, a central point in *R v Lucas* was that a lie is never taken as of itself as direct proof of guilt. A lie is capable of amounting to corroboration.

38. In *Lancashire County Council v CM & F (Children; fact-finding)* [2014], EWFC 3 Peter Jackson J set out some helpful observations on the ways in which lies and discrepancies can pollute the evidence of the case in ways that may not be sinister.

39. In this case neither parent challenged what was standard medical evidence about fractures in children. Despite that it is still open to the court to reject the medical evidence but must give reasons for doing so. The experts do not decide cases. Judges do. The expert's function is to advise the judge.

40. Advances in medical science mean that what is today regarded as conventional wisdom may be shown to be wrong and what is currently unknown may shed light on matters that were previously dark.

41. Where a local authority asserts a case against a parent, the person accused must have the opportunity to answer an allegation and for the court to hear that answer so that it can make a determination. The court's assessment of the parents is at the heart of the process, particularly where, as here, they were the ones caring for the children at the material time.

What happened next?

42. Once the extent of B's injuries had been ascertained at hospital, the police became involved. Both parents were interviewed under caution at a time when it seems likely they had no opportunity to confer one with the other. It is of interest that as they gave their account of what had happened to B - both denying any knowledge of any of the fractures - neither sought to blame the circumcision operation as a cause for the fractures and mother did not mention a fall in the street.

43. During the course of the case both parents have been spoken to at length by social workers, by the children's guardian, and have filed statements answering the case brought against them by the local authority. They were taken through their respective accounts in cross-examination and neither has been entirely consistent.

44. I have had the benefit of hearing evidence from both parents at substantial length. Both required the services of interpreters, although there is some question mark over the extent to which the mother speaks English.

45. The demeanour of a witness in the witness box is a matter that historically weighed heavily with the court. In my judgment it is often the most unreliable assessment of a witness, with all sorts of factors at play in how they perform in the witness box. Those factors are, of course, amplified when the evidence is delivered via interpretation. That said, I could not help but be struck by the way in which neither parent was prepared to countenance that the other might be responsible for B's injuries, whilst asserting their own innocence. They remain a couple. They both seek the immediate return of all three children to their care.

Assessment of the evidence

46. What did I make of them, the evidence and the context in which I must put it?

47. Mother's visit to her friend in the late evening of the 7th of May 2018 is a notable feature of the case. She had an excuse to leave - namely taking food for her friend - but she

left in her house shoes - not changing into the shoes that she wore outdoors. For the first time ever, she took both children with her when she left the house. She did not take B in a buggy, but chose to carry him. A could barely walk, but she left with him on foot. Why did she go when it was late and she had only previously visited her friend during the day? That decision by her has all the hallmarks, in my assessment, of someone fleeing or seeking help or possibly making a cry for help.

48. I reject her evidence that she had a fall. I reject the suggestion that any such fall would have led to the fracture of B's right femur. There was nothing in the mechanism of the fall - as described in detail to me - that could have led to such an outcome. Had there been a fall, I have no doubt she would have offered that explanation both to her friend, to the doctors and to the police. Her suggestion that she was too frightened of what her husband would say made no sense.

49. The picture that rings truest is that sometime at or immediately after bath time B sustained a fracture to his right femur. From that point onwards, he cried and was inconsolable. Such was his cry that the moment ZH saw him she knew something was seriously wrong.

50. It would have been obvious to both parents that something was seriously wrong. What I cannot determine - because neither parent has told me the truth - is how it was that B sustained that injury. It is difficult to accept that a fifth fracture would have been caused by an innocent accident. No other accidental mechanism has been suggested. What I cannot say is which of his parents was responsible for inflicting it upon him.

51. The picture I have is of a mother sad, bored, unhappy, confined to one room, only able to go out with her husband. The life she described in the UK was in very marked contrast to the life she described in Pakistan, amongst her family of high-achievers. The father was described by the mother as being "angry with her," so that she was, at times, frightened of him.

52. When asked about B's crying on this and other occasions father professed to have no knowledge of anything being significant. He varied as to how much help he was with the children and he described massaging B - without any training - the object of the exercise being to improve B's bones.

53. In terms of opportunity, both parents were present in the house when B was injured. B was kept in the front room and, apart from occasions when he was bathed in the living room. His mother left the front room only to go to the kitchen or the bathroom. It is almost

inconceivable that one parent could injure B without the other knowing what had happened and when it happened, such was the confinement of the family physically.

54. I encouraged both parents - as did the advocates - to explain to me how it was that B came to have five fractures. I received no explanation. Father has floundered, blaming visitors to his home jealous of the fact that he had two sons, blaming the doctor and the nurse who carried out the circumcision, and happy to accept mother's explanation that she fell in the street to explain at least one of the injuries.

55. When it was suggested that he might bear some responsibility either for injuring B or for not recognising that B had been injured and doing something about it, but he would have none of that, nor would he lay any responsibility with the children's mother.

56. Her evidence was less wild, but equally unhelpful - she simply offered no explanation. As far as she was concerned, nothing had happened; she was aware of nothing; there was nothing for her to react to. I cannot accept that she was so out of tune with the needs of her second baby not to appreciate that things were seriously wrong.

57. I conclude that there is a real possibility that either of the parents were responsible for inflicting the injuries. One of them certainly did.

The medical evidence

58. I have not felt it necessary in this judgment to review the extensive medical evidence in this case. Single joint experts were appointed to advise on the results of the x-rays and to give a paediatric overview. Investigation was carried out as to whether there was any genetic explanation that might account for a series of fractures in a child who was otherwise healthy. Nothing untoward was found when B was examined and tested.

59. The question of how B would have reacted to being handled was considered in detail in the paediatric overview. I do not find it surprising that a child who had been subject to a series of serious injuries should cry with a loud cry and cry often. The changing of his nappy, the replacement of his clothing, lifting him, placing him down, bathing him, were all things that he was likely to find, to varying degrees, painful. In a child of three months, there is no other way of expressing that pain than to cry. I cannot know whether his crying led to further infliction of injuries. I am lost for an explanation as to why one of his parents should injure him repeatedly.

The parents' relationship

60. I have also struggled to understand the parents' relationship. It was clear, particularly from mother's evidence, that there are cultural factors at play. As a student of Islamic

studies, it was clear that her marriage was an important part of her life - perhaps defining whom she had become. All the evidence indicated that she deferred to her husband. What I have struggled with is why she has committed her loyalty to her husband ahead of that of her loyalty and responsibilities as a mother to her children.

61. Father claimed to be oblivious to mother's unhappiness. It appeared that there was relatively little communication between the two of them, which has continued. A small point, but it leapt out of the evidence. In being asked questions about her friend ZH, mother became upset, complaining that her former friend no longer visits her and that she was proving not to be much of a friend anymore.

62. Father gave evidence that he had banished all friends from the family home. It appears that had not been communicated to his wife.

Conclusions

63. I am satisfied on the evidence I have heard and read that the fractures to the limbs of B - that is the femur, the tibia and the ulna - were the result of a blow, an impact or a bending/angulation snapping action applied to each bone. The rib fractures resulted from forceful compression or a squeezing mechanism applied to the chest wall. An isolated rib fracture could occur from a direct low or impact around the fracture site. The amount of force required to cause each fracture was likely to be significant, excessive and greater than that used in normal care and handling of a child, or even in over-exuberant play or rough handling by an inexperienced parenting. The fractures were sustained non-accidentally and were inflicted by the mother or the father. In my assessment, they will have been inflicted by one and not both.

64. A carer handling or witnessing handling of B - and that is both parents - would be able to recognise that the mechanism and/or force used was likely to cause injury, and anyone present at the time of injury would recognise the child's response - by crying or screaming - that he was likely to have been hurt.

65. The injuries to the femur, the tibia and the ulna, once the acute phase had passed, would have remained painful on moving the limb and a carer who was not present or aware of the injury would still be expected to notice some of the symptoms.

66. The parent who did not injure B was either aware of the injuries or was aware, or ought to have been aware, that he was in pain, had reduced movement of his limbs and was, at the least, irritable and that he required medical attention. Both of his parents failed to seek timely medical attention for B and exposed him to risk of further significant harm.

67. Neither of his parents have been open or honest with the professionals as to the causation of B's injuries.

68. I make the findings sought by the local authority.

69. As the parents have injured and failed to protect B, that finding must inevitably lead me to the conclusion that A and C are at risk of similar significant harm if in the care of their parents.

Crossing the threshold

70. In consequence I am satisfied that in accordance with section 31(2) of the Children Act 1989 that all three children are suffering or are likely to suffer significant harm and the harm or likelihood of harm is attributable to the care given to B or likely to be given to A and C, not being what it would be reasonable to expect a parent to give to them. That finding allows me to move to the stage of considering what statutory orders are needed for these three children, starting with the presumption that I should make the least interventionist order consistent with the welfare needs of the children.

The children's welfare

71. Any decision about an order regulating the life of a child requires me to put the child's welfare as my paramount consideration. I must consider the welfare checklist under the Children Act. I do not propose to set that out in this judgment, but I must carry out a separate welfare assessment in respect of each of these three children.

72. As the care plan is one of adoption I must also consider the enhanced welfare checklist in the Adoption and Children Act 2002 which stresses the need to consider the severance of ties with the birth family and the lifelong nature of the orders I am being asked to make.

73. A is now an active toddler, meeting his milestones and doing well. It is clear from what has been observed in contact that he has a close relationship with his parents.

74. B, fortunately, has sustained no lasting damage because of his multiple fractures. He, too, is developing in line with expectations and is an active little boy.

75. C is still only seven weeks of age. He has all the needs and demands of a small baby, requiring security and love.

76. Given current life expectancies the orders I make may affect the lives of these children for 90 years or more.

77. The local authority case, supported by the guardian, is that, for the future, given the findings that I have made, there is only one realistic alternative available for these children,

and that is that they be placed in the care of the local authority, with a care plan of adoption, and that within the placement proceedings I should dispense with the parents' consent to adoption as the welfare of each of the children requires it.

78. Is this a case where there is a viable alternative or is this truly a case where nothing else but adoption will do?

79. I am clear that these parents cannot be trusted with the care of their children in the light of the findings I have made.

80. Extensive efforts have been made to assess family members. There are family members in Europe and in Pakistan. One of the principal difficulties that has been encountered in contact with the wider family is that none of them will contemplate the possibility that B was injured at the hands of either of his parents.

81. I am told that there is a potential challenge to a negative viability assessment by a relative in Pakistan. That relative lives with the maternal grandparents, who were assessed at the very start of the case - but negatively - but he has done nothing to advance his challenge.

82. Following his birth, C was placed in a foster placement under the Fostering to Adopt regime. His placement has so far been a success. His foster carers have expressed a desire that they should be considered as potential adopters for the two older children.

83. The local authority will commence a process to see whether that is the right outcome for the children with immediate effect. I am clear that, given the closeness in age of these three boys and given the way in which the elder two were removed from their parents in the circumstances I have described that it is important for the future of all three of them that they are brought up as a sibling group. I cannot see how it would be in any of their best interests to be separated.

84. It is on that basis that I approve the care plan. I am satisfied that there is no alternative and that nothing else will do.

85. Within the placement proceedings I dispense with the parents' consent on the basis that the welfare of the children requires me to do so.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.