

IN THE SHEFFIELD COUNTY COURT

[REDACTED]

ROTHERHAM METROPOLITAN BOROUGH COUNCIL



[REDACTED]

JUDGMENT

INTRODUCTION.

1. This hearing has been concerned with a finding of fact to establish the threshold criteria pursuant to Section 31 of the Children Act 1989. The child concerned is [REDACTED] and his parents are [REDACTED]. [REDACTED] I shall hereinafter refer to the parents as father and mother. The purpose of this hearing has been to determine unexplained injuries that [REDACTED] suffered in the first month of his life.

2. The hearing commenced on the 21 June 2010 and principally involved the calling of medical experts. The hearing concluded on 1 July with closing submissions.

BACKGROUND.

3. C [REDACTED] is father's fourth child. His 3 older children are [REDACTED] who is now [REDACTED] years old and his second and third children are [REDACTED], who was born on the [REDACTED] and [REDACTED] born [REDACTED]. The second and third children are as a result of father's marriage to [REDACTED] from whom he separated in 2000. C [REDACTED] is mother's first child and she had never expected to fall pregnant as she suffers from polycystic ovaries. Although mother and father have known each other, for according to father about 16 years, they did not commence living together until 2007. Both mother and father put the date as the 17 November 2007. It seems to be agreed that they moved from [REDACTED] to [REDACTED] in March 2008.

4. The due date for C [REDACTED] s birth was the 21 September 2009 but he was not in fact born until 8.14pm on 3 October 2009 weighing 7lbs 9ozs. It was a forceps delivery at [REDACTED] General Hospital [REDACTED], and by all accounts C [REDACTED] was fit and healthy at birth as the parantatal summary and the new born examination showed in the papers (F36-42) before me.

5. On the 8 October 2009 mother was admitted to [REDACTED] JH with a subdural tear as a result of her epidural and remained in hospital for 48 hours whilst father and maternal grandmother [REDACTED] cared for C [REDACTED]. It seems from the maternal grandmother's statement to the Police (G11) that she stayed with mother, father and C [REDACTED] until about the 16 October 2009.

6. On the 26 October 2009 (Monday) C [REDACTED] was taken by mother and father to the Accident and Emergency Department at [REDACTED] GH. They were seen at 05.13 by a specialist registrar Dr [REDACTED] as C [REDACTED] had a bleeding penis, and a swollen penis and testicles, C [REDACTED] was prescribed by Dr [REDACTED] paracetamol and was referred to [REDACTED] GH's paediatrics department. He was later seen on the 26 October 2009 by a consultant paediatrician Dr [REDACTED] who "flagged up" non-accidental injury but ordered C [REDACTED] transfer to the [REDACTED] Children's Hospital [REDACTED] CH) for a surgical opinion.

7. A colour photograph of C [REDACTED] genital area was taken at [REDACTED] GH and on arrival at 13.00 hrs on the 26 October 2009 he was seen by a specialist paediatric registrar (Dr [REDACTED] at 13.40 for the taking of a history and differential diagnosis. He was later seen by a consultant paediatric urologic surgeon (Mr [REDACTED], who ultimately discharged C [REDACTED] home with his parents, having prescribed antibiotics.

8. On the 28 October 2009 father collected his second and third children [REDACTED] from [REDACTED] so they could come and visit mother and father and [REDACTED] at their home in [REDACTED]

9. On the 30 October 2009 (Friday) C [REDACTED] was taken by mother and father (and indeed [REDACTED] to the Accident & Emergency Department at [REDACTED] CH at about 22.14 with a swollen right leg. The following day, 31 October 2009, (Saturday) a specialist registrar Dr [REDACTED] filled in the Child Protection Medical Pack and the next day [REDACTED] Social Services Department were contacted by [REDACTED] CH and on Monday 2 November 2009 various skeletal surveys were ordered effectively of C [REDACTED]'s whole body. He

was found to have multiple fractures in the ribs, and in his tibia and fibula which were metaphyseal fractures together with a transverse fracture of his right femur.

10. This triggered a police investigation, with the parents being interviewed (on 3 November 2009) at length by the police. Further tests were undertaken of [REDACTED] and as at 5 November 2009, [REDACTED] from an orthopaedic point of view, was ready for discharge. The Applicants' issued care proceedings and the matter was transferred to the [REDACTED] Care Centre.

11. [REDACTED] was in fact discharged from [REDACTED] to foster carers, under an interim care order, on 11 November 2009 and directions were made by the Recorder of Sheffield.

12. [REDACTED] on the same date, were interviewed by the police and the following day a repeat skeletal survey was carried out and pursuant to the Recorder's order mother and father filed statements setting out their version of events. Timetabling took place on 26 November 2009 with a guardian being appointed [REDACTED] on 9 December 2009. There were further directions on 15 January 2010 and 26 February 2010 with the case coming before me on 8 April 2010. Since that date I have had the case management of this matter.

13. The timetable has been tight because the parents' clear unequivocal stance has been that there is a medical reason for the multiple fractures and the scrotum injury that [REDACTED] sustained. From the father's perspective he believed it to be as a result of birth injuries and from the mother's perspective she believed it was some form of

bone fragility. This stance has been maintained throughout the proceedings, with father also adopting mother's arguments.

PROGRESS OF PROCEEDINGS.

14. Given that C [REDACTED] was such a young child and with the multiple injuries he sustained, part of the evidence has been from the treating doctors, and once it became apparent that the treating doctors considered that his injuries may be inflicted, the court has been concerned to ensure, that there has been a constant overview by other medical experts. In late December 2009 Professor [REDACTED] who holds the chair of Paediatric Bone Disease at [REDACTED] University suggested that the pattern of fractures C [REDACTED] sustained was far more suggestive of non-accidental injury than it was of osteogenesis imperfecta (OI) and he would not recommend genetic testing.

15. By the 15 February 2010 a report had been obtained from Dr [REDACTED] who is a consultant paediatric radiologist based at [REDACTED] Hospital [REDACTED]

16. On the 23 February 2010 Dr [REDACTED] a consultant paediatrician at [REDACTED] Hospital also reported. She like, Dr [REDACTED] had been instructed to provide an overview.

17. By 9 April 2010 a consultant neonatologist (Professor [REDACTED]) reported and on 18 April 2010 Professor [REDACTED] reported following instructions from all parties as to whether or not OI was a possible explanation for C [REDACTED] presentation on 30 October 2009.

18. On 20 April 2010 Dr [REDACTED] a clinical scientist was asked by the parents to perform genetic testing for OI in spite of Professor [REDACTED]'s and indeed Dr [REDACTED]'s concerns as to the assistance this may render the court in determining [REDACTED]'s presentation on the 30 October 2009. A general practitioner (Dr [REDACTED]) failed to take blood from C [REDACTED] on 23 April 2010 however on 11 May 2010 a general paediatrician (with an interest in child protection) Dr [REDACTED] from [REDACTED] Hospital in [REDACTED] successfully took a blood sample from C [REDACTED] to enable genetic testing to take place.

19. Dr [REDACTED] reported on the 10 June 2010 dealing with the genetic testing that she had carried out. Thereafter the case proceeded to the finding of fact on the 21 June.

INJURIES SUSTAINED.

20. It is admitted by the parents that on or about the 30 October 2009 C [REDACTED] suffered fractures as follows:

- (a) transverse fracture of the right femur
- (b) fracture of the anterior end of the left 6th rib.
- (c) fractures of the 10th and 11th ribs.
- (d) fractures of both tibiae and fibula metaphyseal
- (e) metaphyseal fractures of both femora

A total, therefore of 12 fractures, in a baby who was non mobile and not yet one month old.

21. Both parents admit that on the morning of 26 October 2009 C [REDACTED] was taken by his parents for treatment for swelling of his genitalia whence it was also found there was a cut/tear to his penis and a bruise on the outer side of his left thigh.

THE PARENTS' CASE.

22. It is the parents' case that the injuries have a medical cause. They both emphatically deny that either of them have inflicted any injury on C [REDACTED]. They do not seek to blame any other person for the injuries as detailed by the doctors.

23. The only explanation prior to the hearing, ever given by either of the parents for the injuries was by father, in terms of an accidental injury, to C [REDACTED]'s ribs as a result of his winding technique. However what is clear is that father is an experienced parent, unlike mother who is not.

24. The local authority suggest that all the injuries are non accidental in origin and that is the findings they seek.

ISSUES.

25. The issue in this finding of fact is to attempt to resolve the position of the parents in the context of the evidence that has been called. Of lesser note is that, although C [REDACTED] has been medically examined subsequent to his placement with foster carers', (15 February 2010 by Dr [REDACTED] and 30 March 2010 by Professor [REDACTED] no fractures have been seen. He was also seen by Dr [REDACTED] at a short period of time on the 11 May 2010 and none of these doctors saw anything indicative of C [REDACTED] fracturing his bones again.

LAW.

26. The House of Lords in their decision Re: B (children) FC 2008 UKHL 35

considered the standard of proof to be applied to the finding of fact. At paragraph 3 Lord Hoffman said

"the effect of the decision of the House in re H (minor sexual abuse): (standard approved) 1996 AC563 is that Section 31 (2)(a) of the Children Act 1989 requires any facts used as a basis of a prediction that a child is likely to suffer significant harm to be proved to have happened, every such factor is to be treated as a factor issue..... it is this rule which this house reaffirms today"

27. In considering the standard approved to be applied (at paragraph 70) Baroness Hale of Richmond held;

"the standard of proof of finding the facts necessary to establish the threshold under Section 31 (2) or the welfare considerations in Section 1 of the 1989 Act is a simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account where relevant in deciding where the truth lies".

28. The test has been set out again by Baroness Hale of Richmond in her judgment in the case of Re: S-B (children) (non-accidental injury) 2009 UKSC 17: (2010 1FLR 1161 at paragraph 43) where she held

"if the evidence is not such as to establish responsibility on the balance of probabilities it should nevertheless be such as to establish whether there is a real possibility that a particular person was involved. When looking at how best to protect the child and provide for the future the Judge will have to consider the strength of that possibility as part of the overall circumstances of the case".

29. It seems that the law is now settled in terms of attributability as a result of Baroness Hale explaining the decision of the House of Lords in Re: O and another (minors) (care): preliminary hearing (2003 UKHL 18) which was concerned with the common problem where a child has been harmed at the hands of one of its parents but the court cannot decide which. The attributability condition is satisfied in that case as Lord Nichols held in Re: O (paragraph 27)

"Quite simply it would be grotesque if such case had to proceed at the welfare stage on the footing because neither parent was considered individually to have been proved to have been the perpetrator, therefore the child is not a risk from either of them. This would be grotesque because it would mean that the court would proceed on the footing that neither parent represents a risk even though one or other of them was the perpetrator of the harm in question".

30. As Baroness Hale explained in Re: S-B

"The Judge at the disposal hearing will take into account any views expressed by the Judge at the preliminary hearing on the likelihood that one carer was or was not the perpetrator or the perpetrator of the inflicted injuries. Depending on the circumstances, these views may be of considerable value in deciding the outcome

of the application for instance whether or not the child should be rehabilitated with his mother.

31. Similarly in Re: D (care proceeding: preliminary hearing 2009 EWCA Civ 472 as Wall LJ (as he then was) neatly put it

"If an individual perpetrator can be properly identified on the balance of probabilities then.....it is the Judges duty to identify him or her. But the Judge should not start on the premise that it will only be in an exceptional case that it will not be possible to make such an identification".

32. In Lancashire County Council -v- D & E (2008 EWHC 832) Charles J considered the approach to be taken in assessing whether the symptoms/injuries were organic or inflicted as:

- (i) to determine the range of possible explanations for the injuries seen.
- (ii) assess the degree of likelihood for each explanation.
- (iii) decide which explanation/s can be established as a real possibility.
- (iv) decide which real possibility can be established as an event that was more likely than not to have occurred (paragraph 26).

He further held:

"The correct position is that a medical view as to the most likely cause of injuries is that that cause is clearly established as a real possibility that has to be

considered in all the circumstances of the case, together with the other possibilities in determining whether a child was a victim of an inflicted injury".(paragraph 36)

The medical evidence in conclusion together with the reasoning underlying it, are, as I have explained, only parts of the overall picture of jigsaw, or be it important parts. Put at its simplest the court will have additional information and that information will include its findings relating to the evidence of the parents and thus the events in the household in the observations of the clinical presentation of the child" (paragraph 86).

33. These are factors that I have borne in mind, and when I say I have considered the Law it is against this backdrop, but more particularly that of the Human Rights Act 1998. I have been, since I have had the case management of this matter, anxious that the parents should have a full and proper opportunity to have the treating doctors opinions' tested by acknowledged independent experts. I am satisfied that this was right because the consequences, if these are inflicted injuries is extremely serious for C [REDACTED] and his parents. The parents have had full and proper access to independent experts and have been able to challenge the opinions of the doctors and more particularly to have their questions answered by them. I have been determined to ensure that the Human Rights Act 1988 and in particular Articles 6 & 8 have been fully complied with, even though some of the decisions made at an interlocutory stage have been criticised by acknowledged experts in the field of medicine (such as the 01 genetic test).

34. I further remind myself, where I consider that there may have been some lying what the impact of those lies maybe, by providing myself with the type of direction that one would ordinarily give a jury pursuant to the case of R -v- Lucas 77 CR.APP .159 so that I must ask myself whether or not a party did in fact deliberately tell lies and to remind myself the mere fact that someone tells a lie is not itself evidence of guilt, but that a person may lie for many reasons, such as to bolster something that may be true, to protect someone, to conceal some other disgraceful conduct, falling short of an unlawful act, so that if there is an innocent explanation I should take no notice of any lies.

EVIDENCE CALLED.

35. I heard from Dr [REDACTED] who was the treating paediatrician, specifically called in by the specialist registrar to examine C [REDACTED] for non-accidental injury in respect of the scrotal presentation on 26 October 2010. I next heard from Mr [REDACTED] who was the paediatric surgeon with a specific interest in urology. I heard from Dr [REDACTED], who was the independently instructed paediatrician but sadly her evidence could not be completed during the course of the first day. Dr [REDACTED] who is a clinical scientist and heads up the [REDACTED] Molecular Genetic Service at the [REDACTED] Hospital gave evidence on her comprehensive analysis of 2 of C [REDACTED] genes particularly COL 1A1 and COL 1A2.

36. I then heard from Dr [REDACTED] who took the blood from C [REDACTED] to enable to Dr [REDACTED] to carry out the tests that she was so ordered to do. Dr [REDACTED] a paediatric radiologist instructed by all relevant parties next gave evidence, having examined the x-rays

taken of C's fractures. She also dealt with questions that arose during the hearing by way of e-mail on 28 and 29 June 2010.

37. Professor [REDACTED] was the next to give evidence and following his evidence Dr [REDACTED] was recalled to complete her cross-examination. Professor [REDACTED] consultant neonatologist gave evidence, who again was instructed by all parties and finally by way of doctors, Dr [REDACTED] who was the treating paediatrician for C's injuries seen on 30 October 2009. She came on the ward on 2 November 2009. I then heard in detail from the parents.

38. Having set out the live evidence that was called, it does not do justice to the four lever arch files which form part of the evidence in this case. It is obviously necessary to have a detailed knowledge of this evidence, which comprised the statements from the parents and the lead social worker together with all the numerous medical reports, (not all doctors being required to give live evidence), the medical records from [REDACTED] 7H and [REDACTED] CH together with the police evidence in respect of their enquiries into C's injuries.

39. The police case is still proceeding and both parents are presently on police bail. There are written statements from the maternal grandmother, from the treating paediatricians (Dr [REDACTED] and Dr [REDACTED]), a report from Mr R [REDACTED] together with witness statements from mother's brother [REDACTED] and his partner ([REDACTED]).

40. A principal piece of evidence has been the police interviews which comprise over 700 pages and involve mother and father and also father's second and third children

██████████ Although neither ██████████ were required to give evidence their police interviews have played a part in this case. The other pieces of evidence, all of which I have had the opportunity of looking at and reading, are the foster carers notes of the care they have been provided ██████████ together with the contacts that the parents have attended for 1 ½ hrs each week day since ██████████ admission into care. All in all this is a very substantial case where the parents have not accepted, nor will admit that they have done anything to cause the injuries found on their son ██████████

ANALYSIS OF EVIDENCE.

INJURY TO ██████████'S SCROTUM AND GENETAL AREA.

41. Dr ██████████ was the examining paediatrician of ██████████ on the 26 October 2009. He found that ██████████ suffered

- (a) bleeding into his nappy
- (b) swollen scrotum and penis
- (c) a cut at the base of his penis, and
- (d) bruises to his perineum and left outer thigh.

Dr ██████████ was clear about these 4 injuries, both in his notes, his written evidence and his oral evidence. The first 3 injuries were acknowledged by both mother and father in their evidence. Father, although he disputed the bruises to ██████████'s thigh and perineum accepted Dr ██████████ was clear about it. These injuries raised in Dr ██████████ a suspicion that they were non-accidental. It is also personate to note although, Dr ██████████ was not specifically asked about it, it is almost inconceivable when he had been asked to examine ██████████ because members of his team were concerned about

the possibility of an inflicted injury to the scrotum that he would not have seen if C██████ had a broken right femur.

42. Dr ██████ was concerned about the presentation of C██████'s scrotum and correctly referred him to the ██████ CH for the opinion of a consultant paediatric urologic surgeon. There was nothing in Dr ██████'s evidence that the parents can properly disagree with. It is apparent that neither the cut to ██████ penis nor the bruising seen by Dr ██████ (c & d) can be explained by a diagnosis of infection. On any view these 2 symptoms of themselves, have to have been inflicted in an infant of this age as C██████ was not able to inflict them to himself accidentally.

43. I accept Dr ██████'s evidence and his raised concerns about the possibility of non-accident injury.

MR ██████

44. Mr ██████ is a consultant paediatric and urologic surgeon. He saw C██████ on 26 October 2009 at about 4.00pm in the afternoon. He conducted an examination of C██████ without seeing any medical notes and in particular the letter of referral written by Dr ██████. The evidence of Mr ██████ is particularly important as it was he, who reached a working diagnosis of infection, but he set out clearly both in writing and in evidence that had he received the information that should have been made available to him he would have taken a different course, in that he would have kept C██████ in hospital for child protection checks, have ordered an ultrasound and it is therefore highly likely on the basis of the evidence, that this would have most likely revealed one broken rib.

45. In evidence Mr [REDACTED] categorically ruled out

- (a) torsion
- (a) hernia
- (b) hydrocele
- (c) orchitis
- (d) epididymitis

46. At the time of [REDACTED] examination he was not running a temperature but blood and urine had been taken from him. The blood and urine tests were clear which would have been the expected markers for infection, that is orchitis (c) or epididymitis (d). Mr [REDACTED] had not seen the photographs of [REDACTED]'s genitalia which had been taken at [REDACTED] JH and thereafter his opinion hardened. I accept Mr [REDACTED]'s opinion both as an expert and also as the paediatric surgeon who examined [REDACTED]. When he was asked to give his opinion now, but on the basis, without regard to the bone fractures, which were subsequently found, he was left with the view that the genital injuries were inflicted injuries and therefore non-accidental, in effect negating his working diagnosis of infection.

FRACTURES ON 30 OCTOBER 2009.

47. [REDACTED] at this stage was less than 4 weeks old, he was immobile and obviously entirely dependant on the care given to him by adults. Just as with the genital injuries, the parents have provided no explanation of an accident or other evidence which plainly raises a high level of concern, that the fractures were caused by inflicted injury. In respect of the fractures 2 consultant paediatricians Dr [REDACTED] and Dr [REDACTED]

gave evidence. Dr [REDACTED] obviously gave an overview and had had the advantage of reading all the papers in the case and also examined [REDACTED] on the 15 February 2010. Dr [REDACTED] at [REDACTED] CH was the examining consultant paediatrician from when she came on duty on 2 November 2009 and was immediately concerned with the lack of explanation from the parents and the multiplicity of fractures. Simply looking at the evidence, both of Dr [REDACTED] and Dr [REDACTED] they were of the view that a transverse fracture of the femur, which involves direct impact on the leg is usually associated with non-accidental injury. The metaphyseal fractures are consistent with non-accidental injury and of course these affected both of [REDACTED] legs. The rib fractures are caused by compression, a substantial force from squeezing and bruises are not necessarily seen. Just as the transverse fracture to the femur usually involves a direct blow any marks can fade very quickly. On any view according to the paediatricians [REDACTED] could have been a very unsettled baby, having as he did, all these multiple fractures. I accept the evidence of the 2 paediatricians, who gave clear evidence that these were all inflicted injuries.

DR [REDACTED]

48. Dr [REDACTED] is a paediatric radiologist and she provided an overview. She gave clear, concise, and definite evidence. She found no radiological abnormality. She was very clear, that this level and quantity of fractures, where there is no bone diseases is really only indicative of inflicted injury. Dr [REDACTED] was particularly useful as to dating. She had of course had the opportunity to see the whole of the evidence presented in this case. She obviously examined, in great detail the x-rays taken. She was completely clear that 11 of the 12 fractures could not be caused at birth as there was no bony evidence of healing and therefore they had to be less than 11 days old from

when she looked at the x-rays which were taken on 30 October and 2 November 2009. Of the 11 out of the 12 fractures they had to have occurred sometime between the 19 October – 30 October 2009.

49. As to the rib fractures, she saw no formation of callus on any bar the left 6th rib. That therefore put the dating for the left rib between the 3 October – 26 October but if she had to put an estimate on it, she would put it at the 12 October. So far as the other fractures are concerned they would effectively date from 22 October 2010.

50. Dr [REDACTED]'s evidence was put in clear and simple terms namely, that short of an explanation for some form of accident in a baby of this age, 11 out of the 12 fractures were caused after his birth. She stated that metaphyseal fractures are very rare and that there was nothing unusual with [REDACTED] ^{C's} bones and overwhelmingly the injuries that she saw were inflicted and therefore non-accidental. She went further and informed the court that the injuries were inflicted on a **minimum** of 2 different dates and the fractures involved a **minimum** of 3 different inflictions of force however Dr [REDACTED] could conceive of the metaphyseal injuries all being caused together. The posterior fractures to the right 10th and 11th ribs could be caused together and the transverse fracture of the right femur was likely to be caused being by a different application of force, but at the same time as the metaphyseal injuries. Obviously, on the basis that the scrotum injury is non-accidental, there has been a fourth infliction of force in respect of that injury. The anterior fracture of the left 6th rib had the callus forming around it and therefore was earlier. She believed the rib injuries were caused by squeezing and that winding would not cause fractures. The metaphyseal fractures

were caused by twisting and torsion and the femur by direct blunt force. These same mechanisms were also agreed by Dr [REDACTED] and Dr [REDACTED]

51. I unreservedly accept the evidence of Dr [REDACTED] and indeed it is not disputed by the parents that C [REDACTED] suffered the fractures as identified by Dr [REDACTED] on the x-rays. They simply dispute the mechanism and believe the fractures to be organic and due to a medical condition.

PROFESSOR [REDACTED]

52. Professor [REDACTED] is a consultant neonatologist at [REDACTED]. He was specifically instructed to provide a medical opinion or explanation as to whether any of the injuries could have occurred, as maintained by the parents, during pregnancy, birth or delivery. The scrotum presentation as seen on 26th October 2009 caused him considerable concern, but correctly he deferred to Mr [REDACTED] and acknowledged there were no positive indicators of infection.

53. At the crux of father's case was that the fracture to the femur was caused at birth. Professor [REDACTED] effectively ruled this out particularly in a normal birth, albeit assisted by forceps. Professor [REDACTED] had also examined the medical records relating to the obstetrics and midwifery notes. There was nothing at all in mother's medical records to suggest any problem at birth nor did he find any evidence of bone disease. He was clear that none of the injuries were caused at birth.

54. Father was concerned that he might have caused the fractures by winding. Mother and father have consistently maintained that there was no accident that they could

think of. Somewhat late in the day father suggested in oral evidence that he might have trapped C's leg between himself and the chair. This explanation I really discount on the basis of all the other evidence and particularly, the first time it was mentioned was during the course of father giving evidence. As regards the rib fractures being caused by father's winding mechanism I bear in mind that the mother of [REDACTED] is a paediatric orthopaedic nurse and father told me that he learnt winding technique from her. Professor [REDACTED] did accept that holding a baby in a certain way and winding him could potentially cause the rib fractures, but he regarded it as unlikely and he specifically linked it, to an inexperienced carer whereas father is not. Father's account in any event was of gentle rubbing and patting and that was what was seen by his older children [REDACTED] and indeed I find it highly unlikely, to such a degree, that I can discount any suggestion that father could have caused the rib fractures by his winding mechanism.

55. Professor [REDACTED] could not support any of the injuries having occurred at birth and as such I can effectively discount that also.

BONE FRAGILITY.

PROFESSOR [REDACTED] AND DR [REDACTED]

56. This is essentially mother's case supported as it is by father, notwithstanding he told the social worker on the 15 March 2010 that he did not think that C suffered from bone disease. Father has now changed his stance and considers that the cause may well be bone disorder or OI.

57. Of necessity in the light of the stance taken by the parents and the fact that mother has maintained that there is some bone disorder in her own family and some possibility in father's family ([REDACTED]) the question of OI had to be seen as a real and distinct possibility. Professor [REDACTED] accepts referrals from the whole of Western Europe and he examined [REDACTED] for about an hour and was satisfied that in his clinical judgment [REDACTED] did not present with OI or other brittle bone disease. At the crux of Professor [REDACTED]'s findings was that metaphyseal fractures only accompanied bone fragility in extremely rare cases, in fact Professor [REDACTED] has only seen one such metaphyseal fracture and then there was an obvious explanation for it.

58. Professor [REDACTED] also emphasised the gravity of metaphyseal fractures when viewed by pathologists as of course the bones attach the growth plates in children. He also stated that multiple metaphyseal fractures is "out with my experience of children with brittle bone disease or OI".

59. It is this crucial factor, as he emphasised during the course of his detailed and careful evidence, that led him to the clear conclusion, with no radiological evidence to support OI or brittle bone disease, nor anything in his clinical examination to support any bone fragility that these were inflicted injuries. The fact that children with bone fragility do not suffer metaphyseal fractures and the multiplicity fractures sustained by this non mobile 4 week old baby led him to be unambiguous that the injuries had to be non-accidental.

60. On his examination he did state that he did not believe [REDACTED] to have dysmorphic features but even if he were wrong in that they are not ones associated with bone

fragility. The aspect of dysmorphic features arose as a result of Dr [REDACTED] taking blood from C [REDACTED] for the purpose of the genetic testing and her reporting that she thought C [REDACTED] may have "soft" dysmorphic features. This view was not shared by either Dr [REDACTED] or Dr [REDACTED] who saw C [REDACTED] over a period of time nor indeed was it shared by Professor [REDACTED] all who did not consider C [REDACTED] to be dysmorphic.

61. As the result of Dr [REDACTED] suggestion, at one time it was muted, and in this there was passive support from Dr [REDACTED] namely if C [REDACTED] had dysmorphic features it may be that an assessment by a clinical geneticist would assist. However effectively Professor [REDACTED] ruled out any suggestion of engaging a clinical geneticist because metaphyseal fractures are not seen in the babies and young people, he sees, who have bone fragility..

62. Dr [REDACTED] as a clinical scientist examined C [REDACTED] blood for COL 1A1 and COL 1A2 being the genes responsible for causing the great majority of bone fragility. C [REDACTED] also had negative results of vitamin D test for rickets nor he was premature and of course his bones were seen by Dr [REDACTED] to be normal on x-ray. All in all, as Dr [REDACTED] stated clearly and unequivocally bone fragility in C [REDACTED] is exceptionally unlikely and statistically now very unlikely, such that it can be discounted.

63. There is no evidence to suggest that [REDACTED] has suffered any further fractures whilst in foster care and of course he has been seen by many doctors over that period.

64. Even if there was bone fragility (which there is not) it would not of course explain the genital injuries, particularly the bruising and the small cut even if (which I do not

think) the other injuries to his scrotum were infection. All in all the evidence from Professor [REDACTED] and Dr [REDACTED] discounted any prospect of bone fragility as being the cause of the fractures. I am also satisfied that [REDACTED] is not dysmorphic and that mother is correct not to seek a full skeletal survey to clarify whether or not [REDACTED] has suffered any further injuries. In respect of both applications I would have been inclined, once I heard the evidence from Professor [REDACTED] and the responses from Dr [REDACTED] to discount any further invasive investigations of [REDACTED] be they in the form of skeletal surveys or assessment by a geneticist.

THE PARENTS' EVIDENCE.

[REDACTED]

65. [REDACTED] believed that she was unable to have children and in her statement to court and in her interview with the police it is quite apparent that she minimised the stress that she was under. This has been corroborated by [REDACTED] on arrival from [REDACTED] with father to visit his home in [REDACTED] on the 28 October (G443) and again on their return from the cinema on 30 October 2009 (G25). It is also clear that mother was so concerned about father's reaction to her pregnancy that she was worried that he may leave her and certainly spoke to members of his family prior to telling father she was pregnant. Indeed this is confirmed by Ms Ford in her helpful and full submissions, in that mother accepts that she made an offer to [REDACTED] that she would "go it alone" if he did not want her to proceed and there were discussions in the early days of the pregnancy about a separation.

66. Mother maintains that such thoughts were fleeting but she did tell her mother and sister first, that she was pregnant and spoke to [REDACTED] sister [REDACTED] for advice

on how to broach the topic with him. I am quite satisfied that mother's statement to the court is both disingenuous and untrue where she presented as if she and father were a calm and delighted couple on news of her pregnancy. Further the undoubted stresses she was put under post birth, together with the infection she suffered, and with a baby who appeared to have been quite demanding, were not detailed in either her statement or police interviews.

67. I was extremely surprised that [REDACTED] who holds down a good job was simply unable to remember very many reasonable details that were sought from her by Mr Prest, such as who changed [REDACTED] on the night his scrotal injury was noticed.

68. She has continued in her belief that a medical explanation will be found for [REDACTED] injuries and she will continue her fight to search for the same. She emphasised this to the court in a handwritten letter she read out. It is apparent that [REDACTED] has been the subject of medical investigations that are not medically justified and indeed even during the currency of this hearing, further investigations were canvassed by the parents, in particular the mother.

69. I do consider that mother did want [REDACTED] to be a girl. Even though, I accept, she was under considerable stress whilst being interviewed by the police she twice referred to [REDACTED] ^{as} 'her'. The fact that father confirmed this adds weight to it. I am also quite satisfied that mother attempted to give the impression that everything was 'fine' in her relationship with father when the reality is, they were under considerable pressure both as a couple and embarking on parenthood (again for father) and for the first time for mother.

70. It is inevitable given the way in which the case has been run and the fact that mother maintains, in the light of the overwhelming medical evidence, that there is a medical cause for [REDACTED]'s injuries, anyone who had [REDACTED]'s interests as paramount would have very great concern for her ability to parent [REDACTED] at all with the substantial risks of physical and emotional harm he may suffer. There is an argument that mother has attempted to prioritise her own needs over [REDACTED] by the way in which this case has proceeded.

71. The stress in the parents' relationship was shown in the final cross-examination by Miss Ford (on behalf of mother) when she suggested that father had failed to take the oath and he chose to affirm. This obviously makes no difference at all to the court but it is an indication of the stresses in their relationship and mother should look long and hard at the injuries that [REDACTED] has suffered and accept that there is no medical explanation for them and decide where best to go forward not only for her sake but also for [REDACTED]

[REDACTED]

72. In many respects I make exactly the same findings regarding [REDACTED] as I do of [REDACTED]. He should look long and hard at this judgment and the fact that there is no medical explanation to support an organic reason for the injuries sustained by [REDACTED] and decide which way the case should go. It is for this reason that I order position statements once the parties have had time to reflect on what they both acknowledge and accept are now inevitable findings in the context of how the medical evidence has stood up to the full and detailed challenge made by their representatives.

73. I have been concerned about [REDACTED] evidence. It is quite apparent that father did not want another child, stating he was "not a happy bunny". He also sought to portray, mother as loving every minute of parenthood, when it is quite apparent that she did not. I have been disquieted by the fact that father has twice discussed with mother that he is prepared to falsely admit he caused the injuries so that C [REDACTED] could be returned to mother's care.

74. I struggle why in his statement to the court he did not tell the truth, when again he is an intelligent man who has for sometime been self-employed as an IT consultant. He stated they were "astonished and delighted when [REDACTED] found out she was pregnant" (C23) I simply do not accept that to be the position in the light of his oral evidence. The fact that the parents maintained to the police, and father in his statement, that there were no stresses in their relationship belies the truth. I find it incredible that father could not recall whether he discussed with mother having a termination when it is quite plain that must have been so when he learnt of mother's pregnancy.

75. Father also prepared a statement which he read out in court which Mr Prest described as 'extraordinary' and indeed I so find.

76. Having found that father did not desire a fourth child I have struggled with whether or not he said "goodbye little girl" twice to C [REDACTED] as was heard by a nurse. On balance I can think of no reason, other than that the nurse did hear father say this, not once but twice, otherwise why would she record such a fact if it were not true? To some extent

this fact causes real concern as both mother and father appear to have desired a girl and C [REDACTED] 3 ½ weeks suffered the very unpleasant genital injuries.

77. As things stand father will continue in a fruitless search for a medical explanation for C [REDACTED] injuries.

IDENTIFICATION OF PERPETRATOR.

78. The parents have never suggested that anyone else could be a perpetrator. There is simply no other person who had the sole care of C [REDACTED] in the timeframe when these injuries were sustained (save for the fracture to the 6th rib) as all the other injuries were less than 11 days old on the 2 November 2009 and therefore sustained on or after the 22 October 2009. Although maternal grandmother [REDACTED] had care of C [REDACTED] following his birth no one suggests that she should either have been made an intervenor or that she had anything whatsoever to do with the injuries that C [REDACTED] was sustained.

79. The pool of perpetrators is therefore reduced to 2 people namely mother and father. I simply cannot make any identification as to who, between mother and father, was the likely perpetrator. Put simply each had the opportunity. In the light of the judgment of Re: S-B I am very conscious that I should refrain from attempting to give an indication of which parent may be more likely to have inflicted any of the injuries and I should do nothing further where it is not possible to identify the perpetrator.

CONCLUSION.

80. I have reached the clear and unequivocal conclusion that this case is one that involved inflicted injuries on a baby. There is much that was not revealed on the papers that came out in evidence, in particular the nature of the parents' relationship and as it was picked up by father's 2nd and 3rd children. I also note that father has never provided any contact details for either his eldest child [REDACTED] or [REDACTED]'s mother. This is in itself, in the light of the parents' evidence causes me some concern.

81. The local authority ask for findings to be made and I have reached the clear conclusion that the findings they seek are overwhelming and I so make them on the basis of the injuries as found by the various doctors which will be set out as a court order.

82. I urge the parents to consider this judgment carefully and reflect on the evidence that they have heard, which I am satisfied they fully understood, and decide what role, if any, they wish to have in the future of C [REDACTED]. As a result of my findings it is plain that C [REDACTED] suffered painful injuries, his testicles were hit or crushed. Further he had broken ribs, his knees and ankles were stripped or sheared. His femur was cracked all the way through. He is now a 'startled' baby, it is not known what (if any) psychological effects he will suffer in later life. He has been made to undergo blood tests which he has found distressing (Dr [REDACTED]). His fracture to his femur has not fully resolved and he will require a paediatric overview for at least 3 years. Unless the parents are able to provide a clear position statement to the court, then the court will inevitably, in the light of these grave findings, proceed and look for alternative carers for C [REDACTED] throughout his minority and more likely beyond..

83. The parents' are required to produce position statements by 21 July 2010 and also to name and give contact details to the local authority of any family members they wish to be assessed in respect of [REDACTED]. These should be provided by 21 July 2010 and thereafter the matter will be listed for directions on 30 July so that further progress may be made in the case.

84. The latest that I am prepared to allow a final hearing to take place for the second stage of this matter is the 24 January 2011. In reality I would hope that it could be sooner, with the possibility of 5 days from 6 December 2010 and I urge the parties to consider this.



HER HONOUR JUDGE CARR QC

5 July 2010