



Neutral Citation Number: [2024] EWFC 120

Case No: BS22C50071

IN THE FAMILY COURT
SITTING AT BRISTOL

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/06/2024

Before :

THE HONOURABLE MRS JUSTICE JUDD

Between :

A County Council	<u>Applicant</u>
- and -	
L	<u>1st Respondent</u>
-and-	
S	<u>2nd Respondent</u>
-and-	
A	<u>3rd Respondent</u>
(by her children's guardian)	

Libby Harris (instructed by **A County Council Legal Services**) for the **Applicant**
Jonathan Wilkinson (instructed by **Tayntons Solicitors**) for the **1st Respondent**
James Tillyard KC and Nathan Jones (instructed by **Langley Wellington Solicitors**) for the
2nd Respondent
Fiona Farquhar (instructed by **Battrick Clark Solicitors**) for the **3rd Respondent**

Hearing dates: 7th May 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 5th June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE JUDD

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Judd :

1. This is an application by the local authority for permission to withdraw proceedings in relation to a 2 year old girl, A. The application is supported by the parents, and also the Guardian.
2. I will not set out the background to this case in any detail, as it comes before me following a successful appeal to the Court of Appeal against findings made by Her Honour Judge Cronin in October 2023. The judgment following the appeal is reported as Re A(A Child)(Fact-Finding: Head Injury) [2024] EWCA Civ 327. Suffice it to say that in February 2022, A suffered an episode in the middle of the night whereby she began to scream and arch her back when in her father's arms. The parents called 999 straight away. A was taken to hospital and found to have suffered bleeding from a ruptured cortical bridging vein. She underwent surgery and appears to have made a full recovery.
3. The local authority took proceedings straight away. At the hearing before Judge Cronin there was a difference of opinion as between the experts as to whether there were signs of injury signifying shaking as well as impact, or whether all the injuries could be explained by the ruptured vein. The view of all the experts based on the medical evidence alone was the injury must have been caused by a traumatic event. There were no retinal haemorrhages or any outward sign of impact.
4. The parents have always denied that any traumatic event occurred which could have explained the injury. The question for the court at any future hearing would be whether the injury was caused as a result of an undisclosed traumatic event or as a result of something natural which occurred, the cause of which is unknown. All are agreed that apart from the medical evidence by itself there is nothing at all about these parents which would suggest that they might injure their child, or indeed that they are not telling the truth.
5. Since the proceedings began A and her parents have been living with the maternal grandparents. Until December 2023 when the parents were permitted to have unsupervised time with A every day for three hours, their care has been fully supervised by the grandparents and/or the local authority. The care they have provided for A has always been considered to be exemplary. In particular, and despite the stressful circumstances of the last two years there have been no observations at all of either of the care provided by the parents to A as being affected.
6. The local authority, supported by the Guardian, takes the view that the time has come for A and her parents to be able to go to their own home. Even if a new fact finding hearing was to determine that the injury was caused by one or other of the parents non-accidentally, the plan would remain the same. The local authority has made enquiries of experts who could conduct a Resolutions type assessment, but this would take several months, a delay that the social work team do not consider is in A's best interests.
7. The Court of Appeal has very recently handed down judgment in Re P and E (Care Proceedings: Whether to Hold Fact Finding Hearing) [2024] EWCA Civ 403. In that case, Baker LJ confirmed that the principles to be applied are those set out by McFarlane J (as he then was) in Oxfordshire County Council v DP, RS, and BS [2005] EWHC 1593 (Fam), and approved in Re H-D-H (Children) [2021] EWCA Civ 1192

The Court of Appeal has emphasised that the decision to be made is always fact-specific, and therefore whilst other first instance decisions may provide a useful illustration as to what has happened in other cases, in coming to a decision it is the statement of principles as summarised in the cases above that I must turn to when considering my decision.

8. At paragraph 22 of *H-D-H*, Peter Jackson LJ stated as follows:

“The factors identified in *Oxfordshire* should therefore be approached flexibly in the light of the overriding objective in order to do justice efficiently in the individual case....For example:

(i) When considering *the welfare of the child*, the significance to the individual child of knowing the truth can be considered, as can the effect on the child's welfare of an allegation being investigated or not.

(ii) *The likely cost to public funds* can extend to the expenditure of court resources and their diversion from other cases.

(iii) *The time that the investigation will take* allows the court to take account of the nature of the evidence. For example, an incident that has been recorded electronically may be swifter to prove than one that relies on contested witness evidence or circumstantial argument.

(iv) *The evidential result* may relate not only to the case before the court but also to other existing or likely future cases in which a finding one way or the other is likely to be of importance. The public interest in the identification of perpetrators of child abuse can also be considered.

(v) *The relevance of the potential result of the investigation to the future care plans for the child* should be seen in the light of the s. 31(3B) obligation on the court to consider the impact of harm on the child and the way in which his or her resulting needs are to be met.

(vi) *The impact of any fact finding process upon the other parties* can also take account of the opportunity costs for the local authority, even if it is the party seeking the investigation, in terms of resources and professional time that might be devoted to other children.

(vii) *The prospects of a fair trial* may also encompass the advantages of a trial now over a trial at a possibly distant and unpredictable future date.

(viii) *The justice of the case* gives the court the opportunity to stand back and ensure that all matters relevant to the overriding

objective have been taken into account. One such matter is whether the contested allegation may be investigated within criminal proceedings. Another is the extent of any gulf between the factual basis for the court's decision with or without a fact-finding hearing. The level of seriousness of the disputed allegation may inform this assessment. As I have said, the court must ask itself whether its process will do justice to the reality of the case.

23. These are not always easy decisions and the factors typically do not all point the same way: most decisions will have their downsides. However, the court should be able to make its ruling quite concisely by referring to the main factors that bear on the individual case, and identifying where the balance falls and why. The reasoned case management choice of a judge who approaches the law correctly and takes all relevant factors into account will be upheld on appeal unless it has been shown that something has gone badly wrong with the balancing exercise.”

9. A's interests are in having a safe and secure home with her parents, and for this to be achieved as soon as possible. She has been living with her parents and grandparents for two years, and she is suffering from some confusion as to who are her primary carers. A new fact finding hearing would be difficult to achieve within the next three to four months, although I would work hard to ensure that the delay would not be any more than absolutely necessary. There are transcripts of the evidence which could shorten matters, but at the very least the hearing would take 5 days and probably more. The cost to public funds would be considerable, for reasons which are obvious. This, however, applies to all cases like this.
10. The evidential result must be said to be unknown. It really is the sort of case that it is extremely difficult to second guess. On the one hand the doctors say (whatever their differences) that they consider that the injuries have occurred as a result of trauma; none of them are able to identify a possible natural cause. On the other hand, the injuries are not typical of a shaking or even an impact injury. There are no retinal haemorrhages, and no evidence of an impact to the head. There is nothing about either of the parents that would suggest that they have a temper or a predisposition to loss of control, and their observed care has been good. There are cases where the cause of an injury is simply unknown. At this stage, all that can be said, in my view, is that the outcome of the case is difficult to predict. What can be said is that, even if the injury was inflicted, it was an isolated event and the parents sought medical help immediately. There is a tape of the 999 call and each of the parents behaved in a manner which demonstrated genuine concern about the welfare of their baby.
11. The central question here is as to the impact of the potential result of the investigation to the future care plans for the child. The local authority and Guardian both consider that there would be little, if any change to the care plan whatever was the outcome of a new fact finding hearing. Two years have passed since the events in question and the care the parents provide is universally considered to be good. No concerns have arisen at all. Although the local authority would prefer the move back to the parents' home to be slightly slower, they still strongly state that it is in A's best interests that this happens soon.

12. There are numerous cases where children are rehabilitated home after adverse findings against parents. This does not mean that there was no purpose in holding the hearing, because in most instances the local authority will remain involved in the family for some months or even years after the return home, and agencies such as health services, or the school will be alert to any concerns about the child (or subsequent children) should they arise. More subtle concerns may lead to protective intervention than had there been no findings at all.
13. I think a fair trial is possible, but the impact of the length of time since the events in question occurred, and of giving the same evidence on several occasions may make it more difficult to get at the truth. On the other hand, if it is ever necessary to look at this issue again (and I stress I have no reason to think it will) at least the transcripts of the evidence of the hearing before Judge Cronin have been obtained.
14. Standing back and looking at all the factors in the case I agree with all the parties that it is not in the interests of justice to A, her parents, or anyone else, to continue to hold another fact finding hearing. The damaging impact of further stress and delay strongly outweighs such advantage as there is in the court considering all the evidence again to see whether it is possible to achieve a clear answer to what happened. There is no advantage in my opinion to A 'knowing the truth' for in fact it may never be known. The parents have cooperated with the authorities all along and there is no doubt they will continue to do so. Family support is strong, and the grandparents live very close by and will continue to visit very frequently, and at the beginning, every day. Therefore the parents are supported by those who are best able to discern whether the parents are struggling and need any help or outside intervention. In my judgment it is now right for the proceedings to be brought to an end, and I therefore accede to the application.