

IN THE BLACKBURN FAMILY COURT

Nuetral citation: [2023] EWFC 268 (B)

Case No: PR22C50126

Courtroom No. 2

64 Victoria Street

Blackburn

BB1 6DJ

Friday, 18th August 2023

Before:

HIS HONOUR JUDGE BOOTH

B E T W E E N:

LCC

and

V & B

MISS WOODS appeared on behalf of the Applicant

MR OVENDEN appeared on behalf of the Respondent Mother

MISS PROBERT appeared on behalf of the Respondent Father

MR HOWELL-JONES appeared on behalf of the Intervenor

MISS HOBSON appeared on behalf of the Children through their Guardian

APPROVED JUDGMENT

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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.

HHJ BOOTH:

Introduction

1. I am concerned with two children, A, born on 27 December 2019, and B, born on 12 February 2022. The children's mother is M, who is 36 years of age, and their father is F, who is 28 years of age.
2. An intervenor to these proceedings is U, who is the mother's older brother and the children's uncle.
3. This has been a fact finding hearing.
4. The Local Authority have been represented by Miss Woods, the mother by Mr Ovenden, the father by Miss Probert, the maternal uncle by Mr Howell-Jones, and the children through their Guardian, Ms Laurie by Miss Hobson. I am grateful to all the advocates for the sensible way in which this hearing has been conducted.
5. Both parents have been the subject of a psychological assessment that has pointed out the cognitive challenges that they have and has guided the way in which they have been assessed during the social work assessment process and have been supported in giving their best evidence to the Court. Although the uncle has not been subject to such an assessment, it seemed obvious to me that he too needed some support during this hearing. The mother was supported by an intermediary, and I have allowed frequent breaks and encouraged appropriate questioning of the parties when they gave their evidence. I am satisfied that all three adults have had every opportunity to properly present their evidence and their case.
6. The proceedings were issued on 25 March 2022 when the Local Authority issued an application for care orders in respect of not only A and B, but two older children of the mother, C now aged 16 and D now aged 13. The issues in relation to those older children were very different from those in relation to A and B. Therefore, I split off the case of the two older children, and it concluded earlier this year, where I made care orders in respect of those children and approved a care plan of long-term foster care. I am happy to report that

what I hear of the progress of those children is all very positive.

Injury to B

7. What was it that led to the proceedings? Shortly before 11 o'clock on the evening of 10 March 2022, a 999 call was made for an ambulance. That call was placed by the uncle. He told the call handler that there had been an accident, that his niece, B, then 27 days old, had been knocked from her baby bouncer by his dog, and that she had banged her head.
8. The call handler, clearly, found it difficult to understand what the uncle was saying to them, and he did not give a very fulsome explanation of B's condition. B could be heard screaming in the background and, at points in the conversation, the uncle was prompted by the father with details about B, such as her date of birth.
9. In due course, B was taken into hospital by her father. The uncle told me that they had, first of all, attempted to take B to an out-of-hours service, which was closed. The father had then taken the uncle back to the family home, and driven to the hospital, where B was examined.
10. During the early hours, B was seen by medical professionals, and, at 4.56am, had a CT scan. The first reading of that scan revealed that she had two skull fractures: one on the right of her head, and one at the front. A subsequent reading of that scan identified a third fracture on the left side of her skull. Of the two fractures that were initially identified, the one on the right had obvious soft tissue swelling overlaying the fracture. The frontal fracture did not.
11. The police attended at the hospital and the father gave a short account that was recorded by the police officer in a notebook, and signed by the father, describing how he had slipped in the living room at home, fallen backwards throwing B into the air, and that she had landed on the laminate floor next to him.
12. As is obviously the case, it was very different from the account given by the uncle when he spoke to the Ambulance Service.

13. The uncle's explanation for the discrepancy was that he was making things up in order to get B seen to promptly. He said the father had told him that there had been an accident, but he had not seen B, he did not know where she was injured, and did not know what had happened. It is perhaps surprising, therefore, that he was able to identify to the ambulance caller that she was injured to the head and she and her father could be heard in the telephone call recording.
14. The father said he did not hear the account given by the uncle and so could not correct him despite being present and prompting the uncle as to B's date of birth.
15. The initial view taken by the child protection medics at hospital was that the explanation given by father of a fall could potentially explain the two evident fractures. To get a specialist assessment of the scans, the scans were sent to Alder Hey Children's Hospital.
16. For reasons that are not clear, the report of the review of the scans was not received before B was allowed home with her parents. It was two weeks later that the review was considered at a child protection meeting, and the decision taken by the Local Authority that, given there were now three fractures identified and that that did not sit easily with the explanation given by the father, that Social Services intervention was necessary to protect all the children. That led to these proceedings in which the parents have given statements, elaborating on their account, as has the uncle.
17. The parents were interviewed by the police, and I have the benefit of those interviews.

Medical evidence

18. Essential to understanding what happened to B has been the medical evidence gathered in this case. As well as identifying the three fractures, B's CT scan revealed a large number of Wormian bones in her skull. That raised the prospect of some sort of genetic problem that might have left her with a vulnerability to fracture, which needed to be investigated.
19. Dr Ellis, a genetic specialist, was instructed and provided a report ruling out any difficulty for B, and reaching the conclusion that the profusion of Wormian bones was merely a particular development facture for her of no significance or consequence.

20. It was identified that a specialist was needed to assist the Court with the conclusions that could be drawn from the CT scan. Dr Williams, a paediatric neuroradiologist, was instructed.
21. To take an overview of all the medical evidence, I decided it was necessary to instruct a paediatrician. The instruction of paediatricians is proving to be a particular problem. There are very few paediatricians willing to accept instructions, and those that are willing inevitably have long timescales before they can produce reports.
22. Initially and for practical reasons, I approved the instruction of a paediatrician in principle in the hope that someone suitable could be identified and instructed without further delay and without the delay that would be caused by bringing the matter back before the Court. To that end, Dr Elhassan Magid was instructed. As I will spell out in due course, that instruction was a mistake by the Court and Dr Elhassan Magid's evidence was not only unhelpful but was positively misleading.
23. Dr Williams was clear that the injury to the front of the skull with no associated swelling was an injury consistent with infliction, whether that be accidental or deliberate, and was unlikely to be birth-related. Obviously, the question of injury during the birth process had to be investigated, given B's age.
24. Dr Elhassan Magid, on the other hand, reached the opinion that it was perfectly possible that the frontal fracture was, indeed, birth-related, particularly bearing in mind that B had been a forceps delivery.
25. With that apparent conflict, I authorised as necessary the instruction of a neonatologist, Dr Hall. Dr Hall's evidence was very helpful. It had its limits; a neonatologist assumes responsibility for a child from the time of birth for the first four or so weeks of life. The birth process itself falls within the expertise of an obstetrician, and so Dr Hall could not give expert evidence about the process of delivery, and the use of the forceps, but could pick up the story from the time of birth.
26. Dr Williams was clear that the two injuries on the sides of B's head could not have been

caused in one incident.

27. Dr Elhassan Magid disagreed and was adamant that, in his experience, and applying his expertise, it was perfectly possible and, indeed, likely that the two injuries were caused simultaneously in the one incident.
28. As well as having reports from the experts, there were two experts' meetings to try and see if the apparent differences of opinion could be resolved. Dr Ellis attended with Dr Williams and Dr Elhassan Magid at the first experts' meeting. Dr Hall, Dr Williams, and Dr Elhassan Magid attended at the second experts' meeting. Dr Hall accepted what Dr Williams said, and, on both occasions, Dr Elhassan Magid found himself in a minority of one.
29. What are my conclusions and why on the medical evidence? Firstly, is it possible that B was injured during the birth process, and when forceps were applied to her skull?
30. Not only do I have the expert evidence, but I have the medical records kept at the time, both of the process of delivery and the examinations of B in the hours that followed, culminating with a 12-hour check, shortly before she was released with her mother from the hospital.
31. In none of those records, carried out by a series of different medical practitioners, is there any record of any injury, or any mark that might suggest an injury, or anything untoward. Of course, there is always the possibility that recordkeeping may not be accurate, but in this instance that would be recordkeeping by a series of different individuals, not just one.
32. How might a fracture have occurred at birth? Dr Williams was able to say that the statistics suggest that a fracture occurs in two or three out of every 100,000 births, so it is a rare event. Both Dr Hall and Dr Elhassan Magid made the point that children who are not obviously injured are not thereafter examined, so there is no routine scanning of otherwise well children.
33. However, how might a fracture occur? Dr Williams was clear that the most likely fracture, if, in the rare event, a fracture occurs, and it is attributable to the application of forceps, would be at the side of the head on the parietal bone.

34. B's fracture to the side of her head on the right to the parietal bone could not have been caused at birth, because there was a very large swelling over the right side of her head. Swellings caused in connection with the fracturing of a skull bone in a baby disappear within seven to 10 days. Thus, the fact that she had those haematomas, both left and right, indicated injuries within seven to 10 days of the date of examination.
35. The only candidate for an injury at birth was the frontal fracture, so how might such a fracture have occurred? The only explanation that was proffered was by some sort of excessive squeezing of the side of the head applying pressure to the front, which then gave way. As Dr Williams explained, the skull bones are soft and malleable at birth, and in several pieces, so that they can deform and move to allow the head to progress through the birth canal. In any event, if there had been a fracture of the skull at birth, there would have been bleeding from that fracture, which would have been very obvious on B's forehead.
36. Dr Elhassan Magid could offer no explanation of the mechanics of how a frontal fracture could be caused by the application of forceps. Despite that, he refused to accept what Dr Williams and Dr Hall said about that matter.
37. I am satisfied on the evidence that I have that when B left hospital she was unmarked and uninjured.
38. Her parents have subsequently produced some photographs, which, Dr Hall accepted, appeared to show bruising or marks to the area of her temple on the right side, possibly on the left side. Those photographs had been taken with a phone camera. They are not of good quality. They are not the kind of photographs that would be needed to carry out any sort of medical assessment of injuries to a child.
39. I would find it surprising, having met both parents, if they spotted bruising to their daughter, that had not been identified by the medics, and were silent and did nothing. The mother is an experienced parent; B was her sixth child.
40. What about the two fractures with the overlaying soft tissue damage? Is it possible that they

could have been caused in one incident? Dr Williams, in the measured way in which he gave evidence, said he could not rule out anything, but, in his opinion, it was highly unlikely. It is possible for two sides of the head to fracture with one fall, usually where a child lands on the top of their head and ends up with what is known as an Alice Band fracture, which runs from the top of the head down both sides. That is not what was here.

41. In any event, the fractures were different in their nature. The fracture to the right ran from one suture at the front all the way across over the ear to the suture behind. A paper, that Dr Williams referred to, indicated the preponderance of fractures of that nature arise in cases of abuse. As well as being a very lengthy fracture, it was also displaced.
42. The fracture to the left was in the area in front of the ear. That fracture was depressed being what Dr Williams referred to as a buckle fracture. That fracture would indicate that the scalp met something that was standing out, so not a smooth surface, but something projecting from the surface to cause that depression or buckle. According to Dr Williams, the force required for each of those two fractures would be very considerable.
43. The only possible explanation for the two fractures to have occurred simultaneously was for her skull to be crushed between two hard surfaces. That could not be ruled out as an explanation but was difficult to envisage.
44. Dr Elhassan Magid maintained his position that both fractures could have been caused in one incident. His starting premise was that the father was giving an accurate account of a fall, where he threw B up in the air as he fell, and, Dr Elhassan Magid conjectured, she could have hit something else, such as the wall, before hitting the floor.
45. The father did not describe a second contact. There was nothing near where he said B landed that could have resulted in a second contact. Dr Elhassan Magid did not explain how two separate contacts was consistent with the forces needed to cause both fractures.
46. Dr Elhassan Magid's opinion relied on his own conjecture. There was no evidence to support Dr Elhassan Magid's conjecture.

47. An expert witness is not helping the Court by trying to make the evidence fit their own conclusions. Dr Elhassan Magid should have deferred to Dr Williams on this point. Dr Elhassan Magid's evidence was not credible. I am afraid that I am driven to the conclusion that his evidence was verging on the dishonest and was, certainly, unprofessional, and unacceptable from a court-appointed expert witness. I do not understand his motives, but he was not applying his first duty to assist the Court.
48. I unhesitatingly accept the evidence of Dr Williams, supported by Dr Hall.

What really happened?

49. How did it come about that B sustained two different, very forceful fractures to the right side of her skull and to the left side of her skull? How did she sustain the older fracture to the front of her skull?
50. The mother, father and uncle maintain the story that there had been an unfortunate accident, and the father had slipped. It was, according to them, an accident not witnessed by the mother or the uncle, because they were outside the house having a cigarette, and were only alerted to something having gone wrong when the father called out for help. They relied on Dr Elhassan Magid that the fracture to the front of the skull occurred at birth.
51. The story began to breakdown in its details. The difficulty with trying to maintain a made-up story is that the people telling the lie must have agreed in detail what the lie was to be and what the details were. That proved impossible.
52. The story was that the uncle had arrived at the parents' home at 10.30pm in the evening. He knew that because he had looked at his watch at a shop, or as he passed the shop at 10.15pm. When it was pointed out to him that the 999 call was precisely timed and meant that he was in the home for 12 minutes, and only 12 minutes, the story began to fall apart.
53. Next, it was not agreed who let him into the house. The mother said she let him in. The father said he let him in. In addition, they told me about him coming into the living room and sitting down, and how the children were asleep upstairs in bed.

54. Nobody told me, until I asked, about how the two dogs in the house had reacted to the visit of the uncle, one of which dogs he subsequently claimed to be his own. Of course, the dogs barked, but why was I not told of that?
55. 10th March was, apparently, the anniversary of the mother and the uncle's parents' wedding, both their parents now being deceased, and the uncle was upset.
56. The uncle has mental health problems. He also abuses alcohol and, when in drink, is loud and argumentative according to his sister.
57. The mother has a problem with alcohol. Testing for alcohol has demonstrated that, at the time following this incident, she was abusing alcohol. She admitted as much, saying that she drank only in the evenings, but, for some reason, on this evening had not had a drink.
58. However, they agreed that they had had coffee, except the father described making tea for himself and remaining in the kitchen, having given the mother and the uncle cups of coffee, which the mother said she had made for herself and her brother.
59. They all agreed on the smoking outside. They agreed the doors were shut. However, when the cry for help came, the mother did not come into the room where her injured baby was. Why not? Apparently, one of the children was at the top of the stairs calling for their mother. I heard variously that it was A and that it was C. It is hardly likely that they would mistake a then-14-year-old girl for a little boy who was toddling.
60. One of the issues is about the amount of time the uncle was spending at the house. He maintained that he was an infrequent visitor, who rarely stayed over, and, indeed, he told me he had never gone upstairs at the house.
61. Where do I look for more reliable evidence? When speaking to the social worker, D, then-aged 12, said that his uncle slept in the top bunk of the room where he slept, with D sleeping in the bottom bunk and A sleeping in an undersized bed by the side of the bunks.
62. On 24 March, when the Local Authority visited, following the discovery of the third

fracture to B's head, the uncle was there in the evening, and was very reluctant to leave, saying he had nowhere to go.

63. I am satisfied the far more reliable evidence comes from D supported by what the uncle said when he was asked to leave. I am satisfied that the uncle was living there, sleeping in the top bunk.
64. Why is that significant? There had been a difficult relationship between the father and the uncle for several years, indeed, all the time that the parents had known one another. At one stage, the uncle had threatened to "fill in" the father. They had argued.
65. It was suggested, although the uncle initially disagreed, that the uncle had been useful to the parents for babysitting when they had had to go out, for example, on a shopping expedition. The uncle had gone to great lengths in his initial statement to the Court to distance himself from the household.
66. My conclusion is he was there all the time on the evening of 10th March 2022. In addition, if it was, as the uncle suggests, the anniversary of his late-parents' wedding, then the likelihood is he will have been drinking, as will the mother. No explanation was given by her as to why this evening should be different from all the others, when she accepted, she was drinking in the evenings.
67. What was it like in the household when the uncle was drinking, and the mother was drinking?
68. Firstly, the father disapproved of his wife's drinking. He got very upset and very agitated when asked about his attitude to alcohol, relating it back to the death of his father from liver disease brought on by alcohol abuse.
69. This was a household short of money. The uncle contributed nothing. The mother had previously worked part-time, prior to B's birth, but was not working. The father had been on paternity leave immediately following B's birth, but then reverted to a working pattern, which, in many ways, did him great credit, working from 7am in the morning until 11pm at

night, with travel either side of those times to get to work. In addition, he had done four consecutive long days' work prior to 10 March but was off work on 10 March on a rest day.

70. Not only had the household acquired a new baby with all the financial implications that that involved, but the family had, in the weeks leading up to B's birth, acquired a second dog and two small cats. The financial pressures on the family are obvious.
71. Secondly, the father was working long hours. Was the mother coping with only her brother to assist? The photographs and the various descriptions from people who visited this house, both before B's birth and subsequently, demonstrate that this was a household that was not functioning at even the most basic level. The house was squalid, filthy, and unhygienic. There was animal excrement in every room. A health visitor had visited to find excrement on the sofa and on the living room carpet.
72. The photographs of all the rooms taken by the police after B was presented at hospital, except for the living room, which I will come back to, show filth, mess, animal excrement and the absence of basic things like bedding for the children and the parents, and conditions that no child should be expected to live in. I mention those conditions at this point, because, in my judgment, it illustrates the pressure that was on the parents. Keeping the home clean and tidy was beyond them.
73. Does any of it help me with what really happened in the evening on 10 March, and in understanding the mechanics of how B came to be injured? No, it does not help me. I have no explanations for any of the three skull fractures, that, in my judgment, were caused in three separate incidents.
74. If B had been injured twice before, why had nobody sought medical assistance for her? That will remain a mystery.
75. Why was medical assistance sought for her on this occasion? That is a question I cannot answer, save that Dr Williams referenced the injury to the right side of the skull as potentially life-threatening. Therefore, whether somebody realised that this was an injury to B that might have devastating consequences for her and for the adults involved, I cannot but

speculate.

76. I mentioned before the photographs of the living room. What stands out from the photographs of the living room is how clean and tidy that room is, when contrasted with the rest of the house. Why should that be? I was told that the most-recent puppy, not housetrained, responsible for the mess that was there when the health visitor attended, had the free run of the living room on 10 March 2022. That living room bears all the hallmarks of having been cleaned up and tidied up, whilst B was at hospital.
77. Why might that have been done? One explanation would be to hide any evidence about what really happened to B. The police sought permission at the hospital to take photographs of the home at the time when the uncle was back in the house. It would have been very easy to alert him to the need, or desirability, of tidying up.
78. Who was responsible for B being injured? There are three possibilities: her mother, her father, and her uncle.
79. Does the evidence allow me to exclude anybody? Can I say that the evidence points to one of them not being there, or not being responsible? There is no such evidence.
80. I have decided that they have lied, all three of them. Where does that take me? The Lucas direction is clear, people can lie for all sorts of reasons. The fact that they lie about one thing does not mean they necessarily lie about everything. People's motives for lying can be many and various. In addition, even if a lie is established, that does not prove the case against a witness who is lying. It potentially provides some corroboration of other evidence.
81. However, what do I know about these three individuals? My assessment of the people who had care of B at the time she suffered her three injuries is critical.
82. The uncle had a problem with alcohol, and a temper when under the influence of drink. In addition, the circumstances of his upset at his parents' anniversary indicate to me that it is more likely than not that he was drinking. Is there a real possibility that he could have

injured B on that occasion and on other occasions? In my judgment, there is every such possibility.

83. What about B's mother? At the time, she was drinking to excess, overwhelmed by her circumstances, possibly upset at the anniversary on the 10th, but plainly not coping. Is there a real possibility that she might have lost her temper or become frustrated with B to lead her to injure her? In my judgment, there is every such possibility.
84. What about her father? He was working long hours. He was frustrated that his wife was spending money that he earned on alcohol for herself. He was frustrated that his brother-in-law was making no contribution to the household. Furthermore, he would have been dog tired. Could he have lost his temper through frustration or otherwise? Is there a real possibility of that? In my judgment, there is every possibility of that.
85. Can I read anything into the fact that the 999 call and the initial attempt to get medical assistance for B was a cooperative effort between her father and her uncle, two men who did not get on at all? Why would they behave cooperatively at that point? One possibility was out of concern for B. Any other conclusion would be speculation on my part.
86. What conclusions have I reached, and how have I reached them? I am satisfied that the Local Authority has made out its case in relation to paragraphs nine through to 14 of the schedule of findings. They read as follows:

9, at 22.42 hours on 10 March 2022, an ambulance was called to the family home by the maternal uncle, who was staying at the family home. B, aged 27 days, was taken to hospital, where she was found to have sustained the following injuries: A, a right-sided scalp soft tissue injury with an underlying widened displaced right parietal skull bone fracture; B, a soft tissue swelling on the left with an underlying fracture of the squamous portion of the left temple bone, which was slightly depressed; C, a linear defect on the right frontal bone with no associated soft tissue swelling.

10, investigations confirm that there is no evidence that B has an

abnormal bone density or any genetic abnormality that would account for the fractures. The fractures are not birth-related.

11, the totality of the injuries inflicted to B's skull were inflicted by either her mother, her father, or her maternal uncle. They were inflicted to B by one or more of her carers using excessive force on repeated occasions.

12, the fractures to the right parietal skull bone, to the left temporal bone were both caused, at some point, between 28 February 2022 and 10 March 2022, either in two separate incidents of impact or as a result of severe crush-type injury where B's head was squashed against a hard surface.

13, the fracture to the right frontal bone was caused at some point before 28 February 2022.

14, B would have been in extreme distress on each occasion that she was injured. The perpetrator was aware on each occasion that he/she had caused injury to B's skull and took no steps to seek medical attention for B. In respect of the fracture to the right frontal bone, that failure to seek medical attention was for a period of at least 10 days prior to B's admission to hospital on 10 March 2022".

87. How did I reach those conclusions? I am satisfied that the Local Authority has established its case on the balance of probabilities. Whilst it is no obligation on the parents or the maternal uncle to prove a case, when they go into the witness box, and when they proffer an explanation that explanation must be measured in the same way as any other evidence. In addition, my assessment of the carers and those who were there at the time of injury to B is critical.
88. I must take into account the inherent probabilities of what is said to have happened. That applies both to the Local Authority case and to the case advanced by the parents and the uncle. I have dealt with how I should deal with lies as I have gone through my judgment.

89. This is a case where there is what is known as a pool of perpetrators. I have gone through the process of asking myself whether I could identify whether there is one individual, or one individual in relation to each of the three injuries to whom the incident could be attributed, and I cannot. There were three people in the house at the time of at least one of the head injuries on 10 March. It may be that there were two separate incidents or, perhaps less likely but possible, some sort of squashing injury.
90. Insofar as the injury to the front of the head is concerned, as I have no explanation from anybody about that injury, I cannot say who caused it, and I am left looking at the three carers.
91. In relation to each of them, as I have done, I must be satisfied that there is a real possibility in respect of each of them could be responsible for what happened to B, and, for the reasons I have given, I am so satisfied. Therefore, all three remain within the pool of perpetrators.
92. However, it goes further than that. Whoever caused the injury to B to the front of her head, the other adults, who were caring for her, failed to seek any medical help. There were three injuries, probably caused by three separate incidents, but the final one in the presence of the three individuals, and no one took action to protect B.
93. In addition, in seeking medical help, whilst that was a good move, it was done in a way that did not assist B. The ambulance call handler was not told how serious her injury was and so did not despatch an ambulance. That led to a delay in B being examined, and appropriate steps being put in place to treat her injuries. Neither the parents nor the uncle could have known what damage had been done to B.
94. Furthermore, then for the three of them to concoct a lie, inventing a story of B being accidentally dropped by her father, resulted in B being returned to the abusive home where she had been injured three times. It was only when the review of the CT scan revealed the third fracture that the parents' story was demonstrated to be false, and the children removed to safety.

95. That is the end of my judgment.

End of Judgment

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