

In the Nottingham Family Court
Before His Honour Judge Reece

N (a Local Authority) v A, B & Others
(Importance of Oral Expert Evidence)

Anonymised Judgment handed down on 15th May 2024

Advocates

N (a Local Authority)	Mr Lewis	(Counsel)
A	Mr Hazelwood	(Counsel)
B	Not represented	
C (the child)	Miss Martin	(Counsel)
D (first intervener)	Miss Claxton	(Counsel)
E (second intervener)	Miss Bloomfield	(Counsel)

1. This case concerns the welfare of a child C who is aged 2. The parents of the child are A and B. The interveners D and E are both relatives of the child.
2. An application was made for a public law order in respect of C as long ago as 1st February 2023. This followed the discovery of a number of marks to C's skin which were suspected to have arisen as a result of non-accidental infliction.
3. An independent expert was commissioned within the proceedings to review the medical and other evidence and to provide an opinion in respect of the marks. The expert ultimately produced 3 reports for the court. The conclusion which the expert reached was that C had suffered 4 inflicted burns on at least 2 separate occasions. The opinion given by the expert formed a key part of the Applicant Local Authority's case against A, D and E. The other family member, B, was not alleged to have had any care for the child at the time that the injuries were likely to have occurred and has, in any event, played no active part in the proceedings.
4. The family members A, D and E all disputed any responsibility for any inflicted injury to the child but accepted that burns may have occurred as a result of inappropriate supervision.
5. The case has twice been listed for a fact-finding hearing before me, the second hearing being listed to take place over 5 days from 7th May 2024. The progress of the hearing can be

summarised succinctly in that I heard oral evidence from 3 witnesses including one of the initial treating clinicians and from the independently instructed expert on the first day of the hearing. All of the parties then had the opportunity to consider the totality of the evidence in this case before the hearing resumed on 8th May 2024. On that date, the Local Authority, with the support of all of the other parties in this case, invited me to abandon the fact-finding hearing and to give consideration to the welfare of C on the basis of the factual matters which were accepted by A, D and E. I heard submissions from all of the parties and interveners in this case and accepted that the contested factual matters should not be pursued in the light of the evidence which I had read and heard.

6. The case remained listed on 10th May 2024 and I approved a redrafted version of the threshold prepared for the purposes of s31 of the Children Act 1989 and made a 12-month Supervision Order in furtherance of the welfare of C. In addition, I accepted the invitation to give a short public judgment on the part played by expert evidence in this particular case. I made plain to the parties that it was not my role to give judgments which are of universal application where questions of expert evidence arise but I also accepted that there was some merit in emphasising the usefulness of the expert evidence in this particular case and the consideration to be given to expert evidence within a process of robust case management in public law proceedings. In this sense, my judgment needs to be read alongside 2 other judgments which I handed down in 2023 emphasising the importance of clear and proactive case management.
7. In looking at the importance of the expert evidence in this case, I will not dwell on the question of the necessity for the expert evidence which had been obtained. This was determined a long time ago and the importance of obtaining an independently instructed expert analysis of the marks which C had is obvious from even the briefest reading of the papers. It was intended to address two of the key issues at the heart of this case – the nature of the marks which C had and the causation of those marks. That analysis was provided in a timely way and supplementary questions were appropriately asked and answered in two subsequent addendum reports.
8. The key point which I was asked to consider is the role which an expert should play in giving evidence at a fact-finding hearing when all of the considerations of pro-active case management are taken into account.
9. The key point, as it seems to me, is that case management always involves an engagement with a range of different issues. At the heart of that process of case management is a focus upon the 26-week timetable set out in the Public Law Outline and in s32 of the Children Act 1989, the Public Law Outline, the Overriding Objective in the Family Procedure Rules 2010 and, of course, the overriding need to determine the welfare of the child.
10. As the Overriding Objective makes plain, the focus of the court should be upon the need to deal with cases ‘expeditiously’ and ‘in ways which are proportionate to the nature, importance and complexity of the issues’, which save expense and which allot to a case ‘an appropriate share of the court’s resources’ to use the language of FPR 2010 r.1.1(2). The principles of pro-active case management are further emphasised in FPR 2010 r1.4 where the emphasis is upon early identification of issues, setting clear timetables, making decisions about issues which need investigating and controlling expert evidence. Moreover, as FPR 2010 r1.2, r1.3 and r1.4

make clear, the task of case management and the furtherance of the Overriding Objective is something which should happen at all times and be central to the task of the Family Judge with the assistance of the parties to a particular case.

11. The concern expressed by some of the parties to this case is that the emphasis upon the robust management of cases in the interests of children should not be allowed to obscure or occlude the court's role in 'dealing with a case justly' and 'fairly' (as emphasised in FPR 2010 r1.1(2)). In particular there was a concern expressed to me by some of the advocates at this hearing that the importance of allowing experts to give oral evidence and to be challenged may sometimes be overlooked.
12. In addressing that point, I would make the following summary observations where oral evidence from expert witnesses is concerned:
 - i. The body of statute, rules, guidance and case law which contributes to effective case management must be read and considered as a whole and applied to the individual case before the court by judge and by the parties in their submissions to a judge.
 - ii. Within that process, a judge will inevitably need to consider the importance of the evidence given by expert witnesses within a wider evidential vista.
 - iii. The initial challenge to – or request for clarification of – the views of an expert should come through questions formulated and answered in advance of a fact finding hearing or final hearing. This is addressed in detail at FPR 2010 r25.10.
 - iv. Proactive case management will inevitably involve consideration of whether oral evidence and cross examination of an expert at a fact finding or final hearing will be necessary. That is reflected in FPR 2010 r25.9(2) which allows for the expert to attend where the court directs 'it is necessary to do so in the interests of justice'.
13. What is noteworthy in the present case is the profound impact of hearing oral evidence from the expert upon the Local Authority's case against the family members A, D and E and the consequent and abrupt resolution of a case which might otherwise have proceeded for a further prolonged period in the absence of that evidence having been challenged on behalf of A, D and E. This underlines a simple proposition that there will always be cases where expert evidence plays such a central part in the determination of factual matters or future risk that the court will require the expert to give evidence and a judge should keep in mind the fact that such oral evidence has the potential to narrow or resolve key factual matters in a way which reduces the remainder of the timetable for that case. That is reflected in the careful wording of FPR 2010 r25.9(2).

HHJ Reece

15th May 2024