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Case No: ZW24C50164 and ZW24C50290

Neutral Citation Number: [2024] EWCC 18

**IN THE FAMILY COURT AT BARNET**

St Mary’s Court  
Regents Park Road  
Finchley Central  
London, N3 1BQ

Date of hearing: Tuesday 22 October 2024  
Start Time: 13:03 Finish Time: 13:21

**Before:**

**PRESIDENT OF THE FAMILY DIVISION**

**Between:**

**A LOCAL AUTHORITY**

**Applicant**

**- and -**

**(1) K**

**(2) S**

**Respondents**

**(3) THE CHILDREN**

**(By their Children’s Guardian)**

**(4) A**

**Intervener**

**MS KATE TOMPKINS, Counsel** (instructed by **London Borough of Barnet**) for the **Applicant**  
**MS SALLY BRADLEY, Counsel**, for the **First Respondent**  
**MS JANE RAYSON, Counsel**, for the **Second Respondent**  
**MS HELEN COMPTON, Counsel**, for the **Children’s Guardian**  
**MS EMMA MOCKFORD, Counsel**, for the **Intervener**

**APPROVED JUDGMENT**

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**PRESIDENT OF THE FAMILY COURT:**

1. The issue that falls for determination at this short hearing relates to the instruction of expert witnesses in pending care proceedings, which relate to four children.
2. The proceedings commenced in the summer of this year, following a single focus of concern, which was that the youngest of the children, who was then aged just a few months, seemed to have sustained a fracture to his left humerus.
3. Fortunately, the matter came before the Court relatively swiftly, and on 28 August, Recorder Roscoe made directions, giving leave for the instruction of two experts – one a consultant paediatric radiologist and another a consultant paediatrician – and for them to report, in relatively short order, on this injury. The injury comes in a context which has no other indicators of child abuse. So the investigation of potential medical explanations or mechanisms that might cause a fracture on its own – without, as I would understand it, any bruising, or any other feature of abuse – is of heightened importance, given the absence of any other abusive indicators.
4. Matters proceeded, but fairly shortly after the Recorder had made his Order, it became apparent that the Legally Aided parties were going to be limited by the Legal Aid Agency in the amount of fees that the Agency would contemplate, it being the Recorder's decision that the costs of each of the two experts would be split four ways, between the Local Authority, on the one hand, and the three Legally Aided parties on the other.
5. I am not going to insert into this judgment the detailed finances. But suffice it to say that the result was to require a very significant contribution by the Local Authority, to top up the fees, particularly with respect to the consultant paediatric radiologist, Dr Olsen. The consultant paediatrician, Dr Cartledge, had been the subject of dispute before the Recorder. The parents, on advice, had selected Dr Cartledge as being, as was said in submissions a short time ago, the 'gold standard' paediatrician for a case of this nature. Certainly, it is not for this Court to attribute badges of merit. But it is plainly the case that Dr Cartledge has, for many years, been an expert of the highest repute in the Family Court.
6. The Local Authority have had cause to review their ability to finance any additional payment over and above the norm, in cases of this sort. Local Authority finances, as is well known, are in the tightest of circumstances, and Ms Kate Tompkins, for the Local Authority, today has told the Court that from a date – I think in September – the Authority's policy changed, so that they were no longer in a position to pay anything more than the pro rata rate split between themselves and any Legally Aided parties.
7. This difficulty is one that is not just faced by this Local Authority, but other Local Authorities around the country, and not just by this Local Authority in this case. Thus it was that two cases – this one and another one – were listed before me today. Unfortunately, it was not possible – due to strictures on the court timetable – to hear full argument, and I am adjourning the full argument on the matter of principle

in this case and the other case, to a one-day hearing, to be listed as soon as possible, when all the various counsel are available.

8. So today the issue in these proceedings is narrow. The Local Authority have identified two alternative experts, who they say are of similar experience and reputation, who can undertake the required expert analysis and reporting within pretty much the same sort of timetable as the instructed experts but will do so within the Legal Aid Agency strictures.
9. The application is therefore made to revoke the Recorder's Order, identifying Dr Cartledge and Dr Olsen, and replace them with a Dr Rose (as the paediatrician) and Dr Oates (as the paediatric radiologist). That was the way that the issue was set up before the hearing commenced, but it is now the case that the parents have considered the position and accepted that the rate of pay that would be required to retain Dr Olsen as the instructed expert represented a very significant additional contribution being required by the Local Authority. They have, therefore, agreed that Dr Olsen can be replaced by Dr Oates. So there is no issue as regarding the identification of the paediatric radiologist. There is, however, a remaining issue about Dr Cartledge, and it boils down to this: Dr Cartledge, if he is to be instructed, would need his fees topping up by a contribution from the Local Authority of the order of £2,884, if he is required to work to the full extent of the quotation that he has given, which is that of up to 38 hours. The band in his quotation is of work requiring between 30 and 38 hours.
10. The parents' primary position is that the instruction that Dr Cartledge should remain and the Local Authority should be required to contribute the excess. Alternatively, the parents say, if that is not to happen, then the instruction of Dr Cartledge is to remain, in any event, and, through some local crowdfunding in their community, the additional funds will be found from their own resources. So they very firmly resist the change of the identity of the instructed paediatrician at this stage.
11. The Local Authority have made clear submissions, through Ms Tompkins, in opposition to that. They take the view that this case, whilst of enormous importance to the parents and to the children, is not a case of the highest order of complexity requiring the instruction of an expert, such as Dr Cartledge, to whom the status of 'gold standard' might be attached. They submit that an individual of the great experience of Dr Rose, working (as he is) in a mainstream hospital in the centre of a big city, Birmingham, will be well placed to provide the necessary opinion. They submit that their financial difficulties are of relevance, that the policy has now changed, that the rate of pay of Dr Cartledge is now known, when it was not at the instruction, and at the time of instruction there was no indication that there would be a need for an additional contribution from the Local Authority. Counsel, on that occasion, did not have any instructions to agree to such.
12. In any event, the Court has been told that the instruction of Dr Cartledge was controversial, as between the parties before the Recorder, and the Local Authority opposed his instruction, putting forward an alternative expert for the role.

13. The Children's Guardian, represented by Ms Compton today, is effectively neutral on the issue, as it now sits before the Court, and she can understand the position of the parents.
14. A concern of the Local Authority, in addition to the matters I have mentioned, is that this case – unlike the companion case that was listed today – is now constituted in a way that it would be very difficult for the Court to come to a decision at any later hearing, that in some way requires the Legal Aid Agency to pay more than it is currently prepared to pay, and that if the Local Authority now undertake to bridge the gap and fund the additional required for Dr Cartlidge, that would be where it ends because they submit the potential to alter that at a later hearing really does not exist in this case, whereas it did in the companion case.
15. On behalf of the parents – and the Guardian, I think, accepts this – that fatalistic view is not accepted, and Ms Holman, solicitor for the father, intends to go back to the Legal Aid Agency, to argue afresh that a degree of exceptionality applies to this case, and that the level of fees should be raised. I cannot get into that. I cannot decide whether that is a well-founded prospect, or one which is fanciful. It is simply part of the background.
16. The factor that I do regard as important is this one: this hearing takes place in the middle of a process. The process started before the Recorder. The Recorder made his decision, and the case proceeded, albeit for a short time, on that basis.
17. The parents particularly sought the instruction of Dr Cartlidge. They were entitled to do so. Any litigant is entitled to put forward their choice. But this was the parents' choice, and the Recorder endorsed it, and there is a particular need, in a case such as this – and those of us who are experienced in these courts come across cases such as this, every now and again – where the allegation of physical injury sits entirely on its own, in an otherwise benign family setting. So to a degree, this injury is a bit of a 'head scratcher', and it is necessary to have confidence that the expert who gives an opinion from a paediatric perspective is so experienced as to have contemplated the range of outliers that is unusual but, nonetheless, scientifically sound medical explanations that might exist. Dr Cartlidge is one such expert.
18. The impact that the expert reports will have in these proceedings will be significant. If the experts say this is child abuse, then that opinion – subject to any further opinions that are sought – is likely to be of very persuasive weight in the court process. Equally, if the expert says that a medical explanation, which is entirely acceptable, albeit unusual in this case, that too is likely to have a major impact. This is a very important element in the evidential jigsaw in this case, because of the unusual circumstances that I have described.
19. It is, therefore, very important that the parents should have confidence in the expert who is going to deliver that opinion, one way or the other. These parents, I am told, have confidence in Dr Cartlidge, in the way that they do not – because they have not gone on the journey that has got them to that position – in Dr Rose. The degree to which the parents have confidence in Dr Cartlidge is demonstrated by the fact that the community, the parents consider, would be prepared to cover the shortfall if they were required to do so.

20. Things would be very different if this hearing had started after the Local Authority had changed its policy and with the Local Authority being very clear and upfront, that there was no way that they would be contributing to any additional fees, if the balance was required to be paid because of a Legal Aid Agency decision. The Local Authority, in case to case, from time to time, in the past have been able to take that step, but not now.
21. So I am conscious this application to change things happens because the policy has changed since the Recorder made his decision. I was sympathetic to the Local Authority's position, when Dr Olsen was included in the equation. But now, looking at it in the way that I have described it, and hearing what is said on behalf of the parents about the degree to which they are invested in Dr Cartledge, and looking at the now relatively modest amount of money that is required to retain his instruction, I refuse the Local Authority's application to change the paediatrician to be instructed, from Dr Cartledge to Dr Rose. I endorse the agreement, as it now is, for Dr Olsen to no longer be instructed, but to be replaced by Dr Oates.

PRESIDENT OF THE FAMILY COURT: *(Pause)*. I have stunned you all into silence.

MS TOMPKINS: Just for clarity, is the decision that the Local Authority pay the shortfall, full stop?

PRESIDENT OF THE FAMILY COURT: Yes.

MS TOMPKINS: Or is it an interim decision, to be reviewed, at a *(inaudible)*.

PRESIDENT OF THE FAMILY COURT: It is the same as yesterday's case.

MS TOMPKINS: Yes.

PRESIDENT OF THE FAMILY COURT: So it is an interim decision. If we can, yes, because I am going to review it. So I should have made that plain.

MS TOMPKINS: That is fine, thank you.

PRESIDENT OF THE FAMILY COURT: Yes.

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**(This Judgment has been approved by the Judge.)**

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