IN THE FAMILY COURT sitting at Coventry

[2023] EWFC 264 (B)

Judgment handed down on the 8th December 2023

IN THE MATTER OF THE CHILDREN ACT1989

AND IN THE MATTER OF:

X (A child) (14.09.2022)

B E T W E E N

Warwickshire County Council

Applicant

-and-

H

1st Respondent

-and-

A

2nd Respondent

-and-

X

(A child acting through his Children's Guardian)

3rd Respondent

Judgment

Hearing dates: 4th and 8th December 2023

Ms Hodnett for Warwickshire County Council

Mr Vine KC and Mr Watson for the First Respondent

Mr Vater KC and Miss Mettam for the Second Respondent

Miss Grey for the Third Respondent

1. I am concerned with the welfare of one little boy, X, who was born on the14th September 2022, so he is 1 year and 3 months old. His mother is H and his father is A. X is represented in these proceedings by his Guardian.

2. Before I say anything more, I wish to express my thanks to all of the professionals who have played their part in this litigation. As I will come on to address in a moment, whilst the last six months have been incredibly hard for the parents, it is my view that this case has been conducted in an exemplary manner by all concerned. I am in no doubt at all that X's welfare as been at the forefront of everyone's minds. Thankfully, the level of disruption that he has experienced has been kept to a minimum, and he can soon return to the care of his parents.

3. The parents arrived in the UK in 2020 on post-study work VISAs, and X was a much wanted baby. However, the family's life took a tragic turn in the summer of this year. His mother reported that whilst she was caring for X in the 14th June, he had fallen, although she did not give a wholly accurate description of that fall until last week, for fear that she would have been criticised. I will return to the consequences of this omission in a moment.

4. X was a little unsettled the next day although otherwise well. The family went to a party om the evening of the 16th June, and X seemed to enjoy himself. However, whilst there, he was playing in a box and he fell over and became immediately unwell. This fall was witnessed by a number of people who were at the party. Within in a minute, he was unresponsive, floppy and making strange sounds. He suffered a seizure and was seen to vomit. An ambulance was called and X was taken to hospital.

5. In short, X was assessed as having sustained the following injuries
   (1) An acute bilateral subdural haematoma
   (2) Bilateral multiple retinal haemorrhages
   (3) An extensive spinal subdual haemorrhage

   Those injuries can, and are, associated with, as Dr Oates described it in his original report *"a shaking type of injury."* The injuries were also *"atypical"* for the scenario of X having fallen on his side whilst playing with the box, even within the context of him previously having been assessed as having a large head.

6. Therefore, child protection procedures were instigated. X was placed in foster care initially, although when the paternal grandparents arrived from Pakistan in order to support the family, I made the decision that he should move to their care at the end of October.

7. The parents have never disputed that their little boy suffered the injuries that he did. They have co-operated with every part of the social care and police investigations. But it has always been their case that X had an accident, and although the injuries that he sustained are unusual as the result of a 'low level fall', X was unfortunate,

and the hands of fate meant that he was more severely injured than one would normally expect.

8. It is also right that I should note that it has always been the local authority's pleaded case that all of the injures were most likely to have been caused in one traumatic incident, within 7 days of X's presentation at hospital.

9. During these proceedings, I approved the instruction of five eminent experts in order to consider the medical evidence. They were
   Dr Keenan, Paediatric Haematologist
   Dr Lavy, Consultant Ophthalmologist
   Dr Hogarth, Consultant Neuroradiologist
   Dr Lawrence Consultant Neurosurgeon
   Dr Ward, Consultant Paediatrician

10. I do not intend to go into extensive detail as to the evidence contained within those reports, as to summarise them would be hugely difficult and they need to be read in their entirety. However, I will set out the key elements of some of those reports to make sense of this judgment. Dr Ward had the advantage of reviewing all of the evidence before she provided her last supplemental report, within which she said,

    "Whilst it is not possible to state with certainty the exact timelines associated with reported injuries and onset of symptoms in X, in my opinion, the most likely scenario is that the seizure and abnormal neurological behaviour leading to hospitalisation was related to the injury when X fell onto the occipital area whilst playing in the cardboard box at around midnight on 16th/17th June 2023.

    It is unlikely that the earlier head injury, which occurred around 14th June 2023, was the cause of the seizure and altered behaviour. However, I cannot completely exclude the unwitnessed event on 14th June 2023 as a cause of a post traumatic seizure or accumulation of the two head injuries causing the seizure and altered neurological behaviour."

11. Dr Hogarth made this observation,
    "The available evidence in the literature suggests that short falls can result in intracranial injury in the form of subdural haemorrhage. This appears to be an infrequent occurrence although it should be acknowledged that most infants do not undergo CT or MR scanning after sustaining a short fall. Subdural bleeds within the head and spine are commonly the result of inflicted injury by shaking. The scans are not able to distinguish between accidental and inflicted injury. The limited available data suggest that intraspinal haemorrhage is frequently associated with inflicted injury and is rarely seen in accidental injury. Again, there is a limit to what can be known about this phenomenon in accidental trauma when most infants do not undergo MR scanning of the spine following accidental head trauma. "

12. The uncertainty around the precise injuries that can be sustained by a low level fall, alongside the level of force required to cause such injuries was also acknowledged by Dr Lavy in his most recent reply.
    "Short distance falls are unlikely to cause retina haemorrhages if the injury is not severe. In rare cases accidental falls, especially those associated with SDH may be associated with RHs, but these tend to be unilateral, localised and superficial. "

13. Alongside that medical evidence, the local authority has also undertaken a parenting assessment of the parents. In short, that assessment identified that there were no other factors within each of the parent's lives or their relationship with each other and their son which caused professional concern, apart from the injuries. In fact, the parents were warm and attentive to their son, respectful and supportive of each other, and acknowledged that the local authority were entitled to be concerned as a result of X's injuries. They could not have done more to work openly with the assessing social worker.

14. The local authority seeks my permission to withdraw its application for care orders in the light of a careful consideration of the medical evidence within the wider evidential canvass. All parties agree to that application. However, even where all parties agree proceedings should be withdrawn, care proceedings may only be withdrawn the permission of the court (FPR, r29.4).

15. Applications to withdraw care proceedings fall into two categories. Cases where the local authority is unable to satisfy the threshold criteria and the court *must* grant the application and applications where it is possible the local authority could cross threshold, depending on the court's construction of the evidence. The local authority confirmed during submissions that they made the application under the first limb, acknowledging that the totality of the evidence before the court persuaded them that it was most likely that X suffered a tragic accident, and so the threshold was not capable of being crossed as at Day 1 of this fact-finding hearing.

16. Mr Vine KC has rightly reminded me of the following legal principles to the establishment of the threshold criteria pursuant to s31 CA 1989. The court must determine probability on evidence, not speculation or assumption, including its assessment of inherent probability/improbability, taking each piece of evidence in the context of the whole, and where the expert evidence is important but the evidence of the carers is of the utmost importance, and where there is no hierarchy of possibilities to be taken sequentially as part of a process of elimination ***(Re BR (Proof of Facts) [2015] EWFC 41, Peter Jackson at §4 to §9).***

17. Likewise, that where there is genuine dispute about the origin of a medical finding, that due consideration must be given to the possibility that the (true) cause is not known, that the doctors have missed something and or that there is a condition (or explanation) that has not yet been discovered ***(Re BR (Proof of Facts) [2015] EWFC 41 Peter Jackson at §10)***.

18. To proceed otherwise is to succumb to 'the prosecutor's fallacy' that the medical evidence alone proves the allegation. ***(R v Henderson, Butler, Oyediran [2010] EWCA Crim 1269, [2011] 1 FLR 547, Moses LJ at §1).***

19. I have no hesitation in granting the local authority the permission that they seek. But it is important that I make clear the basis upon which I grant that leave. This is not a case of the local authority accepting either that they cannot prove their pleaded case, or the expert evidence not coming up to proof. This is a case where the totality of the written evidence allows the local authority, and this court, to be satisfied that it is

most likely that X suffered all of his injuries as a result of falling out of the cardboard box on the 17th June, and that his parents are not culpable in any way.

20. Also, inherent in the local authority's position is an acceptance that it is wholly improbable that one or other of the parents inflicted an injury upon X in the days before his collapse, and that he experienced a 'lucid interval' which allowed him to present normally. Just as it is equally implausible that this child fell as described but was also assaulted by a carer and that his symptoms were the result of a combination of those events.

21. Further, I am satisfied that, although the mother did not tell the whole truth about the fall from the bed on the 14th June because she was fearful of being criticised for allowing that to happen, that fall is likely to have played no causative part in the injuries. H should also be reassured by me that, even had she been honest about X being on her bed that day, these proceedings would have taken exactly the same path as they did.

22. This family has been separated for too long. Ms Hodnett has very helpfully set out the steps that the allocated social worker will take to support the parents over the next four weeks or so by way of a Child In Need plan, at the conclusion of which, it is hoped and expected that all social care will come to an end. But that plan is entirely dependent upon Warwickshire Police agreeing to vary the current bail conditions (which preclude both parents from being with their child unless supervised by a person approved by both the police and social care). I intend to email a copy of this draft judgment to the parties, with permission for it to be shared with the lay parties and also with the police. It has also been agreed that all of the updating expert evidence can be disclosed to the officer in the case. I will hand down judgment at 9.30am on Friday 8th December (by Teams) and direct that the Officer should attend. In the event that the police feel able to vary the bail conditions in advance of that hearing, then I am willing to discharge the direction for attendance by the officer.