Neutral Citation Number: **[2013] EWHC 4100 (Fam)**

Case No. WD12000408

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice

Date: Monday, 15th July 2013

Before:

MRS JUSTICE PARKER

(**In Private**)

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B E T W E E N :

A LOCAL AUTHORITY Applicant

- and -

(1) NB (2) NO Respondents

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MISS A. MOORE (instructed by Legal Services, A Local Authority) appeared on behalf of the Applicant.

MR. R. O'DONOVAN appeared on behalf of the 1st Respondent Father.

MS. RAHUL appeared on behalf of the 2nd Respondent Mother.

MS. A. MARKHAM appeared on behalf of the Guardian ad Litem.

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J U D G M E N T

MRS JUSTICE PARKER:

1. In January of this year I heard, over 10 days, care proceedings relating to two little boys, J, two and three quarters, and R, one and three quarters. The care proceedings had started after R aged three months had been taken into hospital with serious injuries (i) intracranial bleeding (ii) damage to the substance of his brain (iii) retinal haemorrhage (iv) a fractured clavicle (v) a suspected metaphyseal fracture of the tibia.

2. The children were in care for almost exactly a year before I was able to conclude the hearing. On 7th December, when the case first came before me at a directions hearing, I indicated my strong desire and firm intention to conclude the care proceedings within the 10-day slot listed only for a fact finding hearing. At the outset of that hearing I was met with forceful submissions, but which I rejected, as to why I should adjourn the outcome if threshold were established. The basis of the application was a Human Rights challenge (Articles 6, 8 and 14) on behalf of the mother. The mother and the father also wanted me to adjourn because they proposed that there be another assessment.

3. There were 10 experts, reporting upon the appearance of head scans, examination of R's retina, and a skeletal survey. They were (1) Mr Peter Richards paediatric neurosurgeon (2) Dr Stoodley paediatric neuroradiologist (3) Dr Fairhurst radiologist (4) Dr Carl Johnson paediatric radiologist (5) Dr Williams haematologist (6) Dr Hasson consultant paediatrician and paediatric rheumatologist (7) Professor Pope consultant in connective tissue genetics (8) Dr Colford community paediatrician (9) Mr Danny Morrison paediatric ophthalmic surgeon (10) Dr Wyatt consultant neonatologist; who provided a paediatric overview.

4. The leg injury was the subject of radiological dispute and I decided it was not necessary to pursue that, as accepted by Ms. Moore for the local authority. After the 5th expert had given evidence the parents conceded that the injuries were all inflicted. I found that R's cranial/eye injuries had been caused at some indeterminate date some days before R was taken into hospital with his cerebral function compromised, and fitting.

5. The investigation of R's injuries was complicated by the fact that the mother undoubtedly suffers from a rare genetic condition, Ehlers-Danlos Syndrome, which is a connective tissue disorder. Genetic testing has not demonstrated that R suffers from Ehlers-Danlos Syndrome. Professor Pope, an academic and researcher, and not principally an expert witness, the family treating physician, had had various communications with the parties and the court. At one stage there was some confusion as to whether he thought that Ehlers-Danlos was a relevant feature in this case.

6. The eventual concession by the parents that all the established injuries were non-accidental was firmly supported by the evidence. There had been an experts' meeting to which Professor Pope had contributed. He had also contributed on paper. No party sought to argue that Ehlers-Danlos was relevant to the clavicle fracture. Professor Pope suggested that there might be some features in R which could be consistent with an Ehlers-Danlos presentation -- it is a rare and somewhat mutable condition. The parents sought to persuade me that bleeding in R's skull, leading to subdural haemorrhage/haematoma, might be explained by some collagen problem. Another complicating factor is that R suffers from Von Willebrand Syndrome, a clotting disorder, but the consensus of opinion was that this was very mild. There was no clinical evidence to support this being a significant feature in the analysis of his injuries. He suffered no excessive bleeding nor bruising after he was removed from the care of his parents and placed with a foster carer.

7. After the parents conceded the 12 paragraphs headed, "Findings in respect of non-accidental injuries", the focus of the inquiry turned to who was responsible for the injuries. The parents at that stage accepted that they must have been caused by one or other (and I would add, or both of them). I was extremely unimpressed by their evidence and my findings are recorded in my main judgment; that they were not telling me the truth, they were trying to protect themselves, throw blame on the other and showed a remarkable lack of appropriate emotional engagement with the court process.

8. I made full care orders. I rejected the parents' applications for further assessment, on the basis that the findings in respect of the injuries precluded either parent looking after the children, but even taken on their own, that the mother's assessment indicated many, many problems with her ability to provide safe, nurturing care for these two little boys. I found that the father's attitude was immature, selfish and not family focused.

9. Shortly after I gave judgment, Mr. Justice Baker, in a case which I will describe as the *Devon* case [2013] EWHC 968 (Fam), investigated a number of injuries caused to twins where the diagnosis was undoubtedly that they had Ehlers-Danlos Syndrome. Many of the same witnesses gave evidence before Mr. Justice Baker who had given evidence before me. The important difference in presentation is that in R's case there was damage to the substance of the brain which Mr. Richards (consultant paediatric neurosurgeon) and Dr. Studeley (paediatric neuroradiologist) advised me categorically was not, and could not, in any way be linked with any possible connective tissue or clotting disorder. There was a debate as to how far there might have been a greater degree of susceptibility to bleeding in this little boy as a result of Von Willebrand syndrome or, indeed, potentially, if there was some other variant of Ehlers-Danlos Syndrome. But the evidence of the doctors was clear that the brain damage could only be the result of some abusive event. I well remember also the evidence of ophthalmic surgeon, Mr. Morrison, a highly

impressive witness, who categorically ruled out that R's retinal haemorrhages could be connected in any way with connective tissue disorder or Von Willebrand Syndrome.

10. Mr. Justice Baker, after, I imagine, a considerable degree of very anxious thought, formed the conclusion that it was just possible that the features of the children's injuries in the *Devon* case could be consistent with a medical cause rather than abusive handling. Professor Pope gave evidence in that case. He said that there was some suggestion in the literature that there might be a degree of bony fragility linked with EDS: "It is possible that there are some sub-sets which feature lower bone density". Mr. Richards advised Baker J that a natural cause for the injuries was unlikely but not impossible. The judge was highly impressed in that case by the evidence of the parents. He found them frank, believable, compelling and internally consistent.

11. It is well established that the court has to look at the totality of the evidence and it is important not to slice one part of the evidence away from the whole.

12. The case comes before me because on 29th May the placement application for these two little boys came before Judge Wright at the Watford County Court. The mother, and perhaps the father too, in person, had sought to appeal my decision. It came before Lady Justice Black on 21st May, when she refused permission. The parents' perception is that she encouraged them to make an application to me to set aside my findings and start again. I have my doubts as to whether that was what she truly intended to advise the parents, bearing in mind her judgment. I suspect that she simply told them that this was the route available to them, if they wished to rely upon Mr. Justice Baker's findings in the *Devon* case. I am told that it was not until 1st July that the mother, through her lawyers, however, submitted to Judge Wright that I ought to be asked to re-open my decision. At the 29th May hearing the position of the mother and the father was simply that they wished to file further evidence.

13. Judge Wright adjourned the placement application to me. There is no formal application before me but I am asked on behalf of both the mother and the father to adjourn this case to an unspecified date in the future in order that further enquiries may be made of Professor Pope. Counsel who appears today has not been previously instructed and her solicitor has been on holiday. She is wholly unable to tell me what the timescale might be or whether Professor Pope is in fact in the country or available to provide me with help at the moment. I say that by the by. It is not determinative of my decision.

14. The mother and the father also say that their contact with the two little boys has gone well and they wish to oppose the placement order on the basis that they want to have another assessment.

15. These injury cases involving little children can be extremely difficult. It has been pointed out repeatedly in recent authorities that sometimes the court may simply not know what the cause of an injury is. Sometimes a court, faced with what seems like powerful evidence to support a conclusion that a child has been deliberately harmed, may in the end not reach that conclusion, notwithstanding that the chances of a non-accidental cause may not in fact be very high. Of course, each case is different and if statistics show that a certain thing is likely to be the norm that does not mean that in the individual case this is necessarily the answer.

16. There are very significant differences between Mr. Justice Baker's decision and mine. It cannot sensibly be suggested that the hypoxic ischemic injury to R can be given a different explanation by the intervention of Professor Pope. The evidence I heard from the doctors as to that particular feature of R's presentation was for me the central feature of this case and the central feature for them as well.

17. Mr. Morrison was clear in his advice to the court that the retinal haemorrhaging must have been caused by inflicted injury. Then there is the outside chance that there may be some connection, if R has some hitherto unidentified form of Ehlers-Danlos Syndrome, that that might give rise to some degree of bony fragility which might be relevant to the clavicle fracture. Professor Pope, who was instructed in this case at the same time as he was advising in the *Devon* case, did not suggest that the clavicle fracture could even hypothetically be explained by connective tissue disorder. Also, looking at the facts of this case, if there is a degree of bony fragility, then it is surprising that only one injury was sustained. Then there is the impression that the parents made on me in their evidence and the conclusions to which, sadly, I have to come about their reliability.

18. I accept how serious the outcome is for these children and the parents. I accept that the fact that it might take a little longer to investigate these injuries would not be a reason to plough ahead with the placement application, if there were any real prospect that I might come to a different conclusion if Professor Pope were to give evidence in the terms that he did before Mr. Justice Baker. I see no prospect whatsoever that that isolated aspect of the evidence would undermine the totality of the views to which I came on non-accidental injury. Therefore, the reality is that to make yet further inquiry, an inquiry which was already completed in January of this year, would simply delay the outcome for these children.

19. The submission made that I should permit yet another opportunity to assess these parents is not pressed strongly. I can deal with it shortly. I came to a conclusion, looking at the entirety of the history, that neither of these parents was in a position to give these vulnerable children the care that they deserve and need. It would be wrong to prolong the process for the children and for the parents, because even if

contact is going better, it does not address the fundamental issues in this case. These children need a decision.

20. So I reject the application made today for an open-ended adjournment, and for permission to instruct Professor Pope, simply on the issue of bony fragility, and I reject the application for a further assessment of the parents and I make placement orders.

21. I have not dealt in the time available with the detailed skeleton arguments which have been placed before me but I have read them with care and I have taken into account their contents.

Postscript

22. In my first judgment I expressed concern at the delay in this case and how it could be avoided in the future.

23. I accept that complex cases sometimes do require experts from several disciplines. But, even though injury cases can be difficult and sometimes require more than one expert, there were too many experts in this case, of overlapping disciplines.

24. Perhaps because of the number of experts, expert's meetings (and there were several) seemed to confuse rather than clarify. Focus was lost on the fact that there was an established unexplained clavicle fracture, and that all the experts agreed that the damage to the substance of the brain could not be associated with either of R's underlying conditions.

25. The case should not have been set down for a two–stage hearing. There were a number of issues which overlapped between harm or risk of harm and welfare, and the case was not just about a single inflicted injury. Fact finding hearings ought now to be rare, and to take place only in the single issue case, as was originally the case. Once there has been delay it is in any event not acceptable to set down a two-stage hearing.

26. I am grateful for counsel's helpful suggestion that in an apparently complex case where the picture remains unclear after an expert's meeting the court could hold an issues resolution hearing to establish the true state of medical agreement and disagreement. It would require only the key medical witnesses. Elucidation would be appropriately led by the judge rather than by cross-examination on behalf of each of the parties. This is likely to be more efficacious than commissioning further reports.

27. I trust that in future the implementation of the Family Justice Reforms will preclude delay such as occurred in this case. This will require the advocates as

well as the bench to be pro-active in identifying the issues and ensuring that resources are used appropriately.