

Neutral Citation Number: [2013] EWHC 4671 (Fam)

Case No: IL13C00216

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/09/2013

Before:

MRS JUSTICE THEIS DBE

Between:

	LA	<u>Applicant</u>
	- and -	
	1) FM	<u>1st Respondent</u>
	2) MA	<u>2nd Respondent</u>
	- and -	
	3) A	<u>3rd & 4th Respondents</u>
	4) B	
	(through their Children's Guardian)	

Mr Alex Verdán Q. C. (instructed by **Local Authority**) for the **Applicants**
Mr Richard Alomo (instructed by **Forward Yussuf Solicitors?**) for the **1st Respondent**
Ms Francis Oldham Q. C. & Ms Jayne Harrill (instructed by **Mackesys Solicitors?**) for the **2nd Respondent**
Ms Alison Burt (Covent Garden Family Law Solicitors?) for the **3rd & 4th Respondents**

Hearing dates: 16th – 27th September 2013

Judgment

MRS JUSTICE THEIS DBE

This judgment is being handed down in private on 27th September 2013. It consists of 27 pages and has been signed and dated by the judge.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Mrs Justice Theis DBE:

This matter concerns two children B a boy born in early 2012 and A a boy born in early 2013, they are now respectively 21 months and 9 months old. They are the children of the First and Second Respondent, FM and MA, who I shall refer to in this judgment as the mother and father. These proceedings are brought by the local authority ('the LA') who state that B has suffered significant emotional harm and both children are at risk of future significant harm.

B and A were removed from the care of their parents following the tragic death of their older brother C on 11 March 2013. He was then nearly 4 years old having been born in March 2009. He was admitted to Hospital in an unconscious state on the evening of 11 March and died at the hospital later that evening. He had been in the sole care of his father prior to his admission to hospital. The father has been charged with his murder and is currently remanded in custody awaiting his criminal trial due to take place in January 2014. This hearing, to determine the facts and make welfare decisions, was listed prior to the criminal trial being fixed. No party in these proceedings made any application to adjourn this hearing. This court would have been concerned about any further significant delay in determining the future care for these young children.

In the week prior to C's death A had been admitted to hospital on 4th March 2013 with a broken left femur. According to the parents this had been caused when he accidentally slipped out of his mother's arms in the dentists' surgery

earlier that day. He was put in traction and stayed in hospital with his mother, where they were at the time of C's death. During that time the father had remained at the family home caring for B and C.

In summary, the LA contend that B and A are at risk of future significant harm due to the history of domestic violence between the parents, the father's responsibility for A's injury, his responsibility for C's death which B is likely to have witnessed, the inability of the mother to acknowledge or accept the history of domestic violence and the father's responsibility for C's death and the serious risk of future harm such a history poses to both the mother and the children.

The mother, supported by the father, is adamant in her denials that there has been any domestic violence between them and she cannot bring herself to consider the possibility that the father was, or could have been, responsible for C's death. It was, as she repeatedly said, 'the will of [God]' that he died. The father denies any responsibility for C's death and they both contend the accident at the dentists' surgery caused A's broken femur.

If I find that the threshold criteria is satisfied I then have to consider what orders would best meet the welfare needs of these two young children, having regard to the considerations set out in section 1 Children Act 1989.

In relation to what orders I should make the respective positions of the parties are stark. The LA and the Children's Guardian state due to the violent history and the continued denial of that by the mother the risk of future harm to these children of being returned to the their mother's care is so great that it is not manageable and as a result the children's welfare demands they be placed permanently away from their parents and the wider family; they seek a care order and a placement order with a care plan for adoption. In effect permanent separation from the birth family. The mother seeks orders that will lead to a further assessment of her to enable her to demonstrate her acceptance of any findings the court makes and, in

effect, a further assessment of future risk.

As has perhaps been clear during this hearing this case has caused me enormous anxiety. One aspect of the case that everyone agrees upon is the strength of the mother's relationship with the children. Prior to the children being removed from her care there is no significant criticism of the mother's day to day care or relationship with the children. One of the witnesses who lived in the family home described her as *'One of the best mothers to her children'*. She has had frequent contact with the children, five times a week for 2 hours. Her attendance has been excellent and all accounts of the contact are glowing in what has been observed. In her evidence the allocated social worker described the mother as *'very warm and loving with her children, she is very attentive to their needs and sings to them'* a little later she said when asked about the mother's engagement with the children *'It's warm loving, playful, creative and a joy to watch'*. Mr Y said from his observations the mothers *'practical, physical, emotional care of the children is excellent'*.

What is so puzzling about this mother is she is someone who on the one hand has such strength of feeling and empathy for her children. On one level she has a strong maternal instinct (as has been demonstrated during this hearing; she becomes emotional at the mention of her children and her sobs for them during her evidence were both powerful and heart wrenching) yet she seems completely unable to acknowledge the history and future risks to her and the children that unite the experienced professionals who have given evidence in this case. In their written and oral evidence the social worker, Dr R and the Children's Guardian have outlined to the mother their concerns, but she has remained resolute in her denial of the history and, they suggest, has become more entrenched in her views as this hearing has progressed. This may be due to loyalty to the husband and/or deep feelings of guilt. Whatever its roots it caused the Children's Guardian, in his oral evidence, to shut the door he had left open in his written report filed at the start of this hearing that he would support a short focussed adjournment if there was any movement in the mother's position. There wasn't and put simply, his position is the children can't wait. It was a conclusion he reached with great

sadness but not, in the light of the evidence, with reluctance.

The Law

There is no dispute about the legal framework within which I have to consider this case. The burden of proof is on the LA and the standard of proof applicable to all findings is the balance of probabilities in accordance with *Re B [2008] UKHL 35 at paras 70 – 73*. Any findings must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation *Re A (A Child) (Fact finding hearing: Speculation) [2011] EWCA Civ 12*.

If I conclude that one of the parents has lied I will need to consider their reasons for so doing. A lie is not always indicative of guilt as a person may lie for many reasons. For example out of shame, humiliation, emotional pressure, panic, fear, distress, confusions or misplaced loyalty (*R v Lucas QB 720 (1981)*).

In undertaking the welfare evaluation each child's welfare is my paramount consideration having regard to the matters set out in the welfare checklist in section 1 (3) Children Act 1989.

During the course of this hearing the Court of Appeal handed down its decision in *Re B-S [2013] EWCA Civ 813*. That important case gives guidance which can be summarised as follows:

The child's interests in an adoption case are paramount, which include being brought up by their natural family unless their welfare makes that not possible (para 26).

The court must consider all the options available before coming to a decision and have proper evidence from the LA and the Children's Guardian addressing all the options and containing an analysis for and against each option with fully reasoned recommendations. (para 27 and 34).

The court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which can be made available to them (para 28)

The needs for a global holistic evaluation with the judicial task being to evaluate all the options, taking into account the advantages and disadvantages of each option. (para 44)

Re B-S [2013] EWCA Civ 813 at para 22 the CA re-states the clear principle that non consensual adoption is a "a very extreme thing, a last resort", only to be made where "nothing else will do", where "no other course [is] possible in [the child's] interests", they are "the most extreme option, a "last resort – where all else fails", to be made "only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do". At para 18 the CA re-emphasises the requirement of the court to consider Art 8 and the overarching principle set out by Hale LJ (as she then was) in *Re C and B [2001] 1 FLR 611 para 34*.

Background

Both parents are of African origin; the father was born on 31 October 1970 and the mother on 31 October 1972. They married in Country A in 1992 and had two daughters born in 1997 and 1998. Following the outbreak of war in Country A in about 1999 the mother became separated from her husband and then subsequently from her daughters as she was trying to leave their town; neither parent have seen their daughters since. The father fled to this country, arriving in August 2001. In about 2007 the mother says she went to live in Country B and stayed with the paternal family. The parents re-established contact. The father visited the mother in Country B in 2008 and C was born in Country B in March 2009. The mother joined the father here in February 2011. B was born in January 2012, the father was able to bring C here in November 2012 and A was born in January 2013.

The family lived in X in a property rented by RM ('R'), her aunt (who was also the father's step mother) and one other person. The father rented the downstairs room in that property. They shared a kitchen with the other residents, R and her husband DB and the aunt. R and her husband and the aunt lived in the rooms

upstairs.

In April 2011 an incident occurred at the home which resulted in the police being called. According to R's written and oral evidence she was woken by loud shouting and she heard the mother crying. She said as she came out of her room she saw the parents in the room opposite hers, which was her auntie's room. The mother was sitting on the floor crying and the father was standing bent towards her. She said she saw the father punch the mother's mouth with a clenched fist. R yelled at him to stop, which he did and went downstairs. She stayed with the mother and saw that she was bleeding from her lip. She also saw scratches to the mother's neck and when she asked her how they happened the mother said the father had caused them. She described the mother as shaking and '*emotional and fearful*'. She contacted the police, as she feared for the mothers and her safety.

In her police statement she describes this incident as being in April 2010 although there was no challenge to the suggestion that this was more likely to be April 2011 as that accords with the police record. PCs E and C attended the home, R acted as an interpreter and the police records confirm the mother reported being assaulted by the father. The mother was taken to the Police station to make a statement. She was visited there by one of the father's brothers (although there was some suggestion this was the mother's brother) and someone described as the mother's uncle although the evidence was not clear about his precise relationship to the mother and whether in fact only one person attended. Following the mother speaking to the family member who attended a different version of events was told to the police, with the father not being blamed. By the time an interpreter arrived at the police station the mother had changed her mind and she signed a statement stating she did not wish to pursue the matter. When the father was interviewed later that day he alleges the mother hit him on the head with a shoe and he pushed her away causing the injury to her neck. He said R was lying. The mother in her statements and oral evidence in these proceedings denied this alleged violent incident took place, she said R was lying as she wished to have a relationship with the father. In her evidence R said she saw the mother the following morning but did not ask what was happening about any criminal

charges. She said she did not hear any other arguments between the parents. She worked full time and was out of the home for approximately 12 hours a day five days a week.

The mother became pregnant with B later in 2011 and on 4 November 2011 attended her friend, MM's ('MM') home and, according to MM, alleged she had been assaulted by the father. MM took her to hospital. The hospital records record the mother telling an identified clinician that evening the father kicked her and pushed her on Saturday and hit her on the forehead, arms and kicked her on knees.

The following morning, according to Dr A's written and oral evidence, he came on duty at about 11am. He was approached by one of his colleagues, who was just going off duty, with a request to interpret for an African woman. He introduced himself to the mother and describes her being very pleased to have someone to speak to in her own language. In his oral evidence Dr A said whilst he spoke the same language he recognised that his was rusty and he came from a different region from the mother, however he was very clear that he did not misunderstand what the mother was saying. The interpreters for the parents who have been present during the hearing said that when Dr A was asked to say in the language how the mother described being in a refuge that he used very bad grammar, however it accepted that there is no such word as refuge in that language.

Dr A said he spent over an hour with the mother when she described to him the father's treatment of her. For example, she described an argument the previous Saturday when he had assaulted her, she tried to get away and fell to the floor on her knees; he then dragged her on her knees across the carpet. He said because he was not the treating doctor he did not examine her but did see the injuries when she showed them to the female police officer who attended later that day. He saw bruises to her arms and grazes to both her knees, which he said he specifically recalled because it corroborated the account she had given him earlier of being dragged across the carpet on her knees by the father. According to Dr A the mother described repeated assaults from the father, pressure from the community

to drop the previous allegations and threats to kill her and the unborn child from the father. Dr A said following his discussion with her in the morning, he kept popping back to see her and he acted as interpreter again when the police attended in the afternoon. He remembered MM being there when the police attended. He said he made the written record in the hospital notes about 5.15 pm that afternoon. He considered even though he was not the treating doctor it was important the information she had give him was recorded.

He described in his oral evidence meeting the mother on a bus some time later, having a discussion with her about where she was living and how her demeanour was much more positive. The mother denies this meeting on the bus took place.

In her written police statement MM describes knowing the mother since before the war in Country A. She confirmed in her oral evidence that this statement was a truthful account. MM came to this country in 2001 and was contacted by the mother after she came here in 2011. She said she called her in April 2011 and said the father had been beating her; the police had come but later she changed her mind and told the police the father was a good man. In her statement MM said *'I think she did this because she loved him and maybe the community got involved'*. The next time she heard from her was when she came to her home one morning and she *'was crying. She said her husband had beaten her and she was leaking fluid, which was clear fluid, not blood (possibly waters breaking). There was also bruising to the side of her head'*. She called a taxi and they went to Hospital. She said the mother came and stayed with her for a few days and during that time *'4 members of F's husband's family came to see her. They told her you have to come home with us, you have our baby. F said no.'* After a few days the mother moved to accommodation found through Social Services, a refuge in a location in London. She denied she had encouraged the mother to lie in order to secure better housing. In her written and oral evidence she was clear she had always encouraged the mother to be truthful.

MM was with the mother when she was admitted to Hospital to have B in January

2012. B required surgery after his birth, according to MM the father was informed. Following two weeks in hospital, the mother spent two nights at the refuge and then returned to live with the father. In her written statement MM described being shocked and angry that the mother had returned to the father, that she had left a place of safety and return to live with someone who she had described had beaten her. She said she did not hear from the mother until the day after C's death when she rang to inform her what had happened.

MM was reluctant to attend court and give evidence. She did not respond following service on her with a witness summons, and only attended after I had issued a bench warrant to secure her attendance. She had told the solicitor for the LA that she feared attending court to give evidence. She gave evidence via a video link with arrangements that she could only see the legal representatives asking her questions or me on the screen. She was very effectively questioned by Mr Verdan Q. C. for the LA with short focussed questions, however any that touched on issues relating to the mother's allegations regarding violence against her by the father had the response '*I can't remember*', this was despite the fact that she recollected considerable detail about other aspects of what took place. However, she did confirm that the statement she had given the police was true.

Sister T also gave evidence about this period. She is an Accident and Emergency sister with a specialist responsibility for dealing with issues relating to domestic violence. She has been dealing with issues relating to domestic violence for 10 years and said she sees about 5 high risk victims per week. The mother was referred to her and Sister T attended when the mother was with a number of other people, including a doctor and MM. Although she did not speak directly with the mother very much she said through the information she had she was very worried and regarded it as a high risk case due to the history of abuse; it was long term; the community wanted the mother to stay; she was pregnant and had other children; she was unable to speak English; had limited recourse to public funds and the extent of the concern by other people.

On 1 February 2012 the LA received a referral from another local authority regarding the domestic violence allegations made by the mother. On 6 February 2012 the father was arrested and interviewed. He denied the allegation, and was bailed with a condition not to contact the mother. This is thought to be the same day the mother left the refuge to return to live at home.

Following the mother's return with B to live at the family home health visitor, B C, visited on 8 February 2012. She provided a report and gave evidence. She carried out a joint visit with the allocated social worker DH and an interpreter. In her written and oral evidence her opinion was the mother was minimising the issue of domestic violence and was desperate to remain in her marriage. She said she initiated the domestic violence and that she had been misinterpreted at the hospital. Ms C questioned the truthfulness of the mother's account that the father was in X city as she could give no address or contact number for the father, she believed he was still in the house in breach of his bail conditions. She did not disagree with the detailed record of that visit prepared by the social worker.

On 13 March 2012 the mother signed a statement retracting the allegations she had made against the father. It states as follows *'On 20th Oct 2011, an argument flared between myself and husband it was about what I heard that he had a relation with another woman. I asked him about it and he swore that it was not true. However, I wasn't satisfied with his answers and was pregnant at the time. I left home and headed to the people who passed the story to me I stayed with them for six days. On the 4th November 2011 I went to the hospital and was admitted for 2 days. A person interpreted for me but he did not understand what I was saying. I was told that he had said my husband had assaulted me this is a lie, my husband did not touch me, it was a verbal argument. I hereby declare that I wasn't assaulted by my husband on this instance or in the past.'* There is then a declaration by an interpreter.

On 5 April 2012 the LA convened an initial Child Protection Case Conference and B was made the subject of a child protection plan, which included weekly visits

by the social worker. In June 2012 Y A-W become the allocated social worker and a review conference was held on 22 June 2012.

According to the mother the father brought C to the United Kingdom from Country B on 25 November 2012.

A child protection medical examination was undertaken on C and B on 6 December 2012. Old scars were noted on C.

At the Child Protection Case Conference on 7 December 2012 it was decided B should remain the subject of a child protection plan and C and the unborn child were made the subject of child protection plans with regular social work visits.

A was born in January 2013. On 1 February 2013 the Child Protection Conference took place and decided all 3 children should continue to be the subject of child protection plans.

On 4 March 2013 A was admitted to St George's Hospital where he was found to have a fractured left femur. The mother's account at the hospital was that she has dropped A at the dentist surgery onto the handle of the pushchair, but had prevented him from falling to the ground. The father's account differed slightly he put the fall in the context of the mother trying to put A in the pushchair and does say that he did not see it happen. The following day the mother's account changes to put it in the context of putting A in the pushchair and the father rushing to assist and prevent A hitting the ground. The mother stayed in hospital with A until 12 March 2013. Mr A M witnessed what happened in the dentists' surgery. He made a statement to the police on 12 March 2013, took part in a video reconstruction of what he saw on 4 March and gave oral evidence at this hearing. He was clear that what he saw was A falling from his mother's lap as she was in a sitting position; he described A hitting the padded part at the front of the pushchair before falling

to the floor.

Dr J, Consultant Paediatric Radiologist, was commissioned to provide a report on the joint instruction of the parties. His first report states that A's transverse fracture of the mid-shaft of the left femur would be as a result of a significant blow, impact or bending/snapping action being applied to the bone. He said the parents' explanation of the incident could be a potential explanation. He clarified that view in further written reports and in his oral evidence. When questioned about the various scenarios of what took place in the dentist's waiting room he said the most likely mechanism and force that would produce such an injury would be a fall from shoulder height directly onto the floor. He considered a break in the fall by A hitting the pram first a less likely cause.

On 8 March 2013 there was a child protection medical examination on C and B. The old injuries were noted on C but no other concerns and it was decided that they could remain living at home.

On 9 March 2013 the father, C and B visited the mother in hospital. The mother says this is the last time she saw C alive. She said she spoke to him about 8 - 8.30 pm on 11 March 2013.

On 11 March 2013 the father reported that C had collapsed. R said she returned from work that day about 4.30 pm and after eating meal went to the kitchen where she saw the father cooking and he said C was unwell. The father took him a drink and returned with C in his arms, C then vomited. R said she helped the father remove C's dirty clothes the father took C to lay him down and C was sick again. R said she returned upstairs and at about 8.30 pm she heard shouting from downstairs, the father was calling her. She went down and saw C on the floor and he was not moving. She called an ambulance. A 999 call was made at 20.36 and the ambulance arrived at 20.43 at the home. The paramedic reports finding C in cardiac arrest, he applied a defibrillator and began chest compressions. C was

taken to the ambulance, resuscitation attempts continue in the ambulance until they arrive at the hospital. The paramedic in oral evidence confirmed that C was in cardiac arrest when they arrived at the home and save for a momentary period just before they got to the hospital did not have any pulse. Resuscitation attempts continued at the hospital but were unsuccessful and C was pronounced dead at just after 10 pm that evening. The father was arrested and has been charged with C's murder. He is remanded in custody and his trial is listed to take place in January 2014.

The LA convened a Strategy meeting on 12 March 2013 and issued proceedings. B and A were received into police protection, B was placed with foster carers and A remained in hospital before being discharged into the care of the foster carers. Both parents were interviewed that day by the police. The mother said C was well when she last saw him, she had spoken to him on the phone at about 8.30pm the previous evening and the father was a very good father. The father in his interview said C started feeling unwell at 2.30pm the previous day, had vomited a few times and after he had been put to bed he got up feeling unwell, the father said he went to help him. He described C *'throwing himself on the floor'* and the ambulance was called. In his oral evidence the father said he did not see what happened to C, he said he found him collapsed on the floor.

On 13 March 2013 Professor R, a Consultant Paediatric Forensic Pathologist conducted a double doctor post mortem with Dr K a Consultant Paediatric Pathologist. His provisional view as to cause of death was intraperitoneal and retro peritoneal haemorrhage and traumatic rupture of the liver, his report continued *'this child has a number of broken ribs, compression fractures of vertebral bodies and superficial bruising. The fatal injury is the result of blunt trauma to the abdomen. In the absence of a plausible explanation, the finding would be consistent with non-accidental injury, inflicted shortly before death.'*

Following this initial report he sought further investigation. The ophthalmic report from Dr McC concluded there were no retinal haemorrhages and the optic nerve

haemorrhages were consistent with head impact trauma. Dr J, a neuro pathologist, reported haemorrhages into several compartment of the brain are likely to have been of traumatic origin and the neuronal hypoxia is suggestive of having occurred near to the time of death. In his final report Professor R concluded the cause of death was multiple severe internal injuries which were indicative of severe crushing or blunt force injuries which occurred immediately prior to death and would have been instantly or very rapidly fatal. A further report was commissioned within the criminal proceedings from Dr C, Consultant Forensic Pathologist. He agreed with the cause of death being multiple injuries with *'evidence of head injury, chest injury and abdominal injury'* which are recent, consistent with them occurring in the period shortly before collapse and admission to hospital. He concluded that putting the various findings together *'they would be consistent with a major blunt force assault likely to have involved both impact and crushing, such as through punching or kicking/stamping. In terms of the nature and extent of internal injuries as described above, such features may be seen in a fall from a substantial height or as a result of a road traffic collision'*, he continues *'Resuscitation attempts would explain the presence of needle puncture marks but would not explain the various internal signs of injury, all of which show haemorrhage indicating that they occurred in life with the circulation functioning rather than after death when the circulation had ceased.'*

Only Professor R was required to give oral evidence. He was asked about various scenarios put on behalf of the father by Ms Oldham Q. C. suggesting that the injuries could have been caused by the fall to the floor, by C hitting his head on the way down to the floor and the extensive CPR that was undertaken. Professor R was clear in his oral evidence that none of the scenarios suggested could account for the extent of the injuries found on C. In relation to the CPR he accepted that could be a possible cause of rib fractures, but did not consider it likely in this case as there was *'haemorrhaging around the bruising'* which was inconsistent with C being in cardiac arrest prior to any CPR. He said you would not get the extent of the injuries from CPR. In relation to the suggestion of the head injury being caused by a short distance fall, he likened such a cause as being *'hens teeth rare'*. In response to the suggestion C had had a fit or seizure whilst standing and either hit his head on an open drawer or on a ledge projecting underneath the bed before

reaching the concrete floor with a thin carpet and the seizure/fit continuing so the head bangs up and down he said he found such an explanation '*extraordinary*' and did not consider it accounted for the head injuries let alone the other injuries. He said the extent and severity of C's injuries meant that C was unlikely to have survived more than minutes after receiving them. His conclusion was that these injuries, where there was no other plausible explanation, were more likely to have been caused by blunt force trauma, probably by punching or stamping by an adult.

On 13 March 2013 Dr M, Paediatric Orthopaedic Consultant at Hospital signed a police statement questioning the parental explanation as to the cause of A's fracture. He said '*A completely displaced transverse fracture of the midshaft femur requires a significant force applied in a three point manner in order to snap it cleanly across.*' Dr J referred to this as the classic mechanism to cause such a fracture but he did not rule out other mechanisms.

In the father's second police interview on 13 March 2013 he confirmed he had the care of C in the 12 hours prior to his collapse and he does not blame anyone else for harming C.

On 14 March 2013 the mother was arrested. In her second interview she states the father has never been violent to her or the children and that A was injured as she was putting him into the pushchair, she dropped him accidentally and he hit the pushchair. The father picked him up. She can provide no explanation for C's injuries. In the father's third police interview he said C's injuries may have been caused by people pushing his chest or maybe a fall.

Care proceedings were issued on 14 March 2013 and the children made the subject of emergency protection orders until 22 March 2013 and thereafter have been the subject of renewed interim care orders.

The case was promptly transferred to the high court and I became the allocated judge. The first directions' hearing was on 15 May 2013. The mother's statement filed the day before denied any violence by the father and stated she was told by members of the Community to make allegations against the father to obtain larger accommodation. That was not part of her case within this hearing; her case was she was told by MM to apply for larger accommodation. This statement also states she accidentally dropped A from shoulder height; he slipped out of her arms and fell to the floor.

The parents put forward various members of the paternal family to be assessed. Five members were assessed. The initial viability assessments of them all were negative; this was principally because they could not contemplate the possibility of the father being responsible for the injuries to C.

Following these assessments a Family Group Conference was convened on 24 June 2013. This confirmed that the wider family did not believe there is any risk to the children being in the joint care of the parents and the family do not believe there is any risk to children being in the sole care of the mother.

Dr R, Consultant in Forensic Psychiatry, was instructed on behalf of the mother. She met with the mother on 25 July 2013 and her written report is dated 31 July 2013. She concluded the mother did not suffer from any mental illness. The mother maintained her denial that there had been no domestic violence and Dr R expressed her concerns that if it is found that there had been domestic violence the mother's denial and/or minimisation of what had taken place were poor prognostic factors in her ability to protect the children in the future. She gave oral evidence and did not alter her conclusion. She said that if the court found the domestic violence allegations to be true it was of concern that the mother was not able to maintain the separation from the father and this put the mother at further risk. In answer to the question whether the mother's denial of harm made the future risk very significant she said *'The denial results in failure to protect from physical or emotional harm, the risk of harm in that household is very significant'*. She did

not disagree with the four conditions outlined by the social worker. Whilst her view was that the mother may need a decision by the court to allow her to make any change, she accepted that the difficulty in the case was not knowing what factors were driving the mother to maintain her denials, when she is aware of the consequences for her children. In her experience that is a *'rare situation'*. She agreed that even if the mother showed some change after the decision of the court the necessary work would be a *'long piece of intervention'* which she estimated to be between 4 – 5 months of work. This would be contingent on the mother accepting the findings first. She said based on her interview she would be *'pessimistic'* about the mother making changes, there was *'no way to get into the consistent denial there was in this case'*. She said the mother spoke to her in interview of her loss but that was not able to motivate her to change, which is why she considers her motivation to change to be poor.

The LA completed their risk assessment on 9 August 2013. This was undertaken by the allocated social worker Ms G. She has been allocated to the case since March 2013. She is an experienced social worker who has extensive expertise in a wide variety of settings. The risk assessment took place over three appointments, each lasting between 1 ½ to 2 hours, when Ms G met with the mother together with an interpreter. Prior to that she had met the mother at a number of meetings when the LA concerns and the need to parallel plan were explained to the mother. Each of the meetings focussed on particular aspects, for example the evidence relating to domestic violence and the how C died. In her conclusions Ms G outlined out the positive factors in her assessment (for example, the mother's ability to meet the children's basic care needs) as well as the negative ones (the harm caused to both A and C and the history of domestic violence) and concluded that B and A would be at risk of significant harm if they returned to the care of their mother. In her oral evidence she stated the four changes that the mother needs to make;

the mother needed to acknowledge in her evidence that she was the subject of serious domestic violence as was reported;

the father was capable of serious violence to C in the way

described by the medical evidence;

she accepted the findings made by this court, irrespective of the decision in the criminal court and

she had a well thought out safety plan to keep the children safe from the husband in the future.

It was her view the mother has been offered considerable support services, both before proceedings were issued and during the progress of this case. Prior to this case this included the support delivered within the child protection plans which were in the context of the LA being very clear it still considered she was at risk of domestic violence. Ms G said when she first saw the mother in March she arranged for a worker from a refuge to see and speak to the mother separately from the social worker to explore with the mother safety issues. During the currency of this hearing the social worker, Dr R and the Children's Guardian have made it clear to the mother on repeated occasions their level of concern about the history of domestic violence and the evidence relating to the cause of death of C. She also understood the police had provided support to the mother through discussions about safety with the family liaison officer. She said her view is the mother is intelligent and articulate and was able to understand what Ms G was saying. She could understand the risks of domestic violence in the abstract but was simply unable to relate it to her situation.

The LA filed their final evidence and care plan on 28 August 2013. Those documents did not recommend any rehabilitation of the children with their mother and proposed adoptive placements. Placement order applications were issued just prior to the start of this hearing on 13 September 2013.

Both parents filed statements just prior to this hearing, the mother's is dated 12 September 2013 and the father's 16 September 2013. The mother states she will accept the court's findings and will cease all contact with the father if he is found to be responsible for injuring the children. She steadfastly maintained her denial of any domestic violence and said she could protect the children. The father's statement maintained his denials.

Mr Y, the Children's Guardian, filed his report on 12 September 2013. In that

report he agrees the threshold is established and reserved his position on what orders the court should make until after the mother had given her evidence. He outlined his position that if there was any change in the mother's position he would consider requesting a short focussed adjournment to assess the mother's position. That position changed in his oral evidence.

This hearing commenced on 16 September 2013 and lasted 10 days. It was listed to consider both the facts relied upon to establish the threshold criteria and what welfare orders should be made.

The court has heard oral evidence from a number of witnesses:

Professor R (Consultant Paediatric Forensic Pathologist)

Mr G (paramedic)

Sister T (A&E sister)

PC M (attended 5.11.11)

PC H (attended 5.11.11)

Dr J Consultant Paediatric Radiologist

Ms M M (friend)

Mr A M (witness at dentist 4.3.13)

Mr D B (lived in family home)

Ms R M (lived in family home)

Dr R (Consultant Forensic Psychiatrist)

Ms C (health visitor)

Dr A (doctor on 5.11.11)

PC C (attended 4.4.11)

PC E (attended 4.11.11)

Ms G (allocated social worker)

The mother

The father

Mr Y (Children's Guardian)

The court bundle extends to 7 lever arch files and includes all the medical, LA and police records.

Discussion and Findings

Threshold Criteria

Domestic Violence

The evidential foundation of the allegations of domestic violence relied upon by the LA come from a number of sources.

Apart from the parents the alleged assault in April 2011 has three sources; RM, PC C and PC E. R gave a detailed account of being woken by the parents arguing, her observations of the extent of the mother's distress, her being on the floor and the father standing over her and punching her in the mouth. It was a detailed and powerful account which according to the parents is inaccurate and one driven by jealousy, as she either had or wishes to have a relationship with the father. Her oral account was largely consistent with her police statement, save that in her oral evidence she did not accept the mother told her of previous violent incidents between the mother and father. The police officers who attended support R's account in their descriptions of the mother's demeanour when they arrived. PC E mainly dealt with the mother. In her evidence she described the mother '*cowering*' upstairs before she came down to speak to her and being visibly scared, shaking and crying. Although she accepts R did the interpreting when she did speak to the mother she was clear in her oral evidence she elicited the information in a question and answer style, with R interpreting each question and answer with the

mother. She was clear the information she recorded came from the mother and not an account taken only from R, with the mother being a silent observer. She described in her oral evidence asking to see the injuries and the mother moving her clothing to enable the officer to see them. She had an independent recollection of seeing the marks to the mother's neck and the bruise to her arm; although PC E noted the injury to the shoulder she did not have an independent recollection of seeing it. She was clear the mother was saying, via R, that the father caused these injuries. Her observation of the injuries was supported by her entry in the CRIS report that they were sufficiently visible they could be photographed. Whilst PC C dealt mainly with the father at the home he observed what took place in the police station and thought it '*strange*' that the mother should change her story after she had been spoken to by the gentleman who attended the police station, who he understood to be the mother's brother.

According to the parents the evidence from these various sources is either wrong, or as a result of a misunderstanding. R, they say, is simply lying. Whilst they accept there were raised voices they are clear she observed no assault, the mother was not on the floor and there was no reason for the police to be called. They say she was driven to lie by her desire to have a relationship with the father. PC E, they say, was lying in her account of observing any injuries on the mother and she did not glean information by way of questions and answers, it was only from R who was not a reliable source. The description of cowering and the reluctance to come downstairs was, according to the mother, because she was in the toilet and said she would be down shortly; the mother said it had nothing to do with her being frightened. They place reliance on the fact that there was no mention from R to the police of the punch to the face or any record of any injury to the mouth.

Turning to the incident in November 2011 the evidence again comes from a number of sources. MM describes in her police statement (which she accepted in her oral evidence was true and had been interpreted to her at the time) the mother attending at her property in a distressed state and made allegations of being assaulted by the father. The mother was 7 months pregnant and was concerned the unborn baby was harmed. They went to Hospital in a taxi. The hospital records

their arrival and what was initially said; it is noted the mother described being assaulted by the father.

The following morning Dr A came on duty at about 11am. He was an A&E doctor of the same origin as the mother. In his oral evidence he said he was asked by one of his colleagues to interpret for a woman who was in the department. He described going to see the mother and her visible relief in having someone who she could converse with. He described speaking to her for about an hour, and although he accepted they came from different parts of the country in question and that there may be some words that may be different his oral evidence was clear he understood what she was saying and in their discussion, which was by way of question and answer, he had no sense they were misunderstanding each other. He said at that stage he did not see any bruises or marks. After speaking to her for sometime he described regularly popping back to see her to check she was okay. He was involved again when the police arrived and he interpreted for them. This was done by him interpreting questions and answers from the police to the mother and again he said he got no sense there was any misunderstanding in what he was saying to the police and the account he was being given by the mother. He recalls he did see the injuries on the mother at this time, as the police wanted to see them and he was struck by the marks to her knees as that accorded with the description she had given Dr A earlier that day of being dragged on her knees across the floor by the father when she fell trying to escape his assault.

Dr A's position is supported by both police officers who attended, in particular PC M who was the female police officer who said she observed the injuries on the mother. Sister T, the A& E sister with specific responsibility for dealing with cases where there was allegations of domestic violence was clear in her oral evidence and observations that the mother had been subjected to domestic violence. She was so concerned about the situation she refused the initial offer of bed and breakfast accommodation as she considered the mother needed the support in a refuge. The hospital records support the observation of injuries as there is a completed body map within the records showing where the injuries were seen on the mother.

According to the parents the mother was attending hospital for a routine TB test with the appointment only expected to last about half an hour. The father had always attended with her on her previous appointments relating to TB but, according to the father's oral evidence, he was going away for a few days and the mother was going to stay with MM. According to the mother she did not speak to the father until she had moved into the refuge, she did not mention in her oral or written evidence he was away. According to the mother when she went to MM to then go on to the hospital for the TB appointment and MM told her this was the mother's chance to get her own accommodation. In her written statement the mother says '*I was informed by members of the community that I should apply for larger accommodation*' in her oral evidence she said that was referring to MM. She said the suggestion in her statement that she was also told if she made allegations against her husband then it might help her obtain other accommodation was incorrect. Her case is that any record of her making allegations is wrong, she did not make any such allegations at the hospital and MM and Dr A must have interpreted her incorrectly. She denies any examination took place which would have formed the basis of the body map in the hospital records and denies Dr A and PC M's account of them observing the bruises and marks on her body.

According to the mother's oral evidence she thought the refuge she was placed in was a hotel which would lead on to her getting her own accommodation, that she would live in with the father and the children. In her oral evidence she accepted that she was allocated a worker, she accepted that the accommodation she was in was only for women and the father could not visit. Bizarrely she said even though she still loved her husband she remained living there for three months. She agreed she was given a leaflet in the mother's own language which she said she did not read until after the birth of B. It was only then, she said in her oral evidence, that she realised this was a place for women who had alleged domestic violence. According to the father she did this in the hospital after B's birth and she spoke to him about it.

The parents accept the mother lived at this accommodation for three months,

although according to the father she spent more time during this period at the family home. He said in his oral evidence he did not question why it was just for women. He accepted that he did not know the address and did not question this either.

In evaluating the evidence concerning domestic violence I have considered a number of factors. First the language issue. I have carefully factored in the fact that much of what the mother is reported to have said has been via someone else interpreting for her. In this context it is important that I look at what other evidence could support what the mother is reported to have said. I also factor in the fact that apart from the incidents in April and November 2011 and the reports of D hearing shouting on 11 March 2013 there is no other evidence of domestic violence. I also take on board the submission on behalf of the mother by Mr Alomo that the fact something has been reported by a lot of people does not necessarily mean it has happened. But it also has to be borne in mind if there is no evidence of collusion and the reports are independent of each other that is also a factor that needs to be taken into account.

Having considered all the evidence on this issue I am satisfied that it is more likely than not this mother was the victim of domestic violence from the father on at least the occasions described in the evidence in April and October/November 2011.

In relation to the April incident I accept R's account. It is supported in significant respects by the police officers who attended. They support what she says about the mother's fear and distress; they observe injuries which through questions and answers the mother reports as being caused by the father. It is improbable that R could have mis-interpreted what the mother was saying without the police officer noting that was the case. No motive has been suggested to the police officers for lying or why they would make up their contemporaneous records. In relation to R the jealous motive suggested is unsupported by any external evidence and it sits uneasily with the parents remaining living under the same roof as R. The fact that

R does not mention the punch to the mouth to the police can be accounted for by the fact that she had not given a police statement at that stage. During the relatively brief time the police were at the house she was acting as interpreter for the mother and the mother had had the opportunity to clean herself up in the toilet upstairs. In addition, the account given by the father in his police interview of being hit over the head with a shoe by the mother he accepted in oral evidence was not correct, which undermines the credibility of his account now. The attendance by a member of the family so soon after the mother arrived at the police station and the change in her account is more consistent with pressure from the family on her to withdraw the allegations than the allegations being untruthful from the start.

Turning to the allegations made in November 2011 the parents' case on this aspect became more inherently improbable as it was explored in oral evidence. The account given by MM in her police statement of the mother attending distressed at her home alleging domestic violence by the father is supported by the records at the hospital, the written and oral evidence from Dr A and the accounts given by the police officers who attended the hospital. The mother does not now suggest that MM told her to make up allegations against the father in order to secure housing, although the father does. MM's account in her police statement, which she accepts was true when she made it, gives a clear account of the mother turning up on her doorstep alleging she had been assaulted by the father. It is of note that her police statement records at the end that she made changes as she was not happy with the initial statement. Her inability to recall the details about the violence allegations in oral evidence was wholly unconvincing in the context where she was able to give detail about other matters around that time. My assessment is she felt under pressure about giving oral evidence about any detail regarding the assaults by the father. It required a warrant being issued by me to secure her attendance. The source of that pressure is more likely than not to be from the family or the community, as she gives an account in her statement of the mother being visited by members of the paternal family, which is similar to what happened to the mother in April.

Dr A was a compelling witness with no motive to give inaccurate or untruthful evidence. He gave a detailed account, much of which was based on personal recollection. He was clear in his rejection of the suggestion in cross examination by Mr Alomo, on behalf of the mother, that he had somehow misunderstood what the mother said, to the extent that she was making no allegations of violence against the father. If that was the case it would have become readily apparent to him and the mother, not only when he was talking to her but by the questions being asked by the police officer. He had a vivid recollection of seeing the injuries, making the distinction that he had not seen them when he was first talking to the mother but had when the female police officer was there. This was independently supported by the police officers account. In addition I accept the account given by Dr A of his subsequent chance meeting with the mother on the bus. He gave congruent detail about that and no motive was suggested for him to lie about this. The mother did have such a motive as it did not support her account of not understanding the nature of the accommodation she was in and was part of her denial of domestic violence. Where there is any conflict between the mother and Dr A's account of what took place at the hospital and when they met afterwards, I unhesitatingly accept the evidence of Dr A.

The parent's account of the November incidents simply did not stand up to any scrutiny and I reject them. According to the mother's oral evidence she left to go for a TB appointment at the hospital. MM was going to go with her and MM said she should apply for larger accommodation. She was unable to give any rationale why she was going to secure that accommodation by sitting at the hospital in the absence of anything else other than being pregnant. On her account the father did not know about this, yet he seemed unsurprised that he did not hear from her for about 3 days. She said she spoke to him on the phone when she was in the refuge. On her account he said that was the wrong way to go about getting accommodation. On the father's account, given in his oral evidence, he said he was going to X city for three days and that is why MM went to the hospital with the mother. He seemed to express no surprise or wish to make any enquiries as to why the mother was staying in a women's hostel and why he was never given the address. The suggestion by the parents that neither of them realised this was a refuge for women who have suffered domestic violence until the mother had been

there for three months and only after the mother had given birth to B lacks any credibility. The account given by the father of the mother only realising when she read the leaflet written in their language, that she accepts she was given before B's birth yet only had time to read after his birth makes no sense. The mother accepted she was allocated a worker at the refuge soon after she went there.

I am entirely satisfied that both parents knew that the mother was placed at a refuge, that it was because she had made allegations of domestic violence and it is more likely than not that the mother was being put under increasing pressure from the father and the wider family and community to reunite with the father. The birth of B and the presence of the father at the hospital due to medical complications with B would have increased that pressure. It is of note that her withdrawal statement again puts the responsibility on her of making what are said to be unfounded allegations that the father has had a relationship with another woman. I am entirely satisfied both parents knew the type of accommodation the mother was placed in and the reasons why she was placed there. The reality is over a period of time she was driven to return home by a combination of her desire to continue her marriage with her husband and her loyalty to him, together with pressure from him and the wider family to withdraw the allegations.

This was particularly so following the father's arrest on 6 February 2012 for the November allegations of assault against the mother. It is not without significance that the mother was back living at home full time within days, if not on the same day of the father's arrest.

Therefore for the reasons set out above I consider it more likely than not the mother was subjected to violent assaults by the father in April 2011 as witnessed by R and as described by the mother to Dr A in November 2011.

A's fracture

Turning now to A's fracture. The issue I have to determine is whether the accounts give by the parents of the incident in the dentists waiting room are consistent with the mechanism and force required to cause such an injury.

There is no issue that the mother accidentally dropped A in the dentists' waiting room on the morning of his admission to hospital on 4 March 2013.

The initial accounts given by the mother and father do not say that A hit the floor, although the subsequent ones do. The mother's account that he slipped from her arms when she was in a standing position and hit the floor either directly or via hitting the buggy first appears in her statement dated the 14 May 2013. She confirmed this in her oral evidence when she demonstrated what happened. She put A up to her shoulder (facing her body) following feeding him, she stood and he slipped through her arms. She said the lower part of his body hit the pram on the padded rail across the front of the pram and he then fell on the floor landing on the floor either with his body flat face down or on his knee.

The father did not see it happen but came to pick A up from the floor to comfort him. According to the parents he cried and then settled down. After C's dental appointment, they went home via a shop. Once home when they changed A they noticed his leg was swollen and after asking some friends to come with them they took him to the hospital. He was admitted at 2.33 that afternoon.

Dr J's evidence was the most likely cause of the fracture would be a direct fall from shoulder height to the floor. It was his opinion that mechanism and force could result in this type of fracture. If A hit something on the way down from

being dropped from a standing position it was his opinion that could reduce the force required to cause a fracture of this kind. Hitting the pram on the padded part may make it less likely to cause this type of fracture.

Having considered all the evidence I conclude it is more likely than not the mother was standing when A slipped out of her grip from shoulder height. I have reached the conclusion that the mother was standing as she had just fed A and was trying to wind him, both she and the witness describe A hitting the padded bar on the pram which bearing in mind the height of the chairs and the height of that bar on the pram was unlikely to be possible where the witness describes him falling from her lap. I consider he is mistaken about that. Although Dr J considered it most likely a straight fall from shoulder height to the floor would cause A's injury he said it was less likely that it was caused either by the impact on the floor via the pushchair or by hitting the pushchair (even with padding) which could have created the 3 point mechanism described by Dr M. I have to consider that evidence together with the lack of evidence about any other incident, the relative promptness with which the parents sought medical help when they noticed a swelling, together with the difference between this event and C's death as it is potentially explicable by a witnessed event which was accepted by Dr D. Dr M's report gives what Dr J described as the classic mechanism for this type of fracture, but failed to give any specific consideration to what is said to have taken place in the dentists' waiting room.

Taking all those matters into account I am satisfied it is more likely than not that the injury to A's leg was caused by the accidental fall from his mother's arms in the dentists' waiting room as described by her.

C's death

Turning to the likely cause of C's death. Professor R's written and oral evidence was clear and consistent not only in relation to his conclusions but also with the

other medical evidence in relation to the cause of death. Notably Dr C was not required to give evidence following Professor R's oral evidence. The medical evidence from both Professor R and Dr C is that in the absence of any other explanation C's injuries were inflicted by an adult and due to the distribution of the injuries it is more likely that it was a result of a number of impacts. In his oral evidence Professor R said that C was most probably stamped on or punched and the injuries are very likely to have been fatal within minutes. There is no issue that the only adult caring for C at the time was the father.

In his oral evidence Professor R was firm in his rejection of any suggestion that the injuries could have been caused by the CPR. This was because there was haemorrhaging around the rib fractures which points towards them occurring prior to the C being in cardiac arrest and therefore before any CPR took place. Also the severity and extent of the injuries were inconsistent with them being caused by CPR. He also rejected the scenario put to him of C falling to the floor, possibly hitting his head on the way down and continuing to hit his head in the course of unspecified fitting. He described such a scenario as '*extraordinary*' and the extent and severity of the injuries excluded this as a possible explanation.

In my judgment I am entirely satisfied it is more likely than not the injuries that resulted in C's death were caused by the father. The type of actions that would cause these injuries are clear from Professor R's evidence, the time frame for them puts them at a time very shortly before the ambulance was called when the father was the only adult caring for him. He is someone who is capable of violence as is clear by the evidence of domestic violence against the mother. He was in my judgment responsible for the causing the injuries that resulted in C's death. Only he will know precisely what happened and what caused him to behave in such a brutal and violent way to such a young defenceless child.

Failure to Protect

Finally, in the light of my findings about domestic violence, I find there was a failure by the mother to protect C and B as she knew the father was capable of violent behaviour towards her. It is more likely than not B witnessed the violent and fatal assault by the father on C on 11 March 2013. I accept the evidence of Ms G and Mr Y's description about B's emotional presentation as being frozen and anxious.

In the light of my findings set out above I am satisfied the threshold criteria are established in this case and I shall now consider what orders the court should make that will meet the welfare needs of both these children.

Welfare

As set out in the introductory paragraphs I am faced with the stark positions of the LA supported by the Children's Guardian seeking permanent removal of these two young children from their mother's care and the submission on behalf of the mother to have a short time focussed adjournment to enable the mother to consider the findings of the court.

In considering this aspect of the case I remind myself of the words of Lord Templeman in *Re KD (A Minor) (Ward: Termination of Access)* [1988] AC 806

'The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and physical health are not endangered. Public authorities cannot improve on nature.'

These words have a particular resonance in this case due to the strength of the relationship this mother has with her children. However, I also have to remind myself that this court's paramount consideration are the welfare needs of each of these children and within the welfare checklist the court is required to consider the risk of future harm and the mother's capacity to care for the children which have been the central focus of the evidence concerning welfare in this case.

In order to be in a position to provide safe care for these children the allocated social worker Ms G, Dr R and Mr Y the Children's Guardian all agree that the mother needs to meet the four criteria outlined by Ms G in her evidence:

to acknowledge the violence within the home;

that the father could have caused the death of her son C;

accept the decision of this court, irrespective of the outcome of the criminal court and have a safety plan to keep the children safe from their father and generally in the future.

All those witnesses hoped, as did the court, that this mother would in the lead up to this hearing, during the hearing in her oral evidence or prior to closing submissions show some change by her recognising these issues. However much everyone willed her to do so she resolutely maintained her denials. I agree with the assessment Mr Y that in fact the mother has become more rigid and entrenched in her thinking. Her oral evidence supported that view. She said she needed '*clear, clear, clear evidence*' of the father's guilt. Implied within that answer is that she did not consider she had clear evidence now, even having heard Professor R give evidence. Even though on one level the mother may understand the different functions and roles between this court and the Crown Court she said that in the event of the father's acquittal in the criminal proceedings she would regard him as being not guilty, she still loved him and the clear implication was they would reunite. There was no sign in her oral evidence of any change from her or that she acknowledged the professionals' view about the risks to her and the children.

It was this aspect of her position that caused Dr R to give a somewhat pessimistic prediction of the mother being able to change her position, even if she was given the time to consider the courts findings. This view was given prior to the mother giving her oral evidence when she was, in my judgment, more trenchant in her denials than she had been in her interview with Dr R.

Ms G, Dr R and Mr Y are united in their view that this mother is intelligent and on one level understands the evidence, in particular regarding C's death but is simply unable to make the connection that his injuries and death could have been caused by the father. She repeated many times that as she did not see what happened she could not consider the cause of death. But she appeared to have no difficulty in accepting and relying on information she received about the treatment of C whilst he was in Country B. Also she raised the issue of CPR being a possible cause of the injuries, but seemed unable to consider the father's actions as being the possible cause too. In relation to domestic violence she was able to understand the impact of that on women and children but was unable to relate it to her situation.

The submissions in support of the outcome proposed by the LA and Children's Guardian are powerfully and persuasively made and are justified by the evidence for the reasons they each outline in their written submissions. The arguments for making a final care order and placement orders are supported by all the professional evidence, they are united that each child's welfare requires care orders and placement orders to be made. The disadvantages of making such an order for the children have been carefully considered by Ms G and Mr Y and include the permanent loss for the children of the birth family, the delays and uncertainties of finding a suitable long term placement for the children and the difficulties in finding adopters with a similar racial and religious background as the children. They have been balanced with the advantages of the children no longer being at risk of future harm and bearing in mind their ages having the security and stability that comes with an adoptive placement. I acknowledge all the support that has been given to this mother in the past and during the currency of these proceedings. However this has been without the certainty of the findings the court has now made.

Having carefully considered all the evidence I have reached the conclusion that I am going to give this mother a very short period to consider the findings I have made, to see if she can make the changes that were outlined by Ms G as being necessary for the mother to make. I accept Ms G's evidence, as supported by Dr R

and Mr Y of the need for the changes she listed.

This conclusion I have reached is very finely balanced and I acknowledge is against the recommendations of Ms G, Dr R and Mr Y. As a result I need to explain the reasons why I am going to depart from their recommendations:

Mr Y and probably Ms G would have considered a short time focussed assessment of the mother if she had shown some sign of change during the hearing. Whilst she has not shown such a change during the hearing I do not underestimate the pressure this mother is likely to have been under in the lead up to and during this hearing and the uncertainties that existed. In the light of my findings some of those uncertainties, in the context of these proceedings, have been removed by the findings I have made. Dr R did observe that it was a lot to ask the mother to change in the context of her oral evidence. I agree. She has maintained her position for so long it was going to be a difficult position to climb down from under the glare of the court and the other parties. Having observed the mother during this hearing and in the context of the strength of her relationship with the children their welfare requires her to be given this final time limited opportunity to demonstrate those changes away from the spotlight of the court.

It would be contrary to the children's welfare for the court not to give this mother this time limited opportunity to demonstrate that she can change in the way described by Ms G and Mr Y. As part of the welfare checklist the court has to assess the parent's capacity. That must include, in the circumstances of this case where her relationship with the children is so strong, the mother's capacity to change in the light of the court's findings so she can meet the children's needs.

The alternative plan is permanent separation of the children from their mother which is a draconian step to take. I note in Mr Y's final report he stated at paragraph 45 *'If Mrs M is able to accept the court's findings, then the court may be able to consider a further risk assessment of her. If she is unable to accept the*

findings of the court, B and A have the right to know what happened to their brother and why the court considered the mother was not able to care for them. I believe a short adjournment will provide a firm foundation for the children to know their mother was given every reasonable opportunity to consider her position by the court and that adoption was not sought lightly. Although B and A are too young to understand it now, this will be important in their life story work'. Although Mr Y changed his overall recommendation this is still, in my judgment, a relevant consideration in evaluating the children's welfare.

The LA make a powerful point, which I accept, about the need for those supporting the mother on the ground to have trust in her and confidence in her honesty and reliability. It is in the mother's hands now to demonstrate that they can place such confidence in her to possibly be able to provide safe care for the children. That can only be done by her unconditional acceptance and acknowledgment of this courts findings and actively considering a plan to manage the risk of harm in the future. Nothing less will do.

This mother has been described as intelligent and articulate who deep down understands what is required, but for some reason cannot act on it. As Dr R observed something has to occur first before such a change could take place. She said if the mother receives the findings and she processes them it may allow her to make that change. The mother has sought help in the past, but the difficulty has been her ability to sustain it and the pressures she has been put under. The description given by Dr A of the change in the mother when he saw her on the bus gives a glimpse of the change that is possible.

If the mother accepts the findings I have made it may shed light on what factors have contributed to her maintaining her denials in the face of what I and others considered to be strong and compelling evidence about domestic violence and the father's responsibility for C's death. In Dr R's view the courts findings may allow the mother emotional safety to make the changes required.

I have taken into account the mother's actions in having no contact with the father during the currency of these proceedings, but I am clear she remains emotionally attached to him. She will need to demonstrate she can make that break and what contact she has with the wider paternal family. She has got to provide that information in a full and frank way so it can be assessed and to demonstrate she can prioritise her children over her husband.

I make it clear to the mother she has come very close to this court making final care orders and placement orders in relation to her children. She should be in no doubt that unless she makes these changes she will be unable to care for her children in the future as it will be very likely their welfare will require the parents consent to be dispensed with leading to adoption orders being made. In order for her to even have a prospect of caring for the children she has got to unconditionally and without reservation accept the findings I have made. My findings are not dependent on what occurs in the criminal proceedings. They stand in their own right. Any suggestion by the mother that she requires more evidence for her to be satisfied that the father is responsible for C's death will almost certainly mean she will be unable to provide safe care for her children.

The time frame I propose is no more than three weeks before the matter comes back to court. Such a delay will be a purposeful and proportionate delay in the context of the lifelong welfare of these children. I have carefully considered Dr R's evidence about the timescales for any work to be undertaken with the mother. That will need to be evaluated only if this mother can makes the changes required. If she can't then the inevitable consequence will be in three weeks time these children will be made the subject of care orders and placement orders.

I will hear submissions as to any further steps that can take place to actively parallel plan for these children during this period to minimise any adverse consequences of this delay to alternative care planning for these children. Having carefully considered the statement from KM the Adoption Deputy Team Manager

many of the steps outlined in his statement can continue to minimise the impact of delay.

I will hear submissions on what directions are required in the light of my conclusions.

MRS JUSTICE THEIS DBE
Approved Judgment

LA v FM & MA & others (Fact Finding)