

CASE SUMMARY

A Local Authority v A Mother & Ors [2019] EWCA Civ 799

Summary

This case concerned an appeal by a local authority against a finding made that four rib fractures suffered by a baby were sustained accidentally by overlying while co-sleeping with her mother. The Court of Appeal allowed the appeal and remitted the case for rehearing.

Background

A, an 11-month-old baby, had been taken to hospital by her parents after her mother observed bleeding in A's mouth. On examination, A was found to have a bruise on her left cheek, a petechial rash on her lower lip, a torn upper frenulum, a bruise on the outside of her right knee and four healing fractures on her ribs. An interim care order was granted following an application by the local authority.

Two experts were instructed to prepare reports and subsequently gave evidence at trial. Dr J, a consultant paediatric radiologist, advised in his report that rib fractures were typically a result of "severe excessive squeezing/compression of the chest" and required "severe brute force". Dr C, a consultant paediatrician, found in his report that the fractures were most likely due to "abusive squeezing or gripping."

At trial, the mother's case was that A's rib fractures may have been caused accidentally by overlying while co-sleeping. The experts gave evidence to the effect that, while overlying was a possible cause, medical theory in support of it was insubstantial. In particular, Dr J "[did not] believe the actions of rolling on and off would be the cause." Dr C observed that A "sustained a number of injuries [...] which cannot be explained accidentally". The judge ultimately found for the mother on this issue.

A's father gave evidence for the first time, which the judge accepted, that he had caused A's torn frenulum by catching her lip with her bottle during feeding. The judge also accepted the parents' evidence in relation to an exchange of text messages, which included a statement that the mother was going to hit A, that neither parent intended A harm.

The appeal

The local authority appealed against the finding as to A's rib fractures. The grounds of appeal are found at [32] of the judgment and can be summarised as follows.

1. the finding as to the rib fractures was against the weight of the evidence.
2. the judge placed too great weight on the evidence that overlaying was a possible cause of A's rib fractures and failed to engage sufficiently with the evidence that did not support his finding.
3. the judge did not consider the evidence in its totality.
4. the judge did not consider that the fractures may have been caused by A's father in light of his admission in the witness box.

The decision

Baker LJ gave the only substantive judgment, with which Peter Jackson and Moylan LJ agreed, stating that the Court was compelled to intervene and finding as follows:

1. "the judge's assessment of the expert evidence was plainly flawed" (at [46]);
2. "the judge did not, in fact, consider the totality of the evidence" (at [47]) and "overlooked the fact that the father had admitted to an act of abuse when feeding the child" (at [48]).
3. "the judge was plainly heavily influenced by the favourable impression he formed of the parties [...] as a result, his balancing of the totality of the evidence was flawed" (at [49]).
4. "the judge's finding went beyond a rejection of the case presented by the local authority and extended to a positive finding that the rib fractures were caused by overlaying" (at [50]). The Court concluded that the finding could not have been reached safely.

For the above reasons, the Court of Appeal did not consider it appropriate to set aside only the finding subject to challenge. All findings at first instance were set aside and the case was remitted for rehearing.

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