

CASE SUMMARY

Background

Following a fact-finding hearing in 2013, the Mother of an infant boy (AD) was found to have inflicted near-fatal injuries to his spine and skull. This case concerns her application to re-hear those findings of fact. The application was granted after newly-obtained medical reports (commissioned within the Mother's related criminal proceedings) raised "real reason to believe that the earlier findings require revisiting". In particular, the Court was persuaded that the new evidence could support an alternative explanation for AD's vertebral fractures and/or create a "real possibility" of a wider pool of potential perpetrators. The parents did not seek to give further evidence, leaving untouched the 'lay' factual evidence.

Legal Principles for re-hearings

Noting that a re-hearing is not a rehearsal of all the legal principles in play in the case, the Court set out the following principles:

1. The previous findings are the starting point of the Local Authority's evidence. The evidential burden falls on the parent(s) challenging those findings, whilst the legal burden remains on the Local Authority to prove its case. *Birmingham City Council v H and others [2005] EWHC 2885 (Fam)* at [42(iv)];
2. It is for the Local Authority to prove its case on the balance of probabilities. *Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35* at [2];
3. The Court must have regard to a "wide canvas of material", evaluating the relevance of each piece of evidence to other evidence (both lay and professional), and exercising an overview of the totality of the evidence. *Re T [2004] EWCA Civ 558* at [33]; and
4. It is the court, and not the expert, which is in the position to weigh the expert evidence against its findings on the other evidence. *A Local Authority v K, D and L [2005] EWHC 144 (Fam)* at [39(i) and (ii)].

As it relates to this particular case, the Court went on to underscore further relevant legal principles. First, it is perfectly acceptable (and not uncommon) for the Court to reach a conclusion that a medical condition or presentation has an unknown cause, *Re R (Care Proceedings: Causation) [2011] EWHC 1715 (Fam)* at [19]. Second, any finding by the Court must be understood in the light of medical and scientific knowledge as it now stands, recognising the limits of medical certainty, *Re U (Serious Injury: Standard of Proof); Re B [2004] EWCA Civ 567*. Third, as this case involved over 12 experts, the Court emphasised s. 13(6) Children and Families Act 2014, that experts should only be instructed where the court deems that such opinion evidence is necessary to resolve the proceedings justly.

The Findings

After hearing submissions, the Court limited the scope of inquiry to three broad issues:

- i) *The significance of any bone weakness in causing fractures to AD's spine and skull*

The Court concluded that its earlier finding that reduced mineral density in AD's spine was likely attributable to his relative immobility in the immediately preceding 8-day period' did

not accord with the clinical experience of any of the experts called for the re-hearing. Further, there were no obvious evidential indicators to point in favour of any of the other probable causes which emerged through the experts' written and oral evidence. The Court, therefore, concluded, replacing its earlier finding, that there was no identifiable probable cause found for the osteopaenia in AD's spine. On the balance of probabilities, the Court was not satisfied that the fractures to AD's spine were non-accidental.

The Court was no longer satisfied that the vertebral and skull fractures were caused in the same incident. It was careful to explain that the bone weakness identified in AD's spine, did not materially affect the condition of his skull, and that there was no proper basis for concluding that AD's skull was thin, or materially weakened by disease or deficiency. As a result, the Court maintained its earlier finding that the force required to cause the extensive skull fracture must have been significant. In the absence of any account of an event of the severity to cause such catastrophic injury, the Court further concluded that the injuries to AD's skull must be non-accidental.

ii) Possibility of 'lucid' interval between acute traumatic incident and AD's collapse

The Court considered evidence of AD's clinical presentation, and to some extent, evidence of external skull swelling. The Court accepted evidence that following the acute traumatic incident, AD was likely to have become immediately unconscious or in acute pain before being rendered unconscious. However, the Court found that AD was relatively normal after the incident to which Father attributes the injury. Unable to justify AD's case as an exception to the generally-accepted medical norm, the Court rejected the theory that AD experienced a lucid interval after the acute traumatic incident. Therefore, there was no basis on which to alter the earlier finding that the significant traumatic event in which AD suffered his life-threatening injuries occurred very shortly before the paramedics were called.

iii) Whether swelling at the fracture site could signify timing of the injury

The Court accepted evidence that if the recorded observations of the paramedic (treating AD after his collapse) was robust, the swelling at the fracture site would be more consistent with a very recent incident. The Court was satisfied that the paramedic's recording was reliable. As a result, this was in keeping with its earlier finding about the timing of AD's injury.

Following the re-hearing, the Court maintained that it was the Mother who inflicted these serious injuries to her infant son, AD, with the factors informing this conclusion remaining largely intact.

By Vondez Phipps