4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

Re B (A Child) (2006)

[2006] EWCA Civ 486

24/03/2006

Barristers
Justin Ageros

Court
Court of Appeal

Facts
The appellant parents had not been disadvantaged by a refusal of permission for them to instruct a further expert witness to give an opinion at a risk assessment hearing in care proceedings since opinions that had already been obtained had dealt with the issues that a further expert would have considered.

The appellant parents of a child (B) appealed against a decision refusing to allow them to instruct a further expert in care proceedings. B was two years old. Care proceedings had been commenced by the local authority following two incidents in which B had suffered serious injuries. In one incident B suffered a fractured skull, and in the second incident he suffered a fractured shinbone. At a fact-finding hearing the injuries were found to have been non-accidental and to have occurred whilst B was in his parents' care. Experts were appointed who considered the risk to B if he were returned to the care of the parents. The experts highlighted the fact that an important factor in this determination was the failure by the parents to accept any responsibility for the injuries notwithstanding the factual findings made against them. On that basis the parents wished to instruct an independent expert organisation that purported to start from the basis that although recognition of blame was important, it was not an issue that could ultimately determine that the parents could not care for their child. The parents' application was refused on the grounds that it was not proportionate to instruct a further expert.

Held
HELD: Since the refusal by the trial judge of the parents' application seeking to instruct an independent expert, a further report had been prepared in the case. The expert who produced that report had touched upon all the matters that the parents wished to be dealt with by the independent expert, and it was open to the parties to examine and cross-examine the opinion provided on those matters at the risk assessment hearing. Accordingly it was disproportionate for a further expert to be instructed since the parents were not disadvantaged by the absence of a further opinion.

Appeal dismissed.

Permission
Reproduced with kind permission from Lawtel