

North Yorkshire County Council v SA

[2003] 2 FLR 849

01/07/2003

Barristers

Private: Jonathan Cohen QC

Court

Court of Appeal

Facts

The child was taken to hospital suffering from serious injuries. The medical evidence was that he had been injured non-accidentally on two separate occasions, once during the 14 hours before he was brought to the hospital, and on an earlier unspecified occasion. The judge was unable to identify the perpetrator of either injury, but, applying the test that there was 'no possibility that the relevant person injured the child', did not exclude either parent, or the maternal grandmother, or the night nanny from being the perpetrator of the incident which resulted in hospitalisation, as all had taken care of the child during the preceding 14 hours. In relation to the first incident, since the date was not known, a large number of people potentially were in the group of possible perpetrators, including the parents and the maternal grandmother, but the night nanny had not had any contact with the child over the relevant period.

Held

Held – allowing the appeal and substituting a finding which excluded the night nanny and the maternal grandmother as perpetrators, leaving the real possibility that either or both of the parents had caused both sets of injuries to the child –

(1) The test of 'no possibility' was too wide and might encompass anyone who had even a fleeting contact with the child in circumstances in which there was the opportunity to cause injuries. In *Re B (Non-Accidental Injury: Compelling Medical Evidence)* the court had applied a test of 'no real possibility', not a test of 'no possibility' (see paras [24], [25], [44]).

(2) Where there was insufficient evidence positively to identify the perpetrator of the injuries using the balance of probability test, the test to be applied was 'is there a likelihood or real possibility that A or B or C was the perpetrator or a perpetrator of the inflicted injuries' (see paras [22], [26]).

Per curiam : it was particularly important to identify at an early stage all the relevant issues and all those in respect of whom it might be said that there was a real possibility that he or she might have caused the injuries. It was also important to consider at a very early stage whether a split trial was the best way forward or whether it might, in many cases, be better to hear the whole case and then, if necessary,

adjourn for further assessments. In the absence of new evidence affecting the possible identifiable perpetrators it would be difficult to revisit a decision made on the first part of a split hearing at the second part of the hearing, particularly if one possible perpetrator had not been a party at the first stage. It might also be very unjust to a person identified as a possible perpetrator who had not been a party in the first part of the proceedings. These reflections underlined the enormous importance of the Protocol for Judicial Case Management in Public Law Children Act Cases which requires careful case management of each care case from the earliest stage and should identify problems such as those in this case (see para [37]).

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