

F and L v A Local Authority and A

[2009] EWHC 140 (Fam), [2009] 2 FLR 1312, Hedley J.

08/01/2009

Barristers

John Tughan KC

Court

Civil Division

Summary

John was involved in this particular case for over a decade. These proceedings involved non accidental injury, two appeals and a reporting restrictions order.

Facts

The father had two children with his first wife: a daughter and a son. The son was admitted to hospital with brain damage when he was about 2 months old. The judge concluded that the son had suffered a non-accidental injury while in the care of his parents. No determination was made as to which parent had inflicted the injuries. The son's brain damage proved permanent but both the son and the daughter were eventually returned to the parents' care. In due course, the parents separated after which the son and daughter lived with the first wife, their mother, but had unsupervised contact to the father. The father then married his second wife, with whom he had a child. Because of concerns about the brain damage suffered by his older son the local authority removed the child from the parents and began care proceedings deciding, eventually, on a plan for adoption. The judge made a placement order, on the basis of the original findings in respect of the father's injured older son, but also on the basis of the father's vehement denials of responsibility, and his aggressive or unco-operative conduct towards professionals.

Before the conclusion of the adoption proceedings the parents obtained new evidence, casting the original finding of non-accidental injury into doubt.

Held

Mr Justice Hedley Held - rejecting the parents' application - the issue for the court was whether it could be shown on the basis of the new medical evidence that the finding of non-accidental injury in the original care proceedings had been erroneous. The burden was on the father on the balance of probability to show that the original finding was wrong.