

# Re K (Children) (2004)

**[2004] EWCA Civ 1181**

04/08/2004

## **Barristers**

Alison Grief KC

## **Court**

Chancery Division (Leeds)

## **Summary**

It was important to identify the perpetrators of non-accidental injuries to children and accordingly fresh evidence, from a mother who contended that she had previously been prevented from providing such facts to the court as a result of oppression by her husband's family, would be admitted and a reconsideration of the question of perpetration ordered.

## **Facts**

The mother (M) appealed against orders freeing her two daughters (X and Y) for adoption following findings of fact that X had suffered serious non-accidental injuries whilst in the care of M, her husband and the father of the children (F), or their paternal grandmother (G). M was Sikh and had come to the United Kingdom from India following her arranged marriage with F. She spoke no English and lived with F's family. X was born in December 2002 and, a month later, was admitted to hospital with serious non-accidental injuries. As a result X was placed with foster parents. In December 2003, a split hearing in care proceedings in relation to X was heard. The judge found that X had suffered the non-accidental injuries but that it was impossible to identify the perpetrator of the injuries as M, G and F's versions were all so inconsistent and that therefore all three would have to be considered perpetrators as there had obviously been a conspiracy to conceal the truth. The judge found that M had been an unwilling partner in that conspiracy. Y was born in December 2003 and was removed from M the next day. The second limb of the care proceedings was heard in April 2004 at which care orders were made in relation to X and Y and orders freeing them for adoption. M appealed against the orders on the basis of new witness statements made by her implicating G as the perpetrator of X's injuries. M had since left F's family home and was living at a refuge. She alleged that F's family had forced her to conceal the true facts. G refuted M's allegations. M submitted that it was fundamental to securing a just regime leading up to the permanent removal of children from a parent that the evidential basis on which the orders were made had not been tainted by the oppression of other parties to the proceedings. She further argued that there was no inconsistency between her position at the hearing and the instant appeal as the judge had found she was an unwilling conspirator. She also urged the court to consider her cultural background and her dependency on F's family at the time of the hearings. The local authority, G and the guardian opposed M's appeal on the basis, inter alia, that the fresh evidence should not be considered as M had been given ample opportunity at the time to give her evidence; and that a reconsideration of the identity of the

perpetrator would result in an unacceptable delay in deciding the outcome for the children.

### Held

HELD: (1) The judge's finding at the first hearing that M, F and G would all have to be considered perpetrators was unassailable. It was in the public interest for those who caused non-accidental injuries to children to be identified and children had the right to know the truth about who had injured them. (2) As to the admissibility of M's fresh evidence, the constraints of the ordinary civil appeal test from *Ladd v Marshall* (1954) 98 SJ 870 would be relaxed. M had established that her evidence might reasonably lead, on a re-hearing, to a finding that she could be excluded as a possible perpetrator. Justice required the question of perpetration to be revisited. An important consideration in the welfare equation was the fact that the possibility that the children would be reunited with their mother was at stake. The delay caused by M's belated change of stance was in fact quite small. The court was further entitled to take into account M's cultural background and her previous dependency on F's family. (3) The orders freeing both children for adoption would be set aside. X and Y would be made the subject of interim care orders in favour of the local authority and the question of the identity of the perpetrator of X's non-accidental injuries would be remitted to the judge at first instance for further investigation and reconsideration.

### Permission

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