

A Local Authority v S (2009)

[2009] EWHC 2115 (Fam); (2010) 1 FLR 1560

08/05/2009

Barristers

Jo Delahunty KC
Alison Grief KC
Rob Littlewood

Court

Family Division

Summary

In a case involving allegations of shaking a child, the fact that some experts had developed a scientific prejudice was shown by their misuse of research material, their unwillingness to defer to experts in other fields, and the fact that they had made factual errors which supported their hypothesis.

Facts

The applicant local authority applied for a care order under the Children Act 1989 s.31 in relation to a child whose sibling (Z) had died allegedly as a result of non-accidental injury. Z had died aged three months. It was alleged that he died as a result of a shaking or impact injury on the basis of the presence of the "triad" of encephalopathy, subdural haemorrhage and retinal haemorrhage. The local authority alleged that the mother had caused the injuries while she was alone with the children. A considerable number of expert opinions were obtained, the majority of whom considered that the presence of the triad supported a finding of trauma. Two experts (X and Y) suggested that Z's death could have been caused by heart arrhythmia or a choking rather than by trauma. X and Y subscribed to a hypothesis which suggested that hypoxia could cause the triad without trauma. However, that hypothesis had subsequently been withdrawn by its proponent. X and Y regarded the absence of external injuries such as fractures or grip marks as highly significant in reaching their findings, whereas the other experts said that such injuries were not necessary in finding trauma. The local authority argued that all the relevant evidence fitted with a shake leading to Z exhibiting the triad, meaning that the threshold under s.31 had been established. It asked the court to make serious adverse findings against X and Y on the ground that they had developed a scientific prejudice.

Held

(1) The burden of proof was on the local authority and the standard of proof was the balance of probabilities, B (Children) (Sexual Abuse: Standard of Proof), Re (2008) UKHL 35, (2009) 1 AC 11 followed. The central factual issue was the cause of Z's fatal collapse. The evidence of an expert in sudden cardiac death in children indicated that the event leading to Z's collapse had not been precipitated by heart arrhythmia. There was no evidence of a choking event. Further, the accounts of the

parents of the events surrounding Z's death were inconsistent. (2) X and Y's views went against the mainstream of current thinking and the analysis in *R v Harris (Lorraine)* (2005) EWCA Crim 1980, (2006) 1 Cr App R 5, Harris considered. In considering whether X and Y had developed a scientific prejudice, the court had to consider whether their beliefs in the hypothesis and that there had to be external injuries before trauma could be identified had led to their conviction overwhelming their forensic analysis of the case, *U (A Child) (Serious Injury: Standard of Proof), Re* (2004) EWCA Civ 567, (2005) Fam 134 considered. To determine that issue, the court considered X and Y's use of research material, their willingness to defer to the experts in other fields, and the importance of factual accuracy in any forensic examination. (3) Experts were obliged not only to draw the court's attention to research that was contrary to their view, but also to be rigorous in their use of research papers. A paper X had claimed confirmed the hypothesis could not be used to support a proposition that it had been scientifically established that subdural haemorrhages were caused as a result of hypoxia. Y had been disingenuous in her reference to two articles which she described as well-documented cases in support of her hypothesis; she had failed to draw the court's attention to the fact that those cases involved the shaking of a child and that one of them was regarded as a case of non-accidental injury. (4) In cases involving allegations of shaking, it was crucial that each expert kept within the bounds of their own expertise and worked collaboratively with the other experts, deferring to the expertise of those more qualified to comment on certain areas. X had given an inaccurate reflection of another expert's view and had reacted ungraciously when that was put to her. Y had been reluctant to defer to other experts and had done so only grudgingly. Moreover, in order to provide an explanation for the retinal haemorrhages both X and Y had made assumptions outside their areas of expertise in order to fill gaps in their hypotheses. That lacked scientific rigour and it was a matter of concern to see any expert doing it. (5) It was of the utmost importance that all experts check the veracity and accuracy of raw data on which they relied. X and Y had failed to check important data before making findings and had made serious factual errors. (6) X and Y had both developed a scientific prejudice, and Y had permitted her convictions to lead her analysis, as exemplified by the fact that each of her factual errors supported her hypothesis of choking and hypoxia. (7) The overwhelming preponderance of evidence was that medical opinion was that hypoxia did not lead to subdural and retinal haemorrhages as seen in Z. Neither arrhythmia nor choking provided an explanation for Z's collapse. Trauma not only provided a unified picture of what was found post-mortem, but was also the view of the majority of medical opinion. On the balance of probabilities, the collapse was caused by trauma. The court was satisfied that the mother had suffered a loss of control and had shaken Z. The threshold had therefore been established.

Permission

Lawtel 