

Re A (A Child) [2011]

[2011] EWHC 517 (Fam)

10/03/2011

Barristers

Joanne Brown KC
Rob Littlewood

Court

High Court (Family Division)

Practice Areas

Public Children Law

Summary

Consideration of whether s.31 Children Act 1989 threshold had been crossed where it could not be shown that a child's injuries had been caused by his parents.

Facts

Care proceedings in relation to A, a baby, came about as a result of a scan which demonstrated rib fractures including bilateral acromial fractures, for which A's parents had no explanation. From birth, A had suffered from a very severe neurodevelopmental and neuromuscular disorder resulting in complex and demanding care needs. It was documented that, as a result of his condition, he was often very irritable and hugely difficult to handle. Paediatric evidence, which was ultimately accepted by all parties, concluded that the fractures were caused by an episode of squeezing of the chest. However, the expert also concluded that: i) given A's condition, the pain and discomfort of a fracture would have been masked by his general irritability, and ii) the injuries could have been caused by medical staff at the hospital where A was an in-patient.

The local authority had initially left A at home with his parents under 24-hour supervision, but as proceedings continued, they saw fit to reduce this, and by the time of the final hearing, they sought permission to withdraw their application for care orders.

The issue which concerned the court was the proper basis for acceding to the application, whether by way of the threshold not being met, or by the court concluding under s.1(5) CA 1989 that no order should be made. The local authority had conceded that on the evidence available it would not be possible to prove that the fractures had been caused by the parents. The parents' representatives therefore submitted, following the principles set out in Re B, that they should be expressly exonerated from responsibility for causing the injuries, and that the threshold had thereby not been reached.

Held

However, the judge considered that since it could not be shown that the injuries were caused whilst not in the care of the parents, in line with *Lancashire CC v B*, he should not exclude the possibility that they were. Attributability, he said, focuses on care giving rather than parents specifically, even though there may be apparent unfairness to the parents. The judge therefore concluded that the threshold had been met but that no order should be made on the application.

Permission

Family Law Week 