

D (2010)

**[2010] EWHC 3342 (Fam)**

21/12/2010

**Court**

Family Division

**Practice Areas**

Public Children Law

**Summary**

Judgment in care proceedings as to whether there should be a fact-finding hearing into the father's alleged involvement in the death of his child from a previous relationship, K, the father having been acquitted of murder or manslaughter in relation to the same allegations. Hedley J held that there should not be a fact-finding hearing.

**Facts**

K had died at the age of 10 months. The evidence in the criminal proceedings was that K had suffered non-accidental rib and liver injuries and that either K's mother or the father had been the perpetrator. However, only the father had been charged and the mother was a witness for the prosecution (and later resumed care of the other child of the family).

The local authority were concerned, in light of the judgment of the Supreme Court in *Re S-B (Children)* [2010], that without a finding of fact as to who the perpetrator was, there was no basis for assessing the risk posed by the father. Hedley J went on to consider the interplay between *Re S-B* and the House of Lords decision in *Re B, O and N* [2003], concluding that reading the judgments together and as a whole, it was still open to the court and professionals to take into account, when considering risk assessment, the fact that a parent was in a pool of perpetrators.

The parents asserted that a fact-finding investigation would be disproportionate in light of the fact that the only issue being considered in relation to the father was unsupervised contact. The mother was also concerned as to the potential delay to her assessments, although it was agreed that her assessment could be uncoupled from any fact-finding.

**Held**

Hedley J, having considered the judgment of MacFarlane J in *A County Council v DP & Others* [2005], agreed that in light of:

- (i) the fact that the father had not been excluded as a perpetrator could be taken into account in any risk assessment;
- (ii) proportionality, given the nature of the application and the scarce resources of the family justice system; and

(iii) the real risk that the court having conducted the fact-finding exercise may still not be able to identify a perpetrator;

a fact-finding should not be ordered.

**Permission**

Family Law Week 