

A London Borough v O and Others [2011]

2011 EWHC 2754 (Fam)

11/11/2011

Barristers

Alex Verdan KC
Jo Delahunty KC

Court

High Court

Practice Areas

Public Children Law

Summary

Fact finding hearing in care proceedings in respect of two children, one child aged 5 and a sibling aged 9 months whose twin had died (aged only 2 weeks) as a result of head injuries sustained at home.

Facts

The sibling aged 9 months was the twin of a child that had died when only two weeks old in February 2011. Peter Jackson J heard the fact-finding hearing as to whether it was the mother, father or the five-year old who had caused the death. The fact-finding hearing was heard over 13 days. The court heard evidence from inter alia, the ambulance crew, doctors, the police, the parents and expert witnesses.

The child had died as a result of severe head injuries sustained at his home on an evening in February 2011. The mother returned home from shopping to find the twins lying on the floor. One of the twins was gravely injured. The three children had been left in the care of the father. Neither parent accepted that they had caused the very serious injuries and they sought to blame the five-year old child.

While the judge had some concerns about some aspects of the mother's evidence he found that the father had caused the injuries and not the five-year old.

The conclusion of the police inquiry was that the mother could be excluded as the perpetrator but that neither the father nor the five-year old could be excluded. However, the police further concluded that in the context of a criminal investigation there was insufficient evidence to prove it was one or the other.

Of particular note, is the Coroner's inquest that took place on 3/8/11 where neither party was represented and only limited evidence was taken from one of the experts (who subsequently gave evidence in the care proceedings) and from one of the police officers. The Coroner recorded a verdict of accidental death of the twin caused by the five-year old. The local authority had written to the Coroner informing him that a hearing was due to commence in the High Court on 24/10/11 but no reply was received.

Held

Peter Jackson J highlighted that the five-year old's position was not represented at the inquest and that therefore the process by which he was named in the verdict seemed unfair. The judge also highlighted the different functions of the Coroner and the family court. He further commented that he hoped that in the circumstances that the Coroner's verdict could be rectified. The judge directed copies of the judgment to be sent to HM Coroner.

To read the full approved judgement [click here](#)

Permission

Family Law Week 