

Re MW (Case Management) (2008)

(2010) 1 FLR 1093

26/11/2008

Barristers

Court

Family Division

Summary

It was not appropriate in care proceedings concerning a child who might have suffered non-accidental injuries to inquire into the circumstances surrounding the death of another child by the same father where that death had occurred 10 years previously and an open verdict had been recorded; as well as the lack of nexus between the two sets of circumstances, factors of delay, expense and propensity also weighed against directing such an inquiry.

Facts

The court was required to determine whether in care proceedings concerning an injured child it was appropriate to inquire into the circumstances surrounding the death of another child by the same father (F). F's young son (M) had been admitted to hospital with injuries which, in the opinion of the local authority's medical experts, were consistent with shaking or impact. The local authority commenced care proceedings, in the course of which it emerged that another child of F from a previous relationship (X) had died approximately 10 years previously from similar injuries, as to which the coroner had returned an open verdict. The local authority invited the court to determine whether it was necessary in the instant proceedings for the court to determine the cause of X's death in the context of the risk assessment which had to be carried out in relation to M.

Held

(1) In exercising a case management discretion such as that at issue in the instant case, a number of factors were potentially relevant and had to be weighed. However, it should not be suggested that a determination as to how X died could of itself assist, or be relevant to, a determination of what had happened to M. The events were nearly 10 years apart and, save for F, involved completely different individuals in completely different situations. There was nothing which could support some factor of "propensity"; nor was there any logical nexus between the two cases for fact-finding purposes. (2) Factors of delay, expense and proportionality also weighed against directing such an inquiry. The medical evidence in relation to X's death was highly controversial and divergent, and it would also be necessary to hold a factual and social inquiry. Moreover, it was highly speculative whether the court would be able to reach any reliable conclusion as to the circumstances and cause of X's death after the time that had passed, and there was a very real risk of the inquiry remaining as inconclusive as was the verdict of the

coroner.

Permission

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