

## Re M (Children) sub nom ZM v JM (2008)

**[2009] 1 FLR 1177 : [2009] 3 FCR 674 : [2008] EWCA Civ;  
[2009] Fam Law 283 : Times, December 16, 2008**

19/11/2008

### **Barristers**

Brian Jubb

### **Court**

Court of Appeal (Civil Division)

### **Practice Areas**

Public Children Law

### **Summary**

A judge had correctly directed herself as to the burden of proof when making findings of non-accidental injuries in relation to a child in care proceedings. In the circumstances, the judge had been entitled to look critically at any parental explanation of such injuries and it was not a reversal of the burden of proof for the judge to disbelieve the mother's explanation as to how the injuries had occurred.

### **Facts**

The appellant mother (Z) appealed against a finding by a county court judge that injuries suffered by her child (M) were non-accidental.

The injuries in question in the instant appeal had emerged following M's admission to a hospital when she was about two months old. They included bruises on different parts of M's body and a skull fracture. According to Z, M had fractured her skull in an accident when her legs had given way whilst she had been holding M and M's head had come into forcible contact with a door. Z maintained that all the injuries described were innocent. The judge, having regard to evidence of medical experts, held that she could not find on a balance of probability that the fall had necessarily caused all the injuries. She held that, as Z was the main carer, she was the most likely perpetrator but M's father (F) could not be excluded since he had been present in the home up to the date of M's admission to the hospital.

Z submitted that (1) the burden of proving non-accidental injuries lay on the local authority bringing the care proceedings, and the judge had erred by placing the burden of proof on her; (2) the judge's finding that she was the likely perpetrator was inconsistent with her not ruling out F as the perpetrator.

### **Held**

(1) The judge had correctly directed herself that the burden of proof was on the local authority to establish the facts upon which it asserted that the Children Act 1989 s.31(2) was satisfied and that the standard of proof was the balance of probability, B (Children) (Sexual Abuse: Standard of Proof), Re

[2008] UKHL 35, [2009] 1 A.C. 11 applied. In the process of making findings of fact she had not reversed the burden of proof, H (Minors) (Sexual Abuse: Standard of Proof), Re [1996] A.C. 563 considered. The judge had been dealing with a child of only two months with an extensive fracture of the skull who only a month earlier had suffered fractures to her legs. In those circumstances, the judge had been entitled to look critically at any parental explanation of such injuries. It was not a reversal of the burden of proof for the judge to disbelieve Z's explanation as to how the injuries had occurred. The judge's rejection of Z's case was simply part of her overall analysis. (2) It was not open to the judge to say that Z was the most likely perpetrator and then to include F as a possible perpetrator, Re B applied. If the judge found as a fact that Z was the perpetrator then Z alone was the perpetrator. Such a decision had to be reached on the balance of probabilities. However, the judge's words in respect of that issue was capable of several meanings. The judge should reconsider that part of her holding and explain what she had meant by it. (3) (Per curiam) After a judge had given judgment, counsel had a positive duty in civil proceedings to raise with the judge at handing down, not only any alleged defect in the judge's reasoning, but also any genuine query or ambiguity which arose in the written judgment.

Appeal dismissed

**Permission**

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