

Re AK and MK (Fact finding: physical injuries) (2013)

[2013] EWHC 3158 (Fam)

15/10/2013

Barristers

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Practice Areas

Public Children Law

Summary

The court made findings that fractures, bite marks and bruises suffered by a six-month-old baby had been caused by one or both of her parents.

Facts

The court was required to make findings of fact in respect of injuries suffered by a baby (K).

K, aged six months, had been taken to hospital by her parents (M and F) because she was not moving her right arm after what the parents said was a fall the previous evening. Her arm was fractured; she was also found to have suffered multiple metaphyseal fractures, bite marks and other bruises. K and her two-year-old brother (B) were placed with foster parents and care proceedings began. There was a difference of medical opinion as to whether K's X-rays indicated metaphyseal fractures or early rickets. The parents' accounts of how K had been injured varied. In the instant proceedings, they claimed that F would play roughly with K and that he would give forceful massages to the children. M said that K's arm fracture had been caused by her car seat falling off a kitchen surface or by M pulling her arm in a panic after the fall. The parents initially claimed that B had bitten K, but F later admitted to causing the bite marks, claiming he had done so "in love and affection". The court had to determine (i) whether K had suffered metaphyseal fractures; (ii) the cause of any such fractures; (iii) the cause of the fracture to K's arm; (iv) who had inflicted bites upon K, and whether F's confession of having done so was credible; (v) the cause of other bruises.

Held

(1) The evidence of the doctor who considered that K had suffered metaphyseal fractures was utterly persuasive. He was held in high regard by others in his field. The opinion of the doctor who had considered that K was suffering from rickets was not as emphatic in his evidence as he had previously been, and he had stressed his wish to defer to the first doctor. The court had no hesitation in concluding that K had suffered metaphyseal injuries (see paras 32-34 of judgment). (2) K had sustained fractures as the result of excessive forces applied to the bones. In most instances, the mechanism would have been pulling and twisting. Others had been caused by either a blow or a bending and snapping action applied to the bone. Rib fractures had been caused by severe, excessive squeezing to the chest. Such fractures

did not occur from the normal processes of caring for the child, or from over-exuberant play or rough handling. The parents' suggestions did not provide remotely plausible accounts for K's fractures as against the medical evidence. Moreover, there were marked inconsistencies in what each had said, at different times and between them, sufficient to lead to the conclusion that neither was telling the truth (paras 44-46). (3) Several difficulties arose from M's account of K's fall. There were irreconcilable differences in what she had said about the incident to different people at different times. Further, it must have been obvious that K was in considerable pain. The court could not understand why, if the incident had been an accident, she had not been taken to hospital that night. It was compelled to find that the fracture had been an inflicted injury (paras 48, 58-65). (4) For biting to leave lesions that were visible the next day, sufficient force had to be applied such as to cause pain. The biter would be aware of pain from the baby's reaction. Repeatedly biting a baby so hard as to cause multiple bruises led to questions as to whether a person was sane. F's explanations were ludicrous. No one would inflict pain repeatedly upon a baby out of an abundance of love. Either F was lying to protect M or was lying about his motivation in order to render his abusive conduct more palatable. On the current state of the evidence, both M and F had lied (paras 74-79). (5) The other bruises had been caused by some trauma sufficient to break the blood vessels. Six-month-old babies were not sufficiently mobile to knock and injure themselves. The strong probability was that one, or both, of the parents was responsible (para.81). (6) If the truth had emerged, there would have been potential for making progress towards safely reuniting the children with their family. Professionals could work with frank admissions; they could not assist unless they knew what had gone wrong in the past. Unless, within a few weeks, the parents provided the facts as to what had happened, no one would be able to help them. The threshold in the Children Act 1989 s.31 was definitively crossed in relation to both children. There continued to be a serious risk of physical assault. If only one parent had inflicted K's injuries, the other had failed to protect her. Neither could be viewed as a protective parent, and they had colluded with each other to suppress the truth (paras 87-90).

Judgment accordingly

Permission

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