

Re A (A Child) (2012)

[2012] EWCA Civ 1477

16/11/2012

Barristers

Jo Delahunty QC

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

As the instant case showed, there was no justification for press comment to the effect that child-abuse allegations which turned primarily on medical evaluation were conducted with superficial examination by the family courts.

Facts

The applicant parents (P), whose child (C) had been made the subject of a care order, sought permission to appeal against the dismissal of their application to reopen the fact-finding process.

When C was four weeks old, it was discovered that he had sustained 12 fractures to different parts of his body. Further, a week earlier worrying signs in his genital area had indicated either some form of infection or inflicted trauma. At a fact-finding hearing, the judge concluded that C had been injured in the period between birth and final presentation at the hospital and that P were the only possible perpetrators. P sought to reopen the fact-finding process, relying on 26 factors which, it was argued, fell to be reconsidered in the light of suggested developments in medical understanding or which had not been given sufficient prominence. The judge rejected each point, noting that at the previous hearing the court had allowed the instruction of every expert/test requested by P. In seeking permission to appeal, P relied on the case of Islington LBC v Al-Alas [2012] EWHC 865 (Fam), [2012] 2 F.L.R. 1239 and argued that the development of medical understanding in relation to vitamin D deficiency, rickets and brittle bones justified considering whether the judge had been correct in refusing to permit the reopening of the fact-finding exercise. P were given permission to instruct an endocrinologist (N). He prepared a report stating that, while it was likely that C had been born with vitamin D deficiency, it was clear that he had been bottle-fed with vitamin D and iron-supplemented feed, rendering it unlikely that vitamin D deficiency played a significant role in bone fragility predisposing the fractures. He concluded that a medical condition did not account for C's injuries. Those representing C had instructed the barrister who had appeared for the parents in Al-Alas; she was asked to advise whether the case warranted further examination in the light of the science explored, and the expert evidence given, in Al-Alas; she expressed confidence in the safety of the judge's findings and sought to identify why this case was not one which fell to be reconsidered in the light of Al-Alas.

P argued that N had made the crucial finding that C was vitamin D deficient at birth; that was at odds with the understanding of the experts at the fact-finding process, so that those experts should be instructed to review their conclusions; a paediatric radiologist should also be instructed; further, there were signs that C had congenital rickets.

Held

(1) The matters raised by P had been given anxious consideration: it was important that the court should keep an open mind to the clarification of medical knowledge as it progressed over time; there was also the draconian nature of the orders made and the fact that they were entirely reliant on the opinion of medical experts. Nevertheless, it would not be appropriate to grant permission to appeal. N's conclusion that C was likely to have been vitamin D deficient at birth did not support the string of consequences that P sought to extrapolate from it. Among other things, no evidence had been adduced to suggest, let alone establish, that C's bone formation was adversely affected by a lack of vitamin D before birth. The matter had been thoroughly canvassed by the experts at the fact-finding hearing, including an expert of international renown, and the conclusion was that that was not a factor. The signs of congenital rickets to which P had drawn attention were all known at the fact-finding hearing and were not considered diagnostic, or even indicative, of rickets by the experts. It was also impossible to ignore the reasoned and entirely neutral opinion of N; he had expressed the clear conclusion that, despite C's vitamin D deficiency at birth, there was no medical condition identifying a cause for the fractures. There was no basis for now taking time to canvass the opinion of the fact-finding experts or that of a new expert (see paras 39-40, 42, 45, 47-48 of judgment). (2) There had been sustained press comment to the effect that child-abuse allegations which turned primarily on medical evaluation were conducted with superficial examination by the courts, which relied on experts chosen and paid for by the local authority; the evidence, it was said, was not disclosed to the parents, who were not themselves permitted to instruct experts of their choosing. So that those who were interested in such matters could form their own view of the thoroughness and fairness of the process adopted by the family court, an anonymised copy of the two key judgments in this case would be released for publication. Those judgments revealed that at every stage the judge permitted P's legal team to instruct experts on any aspect of the case that P considered relevant and that P's choice of expert was accepted by the court. Further, the court had agreed to the testing of C whenever such was sought on P's behalf, even when that testing was contrary to medical advice, *Al-Alas* cited (paras 49-51).

Application refused

Permission

Lawtel 