

A Local Authority v DB & Others [2013]

[2013] EWHC 4066 (Fam)

06/12/2013

Barristers

Alison Grief KC
Cyrus Larizadeh KC
Michael Edwards

Court

High Court (Family Division)

Practice Areas

Public Children Law

Summary

Fact finding hearing to consider whether a child died as a result of non-accidental injuries and if so, to consider who the perpetrator of the injuries was.

Facts

In the morning of 21.04.13 a 19 month old child was taken to hospital from his home where it was found that he had suffered massive brain damage. Life support was withdrawn and he died 3 days later. The court was required to determine whether it could be established that the child's brain damage resulted from inflicted trauma and if so, whether a perpetrator could be identified by the court.

Mr Justice Keehan considered the law relating to fact findings:

- 1) The standard of proof is the balance of probabilities, nothing more, nothing less. [Re B (Care Proceedings: Standard of Proof) [2008] 2 FLR 141]
- 2) The medical expert evidence is but one part of the evidence available to the court at a fact-finding. [Re U; Re B]
- 3) If it is clear that identification of the perpetrator is not possible, then the judge should reach that conclusion. [Re D (Care Proceedings: Preliminary Hearing) [2009] 2 FLR 668]
- 4) Re T (Abuse: Standard of Proof)[2004] EWCA Civ 558 [2004] 2 FLR 838 at paragraph 33 Butler- Sloss P. said that "Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases has to have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof."

5) "A person comes within the pool of possible perpetrators where the evidence establishes that there is a 'likelihood or real possibility' that a given person perpetrated the injuries in issue: North Yorkshire CC v. SA [2003] 2 FLR 849"

6) The need for judges to give themselves a Lucas direction when considering witnesses credibility.

Held

Mr Justice Keehan considered the medical evidence. All experts were of the opinion that the child had suffered injuries as a result of a non-accidental injury. He was satisfied on the balance of probabilities that the child was a victim of inflicted head trauma and that this was the only explanation for his injuries.

He considered the Mother's and her partner's evidence and found that both had lied during their evidence and in particular in relation to the child's last evening and morning at the family's home. He concluded that the only reason they lied was because they knew how the child came to be injured.

The mother and her partner accepted that if the court found that the child had suffered inflicted injuries, they were the only people who could be within the pool of perpetrators. Mr Justice Keehan accordingly found that the injuries were caused by either the mother or her partner but was unable to determine further who the perpetrator was.

Permission

Family Law Week 