

# LA v (1) FM (2) MA (3) A (4) B (2013)

## 2013] EWHC 4671 (Fam)

29/07/2013

### **Barristers**

Alex Verdan QC

### **Court**

Family Division

### **Practice Areas**

Public Children Law

### **Summary**

The court refused to make an immediate care order in respect of two siblings, despite concluding that their father had caused the death of their brother and their mother had failed to protect them. The mother was given a short period to accept the court's findings, failing which care and placement orders might be made.

### **Facts**

The applicant local authority applied for a care order concerning two children aged 21 months and nine months.

The children had a four-year-old brother. The youngest child was admitted to hospital with a broken thighbone. His mother (M), the first respondent, claimed that he had fallen to the floor as she was putting him into a pushchair. While she was in hospital with him, the eldest child died. He had been in F's care at the time. A post-mortem report stated that he had died from multiple internal injuries consistent with blunt force trauma by punching or stamping. M refused to accept that F could have harmed their son. She also denied that F had been violent to her in the past. However, police had attended their home on one occasion after a domestic disturbance. M had also been admitted to hospital whilst pregnant after an assault by F, when she was again interviewed by police with an interpreter. She moved into a women's refuge for three months but returned to the family home after her child was born, and retracted her allegations. The court heard evidence from four police officers, two cohabitees and M's friend concerning assaults upon M by F. At the time of the instant hearing, F was awaiting trial for the murder of his son.

M maintained that F had never been violent towards her and said that she had lied in order to obtain larger accommodation for her family. She also claimed that others had misunderstood what she had said when interpreting for her. The local authority and the children's guardians submitted that the future risk of harm to the children was so great that it could only be managed by removing them from their parents permanently.

## Held

(1) The court took the following matters into consideration: (a) the burden of proof was on the local authority on the balance of probabilities, B (Children) (Sexual Abuse: Standard of Proof), Re [2008] UKHL 35, [2009] 1 A.C. 11 and A (A Child) (Fact-Finding: Speculation), Re [2011] EWCA Civ 12, [2011] 1 F.L.R. 1817 followed; (b) a lie was not always indicative of guilt, but could arise for other reasons, R. v Lucas (Lyabode Ruth) [1981] Q.B. 720 applied; (c) each child's welfare was the court's paramount consideration having regard to the welfare checklist in the Children Act 1989 s.1(3) and to a child's interest in being brought up by their natural family; (d) the court had to consider all the options available, taking into account the assistance and support that could be made available to M, B-S (Children) (Permission to Oppose Adoption Order), Re [2013] EWCA Civ 813, [2013] Fam. Law 1243 followed (see paras 10-14 of judgment). (2) The court had carefully factored in that much of what M was reported to have said had been via someone interpreting for her, but it also had to be borne in mind that there was no evidence of collusion, and the witnesses' reports were independent of each other. It was more likely than not that M had been the victim of domestic violence from F on at least three occasions (paras 68-69, 73-76). (3) The court was satisfied that the injury to the youngest child's leg was caused by an accidental fall from M's arms as described by her (paras 82-83). (4) It was more likely than not that the injuries that resulted in the eldest child's death were caused by F. The medical evidence was that, in the absence of any other explanation, his injuries were inflicted by an adult. In oral evidence the expert stated that he was most probably stamped on or punched, and the injuries were very likely to have been fatal within minutes. The only adult caring for the child at the time was F. He was someone who was capable of violence as was clear by the evidence of domestic violence against M. M had failed to protect her children as she knew that F was capable of violent behaviour towards her. The threshold criteria were therefore established (paras 84-88). (5) All of the experts agreed upon the strength of M's relationship with her children. There was no significant criticism of her day-to-day care or relationship with them. The court had to consider M's capacity to change in the light of the court's findings so that she could meet her children's needs. M was therefore granted three weeks to consider the court's findings, and see if she could make the changes necessary, including an acknowledgment of the violence within the home, acceptance that F had caused the death of her son, acceptance of the instant court's decision irrespective of the outcome of the criminal trial, and a plan to keep the children safe from their father. She would also need to demonstrate that she could break her emotional attachment to F and the wider paternal family, and demonstrate that she could prioritise her children over her husband. It would be contrary to the children's welfare not to allow her that opportunity to change, KD (A Minor) (Ward: Termination of Access), Re [1988] A.C. 806 followed. She should be in no doubt that unless she made those changes she would be unable to care for her children in the future (paras 91, 97-99).

## Permission

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