

Re IB and EB 2014

[2014] EWHC 369 (fam)

30/10/2014

Barristers

Kate Branigan KC
Andrew Powell

Court

High Court Family Division

Practice Areas

Public Children Law

Summary

Fact finding hearing undertaken in relation to unusual injuries in circumstances where there had been substantial delay from a failure of the police and a Hospital Trust to disclose documents

Facts

The Local Authority issued public law proceedings following allegations that "E" a baby aged 3 months, sustained a series of unusual injuries inflicted by one of her parents in January 2013. Some of those injuries were said to have occurred while the child was in hospital. The child's older sister "I" had in January 2012 sustained a fractured finger. At the time that was attributed to an accident but, following the injuries sustained by E, an allegation that the fracture was a non-accidental injury was pursued by the local authority.

A fact finding was heard over 21 days. Mr Justice Baker, in coming to his conclusions reminded himself of the following principles when undertaking a fact finding exercise:

- i) The burden of proof rests with the local authority.
- ii) The standard of proof is the balance of probabilities.
- iii) Findings of fact must be based on evidence and speculation must be avoided, especially where there is a gap in the evidence.
- iv) Each piece of evidence must be considered in the context of all other evidence.
- v) Appropriate attention must be paid to medical experts, but their opinions need to be considered in the context of all other evidence.
- vi) The court must be careful to ensure that each expert keeps within the bounds of their own expertise

and defers to others when appropriate.

vii) The evidence of parents/carers is of the utmost importance and the court must form a clear assessment of their credibility and reliability. They must have the opportunity to take part in the hearing, the court being likely to place considerable weight on their evidence.

viii) The court must give itself a Lucas direction.

ix) The court must not forget that medical certainty may be disregarded in the future and to consider the possibility of the unknown cause.

x) The test to identify whether a particular person is in the pool of perpetrators is whether there is a likelihood or a real possibility that he was the perpetrator. Where it is impossible on the balance of probabilities to find that one person rather than another caused an injury, then neither can be excluded from the pool.

Held

Mr Justice Baker having considered all the evidence concluded that one of E's injuries with subsequent trauma resulting from it was inflicted deliberately by the mother. He did not find that the local authority had proved that I's fracture was inflicted non-accidentally nor that E's other injuries were non-accidentally inflicted. He also did not find that the allegation of induced illness was proved on a balance of probabilities.

There had been considerable difficulties in obtaining disclosure by the police and the Hospital Trust which led to the proceedings being adjourned several times and greatly delayed. Mr Justice Baker found that the police had repeatedly failed to comply with orders for disclosure, failed to take advantage of the provisions contained in the disclosure orders giving them liberty to apply, and then disclosed a substantial volume of material after the hearing had started. Mr Justice Baker commented that he agreed that one way of addressing police failure to disclose documents is to identify one individual in the police force who will be responsible for facilitating disclosure. He reminded of the need for all police forces to comply with the new Protocol on Disclosure.

Mr Justice Baker also found that the Hospital and its governing Trust was also culpable, having failed to disclose some important material. He stated that hospitals need to develop better practices to ensure that all relevant material is identified and disclosed promptly.

Mr Justice Baker did however acknowledge the police and Hospital Trust's criticisms that some of the orders were too widely drawn. He commented that parties and the court must always ensure that only relevant disclosure is sought.

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Permission

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