

Islington London Borough Council v (1) Chana Al-Alas (2) Rohan Wray (3) Jayda Faith Al - Alas Wray (By Her Children's Guardian Dorthy Pottinger) (2012)

[2012] EWHC 865 (Fam); [2012] 2 FLR 1239 : (2012) 128 BMLR 1 : [2012] Fam Law 943

19/04/2012

Barristers

Jo Delahunty KC

Court

Family Division

Practice Areas

Public Children Law

Summary

The court determined that a child who had suffered from congenital rickets, and who was found to have sustained fractures, brain injury and retinal haemorrhages, had not been deliberately harmed by either of his parents.

Facts

The court was required to determine the cause of death of the first and second respondents' child (J).

J had been taken to hospital where he appeared to be having fits. He later died. His parents were charged with J's murder and their second child was taken into the local authority's care. It was later discovered that J had suffered from congenital rickets due to vitamin D deficiency. The post-mortem revealed that J had sustained fractures, including a skull fracture and fissure, brain injury and retinal haemorrhages. The parents were subsequently acquitted of J's murder following the judge's conclusion that the case should not be put to the jury. The local authority, while accepting that J's rickets had caused some of his fractures, maintained that J had died as a result of non-accidental injury caused by one or both of his parents.

Held

(1) It was not possible to conclude, on the balance of probabilities, that any of the fractures or traumatised fissure were the result of inflicted deliberate harm by either of J's parents. The fractures could have been caused by the day-to-day handling of J due to the particular fragility of his bones caused by the severity of his undetected rickets. The hospital treatment was sub-optimal: the evidence

suggested that J's fitting was not adequately controlled at the hospital, and that there was not proper management of J's blood gas which was likely to have contributed to his deteriorating condition. It was more likely than not that the retinal haemorrhages were not caused by inflicted trauma. While the brain haemorrhage was more likely to have been caused by trauma, it was necessary to assess that evidence in the context of all the other evidence which pointed the other way (see paras 213, 218-219, 224-225, 232-233 of judgment). (2) (Obiter) The court endorsed the view that there was a need for further research, particularly in relation to the different aspects of the non-accidental head injury triad and the impact of vitamin D deficiency and rickets in respect on babies under six months old (para.235). (3) (Obiter) The Children's Guardian took no part in the instant hearing. The role of the children's guardian could include drawing the court's attention to all relevant matters to assist in the fact-finding exercise. Given the complexity of the instant case, and with the benefit of hindsight, the guardian's role should perhaps have been given more robust encouragement at a case management hearing (para.238).

Judgment accordingly

Permission

Lawtel 