

# Re (1) AD (2) AM (Children) (2016)

## [2016] EWHC 326 (Fam)

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In the earlier reported decision of *Re AD & AM (Finding of Fact: Non-Accidental Injury)* [2013] EWHC 4859 (Fam) Cobb J found that a mother had caused life threatening non accidental injuries to her 10 month old son shortly before his admission to hospital. The parents' case was that the injuries could have been sustained as a result of an accidental injury earlier in the day when AD suffered a short fall. A welfare hearing followed in March 2014 and a comprehensive risk assessment was undertaken of both parents. The local authority's plan to rehabilitate AD and his sister to the parents' care under a supervision order and shared residence order between the parents and the paternal grandmother was endorsed by the court.

On the 22nd March 2015 the local authority applied to renew the supervision order. Subsequently, and on the 7th July 2015 the mother cross-applied for a re-hearing of the findings of fact. In October 2015 the criminal prosecution of the mother for inflicting grievous bodily harm with intent and child cruelty arising from the injuries to AD was stayed by the Crown Court for abuse of process due to delays in the case, understood to have been caused by the prosecution failing to disclose further evidence. In her re-opening application the mother relied on expert evidence obtained in the criminal proceedings (following the conclusion of the fact finding hearing) and that a previously untested portion of AD's skull (extracted during surgery) revealed particular bone fragility. She further relied on radiological testing suggestive of lowered bone density, contended that a minor fall could have resulted in serious injury and that the injuries might have happened up to two weeks prior to AD's admission to hospital.

Having heard the application for the determined facts to be considered again at a re-hearing, despite reservations about the strength of some of the new medical evidence, Cobb J found that the mother was able to show sufficiently solid reasons to proceed to a limited reconsideration or review of the earlier findings. It was sufficient for her to show that there was at least doubt around them. There was now additional information of potential vitamin D deficiency and/or osteopenia in AD from the skull analysis. As such there was greater scope for the parents' contention that the incident earlier in the day in question may have caused the injury. As such the mother may not be identifiable as the perpetrator of the non accidental injuries to AD. The court needed to proceed to consider the extent of the investigations and evidence concerning the review. Cobb J applied the three stage approach advocated

by Charles J in Birmingham City Council v H and others [2005] EWHC 2885 (Fam), and endorsed by Sir James Munby P in the case of Re ZZ & Others [2014] EWFC 9 at [31] ("Re ZZ"): (i) the court considers whether it will permit any reconsideration or review of, or challenge to, the earlier finding; (ii) The court determines the extent of the investigations and evidence concerning the review; and (iii) the hearing of the review. In order to satisfy the first stage the applicant has to show there is some real reason to believe that the earlier findings require re-visiting. Mere speculation and hope are not enough. There must be solid grounds for challenge, rather than a real prospect of success or some other compelling reason, Re ZZ applied and Re B (Minors) (Care proceedings: Issue Estoppel) [1997] Fam. 117 considered.