

# Carmarthenshire County Council v Y

**[2017] EWFC 36**

01/08/2017

## **Barristers**

Alison Grief KC

## **Court**

Family Division

## **Practice Areas**

Public Children Law

Judgment following fact finding in care proceedings.

### The issues

This is Mostyn J's judgment on a fact-finding trial concerning whether A had repeatedly raped his daughter, Y, more than 20 years ago, when she was under 16. Y suffered from mental illness and did not participate in the trial.

The judgment highlights the difficulties of fact-finding in relation to events that have occurred many years in the past, and in which the 'complainant' is unable to give evidence.

### Factual background

It was an agreed fact that in 1993, when Y was 13, she was on the contraceptive pill and was sexually active [19]. It was also "undisputable" [19] that she was, at that time, in a relationship with W, an adult. Mostyn J observed, at [20], that the "atmosphere in the family home seems to have been one where there were inadequate sexual boundaries".

By the time that Y was 15 she was suffering from very serious behavioural problems [21]. She was self-harming by bodily mutilation, had overdosed on paracetamol, and had attempted suicide by hanging [21]. Mostyn remarked, at [22] that, "[o]n any view life in the family home must have been a dystopic maelstrom, yet both A and C [Y's sister] described it as being entirely unremarkable, almost of domestic felicity, where parenting was normal and appropriate" [22].

By early 1996, Y was self-harming, overdosing, running away from home and roaming the streets. She was admitted to both hospital and a psychiatric unit [23]. At that time, she made the first intimation that her father had behaved inappropriately towards her, saying that he was overly affectionate [23].

On 12 April 1996, Y prepared extensive detailed handwritten accusations against ten men, and a "shadowy, unparticularised accusation against her father" [24]. Social workers did not take the allegations particularly seriously and the police were not informed [25].

In early May 1996, Y stayed with J on a respite basis for two weeks. She made explicit allegations against her father to J, which were relayed to a social worker [26].

Y's parents came to hear of the allegations and threatened Y with a solicitor if she continued to spread rumours. After this, Y self-harmed with a glass [27].

On 14 May 1996, Y disclosed to LF, a friend of J, who happened to be employed by the local authority, that A had been abusing her since she was four years old and had sexually abused her for the last 2½ years. She alleged group rapes by members of A's family, and said that her parents were aware of this.

After these allegations, the local authority took action. It held an evidence-taking session, which Mostyn J observed "broke virtually every rule set out in the Memorandum of Good Practice for Achieving Best Evidence which derived from the Cleveland Report" [29]. In this session, MB alleged that her father had touched her inappropriately from the age of 8 and had had full sexual intercourse with her from aged 13. She alleged that A had raped her during a visit 11 days earlier.

On 30 May 1996, police arrested A and he was remanded in custody. Y wrote two letters to her father whilst he was in prison. In the first, she told him that she had "retracked" her statement. In the second, she said that she had told social service that she had been lying but that no one would take any notice of her. Y retracted her allegations against A on 19 June 1996.

In 1997, Y wrote a letter in which she said, amongst other things, that she had fallen pregnant, then 16, and had had an abortion. This was known to be untrue. In May 1997, she wrote a document in which she alleged abuse by her father, but gave a completely different version of events to those described by her a year earlier.

Criminal proceedings against A were discontinued, and for various reasons, the allegations against A were not tried in any trial until the fact-finding in these proceedings.

#### Judgment

Mostyn J began by emphasising the long-standing "common-law consensus" that the best way of assessing the reliability of evidence is through cross-examination [7-17].

The learned judge went on to recite the facts (as set out above).

Mostyn J went on to find, at [42] that:

"[42] In the absence of any oral evidence from Y, and specifically in the absence of the opportunity having been afforded to A and B [Y's mother] to confront Y with her manifold inconsistencies, I cannot be satisfied that it is more

likely than not that A abused Y in the manner alleged. Quite apart from the question of the fairness of the process, there are just too many inconsistencies in the accounts given by Y for any fact-finder to conclude that it is more likely than not that the events happened. It is noteworthy that there is no corroboration for any of the allegations at all. They all derive from Y and it is her word alone that determines whether these events occurred. And her word is not to be regarded as reliable..."Mostyn J said that he was not making a finding that the allegations were positively untrue, or that there had been a falsehood.

The learned judge said that although the allegations must be treated as not having happened, he was "wholly unsatisfied at the absence of explanation from A and B for what was going on in that household to

have driven Y so dramatically off the rails. Plainly there were bad things happening to a very vulnerable child” [45]. Mostyn J said that it would be “grossly irresponsible” to endorse a care plan whereby Y’s child were to be brought up by A and B but noted that, in any event, A and B were not in sufficiently robust health to do so.

Mostyn J said that there was no reason why C could not be considered to be a full time carer for Y’s child Z, but said that he was concerned by the “rose-tinted” nature of her evidence [47].

Summary by Eleanor Sibley, barrister, Field Court Chambers

To read the full judgment, please click [here](#).

**Permission**

 **Family Law Week**