

A Local Authority v A Mother & Ors (2019)

[2019] EWCA Civ 799

09/05/2019

Barristers

Sam King KC

Court

Court of Appeal

Practice Areas

Public Children Law

Appeal by a local authority against a finding in care proceedings regarding injuries suffered by a baby.

This is a judgment of the Court of Appeal in which the Court overturns the facts found at first instance and remits the case for a further fact-finding hearing.

The case concerned a very young child, A, who had been taken to hospital and found to have four healing rib fractures, a bruise on her left cheek, a petechial rash on her lower lip, a torn upper frenulum, and a bruise on the outside of her right knee.

The trial Judge had found the parents to be honest and compelling witnesses and had found, as a matter of fact, that the rib fractures were caused by overlaying whilst the Mother had been co-sleeping with A and so that they were caused accidentally. The Judge had accepted the father's account, only given in the witness box and not at any earlier stage (including his police interview) that he had caused the tear to A's frenulum during an incident in which he handled A roughly during feeding. The Judge found that the other injuries were likely to have been accidental.

The local authority appealed against the decision, but on a limited basis against the finding that the rib fractures were caused by overlaying. Ultimately, the Court of Appeal was persuaded that the Judge at first instance had failed properly to consider the totality of the evidence. In particular, the Judge had failed to assess the evidence in light of the Father's late admission of causing an injury to A. Furthermore, the Judge had considered each injury separately and did not stand back and look at each in the context of all the other injuries and evidence.

The Court of Appeal held that "the judge was plainly heavily influenced by the favourable impression he formed of the parties, in particular the mother, in the witness box. ... In my judgment, however, the judge was overly influenced by the favourable impression he formed the mother and, as a result, his balancing of the totality of the evidence was flawed." The Court held that the trial Judge could not safely have reached the positive conclusion, going beyond a rejection of the case presented by the local authority, that the rib fractures were caused by overlaying by the mother.

Given the flaws in the judgment as a whole, and given the failure to consider the totality of the evidence, the Court of Appeal set aside the entirety of the judgment, including all findings and remitted the case for a rehearing.

Permission

 **Family Law Week**