

AA & 25 Ors (Children) (2019)

[2019] EWFC 64

29/10/2019

Barristers

Jo Delahunty QC
Cyrus Larizadeh QC

Court

Manchester Civil Justice Centre

Practice Areas

Public Children Law

This judgment concerns the welfare and living arrangements for 25 children.

The focus of this hearing was mainly on 3 female siblings, AA (15), and twins AB and AC (14). In essence the LA allege that there was a paedophile ring centred on the home of the A girls' grandparents AGF and AGM who systematically and over a number of years sexually abused AB and AC. The A girls are in foster care, but the other children have remained within their families. The guardians stressed the protective arrangements, ongoing for over 18 months, has had drastic consequences on the families.

The allegations demonstrate 'gross perversions' including penetration by penis, digital and tongue and the Judge comments that the allegations 'include perversions which I have not previously encountered in evidence'.

This case is essentially about risk and the likelihood of future significant harm. There is no evidence that any child involved in these proceedings, other than 3 A girls, has in fact been abused- indeed they all have flourished in their family care.

The judge commented that this has been an unprecedentedly complex case. It involves four local authorities, 24 respondents and five intervenors, with 21 of those being named as alleged perpetrators. There are 49 parties. The trial has required a courtroom that can seat 120 people. It was, in effect, 15 care cases being tried concurrently, as all the essential evidence was common to all.

Disclosure was a continual issue, with 42,000 pages in evidence, 67 ABE interviews, and 150 electronic devices were seized yielding 800,000 pages of data.

Preparation for Trial

The Judge praised the co-operation of all parties and HMCTS. Wi-fi was upgraded to enable a paperless trial. The Local authorities commissioned and paid for the CaseLines system which was used for documents.

His Honour Judge Andrew Greensmith was appointed and the case management judge. All interlocutory applications were made before him as were any welfare issues that arose out of the protective measure for the other children.

Q constabulary first became involved in 2017 but most of the allegations emerged in the Summer of 2017 and it was then that most of the local authority protective measures were put in place. It became the most complicated case of its type within the experience of that particularly constabulary.

It was accepted that care proceedings could not wait upon criminal proceedings. Arrests and interviews took place in summer of 2018 and the CPS made a decision not to charge in September 2018. Disclosure was then made, but the police have stated they will take stock of the matter after the trial.

The Management of the Trial

A Re W hearing had taken place and it was agreed that the three A girls should give evidence, subject to their willingness at the time do so. The Judge met with each girl in the place they would give evidence with the guardian's solicitor, the girls' intermediary and a court clerk, and it enabled some preliminary discussions, for example explaining to them that there was not going to be any direct reference to them lying, and that the girls would not be able to see their ABE interviews before they gave evidence.

Both AA and AC gave evidence but AB did not. The evidence was taken by four counsel (guardian for the A girls, grandparents, and the respondents agreeing questions to be asked by one other counsel) asking questions, with the judge, being present with the witness in the remote location. This meant that the judge was largely not seen by the other advocates in the court room and he was not present in the courtroom for most of the trial.

After the Local Authority had completed their evidence, they asked for a few days to consider their position. They intended to continue against all respondents. A submission was made on behalf of all respondents and intervenors, save for the grandparents, that the court should stop the proceedings on the basis that there was not a proper case to answer. This application was refused, albeit the court decided that the court did have the power to make such an order.

The Uncontentious Background

The parties are connected either by blood or marriage and partnership. The majority of the children's birth parents are separated and there are obvious adult feuds, however most of the children have thrived, the glaring exception being the three A girls.

The A girls' mother is the daughter of AGF and was married to AF. The A girls are the youngest of six children. The family home was characterised by chaotic behaviour and inadequate parenting, including domestic violence and serious neglect. There was regular involvement of Social Services, and although there is no positive evidence of child sexual exploitation, there is evidence that inappropriate and pornographic materials that may have been available, there is evidence of disinhibited sexual behaviour, leading to the question as to what the children might have seen.

When the A girls were removed in April 2009, they had suffered serious emotional and psychological damage, were in poor physical condition, had obvious learning deficits (particularly the twins) and they were almost entirely unsocialised. A number of witnesses used the word 'feral' to describe their behaviour and condition. All six children they were removed to the paternal grandparents for a few days at which point the three girls were placed with the maternal grandparents.

The A girls remained at the maternal grandparents until December 2010 when they were placed in foster care after an incident between the AGF and DM who is the daughter of AGM and AGF. The children

returned to the maternal grandparents in April 2012 under an SGO once an extension had been built to accommodate the girls.

There has been no investigation as to what happened in the foster placement but it is clear there is no love lost between the maternal grandparents and the foster carers. It was also a very unhappy time for AA. The girls were removed from their grandparents in February 2017, a removal that is now undoubtedly permanent.

The Judge commented that the maternal grandparents must be given credit for the substantial improvement to the visible welfare and wellbeing made by the girls over their time with them. AA's behaviour at school was unpredictable and sometimes extreme; she struggled to make friends and was very demanding on adults. Complaints emerged of AGM's physical harshness and AGF's uncomfortable touching, and on one occasion AA was removed overnight but then stated she wanted to return home. Matters came to a head in early 2017 when AA made similar complaints resulting in the removal of all three girls to foster care.

For the first 10 days the girls were with Mrs D, they were placed with Mrs P on 17 February 2017. AA stayed there until August 2017 when she moved to the home of Mrs E until 18 December 2017 when she was moved again to a specialist foster carer Mrs F until December 2018 when AA was admitted to respite care.

AB and AC remained with Mrs P until late 2018 when they were moved to separate and individual therapeutic foster placements, where they remain. The Judge comments on the girls that, 'It is important not to lose sight of how truly demanding they were, how truly damaged they were and to consider how all this might affect the evidence'.

AA has had 12 changes of placement, and AC and AB eight each. Whatever the reasons, this would have had a significant emotional impact on the girls with a number of changes taking place close to the time of the trial.

The twins did not make any allegations until they had been with Mrs P for some time. AC alleged abuse against the maternal grandparents and seven others, essentially on an individual basis. AB specifically, alleged a paedophile ring and abuse from aged 5 onwards from all those her sister and cited and a further 12 individuals involving multiple acts of abuse by adults acting together.

There is no corroborative or supportive evidence for the allegations. There is no evidence of organisation, child pornography or regular association, nor do the girls effectively corroborate each other.

AA/IB Incident

In August 2015 the maternal grandparents took the girls to France with their daughter, IM and her two sons including IB who was 6 at the time. During this holiday something happened between AA and IB. As a result AA became more isolated from the family and she could not go unsupervised to certain children's activities. She spent time alone with AGF and on some occasions, the police were involved. There was a formal investigation but a decision was taken 10 months later not to pursue criminal proceedings as they did not think that sexual intent on the part of AA could be proved.

AA blamed IB and IM, she was extremely angry about it and has given varying accounts of what happened, including an admission of her involvement to her foster carer Mrs D in November 2017. AA seems to have interfered with IB's bottom, the Judge comments that this does not seem to be inspired by sexual gratification other than to do something that involved a dominant role. AA was first surprised by the reaction of others, and then was ashamed by what she had done.

Outstanding Factual Issues

The first question is whether the girls have been sexually abused, and if so by whom.

The three girls were examined by an experienced forensic medical examiner, Dr M. She found no sign of clinical injury which is consistent with AA's allegations of no penetrative activity. AB and AC do allege penetrative activity but the absence of injury does not disprove that.

The Law

In this case the LA alleges sexual abuse against all three girls by or permitted by AGF and AGM. By reason of the 2012 SGO the grandparents are treated as the parents in this case.

The Judge commented that in his experience, the burden of proof perhaps has a greater role to play in practice than Baroness Hale expressed in *Re B (Children)* [2008] UKHL 35, 'generally speaking a judge is able to make up his mind where the truth lies without needing to rely upon the burden of proof'.

The Judge further commented that

'it is extremely important to underline that in family proceedings the cost of a mistake either way is equally serious', the Judge states that 'the task of the court, if not easy, is certainly clear. In relation to each allegation made against each named person, has the local authority proved it on the balance of probabilities? My legal duty extends no further than that'.

During the proceedings the Judge was asked to give a section 98 warning to the witnesses:

'In these proceedings you are not allowed to refuse to answer questions put to you and you must answer them. It is almost certain that if the police ask for it, they will be allowed to have the evidence that you give to this court. If the police interview you again, they may ask you in that interview about the evidence you have given to this court. Whether any part of the police interview can then be used if there is a trial in the Crown Court will be decided by a Crown Court judge and not by a judge of this court.'

The judge had not come across such a request before but was assured by counsel that it was now common practice. The judge read the warning in open court in the presence of all the respondents. The judge did not want to address each respondent personally for fear that it may be intimidating before they begin their evidence.

The Judge also made comment on the relevance of the guidance for investigating allegations from Lord Justice Baker in *Re S (a child)* [2018] EWCA Civ 2738:

'This document describes good practice in interviewing victims and witnesses and in preparing them to give their best evidence to court. Whilst it is advisory and does not constitute a legally enforceable code of conduct, practitioners should bear in mind that significant departures from the good practice advocated in it may have to be justified in the courts [...]'

'The principles underpinning the guidance are, however, relevant to all investigations, which include interviews of alleged victims of abuse, whether or not the interviews purport to have been conducted under the guidance'.

The Investigation of the Case

The Judge was clear the investigation needs to consider what has been said and what has not been said. He comments that, 'Child protection work is today carried out in a rabid and unforgiving atmosphere, generated by a well-grounded public fear that too many children are being abused in our society'.

The Judge was provided with a 61 page document entitled 'Chronology of breaches' which was prepared and agreed by 31 counsel and agreed and adopted by all respondents and intervenors. The schedule offers a fair picture of what has happened, without the need for close examination of its commentary.

The Judge accepted that each investigator was well-intentioned and well-motivated but that this was not enough in an area where many of those involved could and should have known that it is sensitive, confidential and prone to error. Many of the investigators had training that was either outdated or inadequate and the judge cautioned that great care must be taken where others, including foster carers, are allowed or even encouraged to take part in information gathering.

The Judge stated that the social worker Mrs G was in an impossible position, her focus was on AA and the IB allegation and she never saw herself as conducting an investigation. Even when the children were removed in February 2017, her focus was on AA, her behaviour and complaint.

Whilst AA tended to ensure she had a high profile, she was chatty and deliberately provocative in terms of her behaviour; the twins were very different and they portrayed no behavioural issues. They had additional educational needs but were otherwise below the radar.

Once AB and AC started making allegations, Mrs G, was understandably, far out of her depth. Essentially, the LA let the police to take the lead in the investigations and took little further effective responsibility.

Mrs P, the foster carer was at the heart of the investigatory process, the three A girls were her first and last placement. During the placement Mrs P kept precise and detailed records, she sent her records to the fostering agency who regarded them as confidential. Mrs P kept a parallel record, which she disclosed to the police, and she was in regular contact with the social worker.

AB and AC began to talk whilst in Mrs P's care, but this was difficult for them and were given notebooks or diaries. They had already fallen in the habit of communicating by leaving notes around the place. Mrs P made substantial 1-1 time with the girls and made a record of these conversations as well as praising them for their bravery. The judge notes that in all this, she was motivated by a desire both to do her best for the twins and by a belief that what they said was, by and large, true and should be uncritically accepted.

There is generally no record of the questions asked by Mrs P and it is difficult to work out which bits the girls said spontaneously. AA was acutely jealous of the attention being received by the twins but refused to say anymore. AA felt she was being coached and after she had moved from this placement made no more extensive allegations that she had at any stage before.

The judge notes the serious risk that the twins were taking the message that if they continued to make allegations, the praise and attention would continue, as indeed they did; and this was an important fact when considering credibility.

The foster carer should never have been put in this situation. The LA had taken a step back and the police thought Mrs P should be allowed to continue these conversations as the girls had confidence in her. The police would ask her for extra detail and she would revert this back to the girls. The judge states he has considerable sympathy for Mrs P, but this does not blind him in forming a view as to the reliability of the information emerging from this process.

AA added nothing additional in her 9 ABE interviews but the judge discussed issues in relation to the twins' interviews.

1. There were multiple breaches of the guidance. DI P stated that the guidance had to be departed from due to the educational limitations of the girls who stated the all the police can do is get the best evidence that the child can give.

2. Many of the interviews are conducted in a manner which conveys the expectation that the girls have specific allegations to make. Even why they sought to say that a respondent hadn't done anything, the questioning continues until AB makes an allegation. There is little free narrative from the girls and on many occasions Mrs P was with them during the breaks.

The Local Authorities' Witnesses

There were at least 12 professional witnesses that the judge has not referred to in his judgment. He notes that there were many occasions when AA could have made a complaint and did not. The overall impression she created was that she was happy living with her grandparents.

Mrs D, the first foster carer, states there was some sexual activity between the girls and they had been acting out 'what he did to them'. AA made a comment to her next foster carer that she was 'not going to say anymore about private things and she was jealous of her sisters having private time and telling bad things about her grandad'.

Mrs E the next foster carer for AA reported that she had mentioned that she had a husband, her grandfather, and that AA had self-harmed but Mrs E could never understand the triggers.

Mrs N was the most important witness. She lived in the grandparent's home with the girls from October 2015- May 2015 and had a good individual relationship with the three girls. Mrs N described how the children were not well liked by other members of the family, that they were aware of this and they craved 1-1 time. Mrs N never observed any sexual activity between the children. Mrs N observed a lot of physical affection in the home and that AA was closer to her grandfather but had not seen any physical discipline, had not seen any other adults go upstairs in the home and described a modest flow of visitors.

The A Girls

The judge was conscious that he knows much more about AA than the twins, and that it is the twins that make the most serious and extensive allegations. The judge notes the physical condition of the girls improved dramatically by 2017 but the same cannot be said of their emotional and psychological condition.

Ostensibly, AA is the one most damaged by her experiences of life. This can be seen in her erratic behaviour, social isolation aggravated by the IB incident and her admitted use of pornography and obsession with masturbation over which she has little real control.

AA has an IQ of 81, the very lowest end of normal. AA talked to Mrs P about seeing films behind her eyes, hearing voices and seeing people in her room.

Whilst complaints were made, there is a consistency to them about her grandfather's handling of her, which she found increasingly uncomfortable. There is an absolute refusal to expand on her complaints and a determination not to be drawn into complaints against anyone else apart from her grandfather.

The judge states he appreciates the need for caution with AA's evidence but finds that it is potentially credible and must be considered as evidence of value.

AC is very different from her twin and had a low profile in this case before she started to talk to Mrs P. The judge is clear that AC believes the truth of what she said then, and believes it now. He is also clear

that she had no idea as to what would be put in train as a result of what she has said. AC alleges ghastly abuse by her grandparents, and seven other members of her family. She does not allege group abuse but her allegations against her grandparents go far beyond anything alleged by AA, although they include the same sort of things.

The judge notes that AC has no track record of lying about things of importance, she has a genuine educational deficit and has a significantly defective memory and a genuine failure to recall. The judge does not dismiss her evidence but states its reliability is seriously called into question.

AB make allegations against all those her sisters have mentioned plus a further 12. Allegations of abuse, and also that they were performed in concert with as many as 16 people at one time. AB did not give oral evidence and the judge again does not dismiss her evidence but approaches it with the greatest of caution.

The judge was satisfied that AB and AC have had some exposure to pornography, both at the grandparents' home and in care. It is impossible to discern the extent or nature of what was viewed, and the impression it made on them.

Were the A Girls Sexually Abused?

Everyone named by the girls denies they were a perpetrator of abuse. The LA submit that the sheer range and detail given by the girls is explicable only by lived experience.

The judge is satisfied that there was a real degree of fantasy in this case. A literal reading exceeds 2000 incidents of abuse which just could not have happened. The girls found rich emotional reward in making allegations and this incentive is powerful when seen through the eyes of two very damaged and needy girls.

However, the judge states that although pornography has a part to play, as does transference of sexual activity from one part to another, this cannot account for all that has happened.

Firstly, some details, including descriptions of internal physical feelings in their body, could not have been learnt save through experience and it is beyond their capacity to invent. Secondly, their developed accounts suggest a grounding in some experience, even if that experience was a much lesser one than those described.

The judge states he has no way of knowing the point at which lived experience becomes fantasy.

Was there an Organised Paedophile Ring?

The twins' evidence probably depends on AGM being the organiser of the ring, based in her home. The judge is clear that he is entirely satisfied that no such ring exists, or ever has existed. There is no evidence of regular communication despite the very large number of mobile telephones seized. The suggestion of mass attendance at AGM/AGF's home is inconsistent with the evidence of Mrs N. There is no reliable evidence of excessive visiting/ parking at or near the home. These children were visible with good school attendance any many activities- the opportunities for the abuse on the scale described were simply not there. It has been shown that many of the respondents could not or would not have been at this address at the times alleged, or in some cases at all. This allegation received no support from AA who has always felt some degree of responsibility over the twins.

The Allegations against the Grandparents

The Judge described the force of AGF's denials and his impression was that they were intended to conceal. The evidence of AGM was characterised by an overriding determination to protect her husband,

and to a lesser extent, herself.

The judge describes the nickname given to AGF amongst the younger females of the family as AGF 'the perv'. The judge states this was a family acknowledgement that he was wholly insensitive to physical boundaries, it was obvious from his own evidence that he still has no idea what the fuss was about.

AGM admitted to smacking AA once in France, the only time that other family members were around. The judge found that physical punishment was a part of the grandmother's armoury but that it never went beyond bare-handed smacking. The judge found that AGF has a temper and could shout at the girls, frightening them. He may rarely have smacked the girls. The judge stated that viewed on its own, this matter would not satisfy the threshold criteria and its relevance is to credibility.

The Case against the other Respondents

The judge outlines his perception of the oral evidence of the respondents and other intervenors making proper allowances for entirely proper family loyalty and also for the intensely personal invasiveness of much of the evidence.

The Findings of the Court

The judge repeats that he has found that AB and AC have been the victims of sexual exploitation to some degree, but the dividing line between fact and fantasy is not possible to determine. The judge states that he is confined to answer, what, if anything, can be proved against the named respondents in this case. The judge comments that reliability is the lode-star of fact finding and describes the art of finding flashes of truth from unreliability.

The judge makes no findings of child sexual exploitation against any of the 12 respondents named by AB. The judge could not safely identify any individual perpetrator, in respect of at least two of them, AB insisted at one stage that she had not been abused by them, and either because the opportunities for the abuse to occur were not there and/or because physical descriptions were unconvincing. The Judge stated he accepted the denials of several witnesses, that without an organised paedophile ring such events could not reasonably have occurred, and there is no medical evidence of injury which is at least, surprising.

The judge cites the same reasons for not making findings against those who are subject to allegations made by both AB and AC. Additionally, the judge notes that the twins gave very different evidence about group abuse, and it would be surprising for the girls to be treated so differently.

Further, AA gives no unambiguous evidence of any penetrative abuse, nor of any abuse by anyone other than AGF. The judge found that AA mothered the twins and it was inconceivable that she would have not known about it if it were happening, nor would have colluded on it. Additionally, although the judge recognises AA's wish not to expand on abuse suffered by her, he does not accept that she would apply that stance to abuse suffered by the twins.

The evidence against AGF comes from all three girls. The earliest comments the twins made to Mrs P related to AGF and were initially very much in line with what was being said by AA.

AA's evidence comes from a very troubled young person who manifested that distress in many ways and her evidence must be treated with caution. The judge found her accounts of physical punishment to be essentially true. Secondly, although her pattern of complaints may have been irregular, the substance of those complaints have been fairly consistent. The judge found AA's description of her as AGF's wife, her relishing the attention this gave her, and her explanation that he could not help himself in the way he touched her, lead to a conclusion that what she was saying about AGF is true.

The judge found that AGF's behaviour frequently and increasingly crossed the line from spontaneous affection to sexual gratification, albeit one that never involved a penetrative act. At worst it involved lying on top of her with his dressing gown open but wearing boxer shorts, and then fondling and kissing parts of her body in what must have been known to him, a sexual manner.

The judge comments that it would be unjust to use these findings to underpin findings of a wholly different order of sexual depravity alleged by the twins. However, AA stated that one matter that provoked her to action was that AGF had started to behave with the twins as he had with her. That is mirrored by the earliest allegations made by the twins after their removal. The judge was satisfied that AGF had begun to behave with the twins as he had with AA, but was not prepared to go any further in his findings and makes no finding of penetrative activity or of intentional grooming.

The judge states that clearly threshold has been crossed on this point and there was a likelihood of further significant harm in the future- a harm that was unlikely to have been less than that already suffered.

Regards AGM, the judge was satisfied that she knew of some of AGF's conduct towards AA and indeed resented some of the attention he gave her. AGM chose not to do or say anything and sought to dissuade AA from saying anything. AGM compounded this by giving some knowingly false evidence to the court in her determination to protect and support her husband.

The judge also found that AGM colluded in the abuse of AA, and also her behaviour created a space for this abuse to happen to the twins as well.

This evidence concludes that the twins have been sexually abused beyond that of which AGF is responsible, the extent, when, where and by whom remains unknown. The judge states that 'All I can say is that there is nothing in the evidence that would allow any named respondent or intervenor to be treated as being under a cloud of suspicion, although no one can escape the cloud of unknowing.'

Exoneration

The Judge was asked by a number of parties to go beyond the findings and to expressly exonerate named individuals from complicity in the matters alleged. The judge was clear that the legal consequences of exoneration are no different to those where the court has declined to make a finding. The decision is binary, and any such person is not and must not be treated as being left under a cloud of suspicion.

The judge stated that a party seeking exoneration assumes an evidential burden to satisfy the court of their innocence on the balance of probabilities. The judge decided that a fair assessment of the evidence allowed him to positively exonerate 15 named people but stressed that there should be no future distinctions made on those who have been exonerated, and those of whom no findings have been made.

Epilogue

The judgment ends with an epilogue praising the cooperation of all parties, whilst also sounding caution for the training of those conducting investigations and communication between safeguarding leads.

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