

London Borough of Southwark v A Family (2020)

[2020] EWHC 3117 (Fam)

18/05/2020

Barristers

John Tughan KC
Mani Singh Basi

Court

Family Division

Practice Areas

Public Children Law

The full judgment can be accessed [here](#). This case from the outset has resulted in 3 fact-finding hearings arising from two successful appeals heard in the Court of Appeal. This judgment is the third fact-finding hearing in the matter.

The first fact-finding hearing was heard in 2017 before Francis J and the judgment on the appeal can be accessed [here](#). The second fact-finding hearing in the matter was in 2019 before Hayden J and the judgment in the appeal can be accessed [here](#) and the summary of this appeal can be found [here](#). For the third fact-finding hearing, the matter was assigned to Sir Mark Hedley by the President of the Family Division. This trial began on 16 March 2020 and it was during this week that the Government announced the lockdown as a result of the Covid-19 virus and the rest of the hearing was conducted via Zoom.

As outlined in the judgment, 'this has been an extraordinary case both because of its subject matter and because of its litigation history' [paragraph 192]. Sir Mark Hedley in his conclusion commented the following:

187. 'Since this is at least the second time that I have concluded after a long forensic enquiry that I do not know what has happened, I need to ask myself one hard question: is this simply a failure of judicial nerve to make a finding against a family such as this, the finding which is nevertheless required by the evidence as a whole? I ask that question not just because it occurred to me but also because I recognise that decisions in cases like this are not driven exclusively by the process of reasoning.

188. There is an element in human judgment that lies beyond cold rationality as every experienced trial judge soon comes to appreciate. In order to test that, I have reflected carefully upon the position as it would be were I to have found that the Local Authority had indeed established their case and this child had been sexually assaulted and killed by one or more members of a family who had then conspired to conceal the truth from all legitimate enquiry. I discovered that such a conclusion would be an affront to my judicial conscience.

189. It follows that I find that the Local Authority have not established the threshold criteria as required in Part IV of the Act. The only consequence of that can be, and will here be ordered to be, a dismissal of these proceedings.'

Permission

