



Neutral Citation Number: [2019] EWCA Civ 159

Case No: B4/2018/2366

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM SWANSEA CIVIL AND FAMILY JUSTICE CENTRE
HHJ GARLAND-THOMAS
SA18C0585

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/02/2019

Before:

SENIOR PRESIDENT OF TRIBUNALS
LADY JUSTICE KING
and
LORD JUSTICE COULSON

Between :

L-W CHILDREN

Patrick Llewelyn (instructed by **Redkite Law Llp**) for the **Appellant**
Claire Williams (instructed by **Carmarthenshire County Council**) for the **First Respondent**
Delia Thornton (instructed by **Haines and Lewis**) **Second Respondent**
Rhys Jones (instructed by **Gomer Williams**) for the **Third Respondent**
Mark Allen (instructed by **Hutchinson Thomas**) for the **Fourth Respondent**

Hearing date: 15th January 2019

Approved Judgment

Lady Justice King:

1. On 12 September 2018, HHJ Garland–Thomas made a finding that GL, the 3rd Respondent in this appeal, had inflicted serious non-accidental bruising to a little girl, “L”. Permission to appeal that finding has been refused. In addition to her finding as to the perpetrator of the injuries, the judge held that the Appellant (“mother”) had failed to protect L from physical abuse at the hands of GL, and also her other two children, R and O, from the risk of physical abuse at the hands of GL.
2. The issue before this Court is whether there was evidence upon which the judge could make such a finding.

Background

3. The background of the family is complicated and is set out in careful detail by the judge in her judgment. For the purposes of this judgment, only a truncated version is required.
4. L is the daughter of the mother and PW (the 2nd respondent); L was four years old at the time of the events with which the Court was concerned. The mother and PW separated sometime after the birth of L, both the mother and PW subsequently formed new relationships and, within each new relationship, further children were born. The mother started to live with GL; they had twins, R and O, who were born in April 2017. In January 2018, L, R, and O lived together in a family unit with their mother and GL.
5. PW, for his part, formed a relationship with LP. They have a child, W, who was born in late 2017. W lives with her mother and father. In January 2018, L was having reasonably regular staying contact with her father and LP.
6. Prior to the events which took place in January 2018, there had not been, and there was no reason to believe that there should be, any involvement by social care in the domestic lives of either the mother or GL. Based upon the findings of the judge at the subsequent Finding of Fact Hearing, it is undoubtedly the case that GL could be short-tempered and controlling, and certainly on one known occasion in about December 2017 (in what became known as the “tickling incident”), lost his temper with the mother going, as it was subsequently described by her, from “0-10” in no time at all. There was no suggestion however that, difficult and unpleasant as such behaviour might be, there had been violence at any time within the household.
7. That is not to say that GL was not capable of violence outside the home, and the judge found as a fact that in 2013 GL had attacked PW with a bat in an unprovoked attack causing injury, although there were no subsequent proceedings or police involvement. The judge also found that on another occasion, GL “injured his knuckles in a fight with (a man called) Zac”.

The “Tickling Incident”

8. Towards the end of December 2017, the mother saw what she thought was a “scram” mark on L’s neck which L told her had been caused by GL tickling her. This incident took place at a time when it was common ground that L had been telling lies about various matters which was causing tension in the household. When the mother raised the issue of the ‘scram mark’ with GL he “flew off the handle”. An argument ensued

and the mother asked him to leave. After a few days the couple got back together. In her draft judgment, the judge accepted that when she wrote her judgment she believed the mother's oral evidence to have been that the mark was a "scram" mark caused by GL and had not been due to the eczema from which L suffered.

9. Following judgment being given, it was drawn to the judge's attention that, contrary to her finding, the mother's evidence was exactly the opposite, namely that the mark was in fact from eczema and was not a "scram" mark. The judge accepted her error, and said in written clarification, that she no longer found that the mother's evidence to the Court had been that the mark was a "scram" mark. The judge went on to say that the "tickling incident" was therefore no longer relevant, and the reference to it (para. 87[15]c) in her findings of fact should be deleted.
10. The Local Authority were not, however, content with the judge's finding and raised the matter again at a directions hearing on 12 September 2018, submitting that the judge should not have deleted her reference to the "tickling incident" which she had held supported her finding of "failure to protect" on the mother's part. The judge agreed with the Local Authority and orally retracted the written clarification which had, by this time, been distributed to the parties. The following day (13 September 2018), the judge, again in writing, included as a factor in support of her finding of "failure to protect" against the mother, the fact that she had "returned to GL after the 'tickling incident'".
11. As already noted, at the time of the "tickling incident", in the latter part of 2017, there were serious concerns that L was telling lies. It was common ground that this was the case and that L was a "drama queen". The mother was sufficiently concerned about L's behaviour that on the Friday before L was injured, she spoke to her health visitor, seeking advice. The health visitor, the judge recorded in her judgment [55], told the mother that it wasn't unusual for children of L's age to tell lies.

The events of the weekend of 12-15 January 2018

12. On Friday, 12 January and Saturday, 13 January, L stayed overnight with her father. On Sunday, 14 January, L was returned home. The mother had to go to work in the afternoon. Whilst she was at work, the three children, L, R and O, were in the sole care of GL. Sometime around 5.15pm, the mother called home by Face Time and all was well. So far as the mother was aware, L went to bed in the usual way between 6-6.30pm, as did the twins. The mother returned from work at 10.15pm.
13. As was her habit, the mother went upstairs to kiss L goodnight and noticed a lump on her forehead. L told her mother this had happened when she had fallen on her doll's house whilst visiting her father. The judge accepted that, as the only light in the bedroom was a nightlight, the mother would not have noticed any other bruising to L's head or face at that time.
14. The following morning, which was a school day, the mother got L up and saw that the lump on L's head was significantly bigger and that she had bruising to the left-side of her face and her ear. When asked how she had come by the bruises, L said that LP, PW's partner, had caused them. The mother checked L's whole body and discovered a number of fresh bruises.

15. The mother phoned the GP in order for L to be checked out in the light of her injuries and also called the health visitor who confirmed that the mother had done the right thing and that she would try to arrange for the mother's usual health visitor to meet her at the doctor's surgery. The mother contacted GL. She also contacted L's father PW, asking what had happened to L whilst in his care.
16. On the morning of 15 January, after the mother had spoken to GL on the phone, he came home from work. The mother met him at his mother's home and he expressed his disgust at what "LP" had done. It should be recollected that, at this stage, L was alleging that LP was responsible for her injuries. The mother accepted at trial that she did not ask GL what had happened, if anything, when L was in his care. When asked about that in cross-examination, she had said that she was afraid to ask him as it would have "caused a big row".
17. The judge found that GL had told the mother not to go to the GP. The mother however, regardless of GL's view, did take L to the GP where L again alleged that LP had hurt her. A child protection referral was made and at the subsequent child protection medical, a number of very concerning bruises, particularly around L's left ear, were seen. Those bruises were highly indicative of non-accidental inflicted injuries. After the child protection medical, L told the social worker and a police officer that her stepmother had hurt her "on her ears". LP was arrested by the police on 15 January 2018.
18. The Local Authority took their first protective steps on 16 January 2018. They permitted GL to remain living in the family home but required the mother to supervise all his contact with the three children.
19. It is now accepted by the Local Authority, that 16 January 2018 is the proper date for determining the date of the instigation of protective measures for the purposes of establishing the threshold criteria. At trial, 6 February was the date which had been erroneously agreed between the parties and was, therefore, the date from which the judge worked.
20. On 5 February, a second protective decision was made at a strategy meeting at which the police attended. The police made it clear that they were looking at each of the four relevant adults as potential perpetrators. This meant that all four children, across both households, were currently considered at risk of significant harm. In those circumstances, from 6 February, both the mother and GL had to be supervised. Most of the supervision was carried out by Mr and Mrs E, the paternal grandparents of the twins, R and O.
21. The mother and her mother, Ms Elliot (L's maternal grandmother), have had a problematic relationship. On 28 February 2018, Ms Elliot wrote to the Children's Services indicating that in her view, L was frightened of GL. In oral evidence she said she had never seen L "behave like that" (what "that" was is unclear from the judgment) saying that L had not wanted to go to GL or to have him pick her up. This evidence was in stark contrast, not only to the evidence of the social worker who observed a positive relationship and interaction between L and GL, but also to Ms Elliot's evidence on an earlier occasion (15 February 2018) when she said in a telephone message that she had no concerns about GL but many about her daughter. The judge, however, concluded that Ms Elliot was a credible witness who was open about the difficulties

between herself and her daughter and had no reason to lie, having, the judge found, L's best interests at heart. There was no suggestion that L had told her grandmother that she was frightened of GL, the view expressed by the grandmother was her own opinion based upon her observations.

22. Between January 2018 and Care Proceedings being commenced by the Local Authority in April 2018, L made further allegations that LP had hurt her, in particular in March 2018 to the paternal grandmother of the twins, and on 14 March 2018 to her teacher at school. The judge, in a clarification of her judgment, held that the Court could place no reliance on L's account that LP caused the bruising given: the inconsistency in L's accounts, her history of telling lies and untruths "acknowledged by all parties", the fact that she did not repeat the disclosure to the health worker, the police or the child protection doctor, and that it was unlikely that she had spent sufficient time alone with her stepmother to enable her to cause the injuries without PW having known.
23. The fact remains that for this substantial period of time, L was accusing LP of having caused her injuries and that, presumably, had been the basis upon which the police had arrested LP and were carrying out their investigations. The judge held that, contrary to the Local Authority's case at trial, the mother had not coached L to make the allegations against LP in order to protect GL.
24. On 23 March 2018, the police informed the Local Authority that they would be taking no further action in relation to an investigation of LP.
25. For reasons which are not apparent, it was not until 25 April 2018 that care proceedings were commenced. At that date, the twins and L were living with the mother and GL at the home of R and O's paternal grandparents. This continued to be the position until the beginning of May 2018 when the relationship between the mother and GL came to an end.
26. Following the breakdown of the relationship, the mother and L moved out leaving GL and the twins with their paternal grandparents. The mother, it would seem, was at this time unable to cope and extremely emotional. She therefore called Mr and Mrs R, the paternal grandmother and step grandfather of L, asking them to look after her. Ms Williams, on behalf of the Local Authority, confirmed to the Court that there had been no question of the Local Authority removing L from her mother's care, but rather, the decision to ask Mr and Mrs R to look after L, was that of the mother; a decision made at a time of deep, emotional distress. L continues to live with her paternal grandmother and step-grandfather.
27. Of significance to the issue of the question of failure to protect, therefore are the following features: (i) that for a significant period following L sustaining the non-accidental injuries, the Local Authority were content for the mother and L to live under the same roof as GL, (ii) L, the victim, was continuing to allege that her stepmother, LP, had inflicted the injury, (iii) upon discovering the bruises the mother had immediately sought medical attention and (iv) in response to L's allegations, the mother had stopped contact with PW and LP.

The Findings

28. The Local Authority's position at the commencement of the proceedings was that any one of the four key adults could have been a perpetrator.
29. On 5 August 2018, a composite threshold document was filed by the Local Authority in readiness for the Finding of Fact Hearing. The nature of the significant harm was described at [7]:

“The nature of the significant harm that L was suffering and all the children were likely to suffer was physical harm and ill-treatment and impairment of their health and development by reason of:”

30. There then followed eight separate factors set out in support of that proposition. The first of those was, unsurprisingly, a detailed recording of the bruises sustained by L and in particular, the extensive bruising over her forehead and left ear together with bruising to her right arm and left thigh. It was accepted by all parties at trial that these were non-accidentally inflicted injuries.
31. By paragraph 7(c), the Local Authority asserted that the injuries were inflicted by one or other of the four key adults. The judge, as already noted, found that the injuries were inflicted by GL.
32. At paragraph 7(d) of the threshold document, the allegation was made that each of the four protagonists had “not been open and honest about the circumstances in which L sustained the injuries”. The judge made no such finding in relation to the mother and indeed, given her finding in relation to the timing of the injuries and the mother's behaviour on coming home from work on Sunday, 14 January and prompt action the following morning on discovering the bruises, it would have been hard for the judge to have reached any other conclusion.
33. By paragraph 7(e), the Local Authority alleged that the perpetrator, and any non-perpetrator in the home, had “failed to seek medical attention at the earliest opportunity”. Again, the Local Authority failed to prove this allegation and indeed it is abundantly clear that the mother not only sought medical attention at the earliest opportunity, but also reported what had happened to her health visitor and rang around those adults who had been in contact with L in an attempt to ascertain what had happened. She ignored any attempt by GL to dissuade her from obtaining medical attention.
34. The global allegation of failure to protect is found at paragraph 7(f):

“The non-perpetrating carer knew or ought to have known that the bruising had been/would be inflicted and failed to protect L and any other children in their care”
35. Ms Williams, on behalf of the Local Authority, now accepts that on the facts as found by the judge, there would be no basis for a finding that the mother “knew or ought to have known that the bruising had been inflicted...and (thereby) failed to protect L” (*my emphasis*).

36. Ms Williams accepts that that only leaves the allegation that the mother “knew or ought to have known that the bruising would be inflicted and failed to protect L” as a basis for the finding made by the judge (*my emphasis*).
37. Following a number of clarifications of her judgment, the judge indicated that her finding in relation to the allegation that the mother had failed to protect the children should be framed as followed:
- “I find that the mother failed to protect L and the twins by permitting GL to care for them alone in that she knew or ought to have known:
- a) She failed to ask GL what had happened on Sunday 14 January 2018 when she was at work;
 - b) She failed to listen to Ms Elliot telling her that L was frightened of GL and that she should listen to her daughter;
 - c) She returned to GL after the ‘tickling incident’;
 - d) She stayed in a relationship with GL knowing of his violent tendencies.”
38. Clarification was sought in respect of sub-paragraph (a) (asking GL what had happened) and the event referred to in (b) (Ms Elliot’s allegation that L was frightened of GL). The judge in a written response replied as follows:

“(a) and (b) - The mother failed to ask GL what had happened when she was at work and failed to listen to her mother when L was frightened of GL. In relation to the first matter, this predates the relevant date although it post-dates the infliction of the injuries. The second matter post-dates the relevant date, but this is relevant (as is the first matter) to the failure to protect finding for the following reason: it shows the mother’s state of mind; she closed her mind to the possibility that GL could have caused the injuries and continued the relationship; she was aware of GL’s history of violence and aggression.”

(It should be noted that “the relevant date” referred to by the judge is the erroneous date for threshold of 6 February and not 16 January when protective measures were instigated).

Analysis

39. Before considering whether the evidence upon which the judge relied was capable of founding a finding of failure to protect by the mother, it is worth having in mind two authorities which considered findings in relation to threshold.
40. In *Re J (A Child)* [2015] EWCA Civ 222, the Court of Appeal approved guidance earlier given by Sir James Munby P (as he then was) in *Re A (A Child)* [2015] EWFC 11, 2015 Fam Law 367. Lord Justice Aikens summarised the *Re A* principles. Of relevance to the present case he said as follows:

“56. [v] It is for the local authority to prove that there is the necessary link between the facts upon which it relies and its case on Threshold. The local authority must demonstrate *why* certain facts, if proved, “justify the conclusion that the child has suffered or is at the risk of suffering significant harm” of the type asserted by the local authority. “The local authority’s evidence and submissions must set out the arguments and explain explicitly why it is said that, in the particular case, the conclusion [that the child has suffered or is at risk of suffering significant harm] indeed follows from the facts [proved].

[vi] It is vital that local authorities, and, even more importantly, judges, bear in mind that nearly all parents will be imperfect in some way or other. The state will not take away the children of “those who commit crimes, abuse alcohol or drugs or suffer from physical or mental illness or disability, or who espouse antisocial, political or religious beliefs” simply because those facts are established. It must be demonstrated by the local authority, in the first place, that by reason of one or more of those facts, the child has suffered or is at risk of suffering significant harm...”

41. In relation to evidence which emerges, or events which take place between the date of an application for a Care Order and the final hearing, Hale LJ (as she then was) considered the extent to which such evidence can be taken into account in *Re G (Children)* [2001] EWCA Civ 968.
42. Hale LJ noted that it is common ground that at the welfare stage, and therefore in an application of the welfare checklist found at section 1(3) Children Act 1989, the Court can take into account all the information available at the date of the hearing in deciding what order to make, the threshold criteria having been established. The question in that case was whether the Local Authority could rely on later events in order to support or prove a particular state of affairs when the proceedings had begun i.e. in relation to threshold, not welfare. Hale LJ said [23]:

“...I would agree with [counsel] that later events cannot be relied upon unless they are capable of showing what the position was at the relevant time. But if they are capable of proving this, then in my view they should be permitted for that purpose. It will then be a matter for the judge to consider how much weight they should be given. This will not always be an easy task.”
43. Given the position as set out in these cases, Ms Williams most properly accepted that there has to be a connection between the facts found and the risk alleged. Ms Williams accepted that there were no facts surrounding the perpetration of the assaults of L, or in relation to the subsequent reporting of the bruising by the mother, which could found a finding of failure to protect. Indeed, there is here an example of a failure to show a causative link between the facts found and the alleged risk to the child. The judge found that the mother had failed to disclose to social care at an early stage GL’s suggestion that the GP should not be involved. The mother, however, had wholly ignored his suggestion and immediately took L to the GP. It follows that the finding (that she had

not told the social worker of his suggestion) was in no way causative and could not possibly found a finding of failure to protect on the mother's part arising out of the events that morning, although it may be a matter for exploration at the assessment stage.

44. Ms Williams also accepts that the judge's factors (a) and (b) (failing to ask GL what had happened when she was at work and to listen to her mother saying that L was frightened of GL), would be insufficient against the backdrop of the other findings to show that, as articulated by the judge in her written clarification, "the mother had closed her mind to the possibility that GL could have caused the injuries and continued the relationship".
45. Both these matters post-date 16 January and cannot therefore be relied upon unless they are capable of showing what the position was at the relevant time (i.e. 16 January 2018) and that those facts justify the conclusion that the mother knew, or ought to have known at 16 January 2018, that the bruising would be inflicted and had failed to protect L and the twins.
46. Whilst the mother may not subsequently have asked GL what had happened whilst she was at work on 14 January 2018 for fear of his reaction, at the relevant time, L was alleging that LP had inflicted the injuries, LP had been arrested and the police were actively investigating the case against her. Further, the Local Authority were at all times content for L to continue to live under the same roof as GL.
47. Ms Williams further accepts that an *ex post facto* observation by the maternal grandmother, Ms Elliott (with whom the mother had a tense and equivocal relationship), in circumstances where there had not even been any oral allegations made by L in relation to GL, could not possibly satisfy the causation test and establish that the mother had many weeks before, as the judge put it, "closed her mind to the possibility that GL had caused the injuries".
48. That the judge put it in the way that she did in her clarification, seems to suggest that she was saying that the failure to protect arose after the injuries and was consequent upon the mother failing to separate from GL at that stage. With respect to the judge, that cannot be right from either a legal or factual point of view. As Hale LJ pointed out, such factors might well be of significance during the consideration of the checklist under section 1(3) Children Act 1989 at the welfare stage of the proceedings, but not in respect of establishing a failure to protect which predated L's injuries.
49. That then leaves the judge's (c) & (d), the two factors upon which she relies which relate to events pre-dating the injuries. These refer to the "tickling incident" and GL's historic violence towards adult males.
50. So far as the "tickling incident" is concerned, the judge relies on the fact that, notwithstanding GL's undoubtedly intemperate and inappropriate reaction to the mother's suggestion that he had hurt L whilst tickling her, she nevertheless allowed GL back into the family home following their brief separation. On the findings, as ultimately clarified, GL had not in fact hurt L by tickling her or otherwise. The mark that the mother had seen had been caused by L's eczema. The judge's condemnation of the mother having taken GL back (after having initially "sent him packing" following his loss of temper when asked about the mark) is based not on a finding that he had

injured L, but (presumably) that she should have in some way recognised that his verbal loss of temper with her, put L at future risk of physical violence from him.

51. It will be recollected that the judge had found in the original judgment that there was a “scram” mark on L caused by GL (albeit not caused in anger). She went on to find, as part of the failure to protect factors, that the mother had, notwithstanding this physical injury caused by GL and his response to it, reconciled with him following a brief separation.
52. When the judge first clarified the facts and accepted that the evidence was that it was a patch of eczema and not a “scram” mark, she rightly said that the tickling incident was no longer relevant. It is unfortunate that, no doubt under the pressure of the hearing, the judge allowed herself to be persuaded that, even though there was no longer evidence of any injury to L, GL’s loss of temper with the mother should nevertheless have led her to ending her relationship with GL on the basis that there was a future risk of physical harm to L. The evidence, as is now accepted by both the Local Authority and the Children’s Guardian, simply does not support such a conclusion.
53. Ms Williams, in oral argument, accepted that this, therefore, left only GL’s historic violence to adult males in support of the Local Authority’s case. It is upon this evidence alone that it was initially maintained on appeal that, notwithstanding her exemplary behaviour upon discovering the injuries to L, this mother is nevertheless guilty of one of the most serious findings (short of being a perpetrator) which can be made against a mother; namely that she failed to protect her young child against a likely risk of physical abuse about which she knew or ought to have known.
54. The judge in her judgment, summarised the nature of the relationship between the mother and GL as follows:

“[78] ...I am satisfied that the relationship between them was characterised by GL’s tendencies towards violence and what I consider to be his control. In the mother’s words ‘it had to be GL’s way’. This appears to have applied to everything in the household.”
55. It should be noted that the reference to violence, it is accepted, related only to the two incidences of adult violence, against PW in 2013 and more recently, towards “Zac”. There is no suggestion that, other than on 14 January 2018, GL had been violent towards L.
56. The question, therefore, is whether those two incidents, together or separately, provide evidence of a factual basis from which to find a failure to protect on the mother’s part or, as put by the Local Authority in their threshold document, do those facts justify the conclusion that “the mother knew or ought to have known that bruising would be inflicted” (by GL)?
57. On the findings of the judge, GL is undoubtedly capable of violence towards adult males. As part of the request for clarification on behalf of the mother, the judge was asked to clarify “why the Court considers that GL’s previous violence towards adult males is transferred to an observable risk of harm to female children”.

58. Whilst such a request may, at first blush, be thought to be close, if not beyond, that which it is proper to ask in clarification of a judge's judgment; in my judgment that was not the case here, given the need for the Court to find a causative link between the facts as found and the risk to the child. The judge offered no such causative link; for example, there was no history of domestic violence within the home or previous involvement of social services and at the time of the "tickling incident," and GL's anger was focused not on L, who was going through a phase of telling lies, but upon the mother for not (as GL saw it) dealing with the issue.
59. The judge's response to the request unhappily not only failed to articulate the evidence upon which it could be said that this man, violent to adults outside the home, should have been forecast to assault a small child within the home, but also reversed the burden of proof as the judge responded to the request for clarification by saying: "there is no evidence before the Court that GL's previous violence was limited to adult males".
60. Ms Williams accepted that it cannot be right to say that any woman who fails to separate from a partner who has been violent outside the home in adult situations is failing to protect her children, although in certain circumstances that may be the case. On the judge's findings, GL has a quick and unpleasant temper and is controlling within his personal relationships. This can be very serious and controlling and coercive behaviour is rightly, in certain circumstances, now recognised as a form of domestic abuse which can lead to a criminal conviction (Section 76 Serious Crime Act 2015).
61. On the facts of the present case however, these unattractive personality traits and/or the controlling personality of GL did not prevent the mother from acting quickly and appropriately when her child was injured, and she maintained her independence sufficiently wholly to ignore GL's suggestion that L should not be taken to see a doctor. In my judgment, putting together GL's behaviour in the home with his aggression on two occasions a number of years apart on adult men outside the home, do not go anywhere near supporting a causative link such that the mother ought to have known that GL presented a risk of physical abuse to L or the twins.
62. Failure to protect comes in innumerable guises. It often relates to a mother who has covered up for a partner who has physically or sexually abused her child or, one who has failed to get medical help for her child in order to protect a partner, sometimes with tragic results. It is also a finding made in cases where continuing to live with a person (often in a toxic atmosphere, frequently marked with domestic violence) is having a serious and obvious deleterious effect on the children in the household. The harm, emotional rather than physical, can be equally significant and damaging to a child.
63. Such findings where made in respect of a carer, often the mother, are of the utmost importance when it comes to assessments and future welfare considerations. A finding of failing to protect can lead a Court to conclude that the children's best interests will not be served by remaining with, or returning to, the care of that parent, even though that parent may have been wholly exonerated from having caused any physical injuries.
64. Any Court conducting a Finding of Fact Hearing should be alert to the danger of such a serious finding becoming 'a bolt on' to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable. As Aikens LJ observed in *Re J*, "nearly all parents will be imperfect in some way or another". Many households

operate under considerable stress and men go to prison for serious crimes, including crimes of violence, and are allowed to return home by their long-suffering partners upon their release. That does not mean that for that reason alone, that parent has failed to protect her children in allowing her errant partner home, unless, by reason of one of the facts connected with his offending, or some other relevant behaviour on his part, those children are put at risk of suffering significant harm.

Conclusion

65. In my judgment, there is no evidence in this case which could properly lead to a finding that this mother failed to protect her children.
66. It follows, therefore, that the appeal by the mother against the finding that she failed to protect L and the twins is allowed and the finding at paragraph 87(15) (a) – (d) to that effect will be deleted.
67. The finding that GL caused the injuries remains undisturbed as does the judge's order that the Care Proceedings in relation to W should be discontinued. The Court has been informed that the Welfare Hearing is listed for 5 March and it is anticipated that all parties can be ready for a hearing before the judge on that date and, in particular, that the Local Authority are able within those timescales, to complete an assessment of the mother on the basis that there are now no findings against her.
68. Finally, I would like to express the Court's gratitude to Ms Williams who represented the Local Authority. Ms Williams, having understandably anticipated responding to the appeal, found herself, at the Court's request, addressing the Court first. Ms Williams was of immeasurable assistance to the Court in helping us to understand much of the chronology which was not obvious from the papers. Further, as we went through each of the factors relied upon by the judge, Ms Williams made appropriate concessions whilst continuing to put the Local Authority's case. This professional and realistic approach allowed the Court to focus on what was, in reality, the only live issue, namely; was GL's history of violence sufficient to lead to a finding of failure to protect upon the mother's part?

Lord Justice Coulson:

69. I agree

Senior President of Tribunals:

70. I also agree