



Neutral Citation Number: [2024] EWCA Civ 1290

Case No: CA-2024-001707

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE FAMILY COURT AT CARDIFF**  
**Her Honour Judge Edwards**  
**CF23C50452**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29 October 2024

**Before:**

**LORD JUSTICE PETER JACKSON**  
**LORD JUSTICE NEWEY**  
and  
**LORD JUSTICE NUGEE**

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**M (Children: Findings of Fact)**  
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**Matthew Rees KC and Joanna Wilkins** (instructed by **Martyn Prowel Gartsides Solicitors**)  
for the **Appellant Father**  
**Simon Stephenson** (instructed by **Vale of Glamorgan Council Legal Services**) for the  
**Respondent Local Authority**  
**Joseff Morgan** (instructed by **Robertsons Solicitors**) for the **Respondent Children by their**  
**Children’s Guardian**  
**Kelly Chamberlain** (instructed by **Redkite Law LLP**) for the **Respondent Mother** (written  
submissions only)

Hearing date: 22 October 2024  
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## **Approved Judgment**

This judgment was handed down remotely at 10.30am on 29 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Lord Justice Peter Jackson:**

*Introduction*

1. This is an appeal from findings of fact. It raises no point of law.
2. The proceedings concern three girls: A (8), and twins B and C (4). There has been a long history of local authority involvement. The children went into foster care on 19 October 2023. The parents separated after the father was arrested for assault and criminal damage and removed from the home by police on 31 October 2023. He later became the subject of an 18-month restraining order. The children have now returned to their mother.
3. The local authority issued care proceedings in November 2023. The final hearing took place over the course of five days in July 2024 before Her Honour Judge Edwards, who had managed the proceedings throughout. She delivered her judgment on 8 July 2024. She found the threshold to have been crossed in eleven respects. She made a care order on the basis of the children's return to their mother and she authorised the local authority to refuse contact to the father.
4. The father appeals, with permission of Baker LJ, from two of the threshold findings. The first is of sexual abuse of C, causing an injury to her genital area, and the second is of physical abuse of B by slapping her on her bottom and genital area.
5. The unappealed threshold findings included: that the parents failed to notice and seek medical attention for C's injury; that in August 2022 the father had tied C to her cot; that in September 2023 he had left the twins naked and unsupervised in the street, where they were found by a member of the public; that, having been a victim of childhood sexual abuse, he had serious fluctuating mental health conditions that impaired his parenting ability; that the parents' relationship was volatile and featured incidents of domestic abuse, including in front of the children; that the parents regularly misused cannabis in the home; that the mother allowed the father to have unsupervised care of the children, despite knowing of his mental state; and that the father had shown aggression and hostility to social workers and was unable to prioritise the children's needs over his own feelings.
6. The history in the period immediately before the children's removal included a referral by the twins' nursery to the health visitor:
  - 18 September 2023 – B had a bite to her left buttock and bruising on her arm.
  - 25 September 2023 – Girls seem very tired, pale and hungry.
  - 29 September 2023 – Girls very hungry on arrival.
  - 2 October 2023 – C had a soiled accident. Blood in her underwear noticed by staff member who helped her change.
  - 9 October 2023 – C had a cut lip and graze to her face. Mother's explanation was that she fell on the way to school. Staff member noticed a lot of bruising to B's thighs.

10 October 2023 – Staff member changing B noticed her vagina was very swollen/protruding. B said it was sore.

12 October 2023 – B had a wet accident. Her vagina looked sore and swollen and white discharge was present.

13 October 2023 – Last day twins attend nursery before being removed by parents.

7. On 12 October 2023, having received the referral, the local authority put in place a safety plan providing for the paternal grandmother to stay in the family home to supervise the care of the children while investigations were carried out. The plan was amended on 13 October 2023 to allow the maternal grandmother to supervise.
8. Also on 12 October, the twins were seen by a GP, Dr D, who did not report any relevant injuries.
9. On 19 October 2023, the twins were medically examined by Dr S, consultant community paediatrician. C was observed to have the following injury: “an approximately 1.5cm red, linear area just external to the vulval opening at the base of the right labium minus. This did not show any acute bleeding points but remained pink...” Dr S was unable to conclusively state whether the injury was a healing laceration or a more superficial abrasion. She advised that the injury was indicative but not diagnostic of childhood sexual abuse. On 2 November 2023, a follow-up examination found that the area had healed. In respect of B, Dr S’s examination was normal, with no recent or healed physical findings to suggest sexual abuse.
10. Dr Fiona Straw, consultant paediatrician, was instructed as a single joint expert to review the medical evidence. She agreed with Dr S’s opinion that the injury to C’s genitalia was a traumatic injury caused by blunt force being applied to the external genitalia. It could be due to sexual abuse, or to an accidental injury, but no history had been given to support that explanation. As to timing, she considered a period of five days before the injury was observed to be a ‘rule of thumb’, but it was also possible that it was caused before 12 October. In response to further questions, Dr Straw confirmed that C’s injury was not consistent with a bite from an adult or from a child and that it was highly unlikely that it had occurred around 2 October 2023, when blood was seen in C’s underwear. She further stated that the most frequent non-sexual cause of genital injuries to young girls is a straddle injury, the most commonly occurring of those injuries being to the labia, and that exposure to urine can make genital tissue more susceptible to injuries, meaning minor trauma may result in injury and bleeding.
11. At the end of January, the three children took part in ABE interviews conducted by Triangle. B and C were then aged three years four months. There are over sixty pages of transcript and the judge watched the recordings twice.

### *The judgment*

12. The well-structured decision runs to 20 pages. After introductory paragraphs and legal self-directions, the judge summarised the medical and lay evidence, noting Dr Straw’s opinion as recorded above. She addressed the evidence of the experienced Triangle interviewer and analysed the three ABE interviews in detail. She assessed

the parents' evidence, recorded the main submissions, made findings of fact and reached conclusions about the orders to be made.

13. The two appealed findings against the father were based on a constellation of factors:
- Accounts given by B and C. The judge found that their ABE interviews were of central importance and had high forensic value [75]. C gave a cogent, credible and compelling allegation that her father hurt her vagina with his teeth, and that this had caused her pain and distress [76]. B's complaints were consistent with what was known about father's previous physical abuse of the children and the bruising seen by the nursery. The evidence did not allow the conclusion that the abuse of B was sexually motivated [77].
  - The injury to C, as to which the judge accepted Dr Straw's unchallenged evidence [35].
  - Her conclusion that C's injury was not caused by an accident, no account had been given of any straddle injury [76, 80].
  - Her assessment of the children's situation as containing multiple risk factors and few protective factors [74].
  - Her evaluation of the ABE interview with A, who had described her father as her "crush" [47, 54].
  - Her evaluation of the father's evidence as illogical, implausible, and internally inconsistent. He could give no sensible explanation for his obsessive use of pornography, including pornography depicting sex between fathers and daughters. He was manipulative, coercive and controlling. He had lied to distance himself from the ample opportunity he had to abuse the children and his motive for lying was his realisation that he was guilty. [60, 72, 78-79]
  - Her finding that the supervision in place between 12 and 19 October 2023 was likely to have been inadequate [63, 80].

#### *The appeal*

14. Against this background, I turn to the ground of appeal. It asserts that the judge was wrong to find that the father had sexually abused C by biting her vagina and had assaulted B by slapping her bottom and vagina, for five reasons:
- (1) Inconsistency with Dr Straw's opinion about a bite.
  - (2) Incompatibility with the undisputed evidence of the mother about the levels of supervision afforded by the paternal and maternal grandmothers during the period when any sexual abuse was likely to have taken place.
  - (3) Illogicality, when there was a finding that B had as a result of inadequate supervision suffered a bite to her bottom, which she said had been caused by her sister.

- (4) Reversal of the burden of proof in respect of C's injury.
  - (5) Undue weight placed on the ABE interviews in the light of the children's ages, the delay before interview, the frequent use of closed questions, and the lack of engagement with the interviewer.
15. I will address these matters in turn.
16. The first argument supposes that the judge found that the injury to C was the result of a bite. In fact the judge made no such finding. She gave a summary of her conclusions to the parties on 5 July 2024, in which she said at [7] that "I find that C has made a cogent and credible allegation that her father hurt her vagina with his teeth and that this caused her pain and distress." She then repeated this formula in almost identical terms in her full judgment on 8 July 2024 at [76]. At [34-35] she had recorded Dr Straw's opinion and said that she accepted it.
17. On reading the papers, it was therefore unclear to me why the judge's order recited this threshold finding: "The injury to C's vagina was caused by the Second Respondent biting her." The explanation provided to us was that Mr Stephenson, as counsel for the local authority, had circulated a draft order in which the finding was drafted without the inclusion of the words "biting her". The words were added by Mr Rees KC, representing the father, alongside other suggested amendments, and an amended draft order was agreed, filed and approved by the judge.
18. The transcript of judgment, received some weeks later, shows that the judge did not make a finding of biting. Mr Rees points out that there are references in C's interview to her saying her father had eaten or bitten her bottom. However, it is unclear what C meant by that. In contrast, it is entirely clear that the judge did not make a finding that the father had bitten C. The amendment proposed on his behalf should not have been agreed and approved. The premise for the first argument made to us is therefore unsound. That being the conclusion, the parties agreed that the correct course is for the Family Court to be invited to amend the order under the slip rule to remove the two added words.
19. The second submission is that the mother had described the children as having been supervised by a grandparent in the week from 12 October onwards, that she had not been challenged about that, and that the grandmothers had not been called as witnesses. Accordingly, says Mr Rees, it was not open to the judge to find that the supervision was likely to have been inadequate. Again, this aspect caused some puzzlement, and led to a concession by the local authority being abandoned during the hearing after we learned of the examination of the twins that had been carried out by Dr D on 12 October. Although the judge did not refer to this examination, it strongly suggests that C had not come by her injury by that time. Whatever the cause of the injury, no adult gave any account of how it might have happened. Taken in combination with Dr Straw's five-day rule of thumb, it is easy to understand why the judge considered that supervision was likely to have been inadequate. I would accept that there is a dearth of analysis in the judgment about the significance of any supervision for the timing of the injury and for opportunity, but that does not avail the appellant. Even if the injury occurred before 12 October, the lack of any account of an accident remains significant. Further, had there been an unobserved accident, C would very likely have complained to a carer, and there is no account of that either.

Mr Rees notes that C referred to hurting herself in a fall. The judge considered this at [80], but made her finding notwithstanding. Considering the totality of the evidence, she was entitled to find that the father had the opportunity to cause the injury, whenever it occurred.

20. The third argument is essentially that, if the children were living in such a chaotic household that B could be bitten by her sister in September, it is illogical and inconsistent to conclude that C was injured by her father in October, rather than in an unwitnessed accident. There is no logic to this submission. The judge's finding was centrally based on C's account.
21. The fourth submission is that the judge reversed the burden of proof in respect of the father by noting the lack of an account of an accident from either parent. This is a familiar argument, addressed in *Re BR (Proof of Facts)* [2015] EWFC 41 at [15-17] in this way. It would of course be wrong to apply a hard and fast rule that the carer of a young child who suffers an injury must invariably be able to explain when and how it happened if they are not to be found responsible for it. However, the absence of any history of a memorable event where such a history might be expected in the individual case may be very significant. Medical professionals, social workers and the court are entitled to take account, to whatever extent is appropriate in the individual case, of the lack of a history of injury from the carer of a young child. In the present case, the judge regarded the lack of any account from a carer as a factor, among others, that supported her conclusion. As Mr Morgan put it on behalf of the Guardian, consideration of the evidence does not amount to reversal of the burden of proof. In reality this aspect of the appeal is a complaint that the judge gave too much weight to the lack of an account. I reject that submission too. There is no indication that she gave undue prominence to this feature, still less that she did so to the extent that would entitle us to interfere.
22. Turning finally to the ABE interviews, the judge rightly studied them carefully, given their importance, the age of the children and the passage of time. She assessed the quality of the interviewing as attuned, and identified compelling features of the children's accounts and responses. She took account of the children's very young age, the delay and the nature of the questioning before coming to her conclusion that the interviews bore considerable weight. She held in mind all the reasons for caution. Referring to C's interview, she said this:

41. The transcript of C's interview does not begin to convey the subtle nuances, body language, the pauses, hesitations, free-flowing recall and so on that is seen in the video. At I301, when C clarifies that her mummy did not hurt her, it was just daddy, she says, "No mummy, just daddy. Just daddy." The transcript that I have does not fully reflect this, nor does it show that when C demonstrates where she was hurt, she was really clear in saying, "My bottom", and uses the paper gingerbread cut-out in a consistent and compelling way. She then says, after a short break, "It was just daddy there", and that "daddy did kiss it better." She then uses the gingerbread cut-outs to demonstrate daddy kissing her genital area. She goes on to clarify that daddy hurt her there with his teeth. When the gingerbread man was being drawn, she was very directive, and required [the

interviewer] to draw teeth on daddy. This was clearly a significant feature for her. There is a photograph of the drawing at I108.

42. C then goes on to act out her fear of father by screaming, saying, “I’m scared of you, daddy”, and running to the other sofa...”

The judge then gives further information indicative of telling detail.

23. As to B’s interview, the judge remarked that it read well from the transcript, but that there was a marked difference between the quality of the twins’ accounts. B gave an account of being smacked with an open palm but was unwilling to engage in a way that was upsetting to watch. Both children said that their father had told them not to say anything.
24. On appeal, Mr Rees argues that undue weight was placed on the ABE interviews in the light of the children’s ages, the delay before interview, the use at times of closed questions, and the lack of engagement with the interviewer. He drew our attention to passages in C’s interview as showing inconsistencies in her account. In relation to B, he argued that the evidence was insufficient to support a finding of slapping on the vaginal area, as opposed to on the bottom. He also argued that the judge was wrong to say at [76] that C’s account was supported by the observations of the nursery and by her mother’s acceptance of her account.
25. The central argument about the treatment of the interviews is not persuasive. It was well made to the judge, and she substantially engaged with it at [39-48 and 62-63]. She saw the interviews and it was for her to assess them. She noted the issue of delay, that B found the truth and lies exercise difficult, and that there were a number of closed questions (not in themselves objectionable with very young children: see the ABE Guidance of January 2022 at E.3.5). Arguments about weight are pre-eminently a matter for a trial judge who has considered all the evidence. Any inconsistencies were not particularly striking from children of this age, and they do not cast doubt on the broader analysis. The denial of slapping B on the genital area has to be seen in the context of the father’s untruthful denial of slapping her anywhere. I agree that the stance taken by the mother could not be probative but there is no indication, beyond a few words in a long judgment, that the judge thought they were to any significant extent. The observations by the nursery could not provide direct support for the allegations, but the worrying condition of the children was consistent with them being at heightened risk of abuse, and the judge’s passing remark can be read in that way.
26. Overall, the judge approached her task assiduously, reached conclusions that were very clearly open to her on the evidence, and explained them in an impressive judgment. Her findings are unscathed by the arguments on appeal. I would dismiss the appeal and record that the local authority will take steps to ensure that the finding in relation to C is correctly reflected in the Family Court’s order.

**Lord Justice Newey:**

27. I agree.

**Lord Justice Nugee:**

28. I also agree.

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