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IN THE FAMILY COURT



No. BM18C00186

[2018] EWFC 94

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 13 November 2018

Before:

MR JUSTICE KEEHAN

(In Private)

BETWEEN:

BIRMINGHAM CITY COUNCIL

Applicant

- and -

(1) MM

(2) FF

Respondents

[REPORTING RESTRICTIONS]

MR A. NORTON QC (instructed by Legal Services, Birmingham City Council) appeared on behalf of the Applicant.

MS C. BINNION appeared on behalf of the First Respondent.

MR B. HUSSAIN appeared on behalf of the Second Respondent.

MR M. MAYNARD appeared on behalf of the Guardian.

JUDGMENT

(Transcript prepared without the aid of documentation)

MR JUSTICE KEEHAN:

- 1 In this matter I am concerned with two children: X, who was born in August 2017, and Z, who was born in July this year. The mother of both children is MM and the father of both children is FF.
- 2 The local authority, Birmingham City Council, brought these care proceedings initially in respect of X as a result of his presentation at hospital, when it was believed that he may have been the subject of inflicted non-accidental injury. As a result of the concerns expressed by the treating clinicians, when Z was born, he too was made the subject of public law care proceedings. X has remained in hospital for a considerable period of time. It has now been discovered that he suffers from severe haemophilia.
- 3 The matter was to be listed for a fact-finding hearing next year, and for that purpose permission was given by me for a range of medical experts to report on this matter. I shall refer to those in a moment.
- 4 I am immensely grateful to all of the experts, who reported in a timely fashion, and most particularly to Dr Cartlidge, who was due to file his final report on 29 November this year and was invited to be able to give a preliminary view for the purposes of this hearing today. In fact Dr Cartlidge completed his full report on 9 November.
- 5 The conclusion of all of the medical experts, with the possible exception of one, is that the explanation given by the parents, namely that in March this year, X fell off the bed at the family home and sustained injury, cannot be excluded. It is also noted that since his admission to hospital there has been no criticism at all of the care afforded by both parents to, first, X, and then Z after his birth. In those circumstances, and taking account of all of those matters, the local authority has, in my judgment quite rightly, come to the conclusion that it would not be appropriate or proportionate to seek to invite the court to make findings of fact that X was the subject of inflicted non-accidental injury. Accordingly, the local authority today seeks permission to withdraw the public law proceedings in respect of both children. Unsurprisingly, that course is welcomed and supported by the mother and by the father, and the Children's Guardian, having reflected on all the evidence, also supports the course of action pursued by the local authority.
- 6 The local authority had proposed at an earlier time that X, and then Z after his birth, should be removed from the care of the parents and placed in foster care. I did not consider, whatever may have been the cause of X's injuries, he or Z should be separated from the care of the parents, and accordingly the local authority has kindly acceded to my request to find and identify a placement where the parents and the children can remain together in a supervised environment. The observations from that unit are, again, uniformly entirely positive about the care afforded to the children by the parents and the love and warmth and the affection they have for both of their children.
- 7 As I have mentioned, the precipitating event occurred on a morning in March. The father was at work, X was asleep on his parents' bed, the mother went to the kitchen, she heard a bang and screaming and returned to the bedroom to find X supine and crying on the carpeted floor. The mother immediately telephoned the father, who came home. By the evening a swelling had developed on X's head and the parents took him to hospital. A

physical examination was undertaken. He was found to be alert, although an obvious swelling was noticed on the right side of his head, and by late evening he was discharged. Two days later the mother was concerned about the lump on the right side of X's head and because he was unsettled, and accordingly she took him to their general practitioner. On examination, X was found to be alert and the mother was advised that it may well be that it was teething that could cause him to be unsettled.

8 Later in March, X was seen by his health visitor. He was then seen again by the general practitioner, and the mother then took X to Birmingham Heartlands Hospital because of the lump on his head and her concern about it. In the emergency department, X was found to be alert, the swelling on the right side of his head was identified and no other injuries were noted. He underwent a CT scan, to which I shall refer in a moment.

9 Thereafter, in June, X underwent an MRI brain scan. A new area of subarachnoid bleeding was discovered. This was based in the left parietal lobe, and over the left frontal lobe, and over the left temporal and occipital lobes. The treating clinicians were concerned by this finding because the bleeding appeared to have occurred when X was receiving factor 8 and without any history of trauma. It was that scan which led to the involvement of the local authority and these proceedings.

10 Dr Keenan, a consultant haematologist, was instructed and reported that X did indeed suffer from a severe form of haemophilia A. The consequences of that are as follows: (1) severe haemophilia in itself is a reason to have severe spontaneous bleeding; (2) untreated this can be a life limiting condition; (3) haemophilia is not of itself known to have any impact on bone density and is unrelated, therefore, to the issue of fractures; (4) those with X's diagnosis of haemophilia are generally not prescribed ibuprofen and other NSAIDs due to potential adverse reactions. Otherwise, Dr Keenan reported nothing of note.

11 Dr Saunders, a consultant neuro-radiologist, reported on the CT scan as follows,

"There was marked scalp haematoma of up to 10 days overlying a slightly displaced 4 centimetre right parietal fracture running from the lambdoid suture. There was extradural haematoma of up to 10 days' old deep to the fracture compressing the brain. There were small interhemispheric subdural haematoma. A second linear hairline lucency with an appearance very similar to the adjacent sagittal suture and with no overlying swelling".

Accordingly, Dr Saunders identified one right-sided skull fracture but did not identify a skull fracture to the left of X's head.

12 Dr Jayamohan, a consultant neurosurgeon, also reported on that scan. He took issue with the findings of Dr Saunders in that he considered that in the left parietal region there was another linear skull fracture.

13 Dr Cartlidge in his report considered the findings on the imaging. In his report he said as follows,

"Treating radiologists interpreted a left-sided lucency as being a second skull fracture. I was troubled by this interpretation since there was no history or observation by healthcare professional of a swelling at this area and yet extensive bleeding and consequently a swelling is what I would expect in an infant with severe haemophilia A. Moreover, I am aware the distinction between a fracture and a suture (normal variant) can be very difficult and indeed I have experience of two highly experienced radiologists diagnosing a skull fracture but at post-mortem was

found to be a suture. Consequently, I was relieved that Dr Saunders concludes there was no left-sided fracture, since it allows a medically logical understanding of the case. In my opinion, the pattern of injury in March 2018 must indicate an impact to the right parietal region of the head. The scalp and extradural bleeding is commensurate with what would be expected in an infant with untreated severe haemophilia A. Consequently, it is an analysis of the cause of the unilateral skull fracture that is pertinent in respect of the injuries found in March 2018".

- 14 In relation to the explanation that had been given for X's injuries, Dr Cartlidge observed the following,

"X was 200 days old when the fracture was found, probably 191 days when it was sustained. He was able to crawl, roll and sit briefly unsupported. I cannot envisage him being able to self-sustain a skull fracture without the causal event being very memorable to carers. The mother, gives an account of leaving X asleep on the parental bed and surrounded by pillows. Mother went to the kitchen. Mother heard a bang and screaming from X. Mother found X supine and crying on the carpeted floor. My assessment of this causal event is as follows. The height of the bed is not stated. They are usually about 60 centimetres above the floor. X was able to crawl and so could have raised himself up a little and on the bed. X does not seem to have been able to stand. X was able to roll, and so had the means to fall from the bed. I deduce that the distance of the fall is likely to have been about 60 centimetres, unless the bed was unusually low or high. The fracture was hairline and simple. In my opinion, such a fall would rarely cause a fracture. However, I cannot exclude such a fall causing the fracture".

- 15 For the reasons given by Dr Cartlidge, I prefer the evidence of Dr Saunders in relation to whether there was or was not a fracture to the left side of X's head. I am fortified in coming to that conclusion when I consider the totality of the other evidence before the court in this case, principally the observations over a particularly extended period of time of the care afforded by both parents to X and then to Z. There has been no criticism of their care of either child at all. The evidence and the reports are all one way of both parents having a very warm, loving and caring approach to both of their young children.

- 16 Taking into account this important evidence, I am entirely satisfied that the injury sustained by X occurred in the course of a fall from the bed in March 2018 as described by the mother. I note that all of the actions by the mother and the father after that event were entirely focused upon X's welfare best interests and seeking medical assistance for him.

- 17 I entirely agree with the assessment of the local authority that it would be wholly inappropriate, and disproportionate, and unnecessary, for this matter, in the light of the medical evidence now before the court, to proceed to a fact-finding hearing where the court would consider whether there was any evidence to find that X had been the subject of inflicted non-accidental injury. Accordingly, I am entirely satisfied that it is in the welfare best interests of both children that I should grant permission to the local authority to withdraw both sets of care proceedings. It has been agreed between the parties that both children will be the subject of a child in need plan for the next three months. That is, as is emphasised by Mr Norton QC on behalf of the local authority, no reflection at all of the abilities or the care afforded by the mother and the father to the children, rather it is to support and help the parents making the transition from the unit where they live at the moment to return to their home in the Midlands, to assist the parents with transporting X for his regular medical appointments and also the transfer of his care from the London hospital to the treating hospital where he has previously been seen in the Midlands.

- 18 I wish to express my sincere thanks to all the experts, most particularly to Dr Cartlidge, for the very timely way that they have prepared their reports, which has been of enormous great benefit to the court. I also wish to record my grateful thanks to Birmingham City Council for the careful manner in which it has considered the evidence in this case and reached the conclusions which I have already indicated I completely endorse. I am also immensely grateful to all counsel, who have conducted this matter in an immensely helpful and child-focused manner.

CERTIFICATE

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This transcript has been approved by the Judge