

IN THE FAMILY COURT

Case No: RG18C00728

Before:

HIS HONOUR JUDGE MORADIFAR

In the matter of:

Re K & C (Children: Finding of Fact)

Edward Kirkwood – Counsel on behalf of the Local Authority

Dr Austen Morgan - Counsel on behalf of Mother – Instructed by Equity Law Solicitors

Gudrun Fama - Counsel on behalf of Father – Instructed by Black White Solicitors

Lubeya Ramadhan - Counsel on behalf of Guardian– Instructed by The Head Partnership

Date of the hearing:

8th October to 12th October 2018

His Honour Judge Moradifar:

Introduction

1. At 11.35 am on 11 June 2018, K presented at the A&E department of her local hospital where she was found to be suffering with burns covering much of her groin area. K was seven weeks old having been born together with her twin sister C in April 2018. The mother stated that the burns were caused by her accidentally spilling hot tea on K. The treating medics did not accept this to be a likely mechanism and raised child protection concerns. The local authority and the police became involved leading to the mother being interviewed by the police. The local authority applied for Public Law orders and the children were removed into foster care where they continue to reside. Subsequently the mother gave a different explanation for the cause of the injuries to K. She blamed her friend Y who lived with her and was involved in caring for both children.
2. The central issues in this case are how and who caused the injuries to K. The matter comes before me to consider these factual issues. The local authority has set out its allegations in a schedule to which the parents have responded. The allegations are:
 - a. On 11th June 2018, K had sustained a burn injury to her lower abdomen, perineum, mons pubis and labia extending down to the buttocks region and upper parts of the thighs. On 11th June 2018 K was admitted to her local hospital and thereafter was transferred to a

specialist hospital. There were no observed splashes or tracking of hot fluid in any other area on K.

- b. Injury was a contact burn caused by a flexible hot object, such as a cloth or sponge, being placed around the perineum within the nappy area. The injury could not have been the result of a brief wipe with a hot towel or flannel.
 - c. The injury was not caused as a result of a cup of tea being spilled on K
 - d. The mother has lied to medical professionals and the police as to the causation of the burn, stating that it was caused by a cup of tea on spilling onto K
 - e. The mother has lied to professionals in respect of the perpetrator of the injury
 - f. The mother has conspired with Y to mislead professionals in respect of both the mechanism for the burn and the perpetrator
 - g. No satisfactory explanation has been provided either by Y or by Mum that would explain how burns to K were caused
 - h. The injuries to K were non-accidentally inflicted by:
 - i. The mother, or
 - ii. Y, or
 - iii. In the alternative, the injuries were inflicted by either the mother or Y.
3. The local authority's primary case is levied against the mother. But for the central issues that I have identified, the remainder of the allegations are accepted by the mother.

The law

4. The fundamental legal principles that I must apply are very helpfully summarised by Baker J (as he then was) in Re JS [2012] EWHC 1370 (Fam). Following this decision, Jackson J (as he then was) in Lancashire County Council v C, M and F (Children: Fact finding Hearing) [2014] EWFC 3 added a further item to this invaluable list of important considerations. Furthermore, I have applied the observations of the then President of the Family Division in Re A (A child) [2016] 1 FLR 1.
5. I am not bound by the schedule of findings that the local authority seeks and can make such relevant findings as are appropriate based on the evidence.
6. Finally, each of the respondents has a right to a fair trial pursuant to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and this right cannot be interfered with unless it is pursuant to a legitimate aim, necessary, proportionate and in accordance with the law.

Background

7. The family are from Ghana. The father came to the UK in 2002 and the mother in 2005. Although Y is referred to as a sister, cousin and the children's aunt, she has no biological connection to the family.

8. The mother met her about five years ago through the Ghanaian community. Y was evicted from her property and moved into the mother's rented room in a shared accommodation. Y is older and has five grown up children. One of her sons, G, lives in the UK and has filed a statement in these proceedings.
9. The father's sister in law owns a hairdressing business. In 2015, the mother and Y visited the salon where the mother was introduced to the father. The initial developing friendship between the parents blossomed to a romantic relation and they married in 2017. Prior to wedding the mother had embarked on a course of IVF treatment in Ghana which proved to be successful and by the time the couple came to be married, the mother was pregnant.
10. After the wedding the couple continued to live separately with the mother living with Y and her son. The father undertook casual jobs and the mother continued to work as a carer. She was the main bread winner. The couple intended to move in together but agreed that the mother would benefit from Y's child rearing experience and assistance whilst the parents looked for a suitable property. Y and the mother shared a bed and G had his own room. It appears that G has not greatly involved himself with the mother, Y or the children. It would also appear that Y may not be permitted to be residing in the UK and may be an overstayer.

11. In April 2018 the mother suffered with high blood pressure that led to her admission to the hospital. She underwent an emergency caesarean section operation and the twins were born on 21 April 2018. K was significantly smaller than C but there were no immediate concerns for the children's health. Following their discharge from the hospital, the mother and the children returned to her home that she shared with Y and G.
12. The father visited the children the day after their birth and continued to visit them regularly thereafter. From time to time he stayed where he would share the mother's room and Y would move into the spare room that was used as a storage room.
13. At 09.26 am on 11 June 2018 the mother rang her Health Visitor to cancel a home visit as she had an emergency. At 09.40 the Health Visitor called the M to rebook. Mother stated that she would get back to her at 15.00 hrs. Between 09.40 and 10.00 hrs mother telephoned her General Practitioner and booked an appointment for 11.40. The records state "Mum spilt tea on baby". At 10.00 hrs mother telephoned the Health Visitor to inform her of "another emergency" as she had spilt tea on K. The Health Visitor advised her to go to the Accident and Emergency Department. At 11.35 hrs K was presented at the Accident and Emergency Department of her local hospital. She was subsequently transferred to a specialist hospital at 14.38 hrs. Later that afternoon Y gave an account to the police when she stated that between 10.00-10.30 hrs she had been in the kitchen and heard a shout. The mother had spilled hot tea on K's inner thigh whilst the nappy was still on. At 20.04 hrs that evening the police searched the mother's address and observed that:

- a. There was an overwhelming “bad smell”. There was a saucepan on side in kitchen containing dark coloured liquid and unidentifiable material.
- b. They saw a cup ring mark and some stains on the sheets
- c. The washing machine in kitchen contained sheets and baby clothes; still damp – appeared to have just finished wash.
- d. The bins searched and found a bag with several soiled nappies and green tissues which were sodden. Nappies did not have staining from tea. No items seized.
- e. In bedroom about 1metre from foot of bed, there was a small stool/table on which sat a small plastic bowl. It contained cotton wool pad. This was dry.

14.The following day, the mother gave an account to police in which she described her accidentally spilling of tea on K. She stated that had placed cup of tea on the foot board ledge near K. She had removed K’s nappy and was reaching for a nappy sack. As she turned, she heard screaming from K. She explained that tea had spilled and went across K which pooled under her on the mat. The mother screamed, called for her “sister”, “come and see what I have done to” K. She further stated that she put K’s clothing in to soapy water. Nappy cream was applied to K when she noted blistering. She called the General Practitioner to make an appointment. The appointment was made for 11.40am. Mother realised it was too long to wait, so she called the Health Visitor who told her to rush her to the Emergency Department. Mother then called her friend E, who came after 20 minutes and took them to the hospital.

15.On 13th June 2018 the police undertook a formal interview of the mother, which was the first of two police interviews. On 14th June 2018, the Local

Authority applied for Emergency Protection Orders in respect of both children, and the children were placed in foster care on 15th June 2018.

16. Later the following evening (16th June 2018) at 23.50, mother spoke to the safeguarding nurse at the hospital, during this conversation she gave a different account by stating she was in the kitchen when K sustained the injury and that the injury had been caused while K was in the care of Y.

17. The following day, the mother recounted her second version of events to the senior consultant in charge K's care. This led to mother being interviewed by police for the second time, during which she recounted the same second version of events. Y had by now made a statement to the police and provided detail as to how the mother had spilt tea. Y was interviewed by police on 20th and 29th June, during which she made no comment.

18. On 21st June 2018 the police searched the mother's address and seized a bathing bowl, two plastic bowls, cotton wool. On the same day, the matter came before HHJ Owens, who made the children the subjects of Interim Care Orders and Y was made a party to the proceedings. Y was served with notice of the proceedings, details of hearings, and with some of the case papers. To date, Y has not participated in the proceedings. It has been impossible to locate her. The matter has since proceeded to a finding of fact hearing before me.

Evidence

19. I have read and considered all the evidence that has been filed. This includes y's version of events. In addition, I have heard the oral evidence of Mr Rayner (consultant plastic surgeon), the mother and the father.

20. Mr Rayner's oral evidence was consistent with that of his written report.

In summary, given the pattern, shape and location of the injury, Mr Rayner has ruled out a chemical burn as the likely cause. This was most likely to have been caused by contact with a hot liquid. However, the pattern of the injury is inconsistent with liquid being poured directly onto the skin as there are no "splash marks" that would typify such a mechanism. A pouring of hot liquid over a nappy or other textile may also have associated splash marks but will also have a centre to the injury where the injury would be more severe and lessening in severity towards the edges of the injury site.

21. In his opinion the most likely cause is a hot flexible pad or material that has been applied to the groin area and that can take up the shape of the body. This material will "bridge" creases in the skin which explains the lack of injury to the creases in the groin area. He explained that the length of time and the temperature of the object have a direct relationship to the injury suffered. That is to say that a very hot object will require a short period of contact to cause such a burn and an object of lower temperature will require a longer period. The lowest range of the temperature that can cause this type of burn can be as low as 50 to 55 degrees centigrade. This may feel hot but not scalding hot to the skin on the adult hand and yet capable of burning the skin of a seven-week-old baby. Mr Rayner was

Careful to illustrate this by reference to a range. Mr Rayner was careful not to give opinion on matters that was outside his expertise but felt that he could state that K would have been distressed when the injury occurred. The burns that K suffered will have presented as blisters. The pink area is where the epidermal layer has been removed following the cleaning of the blister site.

22. Finally, Mr Rayner stated that he had not conducted any experiments with the Commiphora Africana tea as he did not feel he would be able to undertake this properly. He observed that the issue of viscosity of the liquid may be relevant but that this would not alter his opinion on the likely mechanism and cause of the injury.

23. I next heard from the mother. After confirming the accuracy of her written evidence, the mother confirmed that the account is that K's injury was caused whilst Y was bathing her. The mother was in the kitchen and heard her cry out. She went into the bedroom and Y as holding her out away from her body. She stated that she had mistakenly poured hot water on K but that most of it had gone onto Y's legs. This she said was the true version of events and not the version that was recounted by her on 11 June 2018.

24. The mother explained that Y bathed the children in the bedroom that she shared with the mother. Under her instructions, the mother would prepare

three buckets. These buckets are seen in the photographs that were taken by the police. The pink bucket would contain boiling water from the kettle and has a lid. The other first of the two grey buckets would be empty and the other filled with cold water. The water would be mixed in the empty bucket before pouring on the child.

25. Y would sit on the edge of seat with her legs in the baby bath holding one of the children on her lap. She would then pour water onto them and the water would be caught in the bath. When pressed, the mother told me that she washes using a bucket that has a mixture of hot and cold water to a suitable temperature. She was unable to explain why this method was not employed in bathing her children other than saying that she followed Y's instructions.

26. The mother continued by stating that after hearing K cry out. She came into the bedroom and found Y to be panicking. K was distressed and the mother breast fed her for comfort. Initially she only noticed blisters to the front of her groin area. She did not see the full extent of the injury until after she had arrived at hospital.

27. In cross examination she stated that she made up the tea story and took the blame for Y. She was worried about Y's immigration status as she did not have "any papers". She was unable to explain why she stated otherwise in examination in chief and in her police interview, where the

police specifically addressed this issue with her. She denied being in fear of Y or any other person.

28. The mother was taken carefully through the time line for 11 June 2018. I have detailed this above and will not repeat it. The mother accepted that she contacted the General Practitioner within minutes of K being injured. She accepted that she lied to the General Practitioner. She also agreed that she lied to the Health Visitor, the treating teams at the two hospitals and the police. She was unable to explain why other than expressing her concern for Y. The mother was apologetic and remorseful about her actions especially when she was reminded that her daughter was seriously injured and that the treating medical team needed the best information to provide the best treatment for K.

29. In cross examination, the mother's motivation was the subject of a great deal of scrutiny. The mother maintained her stance in respect of Y's immigration status and denied that her second account was connected to her application for an identity card, stating the timing was coincidence. Mother was unable to explain why she maintained the first version of what happened for so long despite attending Court in respect of the children, and could not explain why she did not consider taking a taxi or using public transport, instead of taking an hour and twenty minutes to arrive at the hospital. Mother told me that she and Y tidied before going

to the hospital, but could not explain why. She identified the pot on the cooker in the kitchen as containing (commiphora) tea she had been drinking post-birth.

30. The last occasion mother saw Y was in the hospital on 16th June 2018. Mother maintained that she told Y she was going to tell the 'truth', Y got angry at this and left. Mother stated that she attended the house on 30th June 2018 to collect her belongings and that Y's belongings were still there. She asserted that G was wrong to insist that the mother and Y appeared to leave the property on the same day later in July or August. I note that the mother did not challenge G.

31. The father was the last witness to give evidence. He confirmed some of the background information and explained that he did not know about K's injuries until she had already been admitted to the hospital. When mother told him about spilling tea on K, he was angry. The mother did not tell him the second version of events until after she had told the medics. Father told me that when he saw the pictures of the injuries, he did not believe what the mother was telling him as an explanation. The father hinted at some difficulties he has experienced with Y and he was aware that she did not approve of his relationship with the mother.

Analysis and conclusion

32. I have carefully considered all the evidence within the court bundle and that which I heard from the witnesses. I have also considered the

concessions made by the mother to some of the allegations on the Local Authority's schedule. I accept those concessions and make those findings.

33. The only narrative from Y is contained her statement to the police. Y made no comment in her police interviews. Despite being granted party status, Y has not participated in these proceedings. The mother has been unable to put her case to Y. However, I note that in Y's police statement, she gives appropriate consistent details.

34. I have profound difficulty with the mother's evidence where neither of the versions put forward are supported by the medical evidence, which is clear and consistent throughout (including first opinion of treating medical profession). The medical evidence makes clear that the injury to K could not have been caused by spilling or pouring of hot liquid (whether tea or water), due to the lack of 'splash' marks and the way the injury presents.

35. I have carefully considered mother's reasons for lying and I find them to be wholly unpersuasive. The mother's concern about Y being deported was mentioned for the first time in the witness box. This was put to her at some length in her police interview but did not cease on this opportunity to provide this as her reason for lying. Whilst accepting that culturally, the mother may show deference to her friend (sister/cousin/aunt) as an elder, that does not provide a satisfactory explanation for the continuing series of lies to the medical profession some of whom were involved in treating K, the police, social workers and the Court in circumstances where her child was seriously injured. I have also taken into account that the children were conceived by IVF and were very much wanted and loved by the mother. I have also noted that despite the injury cause to K, otherwise professionals have raised no concerns about the mother's ability to care for the children.

36. I remain concerned that no account has been provided which explains the injuries sustained by K. It remains the case that on the evidence, the mechanism for the injury and the identity of the person who caused it is lacking and I must be careful not to strain to identify a perpetrator in these circumstances.

37. Having considered the totality of the evidence before me, I have no hesitation in making the findings that the mother and Y conspired to mislead professionals in respect of both the mechanism for the burn and the perpetrator; and that no satisfactory explanation has been provided either by Y or by M that would explain how burns to K were caused. I further find that the burns occurred whilst K was in the care of mother and Y and were inflicted or caused either by mother or by Y.

Post-Script

Families are the building blocks of our society and in Public Law Proceedings, the Courts deal with some of the most vulnerable families. Professionals who work in the Family Justice System are highly skilled specialists who often work on complex cases involving serious intricate forensic issues. Their skill set and professional standards are essential for those who represent the parties in Public Law Proceedings. It is incumbent on those representing the parties facing serious allegations to ensure they have seen, read and understood all the evidence in the case and to ensure that the party who they represent has been able to participate meaningfully in the court process.

I note that in this case, neither the parents nor their Counsel were aware that there were coloured photographs of the injuries that were commented upon in detail in the written report of the jointly instructed expert. Until she was partway through giving oral evidence, the Mother had never seen the transcript of her police interview. Despite being in possession of Y's photograph, the mother's

solicitors failed to mention this to the local authority or their own private investigator, resulting in much embarrassment when the wrong person was witness summonsed and attended Court. Counsel for the parents have both informed me that they are immigration specialists, consequently the other professionals have had to work very hard to make sure that the hearing could be fair and effective. The mother's evidence has taken much longer than necessary, which can only have made it more stressful than it needed to be. There is no room in the Family Court for such a lack of care and lackadaisical approach to case preparation.