



Neutral Citation Number: [2022] EWHC 2332 (Fam)

Case No: LN21C00550

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/02/2022

Before :

MRS JUSTICE LIEVEN

Between :

LINCOLNSHIRE COUNTY COUNCIL

Applicant

and

MS

First Respondent

and

FT

Second Respondent

and

JB

Third Respondent

and

X and Y

(Minors represented via their Children's Guardian)

Fourth and Fifth Respondents

Ms Sara Davis (instructed by **Lincolnshire County Council**) for the **Applicant**
Mr Patrick Bowe (instructed by **McNeil and Co Solicitors**) for the **First Respondent**
Ms Joanne Jenkins (instructed by **Sills & Betteridge Solicitors**) for the **Second Respondent**
Sehrish Hussain (instructed by **Ringrose Solicitors**) for the **Third Respondent**
Ms Meryl Hughes (instructed by **Bridge McFarland Solicitors**) for the **Fourth and Fifth Respondents**

Hearing dates: 17 February 2022

Approved Judgment
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MRS JUSTICE LIEVEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Lieven DBE :

1. This case concerns two children, X aged 10 and Y age 9 months. An Interim Supervision Order ('ISO') was made in respect of X on 7 July 2021 and an Interim Care Order ('ICO') was made in respect of Y on 7 July 2021.
2. The precipitating event was that on the 29 June 2021 a referral was received by social services from the Health Visitor team. The mother ('MS') attended for Y's 8 week check and showed the health visitor bruising to his back and abdomen. A Child Protection Medical was undertaken and Dr Herath recorded a number of injuries which can be summarised as follows: A dark blue, linear mark on the left side of the back of the chest, measuring 6 cm x 0.4 cm in size; a parallel 2 cm linear mark, about 2 cm medial (inside) of the dark blue mark; the following linear marks to his right lower abdomen: 1 cm mark; 1 cm mark; 0.5 cm mark; 3 cm mark and 0.5 cm mark. All of these marks the medics say are Non Accidental Injuries ('NAI'). The only explanation given by MS was that she picked Y up from a beanbag chair and trapped his skin. Both parents deny causing injuries to Y.
3. HHJ Clarke ordered that this week's hearing should be a rolled up hearing. I agreed to hear evidence on the fact finding first and then decide the welfare issues. To summarise, the LA seeks findings in respect of the bruises referred to above either that one or other of the parents caused the bruises; or that they should both be placed in the pool of perpetrators; or if I find that the father ('FT') caused the bruises that MS failed to protect Y; emotional harm to the children by being in the house when FT was violent towards MS; and FT's habitual abuse of alcohol and MS minimising incidents of domestic abuse. FT concedes habitual use of alcohol and domestic abuse against MS.
4. I am going to deal first with the medical evidence. Dr Herath examined Y when he attended at hospital. Y was a non-mobile baby at 7 weeks old. Dr Herath recorded the bruises on Y's body and reached the clear conclusion that Y could not have caused the injuries to himself and that MS's explanation was not plausible. Therefore, the only conclusion that could be reached was that the injuries were NAI.
5. Dr Mittal was instructed to give an independent view. Dr Mittal produced two reports and gave oral evidence. In his first report Dr Mittal concluded that there were two possibilities - the first possibility was that the injuries were NAI and the second possibility was that they had been caused accidentally, or due to overzealous handling, by MS. In his report he concluded that the injuries remained unexplained. In his oral evidence he accepted on the balance of probabilities that NAI was the more likely cause. That is clearly correct and accords with Dr Herath's opinion.
6. Dr Mittal accepted that he did not give sufficient weight to the guidance from the Royal College of Paediatrics and Child Health and the alerting features that are suggestive of physical abuse, namely: No medical condition to explain the injuries; bruising in non-mobile children; multiple injuries or bruising in clusters; bruising on non-bony prominences i.e. the trunk; and bruises that have an imprint of an implement.
7. Those alerting features all arise in this case. The other factors that Dr Mittal did not fully consider in his written evidence are that FT has a history of alcohol and substance abuse, has mental health issues and that there is a history of domestic abuse. These all increase the likelihood of NAI.

8. Just to be complete on the issue, there is in the view of Dr Herath and Dr Mittal, and in my own view, no possibility that Y caused these injuries to himself. The 6 cm injury on the back would be impossible for a non-mobile baby to inflict on himself, and a child of this age would not have had the strength to cause the bruises on the abdomen to himself. I have therefore reached the conclusion that these are NAI.

The Parents' Background

9. There is a significant history of domestic abuse between MS and FT and in FT's previous relationships. FT has an unfortunate history of aggression and of cannabis abuse. There have been serious problems with alcohol abuse and violence over the years. There is an incident recorded on 29 May 2018 between FT and his previous partner where, according to the chronology, his step-daughter was caught between the two and got a black eye. FT denies causing any injury to the child. In 2019 and 2020 there are two convictions of assault against a neighbour. FT accepted the assaults took place but says he was provoked and acting in self-defence.
10. In September 2020, when MS was a few weeks pregnant, FT assaulted MS and head butted her in the face. MS called the police because she felt afraid but then did not support a prosecution. Y was born on 7 May 2021 and on 3 June 2021 MS again called the police because of alleged violence by FT, but again MS did not support a prosecution.
11. During the oral evidence it transpired that there had been another incident on or about 14 May 2021 when X intervened in an argument, FT shouted at her and called her a 'retard' which naturally very much upset X. X told her teacher that MS was going to leave FT and that FT threw something at MS. I find it very worrying that MS did not mention this incident in her evidence and denied knowing what P had been talking about. This incident took place only a few days after Y was born.
12. FT accepted that he had a serious alcohol problem but said that he was trying to address it from March 2021 onwards. He said that when Y was born, he was drinking less.

Oral evidence of MS and FT

13. I could not emphasise more strongly that both parents love their children and at some level want to do their best for them. The difficulty is transforming that love into real actions. MS spoke movingly about the children and her love for them and in principle I accept that she wants to protect them and look after them. During these proceedings she has moved into the home of the maternal grandmother and is looking after the children under supervision.
14. However, the evidence showed beyond any doubt that MS minimises FT's behaviour and lacks insight into the impact of FT's behaviour on Y and on X. Both parents think that if the children are not in the room when FT was shouting or that they did not actually see FT hitting MS that they have not been affected. I cannot emphasise enough how wrong this is. Children are affected by domestic abuse in the family throughout their lives.
15. Most importantly in the context of this case, I do not think MS was honest with the court. One clear example is that she failed to refer to the fight when FT shouted at X.

That failure casts into doubt the weight I can give to her other evidence about the injuries. MS's desire to protect FT appears to have overridden any ability to be honest with the Court.

16. MS said that on the evening of 27 June 2021 she went to collect X from her father, the Third Respondent ('JB'), and she left FT alone with Y for about 20 minutes. When she got back Y was settled and normal and he was behaving normally the following day (Monday) when FT went to work. MS had changed Y's nappy and didn't notice any bruising. She only saw the bruises to the back and abdomen when she took Y for his bath on the Monday evening.
17. When MS went to the Health Visitor ('HV') for the appointment on 29 June 2021 she told the HV about the bruising. She also told the HV that her relationship with FT was "good" and she mentioned nothing about FT's alcohol abuse or that 3 weeks earlier FT had assaulted her. In my view, her failure to be honest with the HV shows that MS is prepared to prioritise FT over the safety of her children.
18. I have no doubt FT loves the children and wants to care for Y. He did seem genuinely remorseful when considering his past conduct, but there are features in his evidence that are extremely troubling. He sought to minimise each incident which was put to him. He was quick to blame others for any occasion when he had been violent. He had not been honest in his witness statement or honest in his evidence. He only referred to the incident when he shouted at X when cross examined. Like MS, FT has very little insight into the impact on the children of his alcohol abuse and DV. FT denies hurting Y or any knowledge of how the injury happened.

The Law

19. The law in this case is straightforward, the burden is on the LA and the standard is on balance of probabilities. The judge has to look at all the evidence in the round. I give myself the *Lucas* Direction (*R v Lucas* [1981] QB 720) in respect of lies. The case is pleaded by the LA on the basis that if I cannot conclude which parent caused the injury, I should put them both in the pool of perpetrators. I should only do this if I cannot conclude on the evidence, which parent caused the injuries.

My Conclusions

20. The position of both advocates for the parents is that they do not robustly dispute the medical conclusions, but neither parent accepts they caused the injury. The starting point is that Y had a nasty, long, dark, livid bruise on his back and a number of bruises to the abdomen. MS's explanation for the injuries is not plausible and Y did not cause these to himself. It is the opinion of both doctors, but it is also common sense, that the bruises could not have been caused by MS picking Y up, most obviously the bruise on the back. I cannot accept that Y did not cry when that injury was caused. That bruise would have caused him pain and he is highly likely to have cried. Therefore, whichever parent was looking after him would have been well aware of the bruising.
21. In respect of *Lucas* and the treatment of lies, I understand why parents lie to social workers and to the court, but I can only emphasise that it is a huge mistake to lie in these cases. The consequence is that neither the LA nor the Court, can trust the parents.

22. I agree with the Guardian that this is very much a last chance situation for the parents. It is essential that they cooperate fully; are proactive in engaging with help offered; and are completely honest with professionals. The professionals are there to help this family but can only do so if the parents fully engage.
23. As to who caused these injuries, it would be easy to say it must have been FT because he has a serious alcohol problem and a history of aggression. There is no question in my mind that FT continued drinking after Y was born, namely on 3 June 2021 when he assaulted MS and around 13 May 2021 when he shouted at X. It is almost certain therefore that he was continuing to drink, he accepted that he continued to take cannabis and there is a serious history of aggressive acts. There is evidence he has not been honest with the LA or with me. But the Father does not have a history of violence towards children, and it is in my view unlikely that he would have deliberately hit Y. In the face of neither parent being honest with the court and in light of MS lying to various agencies, I cannot tell if MS is lying to cover up for FT, or whether there was a fight and something happened to Y which she caused. I am entirely confident that whatever did happen both parents must have been fully aware of it given the nature of the bruise on Y's back and the pain that would have been caused when it happened. Given MS's lack of honesty about what has happened I feel the correct conclusion is for both parents to be in the pool of perpetrators. I am so uncertain as to which parent did it that is the correct finding on the evidence I have seen.

Other findings in threshold

24. DV and alcohol abuse are conceded and are supported on the evidence. I find that because the injuries are NAI there would have been harm caused to both children while all this was going on. MS has minimised the nature and extent of DV and she seems to have normalised it. She loves FT, and seeks to protect him and maintain the relationship, but she absolutely needs to prioritise keeping the children safe, both physically and emotionally.
25. Despite the fact that this was a rolled-up hearing, it was decided by all parties and the court, after I gave judgment on the fact finding element, that I should adjourn final welfare decisions for a number of weeks for the parents to engage in various work with professionals. I therefore give no judgment on the welfare element of the proceedings.