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Re L-R (Children) (2011)

[2011] EWCA Civ 1034

08/03/2011

Barristers
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Court
Civil Division

Practice Areas
Public Children Law

Summary
A judge had been entitled to find that cuts to an eight-year-old child's head and a burn to his leg were self-inflicted. Whilst the medical experts had not encountered such self-harm before, they had not excluded the possibility that the injuries were self-inflicted and the judge had not erred in making a positive finding, which was, in principle, always more satisfactory than determining merely that an injury had been caused by any one of a pool of possible perpetrators.

Facts
The first appellant child (G), supported by the second appellant local authority, appealed against factual findings that cuts to his head and a burn to his leg were self-inflicted. The first and second respondent "mother and father" (M and F), who were nationals of the Ivory Coast, had entered the United Kingdom with G and the third respondent child (D). D, who was born in 1996, was F's daughter. G, who was born in 1999, may have been F's son. Whilst the parentage of D and G was not clear, they had lived as a family with M and F in cramped accommodation. D and G had not previously lived together. The move to the UK, accompanied by the change in surroundings and language (G did not speak English) caused serious emotional disturbance to G. In February 2008, when aged eight, G was admitted to hospital where he was found to be suffering from lesions on his trunk, legs and buttocks, and three cuts to his head. He was admitted again four days later with a further six cuts to his head. G was later found to have a burn to his leg caused by a fire started in his bed. The local authority issued care proceedings in respect of D and G, who were placed in interim foster care, and a fact-finding hearing was held to determine who was responsible for G's injuries. It was the local authority's case that any or all of D, M and F had caused G's injuries. They denied that and asserted that his injuries were self-inflicted. The judge heard extensive medical evidence from four experts, the thrust of which was that self-harm was hugely unusual in a male child, particularly one so young, and that self-inflicted cuts to the head were unknown to doctors and unreported in medical literature. It stopped short, however, of concluding that it would have been impossible for G to have injured himself in that way. The judge also heard oral evidence from M and F, who contended that the lesions had been caused by beatings which occurred before G had entered the UK, and that he had cut himself and started the fire which led to his burn. The judge also had evidence

from D and G in the form of videotaped interviews. D had stated that G had injured himself. In two interviews, G had admitted his responsibility for the injuries, but in a third interview he denied that and accused D of cutting him and starting the fire. The judge found that the medical evidence was consistent with both explanations, and that a number of factors could have precipitated G changing his account, including his preference for his new life with foster parents. The judge concluded that M and F were responsible for beating G, but that the cuts and the burn were self-inflicted. G argued that the effect of the medical evidence was so powerful, it disentitled the judge to have found that his injuries were self-inflicted, and that the judge's factual findings in that regard were, accordingly, perverse. The local authority submitted that the judge had erred in failing to attach sufficient weight to G's later interview denying responsibility for the cuts and instead blaming D, and in attaching too great a weight on the evidence of M and F who he had found to be responsible for beating G.

Held

(1) While the Court of Appeal would always keep the door open to appeals against findings of fact, it was a heavy task to persuade the court that a judge of the Family Division, in a reserved judgment, had erred in declining to find M, F or D responsible for G's cuts and the burn. That task was an even steeper one when the evidence that had been before the judge was surveyed. The judge had had well in mind the weight of medical opinion contrary to self-harm and had expressed a concise and accurate summary of the medical evidence in his judgment. His finding that it was consistent with both explanations, namely that the injuries were either self-inflicted or inflicted by another person, represented his reminder to himself that the medical experts had not gone so far as to exclude self-harm on G's part. Although they had not encountered such self-harm before, they had not excluded the possibility that the cuts were self-inflicted. The judge had considered that he could make a finding in a positive form, which was, in principle, always more satisfactory than determining merely that an injury had been caused by any one of a pool of possible perpetrators. In those circumstances, he had been entitled to find that G was the perpetrator of his own cuts and had caused the fire. (2) (Per Jacob L.J.) Legal proceedings could never bring out the absolute truth of an event and the best that a judge could do in reaching a conclusion was to go by the evidence he had before him. If a judge did that fairly, by taking into account all relevant matters and ignoring irrelevant ones, that was the best that the human system could devise. In the instant case, the judge had weighed the evidence fairly, and whilst the absolute truth could never be known, his conclusion was one he was fully entitled to reach.

Permission

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