

A Local Authority v C (2011)

[2011] EWHC 231 (Fam)

11/02/2011

Barristers

Alex Verdán KC
Kate Branigan KC
John Tughan KC

Court

High Court

Practice Areas

Public Children Law

Summary

Fact-finding. Allegations of sexual abuse to pre-pubertal child and the importance of compliance with the RCPCH Guidelines.

Facts

A (a girl born in late 2006) and B (a boy born in April 2008) were removed from the care of their parents on 18 September 2009 following events which resulted in A sustaining injuries around her vagina.

On the 15th September 2009 the father telephoned NHS Direct as A had suffered an injury and was bleeding from her vaginal area. The parents said that A had slipped and fallen whilst the mother was bathing the children and leaned out of the bathroom door to speak to the father in the adjacent bedroom. A was taken immediately to hospital as per the advice and underwent several examinations.

At 12 noon on the 16th September 2009 Dr H, Consultant Community Paediatrician on duty to deal with child protection referrals, was informed about the case and conducted an examination of A, including a "very brief" physical examination as A was obviously distressed and clinging to the father. Dr H concluded that A was not at risk from the parents, but should remain in hospital for a further night. The next day, A was discharged without it being discussed with the Named or Designated Doctor or Named Nurse for Child Protection.

On the 18th September 2009 Dr C, Acting Named Doctor for Child Protection at the NHS Trust, was "amazed" to learn that A had been discharged, and a strategy meeting took place. The children were to be removed to foster placements, the parents were to be interviewed by the police, and A re-admitted and re-examined under general anaesthetic ("EUA"). The EUA commenced at 7pm, with 11 people present including Dr C and Dr R, Designated Doctor for Child Protection. Following the EUA, the father was arrested on suspicion of rape. The father has since been informed by the police that they are taking

no further action.

The matter came before Mrs Justice Theis for a fact-finding hearing lasting 11 days. Three of the paediatricians had been joined as interveners in the proceedings, and the NHS Trust had been given permission to attend hearings by way of a noting brief. The learned judge recorded that the court's ability to focus on the extent of and cause of A's injuries was hampered by the failure of some of the clinicians to follow the RCPCH Guidelines ("The Physical Signs of Child Sexual Abuse" An evidence-based review of guidance for best practice, March 2008, the Royal College of Paediatrics and Child Health) and internal NHS Trust guidance.

The LA did not pursue a case that the mother caused the injuries to A, rather that she knew more about what happened than she was letting on. The LA's case against the father was that he caused the injuries and knew more than he had said to date.

A's (broadly agreed) injuries consisted of bruising to the right labium majus, less extensive bruising to the left labium majus, and a laceration of the posterior fourchette.

There was great evidential debate as to the existence of any injury to the hymen. The learned judge found it very surprising that Dr C's contemporaneous clinical notes of the EUA were very limited (9 lines of brief notes) and that there were no line drawings, falling far short of the minimum required by the NHS Trust guidance and the RCPCH Guidelines. The learned judge considered that photographs taken on the 18th September assisted to some extent, but did not assist greatly in resolving this issue. She considered it striking that some of the basic facts as to the EUA remained unclear, such as who examined A first.

Held

Theis J came to the clear conclusion that she could not be satisfied, on the balance of probabilities, that there was a hymenal injury. She considered that A should not have been discharged before there had been a strategy meeting. The use of a colposcope, or other options, should have been considered. Insufficient attention had been given to the importance of the parents' consent.

The learned judge could not be satisfied, on the balance of probabilities, that A's injuries were a result of her being sexually abused by the father, the injuries being suggestive of such abuse but not diagnostic of it. The expert evidence of a Consultant Paediatrician and a Consultant Community Paediatrician was at best equivocal about sexual abuse being the cause of the injuries, neither expert agreeing that it was the most likely cause of the injuries. The experts could not rule out the cause of the injuries being A accidentally falling on a toy giraffe, although they had difficulty in working out the precise mechanism.

The learned judge concluded that, on the balance of probabilities, the injuries to A were caused accidentally. The judge's acceptance of the mother's evidence that a toy giraffe was there on the evening of the 15th September 2009 was not sufficient for a positive finding that the injuries were caused by a fall on the toy, although that remained a possibility, and the precise cause of the injuries remained unexplained.

The learned judge ended her judgment with helpful "lessons to be learnt". She stated that the message should go out loud and clear that compliance with the guidance in terms of written records (including line drawings) of examinations using precise terminology should be the norm, and endorsed the observations of Mr Justice Baker in *A London Borough Council v K* [2009] EWHC 850 (Fam) para 161 as to recording the examination on DVD. The learned judge stated that anyone who does this type of work must not only be familiar with the RCPCH Guidelines, but the expectation that they are followed, in the absence of good reason.

Permission

Family Law Week 