

# Re A (Children) (2012)

**[2012] EWCA Civ 1278**

18/07/2012

## **Barristers**

Alex Verdán KC  
Alison Grief KC

## **Court**

Court of Appeal (Civil Division)

## **Practice Areas**

Public Children Law

## **Summary**

In deciding that a father was responsible for inflicting fatal injuries on his baby, the judge had not reversed the applicable burden of proof or reached an unreasonable conclusion.

## **Facts**

The appellant father (F) appealed against a decision in care proceedings that he was responsible for inflicting fatal injuries on his young baby (B).

In his judgment following a fact-finding hearing, the judge had considered who had caused B's injuries by referring to B's mother (M), his four-year-old brother (C) and F in turn. He stated that the burden of proving a fact was on the party alleging it. He first eliminated M as being responsible for B's injuries, and went on to conclude that there was no real possibility that C had caused B's injuries. He found that F was responsible for causing B's injuries, and said that he had reached that conclusion by eliminating the only possible alternatives and by rejecting F's account. Since the trial, C had been involved in an incident where he had kicked a carer on the shoulder and caused her severe bruising.

F submitted that, as a matter of law, the judge had misdirected himself as to his approach, and that if he had correctly and fully applied the principles in *S-B (Children) (Care Proceedings: Standard of Proof)*, *Re* [2009] UKSC 17, [2010] 1 A.C. 678, he would not have expressed himself in the way that he did when concluding that F was responsible for B's injuries. In particular, F argued that (1) the judge had implicitly reversed the applicable burden of proof, requiring F to prove that he was not responsible for the injuries; (2) the judge had decided that F was responsible for B's injuries by conducting a process of elimination: it was only by eliminating M and C that F was left as the only remaining possible perpetrator.

## **Held**

1) The judge's reference to the burden of proof had to be taken in the context of the surrounding passages of the judgment in which he considered who was responsible for B's injuries. In the words that

he had used, the judge was saying that he had to consider whether F's explanation was a real possibility or plausible. That was a permissible and sensible approach. Accordingly, the judge had not reversed the burden of proof by requiring F to prove anything, S-B considered. (2) It was open to F to criticise the judge for conducting a process of elimination, given that he had said that he reached his conclusion by eliminating the only possible alternatives. However, the judge had to reach a realistic conclusion and be as specific as the evidence permitted him to be. Overall, the judge's conclusion was supported by the evidence and was acceptably reasonable. (3) It was likely that it would be the same judge who would conduct the second stage of the trial. There was no doubt that the incident involving C kicking the carer was a subsequent event which the judge would be entitled and bound to consider. It would be open to the judge to reconsider the findings of fact that he had already made if that subsequent event was sufficiently material.

## Permission

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