

Re P (Findings of Fact) (2014)

[2014] EWCA Civ 89

06/02/2014

Barristers

Sam King KC

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

A judge had erred in concluding that medical evidence supported a traumatic cause for a child's injury, when in fact the evidence was equivocal. She had therefore approached the non-medical evidence from the wrong angle and her decision could not stand.

Facts

The appellant (P) appealed against a decision that he had caused non-accidental injuries to the daughter (K) of his partner (M).

K was approximately one-and-a-half years old. She and her brother lived with M and P. M was divorced from their father (F). K was admitted to hospital after having a fit. She had red marks on her head which had faded by the time she arrived at the hospital. She was discharged later that day, but continued to be unwell. An MRI scan revealed that she had bilateral subdural collections over both cerebral hemispheres, but they had occurred weeks or months earlier. She also had a small retinal haemorrhage. M was told that the children could not stay in her care. The following day P rang social services and told them that he had accidentally knocked K down the stairs a few weeks earlier. He also told police that on the day K was admitted to hospital, she and the family dog had head-butted each other, causing a bruise on her head. A few days later he admitted that the stairs incident was a lie, made up in order to prevent M from losing her children. A psychological report noted that P's mental state was fragile and he was prone to acting impulsively. F issued proceedings seeking a residence order in respect of K and her brother. The judge stated that the medical evidence was equivocal and could point to either a natural or a traumatic cause for the retinal haemorrhages and the fit. However, she concluded that "there were several features that supported [a traumatic cause] as being likely". She found that the most likely explanation for P's lie about the stairs incident was that he was seeking to cover up another traumatic incident which he was too frightened to admit. She also found that he had embellished the dog incident.

P submitted that it was wrong for the judge to have shored up equivocal medical evidence with the non-medical evidence concerning the lie.

Held

(1) In an appropriate case, findings of non-accidental injury could be made even though the medical evidence did not establish that there had been such an injury. The court had to consider the totality of the evidence and make findings on the balance of probability (see para.52 of judgment). (2) The case was unusual in that P admitted lying, and offered an explanation why. It was more common for the lie to have been found by the judge. The judge had given careful consideration to P's explanation and referred to the features of the psychological report which supported what he said, namely his fragile mental state and impulsivity. She gave cogent reasons for concluding that the probability was that he was lying to hide another, more sinister, episode of trauma. Her reasoning was shaped intuitively as a result of her assessment of P as a party and a witness. An appellate court should be very cautious about interfering with the trial judge's assessment, particularly when it depended heavily upon observation of a party over several days, including in cross-examination directed to the particular point in issue. The case was difficult and unusual, and the care with which the judge approached it was apparent from her judgment. However, there was a problem with her findings. That problem lay in her treatment of the medical evidence. The non-medical evidence was not particularly robust in nature. It could hardly be said that it pointed inexorably to one end. There was no margin for error when the judge considered its implications in light of the medical evidence. Her view that there were several features of the medical evidence that supported a traumatic cause was either not accurate or not explained. A proper approach would have been to recognise that, at best, the medical evidence did not help a great deal. If the judge's words indicated that she derived positive support from it then she had approached the non-medical evidence from the wrong angle. The support that she might have erroneously derived from the medical evidence might have been sufficient to propel her to a finding that she would not otherwise have made against P. Had she acknowledged that the most that could be said of the medical evidence was that it was, in some respects, consistent with a traumatic cause, she might have questioned to a greater extent whether there was any event at all on the day in issue, and might have taken a different view as to the import of P's lies. A contemplation of the absence of medical features positively supporting a traumatic event might also have led her to remind herself of those elements of the medical evidence that did not fit well with a traumatic event (paras 33, 53-59).

Permission

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