

# Re AD & AM (Children) (Fact Finding: Re-Hearing) (2016)

**[2016] EWHC 2912 (Fam)**

16/11/2016

## **Barristers**

Sally Bradley  
Julia Townend

## **Court**

Family Division

## **Practice Areas**

Public Children Law

Re-hearing in relation to a 2013 fact-finding, which had concluded that a mother had caused life-threatening injuries to her son and that these were non-accidental. Cobb J sets out the core principles of a re-hearing.

This was the re-hearing in relation to a 2013 fact-finding, which had concluded that a mother had caused life-threatening injuries to her son and that these were non-accidental. Cobb J refers to the three stage test on an application for a rehearing (Re ZZ & Others [2014] EWFC 9 at [31]). This judgment addresses stages 2 and 3: namely, the court's reasoning for permitting a limited investigation and the calling (and re-calling) of evidence relevant to the facts ("stage 2": Re ZZ at [34]), and the determination of the "stage 3" process - the hearing of the review, considering "the fresh evidence alongside the earlier material before coming to a conclusion in the light of the totality of the material before the court" [6].

The judgment concerns two children, a boy AD (4) and his sister AM (7), who were living at home with their parents and paternal grandmother. A July 2013 fact-finding found that the mother had inflicted near fatal injuries on AD, who had suffered massive head wounds and spinal fractures. In 2013, a finding had been made that there was an incident where AD was left alone at approximately 4.30pm, but that this would not have been sufficient to cause the injuries.

The "stage 1" test was considered in February 2016 (Re AD & AM (Fact-Finding hearing) (Application for re-hearing) [2016] EWHC 326 (Fam)), and Cobb J was satisfied that there was "some real reason to believe that the earlier findings require revisiting". A piece of AD's skull had been recovered; this fragment was believed to reveal significant features of woven bones, possible signs of vitamin D deficiency and unusual thinness at the fracture site. Eight additional medical experts had provided further opinion.

Stage 2 - the shape of the enquiry

Following meetings between the experts, and submissions on the scope of “stage 2”, Cobb J indicated that a proper basis had been made out for reconsidering the following issues [8]:

- i) The extent of mineralisation or demineralisation of AD’s skeleton; whether this had any significance to the causation of the vertebral fractures; and the implications of any bone weakness on the skull fracture;
- ii) The newly obtained evidence (to be considered alongside the existing evidence) relevant to the possibility that AD experienced a ‘lucid’ interval after the “4.30 incident” [and before collapse at 9.30pm];
- iii) Whether recently-expressed opinions about the significance of the external appearance of the head (notably the swelling at the fracture site) provides any greater clue about the timing of the injury.

### Stage 3 – re-hearing

Cobb J revisited the law, and set out the following core principles [12] (summarised below):

- i) In a re-hearing, the previous findings are the starting point of the local authority’s evidence, and the evidential burden falls on the parents in challenging those existing findings, however the legal burden remains on the local authority to prove its case;
- ii) It is for the local authority to prove its case on the balance of probabilities;
- iii) In evaluating the evidence, the court must have regard to the wide canvas of material, both lay and professional. No person has as wide a perspective on that material as the judge, and they must “exercise an overview of the totality”;
- iv) The role of the court and the role of the expert are different – it is the court which is in the position to weigh the expert evidence against its findings;
- v) Prominently featured on the wide canvas ((iii) above) is the evidence of the parents themselves;
- vi) It is perfectly acceptable (and not uncommon) for the court to reach a conclusion that a medical condition or presentation has an unknown cause;
- vii) A court must bear in mind that “today’s medical certainty may be discarded by the next generation of experts, or that scientific research will throw light into corners that are at present dark” (Re U (Serious Injury: Standard of Proof); Re B [2004] EWCA Civ 567; [2004] 2 FLR 263).

Cobb J also summarised the law on the use of experts [13-16], particularly in light of one of the experts speaking of positioning himself against the “Child Abuse Community”.

The parents did not give further evidence and Cobb J set out the 2013 factual matrix [17]. There was detailed written and oral expert evidence before the court.

### Conclusion

Having reviewed the evidence, Cobb J found “no basis for diverging from the essential finding made in 2013 that the mother inflicted serious head injuries upon her son” [90]. Having found no proper basis for concluding that AD’s skull was thin, or materially weakened by disease or deficiency, Cobb J upheld the finding that the forces required to cause the extensive fracture must have been significant and in the absence of any account of an event of severity to cause such catastrophic injury, further concluded that they must be non-accidental [92].

With regard to AD's spine, in light of osteopaenia, Cobb J stated that he was no longer satisfied on the balance of probabilities that the thoracic fractures were non-accidental, and so withdrew that finding.

Save for that withdrawal, the outcome of the fact-finding hearing was as before.

**Permission**

 **Family Law Week**