

# A v W and Others No 1 (Fact Finding) (2016)

**[2016] EWFC 64**

15/12/2016

## **Barristers**

Rex Howling KC  
Justin Ageros

## **Court**

Family Division

## **Practice Areas**

Public Children Law

Fact finding hearing within care proceedings concerning two young children.

## **Background**

Both parents had troubled childhoods that involved physical and sexual abuse, severe breakdown of relationships with their own parents and families, emotional neglect, drug and alcohol abuse, criminal convictions, mental health difficulties, being placed in care as children, and in the case of the mother, being born addicted to heroin caused by her own mother's chronic drug use. The mother's first child, L, died very young from congenital cytomegalovirus.

The parties' relationship, which commenced soon after L died, was characterised by domestic violence, drug and alcohol use and concerns for the mother's mental health.

On the morning of the 25th April the father called 999 stating that MN had gone "really vague and weird and just literally white and limp". An ambulance was called and MN was admitted to hospital where he was diagnosed as suffering from an acute subdural haemorrhage, and to have a chronic subdural haemorrhage, posterior rib fractures and fractures to the distal right and left femoral metaphases.

MK was placed with the paternal grandmother, and on discharge from hospital, MN was placed into foster care.

## **The law**

The court set out the legal principles to be applied in approaching the evidence in a fact-finding hearing as summarised by Baker J in *Re IB and EB* [2014] EWHC 369 (Fam). *Re C and B* [2011] 1 FLR 611 applied in considering whether any orders made in respect of the children's welfare were proportionate in the context of the case. Evaluation of all the options before the court having regard to the high degree of justification was required under Article 8 where placement orders were being sought, alongside consideration as to whether the lifelong welfare interests of the child under s.1 ACA 2002 required the court to dispense with the parents' consent in making such any such orders.

## The evidence

The court heard oral evidence from four medical experts, five local authority witnesses, an ISW, the parties, numerous family members and friends and the Guardian. The extensive written documentation amounted to 10 lever arch files.

The experts were agreed that the injuries arose from at least two separate occasions. The acute subdural haemorrhage was likely to have been caused by a traumatic event immediately (within two hours) of the 999 telephone call and the retinal haemorrhages likely to have occurred at the same time. Considerable force would have been required to cause such injuries. The fractures most likely occurred between 29 March – 8 April, the court accepting the experts' evidence that they were not caused at birth and/or on 25 April; again, considerable force would have been required to cause such injuries. The court accepted the experts' evidence that there was no metabolic or genetic cause; and in the absence of any reported event, they were non-accidental.

In attempting to establish a time line of events and who had care for MN over the relevant time period the court sought to detail the movements of the parents and the numerous visitors to their house over that time. The court had great difficulty in establishing a clear picture due to the parents' written and oral evidence (in particular that of the mother) being inconsistent, which created "layers of untruths and has made an already complex case much more difficult, due to the multiplicity of lies and untruths" [13]. Furthermore, the court found that the parents (in particular the father) had sought to tamper with the witnesses' evidence in their favour.

## Findings

Having regard to the parties' pattern of behaviour and the circumstances of the 24/25 April, the court found that it was more likely that MN was in the father's care when he suffered the acute subdural and retinal haemorrhages, taking into account that fact that he had woken to feed MN that morning, had made the 999 call, had struggled to wake the mother, and the transcript of that call. In light of the impossibility of establishing a clear time line for the preceding weeks, the court was unable to exclude either parent from the pool of perpetrators in respect of the fractures. Furthermore, it found there had been a failure by both parents to protect the children who were at risk of future significant physical harm and neglect due to the parents' daily drug use, the number of adults staying in the home and significant emotional harm caused by the volatile nature of the parents' relationship and their neglectful behaviour towards the children.

## Permission

 Family Law Week