

## Re M-B (Children) (2015)

**[2015] EWCA Civ 1027**

14/10/2015

### **Barristers**

Rebecca Foulkes

### **Court**

Court of Appeal (Civil Division)

### **Practice Areas**

Public Children Law

### **Summary**

A fact finding exercise following the discovery of a child's non-accidental injuries was so fatally flawed that it could not be used for a future evaluation of the welfare needs of the child and its siblings. The judge should have made findings on the evidence that the child's fractures were the result of non-accidental injury and identified the probable perpetrator or pool of possible perpetrators.

### **Facts**

A local authority appealed against the judgment in a fact finding hearing.

A post mortem examination following the death of a baby, aged 10 months, found seven fractures in his long bones that had occurred 25 to 50 days before his death. The cause of death was not identified. All four of X's siblings were consequently removed from the mother's care. The local authority relied on agreed medical evidence which showed no sign of brittle bones, and that the injuries could not have been self-inflicted. That evidence showed that each fracture was the result of significant force applied to the bone, typical of a blow, impact or snapping action and would not have occurred from minor domestic accidents, over-exuberant play, or rough, inexperienced parenting. The judge reviewed the evidence and discounted the father as a perpetrator. He did not discount the mother from causing the injuries, but found that she did not have reason to know of them.

The local authority contended that the judge had been wrong (1) not to make findings on the evidence that the fractures were the result of non-accidental injury; (2) not to identify the probable perpetrator, or pool of perpetrators.

### **Held**

The judge's reasoning was difficult to follow. He appeared to have concluded that the local authority's reliance on the lack of a satisfactory explanation for the injuries indicated a reversal of the burden of proof, whereas the case he cited as authority was clearly fact specific and wrongly elevated to a legal principle, *M (A Child) (Fact-Finding Hearing: Burden of Proof)*, *Re [2012] EWCA Civ 1580*, *[2013] 2 F.L.R. 874* considered. He had used the medical evidence inconsistently, on the one hand to exculpate the father on the grounds that if he had caused the injuries the child would have shown signs of distress in

his care, and on the other hand in deciding that the child's distress would not have been so obvious to the mother that she would have taken the baby to the hospital. The judge's fact finding exercise was so fatally flawed that it could not be used for a future evaluation of the siblings' welfare needs. The case was remitted for a rehearing (see paras 11, 14-16 of judgment).

Appeal allowed

**Permission**

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