This Judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

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Case No: YO21C00174
Neutral Citation Number: [2022] EWFC 172 (B)

IN THE FAMILY COURT

Date: 6 December 2022

Before:

MR RECORDER BICKLER KC

- -

Between

A LOCAL AUTHORITY

Applicant

And

(1) THE MOTHER
(2) THE FATHER
(3) THE CHILD
(4) THE CARERS

Respondents

Clive Newton KC (Instructed by the Local Authority Legal Department) appeared for the Local Authority.

Darren Howe KC and James Hargan (instructed by Donald Race and Newton Solicitors) appeared for the Mother.

Sara Lewis KC and Christopher Rank (instructed by Wollens Solicitors) appeared for the Father.

Clare Garnham and Jane Aldred (instructed by Switalskis Solicitors) appeared for the Children.

Alison Brooks (Instructed by Barnes and Partners Solicitors) appeared for the paternal grandmother and paternal great aunt.

Judgement of Recorder Bickler KC

1. Child A and Child B are twins born in 2020. I shall refer to their mother as M and their father as F. The Third and Fourth Respondents are the paternal grandmother and paternal great aunt respectively, known as the 'carers'.

2. The Mother is an Accountant. The Father is an Architect. None of the adults in this family have ever been involved with Social Services. There are no social concerns relating to the adults' physical or mental health, alcoholism, previous episodes of domestic violence or any other social concerns that are often features of cases of this kind. Each of the adults has an exemplary character.

3. On 17th April 2021 A was taken by his parents to the A Hospital. This followed an account of a fall suffered by A when he was left momentarily on a changing table by his Father. Initially, A was discharged from hospital with no identified injuries or safeguarding concerns. Upon peer review of the x-rays and a further skeletal survey, A was found to have sustained the following injuries identified by radiography on the following dates:

    - Chest radiography on 17th April showed the outline, upon review, of the third, fourth and fifth ribs posteriorly, consistent with acute rib fractures. Additionally, there was a potential for a fracture of the seventh rib laterally, consistent with a healing fracture.

    - A CT chest scan on 20th April confirmed the imaging of the third, fourth and fifth posterior rib fractures.

- A skeletal survey on 21st April additionally found a fracture to the left distal femur that was a partly healed metaphyseal fracture, a right distal femur fracture and a right distal tibia fracture.

- On 4th May a further skeletal survey additionally identified a right humeral fracture together with the other fractures that had previously been identified.

4. It is right to note that twin B was subsequently x-rayed and examined and no injuries were found.

5. A suffered 3 accidental events in the weeks prior to the discovery of these injuries. The fact of the events are accepted by all parties, including the Local Authority. The dates of the three identified episodes of falls, that are said by the parents to have caused accidental injuries and explain the injuries discovered, are the 21st March, the 13th April and 17th April 2021. Each event has been the subject of scrutiny during the course of this fact-finding hearing. The mechanism of the falls and the subsequent reaction of A has remained contentious.

6. The injuries fall into 2 distinct categories of acute and non-acute. The injuries identified and agreed to be acute are the third, fourth and fifth ribs together with the right humerus and the right distal femur. The non-acute and healing injuries are said to be the seventh, eighth and ninth ribs, together with the left distal femur and right distal tibia. Acute is defined as less than seven days before 17th and 21st April and healing is said to be at least five to ten days before the imaging.

7. The written submissions of the Father contained a helpful summary of the evidence of Dr Barnes consultant radiologist. It is agreed by all parties and I adopt and set it out below:-

a. Left 3rd,4th, and 5th ribs – acute on 17th April therefore most likely caused between 7th and 17th April 2021
b. Left 7th rib – on or before 12th April
c. Left 8 rib – on or before 29th April (this includes dates after safeguarding procedures were invoked in hospital and dates while A was in foster care)
d. Left 9th rib - on or before 16th April

e. Right distal femur – 11th – 21st April

f. Right distal tibia – on or before 16th April

g. Left distal femur – on or before 16th April

h. Right humerus – on or before 29th April. This injury was first apparent on 4th May 2021 therefore Dr Barnes accepted that the most he could say from a radiological perspective was that it was at least 5-10 days old on 4th May 2021. Of course, it may have been present on 21st April but was not seen.

8. Thus, the issue for this finding of fact hearing can be succinctly described follows:- 3 events are described. They are accepted by all parties as having occurred in one form or another, with presentation of A at hospital in the immediate aftermath of the 21st March and the 17th April. Can the LA be disprove the explanations provided by the parents for the injuries sustained by A or not? If the Local Authority cannot so disprove, then it will follow that threshold has not been crossed given that there are no other concerns alleged. If the Local Authority do successfully disprove the accidental explanations, then the court will be left without explanation for multiple fractures to a 6-month-old baby.

9. The Local Authority's case is that the Mother and or Father has inflicted these injuries upon A in at least 2 separate moments of loss of control. The Local Authority contend that the non-perpetrating parent should have known that A was injured as a consequence of his excessive crying and is therefore responsible for failing to protect him.

10. Once the injuries were discovered A and B were discharged from hospital on 26th April. They were initially placed together in foster care for a period of one month. On 26th May they both moved to live with the Third and Fourth Respondents where they remain to date. The parents see the children and care for them all day every day under the supervision of the Third and Fourth Respondents. There is currently an interim Supervision Order, the interim Care Order having been discharged and replaced with an interim Supervision Order on 10th August 2021. The family reside in the south of England, but the maternal grandmother resides in north of England and the family was staying with the maternal grandmother when the injuries were discovered, hence the involvement of this Local Authority.

11. A brief description of the accidental events are as follows:-

12. On the 21st March 2021 the grandfather was holding A in the living room, the family having driven down to visit the paternal grandparents on that date. A somehow wriggled out of his arm and the grandfather attempted to stop A falling but was unable to successfully prevent A banging his head, probably on a nearby coffee table. The PGF attempted to grab A. F was nearby and did grab A as he fell on the coffee table. A was presented to the Hospital very soon after, where the care focused primarily upon his identified head and neck injuries.

13. The second fall was on 13th April 2021 when the Mother was carrying A in the grounds outside the MGM's apartment and tripped and fell. A fell from his Mother's arms onto a concrete path. He was immediately taken inside and examined. A decision of all the adults, including 2 visiting friends, was that A had not sustained serious injury and did not require medical treatment. M herself sustained grazed and cut knees.

14. On 17th April 2021, A fell from a changing table at the home that the family were sharing with the maternal grandmother. The Father had turned away to get some clothing leaving A on the top of the unit lying on a changing mat. He heard but did not see A fall to the floor. The parents immediately took A to hospital [not the same Hospital as the 21st March given the geography] They disclosed the fall and the visit to the other hospital, but not the fall on the 13thApril, until they were told on the 23rd April that A had sustained multiple fractures.

15. To assist the Court in its consideration as to whether these episodes can explain A's injuries, a series of Part 25 expert medical witnesses were instructed. It is worthy of comment that it has taken a very long time from discovery of injury for the case to reach trial. This was partly as a consequence of Dr Cartlidge [consultant paediatrician] advising that it was necessary to instruct a Clinical Geneticist. In the end, two Geneticists were instructed, namely Dr Irving and Dr Saggar, as was a Consultant Paediatric Radiologist, Dr Barnes. Additionally, the Court heard from the Consultant Paediatrician who was on duty at the second Hospital at the relevant time, namely Dr D.

16. The Local Authority threshold is that the injuries sustained by A were inflicted as a consequence of a loss of control by one of his parents. Additionally, that the parent who inflicted the injury did so by exerting pressure or otherwise assaulting A in a manner that they would have realised was excessive and inappropriate. The non-perpetrating parent should have been aware that the injuries had occurred by reason of the child's reaction to normal handling after infliction of the injuries and should have sought medical assistance sooner than 17th April. It follows that on the Local Authority's case both A and B are at risk of suffering significant harm from similar inflicted injury if returned to the care of their parents.

17. The parents' case is that they have been loving, caring parents who did everything they could to care for their twins to a high standard. They accept that it is extremely unfortunate and somewhat embarrassing that A was subjected to three accidental episodes in such a short space of time. They attended upon the hospital following the episodes on 21st March and 17th April. They did not attend at the hospital on 13th April because they did not believe that A had sustained injuries that required medical assessment or treatment. Further, that they did not disclose on 17th April that A had had a fall on 13th April because again they did not believe this to be of significance. They later disclosed this episode a few days later upon being told of the extent of the multiple fractures that A had been found to have sustained following additional radiology. The Local Authority regard the late disclosure of the event on the 13th April as having a more sinister explanation.

The Law

18. I have received a Legal Framework that has been agreed by all parties together with a List of Authorities. An additional authority was provided at the close of the evidence on behalf of the Mother. It is the judgment of Mr Justice Newton in ***Central Bedfordshire Council v. F, D and C***. The judgment is dated 29th July 2022. I confirm that I have applied these legal principles faithfully to this case. Many of them are well-known and do not require lengthy explanation. However, I confirm that the burden of proof lies with the Local Authority and the standard of proof is the balance of probabilities. It is for the Local Authority to disprove the explanations of accidental injury proffered by the parents. I am reminded of the judgment of His

Honour Judge Bellamy in the case of ***Re FM*** **[2015] EWFC 26** in which he indicated, and I quote:

> "It is the local authority that seeks a finding that the injuries are non-accidental. It is for the local authority to prove its case. It is not for the mother to disprove it. In particular, it is not for the mother to disprove it by proving how the injuries were in fact sustained. Neither is it for the court to determine how the injuries were sustained. The court's task is to determine whether the local authority has proved its case on the balance of probability. Where as here there is a degree of medical uncertainty and credible evidence of a possible alternative explanation to that contended for by the local authority, the question for the court is not has the possible alternative explanation been proved but rather it should ask itself in the light of that possible alternative explanation can the court be satisfied that the local authority has proved its case on the simple balance of probability."

19. It seems to me that the approach as articulated in that case should be applied faithfully in the instant case. Of course, I must decide the facts on a binary system in which the only values are '0' and '1'. In reaching that conclusion I must assess all of the evidence including the wider canvas of evidence. The evidence of the parents and the other carers is obviously of the utmost importance. I must assess their credibility and their reliability following the fullest opportunity being given for their evidence to be scrutinised following searching questions asked by experienced Leading Counsel.

20. As to my approach in relation to the expert evidence, I bear very much in mind that the role of the Court and the experts are distinct and that I must weigh their evidence against my findings and evaluation of the other evidence in the case. I very much bear in mind ,as set out in the Judgment of Mr Justice Newton in ***Central Bedfordshire Council v. F, D and C*** **[2022] EWFC 130** that the Court must:

> "bear in mind the rubric that today's medical certainty may be discarded by the next generation of experts together with the hypothesis that causation must not be dismissed just because it is unusual. The Court must always exercise considerable caution when considering the significance of expert opinions, particularly where a condition or combination of conditions is unusual. Unusual, rare or unknown conditions do exist and it is sometimes not possible to identify what is not known or understood; what has been described in many cases as a known unknown."

21. Additionally, in looking at the wider canvas I am invited to consider the relevance of the judgment in ***Devon CC v. EB and Others*** **[2013] EWHC 968** and the judgment of Baker J, as he then was, in which he set out the importance and relevance of the impeccable character and description of the standard of care of the parents when set against the Local Authority's case, of having departed from normal behaviour and inflicted injuries on at least two occasions on A by a loss of control. It is not impossible, for parents of impeccable character to have inflicted injuries in a momentary loss of control, but in that case the Judge found that it would be 'surprising'.

22. I will have to weigh all the medical evidence against the evidence that I heard from the parents. If I find that there have been any lies told, I will direct myself accordingly.

23. Thus, it is against this legal framework that I now turn to the evidence that I have heard.

The Medical Evidence

Clinical Geneticists

24. I heard from both Dr Irving and Dr Saggar. Their evidence concentrated upon the finding of a Variant of Unknown Significance ("VUS") identified in the genetic profiling of A's gene, known as BMP1. Dr Saggar explained that A may also have inherited Hypermobility Spectrum Disorder ("HSD") from his Father, who was diagnosed by Dr Saggar upon examination as having suffered from HSD. Accordingly, the twins had a just greater than 50% chance of inheriting this condition. Upon examination A was found to have with some characteristics, including a Beighton score of 6 out of 10, compared to his brother of 4 out of 10, and other minor features.

25. The relevance of the VUS and possible HSD was the possibility that this may impact upon the bone density of A and therefore his bone fragility. If A suffered from some form of lowering of bone density and thus bone fragility, as a consequence either of

the genetic mutation found of the Variant of Unknown Significance or because of HSD, then the question arose as to whether or not this was of clinical relevance. The key question to consider was whether A might suffer fractures that children without such abnormalities would not suffer. The evidence therefore concentrated both on the mechanism and the level of force from the known accidental events. If A did suffer any reduced bone density it was agreed to be at the very mildest end of the spectrum and that an excessive force, more than rough handling, would still be required.

26. Various research papers were considered by both experts and explored in cross-examination. The papers did tend to indicate that children with osteogenesis imperfecta, agreed to be an umbrella term for reduced bone density, may because of the BMP 1 variant suffer reduced bone density that would cause fractures that would not otherwise have been sustained in a child without such a variant. Additionally, consideration was given as to the impact of HSD and various studies again tended to suggest that there was some connection between HSD and bone fragility. However, A had not suffered any further known fractures since April 2021, a factor considered important by both experts, notwithstanding that A had not suffered any similar accidents and was somewhat cosseted by his current carers.

27. The Clinical Geneticists essentially agreed with each other, although I found that Dr Saggar was perhaps more cautious in the way in which he approached the scientific uncertainties that undoubtedly surrounded this relatively new area of medical research and expertise. Dr Irving was more firmly of the view that there was no evidence that this child had reduced bone density or that he had any predisposition to fractures from a lesser force. Dr Saggar whilst tending to agree with the evidence of Dr Irving was also of the view that there may have been a small and mild reduction in this child's bone fragility which would not have caused spontaneous fractures and nor would his bones fracture easily. The consensus emerged that the likelihood is that the mechanism of causing such fractures would not alter, but what would potentially alter was a reduction in the level of force that needed to be applied for fractures to take place. Dr Saggar accepted that the variant that he had found in A was a Class 3 variant, likely to be benign, but he could not exclude that it had some clinical impact. Additionally, he was of the view that this child probably did suffer from being on the

Hypermobility Spectrum Disorder. My note that summarised the essence of Dr Saggar's evidence is as follows:-

> "If you have bone fragility but no other features of OI it is not known if fractures can happen without a force that is not normal. What I can say is it won't be rough handling and you will need some form of excessive force, but it may be of a lesser force and type that would cause a fracture. I accept that this is a single copy gene which makes it much less likely that it will have an impact on bone fragility, but if he has bone fragility in the absence of classic OI it will be less severe so you will still need a force that is more than rough handling."

28. The upshot of his evidence was that he remained cautious because of the recessive nature of this genetic variant. The research papers quoted to him seemed to give Dr Saggar pause for thought and he was far less ready to dismiss the possibility of bone fragility and fractures being caused by a slightly lesser force than would otherwise be the case. However, the possibility of clinical significance still remained low.

29. I was then assisted by the Consultant Paediatric Radiologist, Dr Barnes. Dr Barnes gave helpful evidence, deferring where appropriate and was conscious not to stray outside the area of his expertise. In terms of dates of the fractures, Dr Barnes conceded he could only give very broad timescales of less than 10 days on acute injuries, where there was no evidence of healing, to ones where he saw some healing, and some callouses. There was no remodelling of any of the bones which would cause there to be a longer time period for these fractures. The upshot of his evidence was that the acute fractures of the third, fourth and fifth posterior ribs, the right humerus and the right femur could have occurred in terms of dates consistent with the episodes on 13th and 17th April. The non-acute injuries of the seventh, eighth and ninth lateral rib fractures, the left femur and the right tibia could be consistent with having occurred on the 21st March episode. Of course, radiologically they could have occurred at any time in between those dates as well as on those dates themselves. His evidence was to clarify that the acute rib injuries were not close to the spine and were next to each other. This evidence resulted in the contemplation that the rib fractures could have been caused from a fall/ impact.

30. I finally heard from Dr Cartlidge who is a well-known Consultant Paediatrician with vast experience of assisting these Courts.

31. In general, I found Dr Cartlidge's oral evidence to be far more cautious and open to alternative explanations, other than non-accidental injury, than appeared to be the case from his written reports. Dr Cartlidge considered the clarification by Dr Barnes of the position of the third, fourth and fifth rib fractures not being fully posterior fractures. His view changed so that the mechanism could include a fall from the changing table as well as a squeezing action. Additionally, there would not necessarily be a bruise from the fall if the surface upon which the child fell was relatively flat and substantial. The metaphyseal fractures would likely require a twisting force to be applied. Grabbing a child in panic in an attempt to prevent a fall could be consistent with such a force. Additionally, the child's presentation as described by the parents immediately following his fall and at the hospital, was consistent with an acute event of rib fractures having occurred at the time of this fall on 17th April.

32. In cross-examination, Dr Cartlidge conceded that metaphyseal fractures were extremely difficult to find clinically and that is why skeletal surveys were so important. He was not surprised that palpation took place upon examination several times by the treating doctors without these metaphyseal fractures being discovered.

33. Dr Cartlidge was questioned extensively about the three episodes of accidental falls, with the mechanisms described, and if they could explain the fractures and injuries found upon A. In his written evidence Dr Cartlidge was clearly of the view that in the absence of bone fragility the three episodes would not sufficiently explain how it was that A sustained such injuries. However, upon cross-examination of his reasoning, the impression I had from Dr Cartlidge was that so much was unknown about the precise details and mechanisms of the falls sustained, the grabbing actions in a split second by adults, and the potential for twisting actions within such falls. He was essentially telling this Court that whilst the descriptions were outwith his usual experience of how such injuries are caused, he was nevertheless in the territory of making educated guesses about precisely whether or not these episodes could account for the injuries themselves. He was not critical of the adults' difficulty in recalling the mechanisms with precision, regarding such vagueness as understandable. I found his evidence to be refreshingly objective and very helpful to this Court. The key evidence he gave was:-

> "In terms of whether or not there is bone fragility and whether or not it is clinically significant, if it is present it has to be at the lowest end of the spectrum. However so far as the incidents are concerned, the force used is not known and can't be known except potentially by the Judge. I'm having to give educated guesses."

This is an extremely helpful analysis of the extent to which the Court is assisted by expert evidence. There are clearly severe limits to the assistance that the experts can give to the Court. Dr Cartlidge said that it does come down to the interpretation of the three events and the difficulty in recalling details of events at a time when adults would not have appreciated the significance of them and that they happened with such speed. He would not expect lay witnesses to have a precise recollection of the mechanisms involved. Mildly fragile bones will fracture more easily, but excessive force would still be required. He did not agree, however, that excessive force would necessarily mean non-accidental injury, as accidental injuries as described in this case could still involve excessive force. Dr Cartlidge was therefore able to contemplate that the metaphyseal fractures were capable of being caused if the limbs were grabbed in attempting to prevent this child falling and that rib fractures could well be caused as a consequence of a fall and an impact. Dr Cartlidge essentially deferred to the court, who would hear and judge the totality of evidence in assessing if such accidental events could cause the injuries found. Thus, this expert evidence must be weighed very carefully against the lay evidence I was to later hear.

34. Before turning to the lay evidence, I also heard from a treating clinician, Dr D. Dr D's evidence concerned the information imparted to and from the parents at the hospital in the days following the final episode on 17th April. In short, I did not find any of the evidence that Dr D gave to be of concern and relevance in relation to the parents' conduct. Indeed, the more I was directed to the medical notes and the entries in relation to the parents' conduct at the hospital, the more it struck me that their behaviour was entirely inconsistent with that of a perpetrator. In particular it became clear that it was the parents who were directing the medics to investigate potential rib fractures and carry out x rays.

35. I now turn to the lay evidence.

The Mother and the Father

36. I found both the Mother and the Father to possess the following qualities during the course of their evidence. They were calm, appropriately upset, displaying an eagerness to furnish the Court with a true account and to avoid embellishing their evidence to assist what might be perceived by themselves as their own case. I did not find, notwithstanding extensive challenge to their evidence, any relevant inconsistencies. Their descriptions of the presentation of their child and the detail of the accounts of the three episodes had a glaring absence of inconsistencies, either in their individual accounts or between each other. The pain they both felt at their child's injuries and their separation from both twins was palpable.

37. When challenged extensively about the failure to promptly inform the hospital between 17th and 23rd April about the fall on 13th April, I found their explanations entirely plausible. They did not believe that any injury had been sustained at that time and it was only when they were confronted by the multiplicity of fractures that they began to contemplate its relevance. They both however did accept that perhaps they were embarrassed to explain that a further episode of accidental injury had occurred in such a short space of time in the context of having told the hospital of the events of 21st March and 17th April. Such embarrassment I found to be entirely plausible and consistent with a non-perpetrating parent. Indeed a perpetrator may be more likely to overcome such embarrassment, and seek to rely upon another accidental event to falsely explain the injuries caused by their own known assault.

38. Both parents are without other social and behavioural difficulties. They were and are in a stable and loving marriage supported by extended family members. They were clearly thrilled at having given birth to twins, whom they loved and adored. Their living arrangements were less than ideal, they having decided to stay through lockdown with the maternal grandmother, who had recently suffered bereavement. This was a small apartment, but not one that was overly cramped or caused too many difficulties. What is clear however, is that the size of the living accommodation would not have easily allowed for non-accidental injuries to be inflicted upon this child without the other adults being aware of such infliction.

39. I also heard from the paternal grandfather, the maternal grandmother and the paternal grandmother. The paternal grandfather gave evidence about the events of 21st March. Again, he struck me as an honest witness, trying to recall events which he very much regretted in that his grandchild had slipped from his hands, he had attempted to rescue him but the precise mechanism and detail of that event were not surprisingly quite unclear to him. The maternal grandmother again gave honest evidence that did not seek to embellish, exaggerate or minimise. The cumulative evidence of the extended family was that the parents had the sort of glowing references that sat comfortably with the impression that the parents made upon this Court.

The Positions of the Parties at the Conclusion of the Evidence

The Local Authority contend that the evidence of the Clinical Geneticists was such that the Court can safely either exclude or regard the significance of the potential for bone fragility as being trivial or minimal. They rely upon the evidence of Dr Cartlidge that even if the force was reduced by a small degree, the force would still need to be excessive. The LA therefore concentrated upon the detail of the three accidental incidents. They contend that the injuries cannot have occurred by the mechanisms described in the three episodes. There was simply, they contend, an absence of descriptions that would allow for the sort of twisting force which would account for the metaphyseal fracture. The absence of bruising and the two falls described on 21st March and 13th April would not account for the rib fractures seen on x-ray. They do concede that there is potential for the acute rib fractures to have been caused by the fall on 17th April, but in the context of multiple inflicted fractures the likelihood that they were caused by squeezing should prevail.

40. As to the parents' evidence and presentation, the LA point to the failure of the parents to disclose the episode on 13th April to the hospital in a timely manner. The Local Authority's position is that this non-disclosure demonstrates a lack of candour. Additionally, they point to the circumstances in which the injuries occurred, namely that these were first time parents caring for twins, sleep deprived with the father having to combine contributing to childcare with continuing to work from home. The relevant period being during Covid lockdown may have added to their stress.

Finally, that the non-perpetrating parent has failed to protect the children from the actions of the perpetrator as they would have known from the excessive crying that something had taken place.

41. The Mother, Father, Third and Fourth Respondents and the Guardian, whilst having nuanced and differing submissions to make, essentially all invite me to reject the Local Authority's contentions for non-accidental injuries and therefore invite me to discharge and dismiss the application and return the children to their parents forthwith. It was clearly expected that this position would be presented by the family members, but it was of significance that the Guardian felt compelled to come off the fence and invite the Court, following careful and detailed written submissions, to conclude that threshold is not met.

42. The Guardian from her own enquiries and having heard the parents give evidence, believed that the twins are part of a loving family, the parents are of exemplary character without any of the other social difficulties, and that the evidence from the family has, in the view of the Guardian, created a singular reliable picture of family life sufficient to conclude that the fractures sustained by A were caused by the misfortune that he incurred accidental falls in short succession, rather than the interpretation of one of his parents inflicting injury from a loss of control. The Guardian was struck by the clarification and circumspection that emerged from the expert oral evidence, when set against their written reports. The Guardian is driven to the view that the Local Authority have failed to discharge the burden of proof placed upon them and failed to prove that these are non-accidental injuries.

Decision

43. Given that there was a history of three accidental injuries, two of which had resulted in timely presentation for medical attention, and all of which were said to be consistent with radiological dating of these fractures, it was crucially important for the Court to hear and evaluate the parents' evidence with care.

44. Having listened carefully to the parents, I find that the Local Authority have not proven their case and my reasons are as follows:-

(i) I find that the parents were truthful witnesses. Their presentation and the manner in which they gave their evidence, together with the content of the evidence itself, were compelling. I did not think at any point that they were lying or attempting to deceive the Court. Rather, they were doing their best to recall a horrendous month that is now approaching its second anniversary.

(ii) When the parents were given the opportunity to embellish their accounts, they did not take it. The prime example of this is that they simply were unable to specifically recall that they had definitely grabbed a limb on any occasion when seeking to prevent A falling. It would have been the easiest piece of evidence for them to give to say that in hindsight they had done so, thus making the events fit with the medical evidence.

(iii) Their evidence was individually consistent and consistent with each other and the other lay witnesses.

(iv) The Local Authority's case must involve a conclusion that whilst three traumatic events had occurred, and A was presented at hospital, in distress, within an immediate timeframe following two of them, the events did not account for any of the injuries. This I find to be unlikely, given the nature of the falls.

(v) The Local Authority's case is that episodes of non-accidental injury (at least two of them) occurred in a small flat with three carers present. The carers were present almost all of the time because of covid restrictions. It follows that the injuries must have been sustained and inflicted without the other two non-perpetrating adults hearing or witnessing the same. To conclude otherwise would involve this Court disbelieving the maternal grandmother, Mother and Father and concluding that they were aware of such episodes but chose to lie about them. Such a scenario strikes this Court not only as extremely unlikely, involving as it must a sophisticated collusion between the adults.

(vi) The injuries, whilst not necessarily 'likely' to have occurred consistent with the medical evidence, are nonetheless potentially consistent with an identified mechanism that resulted from three accidental episodes. Further the radiological timeframes are consistent with the injuries having resulted from the 3 accidental events.

(vii) I do not find it necessary or productive to identify with certainty which event caused which injury and by which mechanism. Such an exercise would involve 'educated guesswork' on the part of the court and is unnecessary in the context of the burden and standard of proof that rests with the LA. I did however find persuasive the contention that the acute rib fractures were caused by the fall on the 17th April. The metaphyseal fractures and non-acute rib fractures were sustained by a combination of mechanisms incapable of precise identification on the 21st March and the 13th April.

(viii) The presentation of A at hospital by the parents on 17th April and their insistence on bringing to the medics' attention the "clicking sound" and seeking further x-ray investigation is wholly consistent with a non-abusive parent's conduct. It is inconsistent with the conduct of a perpetrator.

(ix) The non-disclosure on 13th April I found is borne of a genuine belief in the lack of relevance, wrapped up in a conscious or unconscious embarrassment at the number of accidents that had occurred in a short space of time. This was an entirely understandable reaction. Further a perpetrator would more likely wish to bring this event to the attention of the medics and seek to hide behind it as a cause of injures they knew they had otherwise inflicted.

(x) The issue of reduced bone density and therefore susceptibility to fracture from a lesser force I do not need to decide. I have concluded that the Local Authority have not proved their case absent such a resolution of this finding. However, I do go on to note that the totality of the medical evidence did entertain a possibility, albeit a small possibility, that A did suffer from conditions including his BMP1 Variant of Unknown Significance and potentially HSD, that cannot be ignored when considering the wider canvass

of evidence. The scientific evidence on this issue had a degree of scientific uncertainty and if there was a difference in emphasis of the experts' opinion between Dr Irving and Dr Saggar, I preferred Dr Saggar's evidence. He appropriately expressed a greater degree of circumspection than did Dr Irving.

(xi) The evidence of Dr Barnes, and in particular the evidence he gave about the position of the acute rib fractures, was helpful to this Court in understanding the potential mechanism. Further, that the dates of all the injuries were not outwith the possibility that the injuries had occurred within the three episodes recorded of accidental injury.

(xii) The evidence of Dr Cartlidge I have already indicated I found persuasive. Dr Cartlidge advised that when one is looking at mechanism and degrees of force within the context of momentary accidents, there is a degree of educated guessing from a medical perspective that this Court must step into.

(xiii) The medical evidence I find was not inconsistent with all of the injuries having been sustained by the accidental injury episodes described.

45. Having carefully considered the totality of evidence, I am unable to find that the Local Authority have discharged the burden, on the balance of probability, of proving that this child sustained his injuries as a consequence of non-accidental injury. It therefore follows that as this child has parents for whom no other safeguarding concerns attach, these proceeding should come to an end and these children must be returned to the loving care of their natural parents forthwith.

RECORDER SIMON BICKLER KC

6TH December 2022