

Neutral Citation no. [2007] NIFam 3

Ref: WEIC5768

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 09/03/07

IN THE HIGH OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

DOWN LISBURN HEALTH AND SOCIAL SERVICES TRUST

Applicant;

and

B and S

Respondents;

and

K

Intervener.

WEIR J

Prohibition on reporting

[1] Nothing must be reported in this case which would serve to identify the child who is the subject of these proceedings or any of the parties.

The nature of the proceedings

[2] The applicant ("the Trust") applies for a Care Order pursuant to Article 50 of the Children (NI) Order 1995 ("the Order") in respect of C. B is the father of C and S is the mother. K, a man who was living with S when injuries to C were discovered, was given leave to intervene in the proceedings. At the hearing the Trust, the Guardian ad Litem ("GAL"), B, S and K were all separately represented by counsel.

The background

[3] C was born on 14th January 2005. Following his birth B and S lived together for a period of months during which there appear to have been difficulties between them until, in or about the end of November 2005, the parents separated and S returned to her home village where she moved into a house occupied by a sister, L. At about the same time as she moved in with L she commenced a new relationship with K who also moved into the house and the three adults and C lived there together until around New Year 2006 when L moved out. After that and until 20th February 2006 C continued to live with S and K in that house. During that period Social Services were in contact with the household in a support role and nothing untoward concerning the welfare of C was observed or suspected.

[4] On 20th February 2006 C was brought to the Accident & Emergency department of a hospital with a report that he had fallen from a toy car and hit his head on the carpeted bedroom floor. The doctor on duty found multiple bruising to the head, upper and lower limbs including some linear abrasions, bruising to the inner aspects of the thighs and observed that the bruising was of differing ages. He concluded that the injuries were non-accidental and reported the matter to the Emergency Duty Team. Police and Social Services were then informed.

[5] When spoken to on 21st February 2006 by a social worker S was asked whether she knew who had hurt C. She said that it was K and that it had happened on Sunday, 19th February when K had hit C several times on the leg. When later asked about the injuries to the head S said she was unsure how C had received them and that she had brought him immediately to hospital when he had fallen out of his toy car. When spoken to 22nd February 2006 by Dr Primrose, Consultant Paediatrician, S stated that K had slapped C on the leg and hands once on Sunday 19th February but that otherwise he had not hit him and that no body had shaken the child. S said that when C bit her she would hit C on the hands but no where else and she claimed that at noon on Monday 20th February there were no marks on C. In the light of her medical findings Dr Primrose did not accept the mother's explanations for the injuries sustained by C.

Findings on medical examination

[6] (i) Extensive bruising principally affecting the face and head, the back, left arm and shoulder, right arm, left leg and right leg. The nature and extent of this bruising can be well seen in police photographs (reference H 0426/06) taken on 21st February 2006.

- (ii) Examination of the back of C's eyes disclosed diffuse widespread intra- and pre- retinal haemorrhage.
- (iii) An MRI scan revealed the presence of subdural haematomas indicated as having been recently acquired together with other less clear indications of injuries to the head, possibly of different age. The doctor concluded that these were indicative of a significant brain injury or injuries.
- (iv) She concluded that the findings were consistent with a pattern of non-accidental injury and that it was unlikely that the extensive bruising was sustained in the course of only one assault and more likely that C had been subjected to multiple assaults given the nature and extent of the bruising to his head and body. She also considered that the report of the MRI scan raised the possibility of more than one traumatic brain injury.
- (v) In the course of a parallel investigation a most helpful report was obtained by the Police from a Dr Stoodley, Consultant Neuroradiologist at Frenchay Hospital Bristol, who is an expert in the interpretation of imaging investigations of the brain and spinal cord and with a specific interest in the neuro imaging of children. He reviewed the CT and MRI images and concluded that the pattern of multi focal acute subdural haemorrhage seen on C's scans is not that which could be reasonably ascribed to a fall from a toy car. In his opinion the pattern of subdural haemorrhage seen on C's scans is only very occasionally seen even in the context of very severe accidental head trauma. He was not aware of anything from the history that would account for the appearances on C's scans. In preparation for this hearing a meeting of medical experts retained by all parties was held on 10th January 2007 at which it was agreed that the injuries were not consistent with the account of the child accidentally falling from a toy car and that they were non-accidental.

Matters agreed and not agreed

[7] This was a "split" hearing which examined the extent to which the threshold criteria provided for by Article 50(2) of the Order are satisfied. There was a certain measure of agreement between the Trust and B, S and K in relation to the criteria as follows.

[8] In relation to S, it was agreed that:

- (1) Social Services had a long standing involvement with S and her wider family in respect of issues of sexual abuse and care concerns.

- (2) S's mental health difficulties, anorexia, depression and attempted self harm resulted in her admission to a mental hospital on 22nd April 2006.
- (3) S had disengaged from Health Visiting monitoring and psychiatric services
- (4) S accepted that she had struck C on the hand in the past.
- (5) S accepted that she had abused substances as evidenced by the fact that she tested positive for cannabis when seen by Dr Primrose on 22nd April 2006.
- (6) That she had abused cannabis while C was in her care.
- (7) S had failed to respond appropriately to protect C or to report K to the relevant protection services when K had pushed C upside down and head first into a toy car on 14th February 2006.
- (8) S had roughly handled the child.
- (9) S had failed to work with professionals in an open and honest way.
- (10) S also accepted that C had suffered severe physical abuse resulting in substantial bruising and subdural haematomas and widespread haemorrhages to the eyes but while she accepted that those were non-accidental she did not accept that she had caused them. She also denied that she had failed to appropriately supervise the child or that she had failed to seek immediate medical attention for the injuries.

[9] K accepted the following facts:-

- (1) That he had slapped the child on occasions including 15th or 16th February 2006, 19th February and 20th February 2006.
- (2) That he did not appropriately supervise the child on 20th February 2006.
- (3) That he caused substantial bruising to C's arms and legs by slapping him.
- (4) That he failed to give a reliable consistent and truthful explanation to account for the injuries sustained by the child.
- (5) That he failed to protect C.
- (6) That he failed to be open and honest with the police from the outset.
- (7) That he minimised the extent of physical force by way of slapping which would have been necessary to cause the injuries sustained by C.

[10] K did not accept:

- (1) That he pushed the child upside down and head first into a toy car in anger on 14th February 2006.
- (2) That his admitted shaking of C was other than playful.

[11] B, the father of the child, had no contact with him during the period from the beginning of January 2006 to February 20th 2006. There was no allegation against him of ill treatment of C and the matters alleged against him were therefore historical:

- (1) That he had a history of alcohol abuse and use of cannabis in the past.
- (2) That he had a history of depression and self harming.
- (3) That there were concerns about his ability to manage anger.
- (4) That he had failed to fully engage in the past with addiction and anger management services.

[12] It may be seen from the above that the substantial issue in the case by the time of the hearing was who had caused the serious injury or injuries to C's head since responsibility for the extensive bruising suffered by C was for the most part accepted by K. The two possible perpetrators are S and K.

The hearing

[13] S chose to give evidence while K declined to do so. I shall consider the significance of that failure later in this judgment. S gave evidence that she had first become frightened of K when he held the child upside down over his toy car after returning home in a bad temper following a dispute with his uncle who lived next door. She had also been frightened when K had thrown a mobile phone which had struck her. She gave a most unimpressive account of the way in which the injuries to C were sustained and of her knowledge of the circumstances. She claimed that on the Sunday night she had been upstairs putting laundry over radiators and came down to find that C was on the settee and that he had red marks on his arms and his legs. K told her that he had slapped the child two or three times because the child had bitten him. On the Monday morning, 20th February 2006, S had to go to court in connection with an application made by B for contact with C. She left C at her father's house and, on returning from court, went back to the house that she shared with K at about 3.00 pm. According to S, K put C upstairs into his bedroom to play with his toys and came back down again before returning upstairs after 5 or 10 minutes. While K and C were both upstairs S heard a bang and K came down carrying C whose eyes were rolling and his legs drawn up behind him. The child was then taken to hospital.

[14] When asked about K's temper S said that he was only sometimes bad tempered. He occasionally became bad tempered with a number of dogs that he kept on which occasions he would have gone outside and beaten and kicked them. He was also in a bad temper on the morning of 20th February as he did not wish C to be taken to S's family to be looked after while she was away at court. S's father had come to take her to court in his car and, while he

was in the house waiting for S, K had shouted downstairs cursing at the father and had punched the bedroom wardrobe.

[15] S was cross-examined at length on behalf of the Trust and the GAL. Making every allowance for her somewhat reduced intellect and poor educational attainments S was a most unsatisfactory witness. When cross examined in detail by Mr Long Q.C. about the individual injuries illustrated by the police photographs she gave most unconvincing explanations. Her account of being upstairs attending to laundry while the severe bruising sustained by C on 19th February was occurring and of being unaware that that had happened until she came back to the sitting room was entirely unconvincing. It is not possible to accept that in such a small house a child could receive the blows necessary to cause the injuries evidenced by the photographs without crying in such a way as for that to be obvious to any one upstairs while the blows were being inflicted. Similarly, the claim by S that C suffered his severe head injury upstairs on the evening of 20th February and that all that she heard was a bang is again frankly incredible.

[16] While S was giving her evidence I was concerned lest in her understandable desire to distance herself from closer knowledge of when and how the injuries were sustained she might leave herself open to the suspicion that her culpability was greater than in fact it had been. I urged her on more than one occasion to think carefully about the answers that she was giving and ultimately went so far as to obtain the permission of all counsel to enable her counsel, Mr Ferriss Q.C., to consult with her during the course of her evidence about the possible implications of what she was saying and not saying. However she persisted thereafter in maintaining the inadequate account that she had given so that at the end I found it quite impossible to reach a conclusion as to whether she was simply minimising her knowledge of injuries inflicted by K and the circumstances in which they were caused or whether she herself had played a greater part in the causing of at least some of those injuries than she was prepared to admit. I found her to be determined, despite repeated urgings to be candid, to tell the court as little as possible of what she knew of the circumstances surrounding C's injuries. As a result I find it impossible to exclude her as a possible perpetrator of some of the injuries sustained by C.

[17] So far as K is concerned, he did not give evidence nor was S cross examined on his behalf about the allegations of bad temper that she had made against him. As set out at paragraph [9] above, K had made limited admissions of ill treatment of C and I infer from his refusal to give evidence without advancing any reason for failing to do so that it is likely that it was K who caused the serious head injuries to C.

Conclusion

[18] I have been greatly assisted by the realistic and cooperative approach of all counsel. In the first place it was agreed that the relevant date for the assessment of the first limb of the test namely “that the child concerned is suffering, or is likely to suffer significant harm” was 23rd February 2006 when the date of the initiation of protection measures, namely the Emergency Protection Order obtained by the police. Counsel also agreed that at that date the child was suffering “significant harm”.

[19] Moving to the second limb, whether “the harm is attributable to the care given to the child not being what it would be reasonable to expect a parent to give to him”? In relation to this limb I am satisfied on the balance of probabilities that K caused serious injuries including head injuries to C and, for the reasons earlier discussed, I cannot exclude the possibility that S may also have caused some of the injuries though I regard that as less likely. I am also satisfied that both K and S failed to afford C the protection which it would have been reasonable to afford him.

[20] Accordingly I am satisfied that the criteria required by Article 50(2)(a) and (b) of the Order have been established.