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

Delivered: 28.06.2010

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

08/42444
06/119639

IN THE MATTER OF KW, EW AND MW

BETWEEN:

BELFAST HEALTH AND SOCIAL CARE TRUST

Applicant;

-and-

SM AND EW

Respondents.

WEIR J

Confidentiality

[1] This judgment has been anonymised and nothing may be published in relation to these proceedings or this judgment that would serve to identify either directly or indirectly the respondents or the children concerned.

The nature of the proceedings

[2] The applicant Trust has applied to the Court for a determination of the issue as to whether non - accidental injuries sustained by EW at some time over the days immediately preceding 16 December 2009 were deliberately inflicted.

The background

[3] The children in this case, KW, EW and MW are the children of SM the mother and EW senior ("EWS") the father who are the respondents in this case. The relationship between the parents commenced in 2003 and was from the outset characterised by excessive alcohol consumption on the part of EWS which led to verbal and physical altercations between the couple. On 31 July 2004 KW was born and there were two respite placements in the summer of 2005 as a result of concerns regarding the parents' lifestyle. On 20 October 2005 EW was born and although SM struggled to care for both children further respite care for KW was required in November and later that month, again due to problems between the parents, EW had to be voluntarily accommodated in a respite placement. Attempts were made to rehabilitate the children to their parents' care by means of residential assessments but the attempts proved unsuccessful due to SM's inability to cope with the children and EWS' continued abuse of alcohol. The two children therefore returned to foster care and care orders in respect of both of them were granted on 17 May 2007. The then care plan was for permanency by adoption.

[4] On 13 February 2008 SM gave birth to a third child, MW, and embarked upon a PACT assessment which proved successful and enabled SM and MW to live together in the community. An intensive support package was made available and SM is reported to have engaged well with the services provided. By May 2009 matters had progressed to a point at which MW's name could be removed from the Child Protection Register and a decision was further taken to revisit the Trust's care plan for KW and EW. SM indicated that she would like to have both children returned to her care and EWS agreed with this and advised that he would be willing to offer ongoing support. Accordingly, on 5 July 2009, SM embarked upon a placement at Thorndale Family Centre initially with MW and subsequently with KW and EW. The assessment was successfully completed on 24 September 2009 and SM returned to the community with all three children, residing firstly in Thorndale homeless accommodation until, on 29 November 2009, SM moved out to her own privately rented accommodation. SM appears to have struggled to cope with all three children in the community. In her statement to the court dated 13 January 2010 she says "matters progressed well in Thorndale but began to deteriorate upon my return to the community." She explains in some detail that the support promised by EWS did not really materialise. She says in her statement that when EWS was at home with them he frequently would not get out of bed until midday. He was not particularly involved in caring for the children and was not supportive for the most part. He never took the children for even a short time to allow her an hour or two on her own and she was always the person with

responsibility for caring for the children at all times whilst EWS came in and out of their lives as he wished. His absences and refusals to respond to text messages or phone calls made the situation within the home even more stressful and distracted her attention from the children. She describes becoming more and more drained as the weeks went on and trying to explain to EWS how she felt but without any response. She was left to get the children ready for school and to walk them there while EWS lay in bed offering no support. This led to arguments within the home. EWS has provided a statement dated 20 January 2010 in which, broadly speaking, he agrees with the account given by SM and, in particular, says that it was always intended that he would keep his own home after SM and the children returned to the community and observes "I have been living on my own since 2005 and I wanted some time on my own. I am quite a solitary person and admit that I was missing the time to myself."

[5] The Guardian ad Litem ("GAL") in her report dated 22 January 2010 describes SM's position at this time in a succinct passage at paragraph 10.2:

"Parenting children is a complicated and enduring task which is difficult at the best of times with two committed parents. To take on this task with limited experience, a poor childhood, a partner whose support was less than dependable and children who competed for attention and care was always going to be a momentous task."

[6] After about two weeks spent by SM endeavouring to cope virtually single-handedly with the children something plainly went wrong. On 16 December 2009 while EW was at an arranged appointment at the Child Development Clinic in relation to ongoing problems related to his behaviour and development, Dr McGinn, Consultant Paediatrician, found significant bruising on the child's body, particularly in the area of his upper back. The doctor was not satisfied with the explanation provided for the injuries and alerted Social Services. The police were also informed and a further medical examination was carried out by Dr Hall, Forensic Medical Officer, who also expressed concern about the nature and purported cause of the injuries. The children were removed from parental care on 17 December 2009 and then returned to the family with the stipulation that the children and their parents reside with EWS' mother and her partner in order to provide supervision. This arrangement broke down on 7 January 2010 due largely to the cramped living conditions in their two-bedroomed flat, since when the children have been in separate foster placements.

The nature of the injuries

[7] The injuries to EW were first noticed by a Dr Claire Murray, a junior colleague of Dr McGinn and drawn to the latter's attention by her. Dr McGinn carried out an examination with the assistance of Dr Murray and observed a number of discrete, linear marks on his upper back. These marks were consistent with bruising and were noted to run in a number of directions. There was an area of bruising noted on the left forearm and there were in addition two linear parallel lines noted on his right anterior chest and shoulder area. There was petechial bruising noted on his right armpit and a small circular bruise noted in the inner aspect of his right upper arm. He had some bruising noted to both knees and shins. The child co-operated with the examination and "preferentially sought out his parents and looked to them for reassurance."

What caused the injuries - SM's explanations

[8] When Dr McGinn asked the mother what had caused the bruising she told the doctor that she had been with the children and their daddy at an outdoor play area on Sunday 13 December when EW and KW had been on the climbing frame and EW had fallen off it from a height. SM recalled that he had been very upset and that she had later looked at his back in the car but the marks did not appear until a day later. SM maintained this explanation for some time and indeed it was canvassed in the course of a review before me on 8 January 2010 when, having seen the photographs of the injuries, I expressed some considerable scepticism as to whether they could have been caused in the manner then being described. Five days later, on 13 January 2010, SM made a statement in which an entirely different version of the circumstances leading to the injuries was given:

"On the morning of 12 December 2009 I had arisen early as usual in order to get the children up and to provide them with their breakfast. Thereafter they played in their rooms with their toys and I must have fallen asleep. I was awoken by [KW] and when I got up I realised that the children had been playing with water in the bathroom. [EW] had proceeded to soak his bedroom with cups of water and had taken the shower head out of the shower in order to spray the landing, bathroom and stairs. He had also ripped wallpaper off the bedroom wall.

I had gotten into debt in order to pay the deposit and rent upon the property as well as ensuring

that it was adequately furnished. Money was very constrained and my immediate thought was that I was going to have to pay out additional monies to the landlord as a result of the damage caused by [EW]. At that point [EW] was on the top bunk bed in the room which he shares with [MW]. I ordered him to come down off the bed and he refused to do so. I accept that I lost my temper and that I grabbed him by the arm and pulled him across the bed to the steps of the bed. I did so by standing on the bottom bunk. I then pulled him down the steps of the bunk beds but as he was wearing a t-shirt he spiralled on the way down and hit the steps of the bunk beds. He then landed on the floor whilst I was still holding on to his t-shirt.”

[9] Later in the statement SM explains why she has altered her account:

“I have not put this explanation forward before now due to my terror that this momentary loss of control would result in my children being taken away from me forever. We had been so happy to be back together as a family unit despite all of the challenges described above. I have been so upset since this incident and still find it hard to believe that the children have been returned to foster care.

The Court will be aware that I initially put forward the explanation that the injuries had been sustained when [EW] fell off the climbing frame in the park the following day. I wish to reiterate that this incident did occur although I accept that his injuries were not sustained in this way.”

The bunk beds

[10] Good quality photographs of the steel bunk beds were taken on 23 April 2010. They are comprised of tubular uprights and tubular guardrails enclose most of the upper bunk to the point at one end at which steps fixed to the bed, three in number, extend vertically down to the lower bunk. The tubular enclosure to the upper bunk has a curved section just at the point where the bars terminate above the steps and each of the steps is formed with four curved corners, in both cases presumably to avoid the risk of accidental injury from contact with a sharp corner.

The cause of the injuries – the view of the experts

[11] I have had the considerable benefit of the assistance of a number of respected experts in the fields of paediatrics, forensic pathology and forensic medicine. The paediatricians were Dr McGinn to whom I have earlier referred and Dr Nelson also a Consultant Paediatrician formerly employed by the same Trust as Dr McGinn and presently a Consultant in Galway. The Forensic Pathologist was Dr Derek Carson who was for many years prior to his retirement the Deputy State Pathologist for Northern Ireland and the Forensic Medical Practitioner was Dr Janet Hall who has been a Forensic Medical Officer specialising in child abuse and sexual offences for 20 years. Each of the experts endeavoured conscientiously to explain the possible aetiology of the marks seen on EW but none succeeded in doing so conclusively. I summarise the evidence of each in the succeeding paragraphs.

Dr Carson

[12] Dr Carson did not have the opportunity of physically examining EW and was dependent upon photographs and the reports of Dr McGinn and Dr Hall. Significantly, given Dr Carson's very long and extensive experience of examining and commenting upon marks and wounds, he said at the outset of his report "I must make it clear that I have never before seen a pattern of injuries such as that portrayed by the photographs of the back of EW." In the course of his evidence he observed that the photographs show marks that essentially run in two directions. The upper group of four run in a more or less horizontal direction at the top of the back below the neck with one on the right shoulder. The second group consists of two very well defined injuries on the back of the chest and four less well-defined injuries on the mid back extending slightly towards the mid back. He drew attention to the fact that the photographs had been taken five days after the injuries were said to have been caused so that there might well have been changes in their appearance in the intervening period. He expressed the view that these were non-accidental injuries as "children rarely injure themselves on the back". He was sceptical about the explanation involving the bunk beds as he could not see how the child could have contacted more than the top step leading to the upper bunk and whereas in this case there are bruises running horizontally and vertically he could not see how all these injuries could have been caused by contact with a single step. As to what could have caused the injuries he repeated the observation contained in his report that he had never previously seen such a pattern of injuries and said that he believed that the injuries were caused by blows inflicted with some object. He observed however that he would have liked to have seen the injuries at the outset rather than after five days "as things can become blurred with bruising." Under cross-examination by Mr O'Hara QC he agreed that he had been and remained uncertain as to the mechanism causing the injuries and when asked what sort of implement

might have been used he said that he could not be certain. He did agree that the bruise across the middle of the back appeared to have a degree of curvature and ran into some other curved marks below. It was pointed out to him that the area of the back on which the marks were found was very limited being restricted to the upper back so that if they were caused as a result of an attack the assailant would have had to consistently hit the same part of the body eight or nine times and leave no other marks elsewhere. He did not however accept the mother's second explanation for the infliction of the injuries by reason of the number, type and extent of the marks that are evident.

Dr Nelson

[13] This witness, who like Dr Carson was dependent upon photographs, reached a different conclusion from that of Dr Carson and Dr Hall. In her assessment she was influenced by the distribution of the marks and by the outcome of a lengthy interview with both parents extending to about 1½ hours. "I said to them I had difficulties to see how these could be caused by a fall from the bunk bed but by the end I could see how that could have happened. I would not have had that opportunity had I not interviewed the parents." In relation to the importance of an interview she drew attention to guidance from the Royal College of Paediatrics and Child Health, "Child Protection Companion" published in April 2006 which says at paragraph 6.2.1(i):

"No sight in itself is pathognomonic (diagnostic) and a careful history should be taken in all cases."

She referred also to an article by Professor T J David "Avoidable Pitfalls When Writing Medical Reports for Court Proceedings in Cases of Suspected Child Abuse" which, in a section entitled "Interviewing the Parents or Carers" states as follows:

"When a child is referred to a paediatrician because of a clinical problem, the paediatrician has three main tools: the history, physical examination of the child and a study of the available data including investigation results and previous records. Most paediatricians would not dream of giving a clinical opinion without taking a history, and yet it is not uncommon for paediatricians to undertake a 'paperwork exercise' of preparing a report without ever meeting the child or the family. While there is a desire to avoid needless repetition of physical examination of small children, particularly long after an injury has

occurred, it is hard to justify avoiding speaking to the parents or carers.

It is likely that the paediatrician who has been asked to conduct a paper exercise will have available witness statements from the parents and/or carers and others, and there may also be a transcript of police interviews. There should also be copies of the medical records. Alas, none of these is a substitute for a properly taken history of ones own. However detailed are interviews by police or lawyers, neither have the medical knowledge, training or expertise to take a medical history. Furthermore, the medical records all too often contain incomplete histories obtained by the admitting junior doctors. The fact is that all clinicians perform their clinical duties with the aid of various routines, and departure from these routines by the use of short-cuts may be associated with a greater risk of error. Interviewing parents or carers is time consuming, and may be inconvenient and cause delay, but preparing reports in cases of possible child abuse is not an activity where a doctor should contemplate second best.

A paediatrician who does not attempt to interview the parents risks being criticised for by-passing the usual routines and failing to consider all aspects of the case. Recent press publicity has indicated that parents may be exceptionally aggrieved by paediatricians willing to make a confident diagnosis of abuse without ever meeting the parents and giving them the opportunity to explain their side of the story."

I pause here to observe that Dr McGinn had endeavoured to obtain a history but the history that she had been provided with related to the climbing frame and not to the bunk beds. Dr Nelson said, as did all the doctors, that the fact that the account had been changed from the climbing frame to the bunk beds as a cause of injury had raised her suspicions as had the fact that EW had not been brought by the parents to any doctor after the bruising had been discovered. However, Dr Nelson ultimately concluded, having seen better quality photographs than those which had been provided to her for the purposes of her report, that the strange pattern of injuries and their distribution could be attributed to direct forceful blunt trauma, dragging

forces (friction) and rotation against the hard linear metal frame and ladder. She pointed out that on the bunk beds there are linear surfaces, curved round protruding edges on the ladder steps and two rounded/circular protruding ends at the top of the ladder where the vertical side rails of the ladder end. In her opinion a struggling, twisting child could hit or be dragged against multiple surfaces/edges damaging his back with sufficient force to cause the injuries described. Abrasions could have been caused by friction of skin against a hard surface. Dragging forces could explain the broken/interrupted appearance to the horizontal lesion on the right shoulder as skin "concertinas" with friction. Some of the lesions appear curved and forces of a child rotating over a rounded and protruding step corner may explain this appearance. She concluded:

"It is my opinion that the bunk bed frame and ladder cannot be discounted as being responsible for some or all of the injuries."

She also considered other possible causes of injury such as the use of a stick, belt, blow or other mechanism however her conclusion was that it was unlikely that any one implement could have caused all the injuries depicted, as the patterns of injury differ. On this she concluded:

"This would mean that EW would have to have experienced inflicted injuries with varying implements on at least nine occasions. The forces applied would have had to have been from several different angles as similar linear injuries are at right angles to each others. This implies that EW could not have been held in one position to receive these injuries, as his body position or that of the assailant would have to move significantly. He could have sustained injuries during repeated assaults where he changed position during each assault eg by running and being caught or by wrestling himself into a different position. However, it would be almost impossible for the injuries to land all in one area ie just to the back, in this situation. Implement injuries to other body parts would be anticipated. In this scenario a pattern of restraint injuries (to shoulder, neck or arm) would also be expected. Whilst repeated episodes of injury, with differing implements, is possible, it is more likely that injuries were sustained during one episode of parental anger and loss of control."

[14] Dr Nelson concluded that it was her professional opinion that inflicted injury is the most likely explanation for the constellation of injuries sustained by EW. She concluded:

“EW’s mother has put forward a possible explanation for the inflicted injuries. Whilst the delay in any plausible explanation is noted and significant, it is possible that SM’s detailed and consistent account of pulling EW forcibly from a top bunk bed might explain some or all of the injuries to his back.”

[15] Dr Nelson was closely cross-examined by Mr Toner QC as to the mechanism whereby the injuries might have been sustained by the child being forcibly dragged while resisting along the top bunk and down the vertical ladder. After a detailed examination of the various metal protrusions on the bunk beds and their possible relationship to the injuries seen in the photographs Dr Nelson maintained, by reference to the shape of various injuries and the shape of various portions of the ironwork on the bunk beds, that SM’s account of how the injuries were sustained was “plausible”. She was pressed about the fact that during a conference of experts held prior to the trial she was recorded as having said:

“There is a large degree of uncertainty as to the mechanism of injury but I think it is possible but unlikely that these injuries were sustained by being pulled from a bunk bed. Possible but unlikely.”

In her evidence she explained this conclusion as being based upon the fact that SM had changed her account from the climbing frame to the bunk beds leaving her to be sceptical about the second explanation. However, on reflection she said that she would prefer to delete the word “unlikely” because she had found SM convincing and she had not changed her story in the course of her interview with her. She had found her “a plausible and consistent witness”. She concluded by saying that having been the lead clinician at the Royal Victoria Hospital for some 8 years if she did not believe that the bunk bed mechanism was a possible explanation she would tell the court so.

Dr Hall

[16] Dr Hall had examined EW on 17 December 2009 at the request of the police. The initial account given to her by the police was that the mother said that the injuries had been sustained in a fall from a climbing frame. The doctor agreed that she had not taken a history from either parent. She was

later informed that SM had altered her account of the injury and had provided a statement to the police to the effect that she had forcefully pulled EW from the top bunk causing bruising as he fell against the steps of his bed. Dr Hall had initially rejected the climbing frame as a mechanism and she in turn rejected the bunk bed mechanism for the following reason:

“The bruising to EW’s back consists of a cluster of eight or nine discrete long thin bruises, measuring between 2 and 6cms in length and lying in a variety of directions in a well-defined area, along the boy’s upper back and across his shoulders.

It is not possible for me to understand how a fall against a set of steps could impact eight or nine times in such a variety of directions, in such a concentrated area, nor how the area between the shoulder blades could become bruised by this mechanism, being slightly recessed and less prominent than the protruding shoulder blades.”

[17] In the course of her evidence Dr Hall maintained her position the injuries could not have been caused by pulling the child off the bunk bed. In cross-examination she agreed with Mr O’Hara QC that she had not seen the statement of 13 January 2010 provided by SM until the teleconference when she was pressed to accept that the description of the incident contained in the statement involved a lot more than pulling EW so that he fell against the steps. As Mr Toner QC had done with Dr Nelson, Mr O’Hara took Dr Hall in some detail through the various injuries and the features of the bunk beds and her ultimate position was that she had difficulty accepting the bunk bed theory as explaining all the injuries and the pattern of injuries. Significantly, she also said in common with Dr Carson and Dr Nelson “there is no probable explanation for the pattern of injuries.”

Dr McGinn

[18] Dr McGinn’s evidence was that she had examined EW at the request of her colleague, Dr Murray, when the marks were noticed at the Child Development Clinic on 16 December 2009. She too commented upon the unusual pattern of the marks that were seen and stated her impression that the pattern and distribution of bruises was not consistent with the climbing frame account that was at that time being given. At the same time she commented that EW appeared comfortable in his parents’ company, he appeared to have a warm interaction with his mother and sought his mother out preferentially within the clinic setting. Dr McGinn did not add significantly to her written opinion in the course of her evidence pointing out that she had not felt able to offer a comment on the subsequent bunk bed

mechanism when she was later informed of it. When cross-examined by Mr O'Hara as to whether there were any marks shown in the photographs that might not be the result of the bunk beds she very fairly responded that she was not forensically trained and did not feel able to offer an opinion.

The evidence of SM.

[19] SM described in some detail the past history of her involvement and that of her children with Social Services and how matters developed when she returned to live in her own house in the community with all three children. She enjoyed having the kids back but EW's behaviour was an issue. He was not on any medication but she had had advice on managing his behaviour while at Thorndale. (I pause here to observe that EW's behaviour is well documented as having been problematic both when he was in the care of his mother and also of foster carers). SM found when they had moved to the new house that the children were more settled but EW was still aggressive and he was very strong for his age. On Saturday 12 December she had got up and given the children their breakfast and then gone back to bed and fallen asleep. She was wakened by KW who called her to see what EW had done. On going out of the bedroom she found the floor of the landing and the children's bedroom and bathroom were all very wet. The children had taken down the showerhead and were filling up toy cups with the water and throwing water at each other. As a result, the wallpaper had been soaked and ripped and KW said that EW had done that. Since the house had been newly redecorated before they moved in SM was very angry when she saw the damage. EW ran into his bedroom and got onto the top bunk and refused to come down. She stood on the bottom bunk and trailed him by his t-shirt to the other end of the bunk where the steps are. She got down from the bunk and continued to pull him down to the floor by the arm. He landed on his bottom and his back and when he landed she had let go of him and walked out of the room telling the children to get the room tidied. While this was going on her partner EW was, characteristically, fast asleep in the bedroom. SM was upset and EW was upset and SM said that she apologised to him, took the children downstairs, put EW on her knee and hugged him. She was unaware that she had hurt and did not notice the marks on him until the next day, Sunday. On the Sunday afternoon the three children and their parents had gone to the play park during the course of which EW had fallen from a climbing frame but when she noticed the marks on EW's back while she was bathing him on that Sunday evening she knew that she had caused them and that that had not happened as a result of the accident on the climbing frame. She was frightened about the consequences for her of these marks being discovered and contemplated not going to the Child Development Clinic on the following Wednesday where she knew that EW would be examined and the marks would be found. However she did keep the clinic appointment and the marks were indeed found. She described the family's unsuccessful attempt to live with EWS' mother and her partner over the Christmas period

and how, due to the cramped conditions, it became impossible and the children were removed. On 8 January 2010 at the review hearing before me she had heard my comment that the injuries disclosed by the photographs did not seem consistent with a fall from a climbing frame and after the hearing she had told her barrister what had actually happened, resulting in her statement of 13 January 2010.

[20] SM was cross-examined by Mr Toner QC on her account of a bunk bed incident and she agreed with him that at one time she had also suggested that the injuries might have been caused by other children hitting EW with toys when she knew that that theory was also untrue and that she had kept EW away from school on Monday 14 and Tuesday 15 December because of the marks on his back. She said that she and EW were no longer a couple since the breakdown of their living arrangements over Christmas and that she thought that that situation was likely to be permanent.

Submissions

[21] Mr Toner accepted that the Trust has the burden of establishing on the balance of probability its case that SM's account of these injuries having been sustained during an alleged pulling from the bunk beds was not correct. He pointed out that the issue in this case between the parties is not whether the injuries were non-accidental because they are admitted to be so. In his submission the question was rather whether the Trust had satisfied the court that the bunk bed explanation for the injuries was not the correct one. His summary description of the state of the written and oral evidence at its conclusion was, I think realistically, expressed as "we are in the realm of possibilities."

[22] Mr O'Hara pointed out that whatever problems had existed in this family that had caused Social Services to become and remain involved with them, there was no history of any physical abuse of any of the children by either parent at any time in the past. He also drew attention to the fact that there were a number of different theories as to how various of the injuries might have been caused but the only one which might explain the pattern and distribution of all the injuries was that related to the bunk beds.

Conclusions

[23] This is not an easy case to decide. There is no dispute that the injuries were not accidentally sustained and the question is whether I am satisfied that it is more likely than not that they were *not* sustained in the course of the alleged bunk bed incident. If they were not sustained in that incident then no other explanation than one of intentional infliction in some presently unknown manner seems possible.

[24] SM has not helped herself by initially telling lies about the injuries being caused by a fall from the climbing frame. She claims even now that there was a fall from the climbing frame but admits that that fall did not cause the injuries. I am by no means satisfied that there was any fall from a climbing frame. The fact that she later agreed that a climbing frame cause for the injuries was not true and then described a bunk bed incident has, not unreasonably, invested the doctors with a good deal of scepticism about the reliability of that second account, a scepticism which I have been inclined to share.

[25] However I remind myself that there can be motives for telling lies other than guilt of the particular discreditable action alleged. For example, people sometimes lie out of shame or a desire to conceal other wrongful behaviour or, in a case such as this, a powerful fear that, if the other wrongful behaviour is admitted to, the consequence will be a conclusion by social workers that the parent is unable to cope, resulting in the removal of the children.

[26] The following list of factors, while not exhaustive, seem to me of importance in assessing the likely truth of this matter:

1. EW is and was a child given to particularly difficult behaviours which he exhibited not only when in the care of his mother but equally when in that of his foster carers and for which he was being seen at the Child Development Clinic.
2. While at Thorndale SM had had advice and assistance in managing the three children together whereas following her move to the community she was dependent upon EWS who had promised in advance that he would help and support her. By his own admission, the latter turned out to be a poor support indeed. SM did not overstate the position when she said in her statement "for the most part his presence in our lives has been a distraction rather than a force for good." I would describe him in less forgiving terms as a selfish person who, though he well knew SM was struggling with the challenge of caring for their three children in their new home away from the supports of Thorndale, felt entitled to time out for himself in his own home and, when he did condescend to visit SM and the children, lay in bed until late careless of the fact that SM badly needed his help. His "a la carte" approach to parenting was more of a hindrance than a help. His appreciation of "time out" for himself did not extend to any similar consideration for SM. His contribution to family life was, to borrow a phrase from Lord Denning, scarcely more than "to hang up his hat in the hall." These children and SM needed and deserved a good deal more than that level of contribution at that stage in their new life together and they were seriously and inexcusably failed in that by EWS.

3. Given the low mental state into which SM had sunk by the morning of 12 December 2009 when she discovered the havoc wreaked by the children to their newly-decorated house and with EWS still sleeping soundly from a tiredness for which no energetic endeavour can have been responsible, it is not surprising that she lost her temper. Any parent might have struggled to contain theirs. Her account of the ensuing struggle with EW is entirely understandable though much to be regretted.

4. Is her account of the struggle sufficient to account for the injuries observed and photographed? The first point of significance is that none of the very experienced doctors accustomed to examining wounds and marks on bodies had ever seen a similar pattern of injuries. Secondly, none could put forward an explanation other than the bunk beds that would account for the entire picture comprising the distribution, pattern, individual shape and confined location of the marks. Thirdly, only Dr Nelson had had the opportunity to take a detailed history of the events from SM and she, a highly experienced clinician, found that the history did not deviate over the course of the interview lasting some ninety minutes and was convincing. Fourthly, while the climbing frame explanation was subsequently admitted to be false and that has inevitably cast doubt upon the veracity of SM's second account, it seems to me that SM may well have been terrified that if she admitted that she had lost her temper and dragged EW down from the upper bunk bed in a way that caused this bruising she would be condemned as an unfit mother and would again lose the children that she had striven so hard, long and ultimately successfully to have returned to her care. The climbing frame explanation may have seemed to her to be a way of providing an explanation for which no blame would be attached.

[27] This is not a case in which it is possible to reach a firm conclusion. I am not persuaded that SM deliberately inflicted these injuries on EW who as earlier noted, was observed at the Child Guidance Clinic to have a warm interaction with his mother and to seek her out preferentially. I conclude that the bunk bed explanation, although it came late, is more likely than not to represent the true cause of these injuries. It follows that I am not satisfied that these injuries were intentionally inflicted by SM. There is nothing in the evidence to suggest that EWS inflicted them.

Postscript

[28] The overall evidence in this case establishes that SM tried very hard to succeed, virtually single-handedly, in the particularly difficult task of parenting these children. I have no doubt that she loves them very much and that they love her. EWS was no real help to her nor in my estimation can he be

counted on for the future. He was indeed a hindrance. SM needed what she did not have and, if the children return to her as I hope they will, will similarly for the future need namely, good, practical help. I am often struck in these cases by the paucity of such help for parents in the community, especially for parents who lack familial support. By comparison, the level of help and respite provided for Foster carers seems for some reason to be very much greater. The GAL's description repeated at para [5] above of the magnitude of the task facing SM and the many other parents like her whom I encounter daily in the course of this work seems to me entirely apposite. What is badly needed is more practical day to day support from people with practical parenting skills, probably more mature people who may have raised their own families and thereby learned from their own successes and mistakes. An investment in recruiting support of this type would be both effective and cost-effective in maintaining families within the community and avoiding the costly involvement of the care system. This form of "upstream" intervention obviously cannot hope to prevent every mishap or tragedy but it would help to keep children to receive "good enough" care where ideally they belong, living in their own families. An outcome of permanent removal of children from their families is, too often, as much an indictment of a failed system as it is of inadequate parents.