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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

RE: M and R
(Non-Accidental Injury: Possible Perpetrators)

O'HARA J

Introduction

[1] The names of the parties in this case have been anonymised in order to protect the children who the case is about. Nothing must be published or reported which directly or indirectly leads to the identity of the children being revealed.

[2] This case involves two children – M and R. The children were removed from the care of their parents in March 2016 when R who was then 10 months old was found to have fractures to both elbows and both shoulders. The medical evidence which is now unchallenged is that these were significant fractures which do not occur with normal handling of a baby. They are likely to have been caused in at least two separate incidents.

[3] This part of the hearing of the Trust's application for care orders focussed on which adult or adults are in the pool of people who may have inflicted the injuries – the pool of possible perpetrators. In this case three people were identified:

- (i) the mother;
- (ii) the father; and
- (iii) the paternal grandmother who helped her son and the mother care for the children from time to time during the period in which the injuries are likely to have been sustained by R.

[4] In considering the evidence and reaching the decision which follows I have taken account of all the oral and written testimony presented and the submissions and authorities to which I was helpfully referred. Central to the authorities is the direction that in order for an adult to be in the pool of possible perpetrators it is necessary to prove more than that that person had an opportunity to inflict the injuries. If that was the correct approach, anybody who cared for the child, even briefly, would be included in the pool. Instead the court tries to identify the actual perpetrator but if that is not possible it includes in the pool anyone of whom it can be said that there is a likelihood or real possibility that he or she was either the perpetrator or a perpetrator. Whether that can be said in any case depends on an examination of the circumstances of the family at the relevant time.

[5] In the present case the application of that approach led me, at the conclusion of the hearing, to exclude the paternal grandmother from the pool. Neither parent nor the Trust made any case that she should be in the pool. While she had the opportunity to cause the injuries because she helped to care for R, there was nothing in the surrounding circumstances to suggest that she might have done so.

[6] Turning then to the father, it was conceded on his behalf that he was in the pool of possible perpetrators. His case was that the mother is also in the pool. Her case was that the evidence proves on the balance of probabilities that the father was the perpetrator and she is not therefore in the pool. She conceded that she had failed to supervise and protect R from sustaining the injuries and that by leaving R with the father (and by her relationship with the father) she failed to provide a safe home environment. She further conceded that they had a volatile and fractious relationship characterised by domestic violence, needing repeated PSNI intervention. Her case was that she was the victim of domestic violence, not a perpetrator of it, and that the children who were present in the home witnessed that disharmony.

[7] The father's concession that he is in the pool of perpetrators was entirely appropriate. There is a history of drink fuelled rows between him and the mother with the police having been called out four times including July 2015, December 2015 and February 2016. Their relationship was volatile and fractious with separations and reconciliations. They also had significant financial pressures shortly before R's injuries were inflicted - the father had left his job and was playing a leading role as carer for the children. Then the mother left her job in what seemed to be difficult circumstances so their joint income reduced significantly.

[8] It is necessary to add to this picture the fact that R was a sickly baby. He was a poor feeder and a poor sleeper. These difficulties would stress any parent but especially parents whose relationship was volatile and already under significant pressure. I heard evidence from the health visitor who said that she had seen the mother about R approximately 10 times up to March 2016. They had a positive interaction and the mother struck her as a caring and efficient mother who sought

advice appropriately. However, the health visitor added that the mother was positive about the father's care of the children and how supportive he was of her.

[9] On 7 March 2016 the mother asked the health visitor to see R because he seemed unwell and off his food. Towards the end of that visit she mentioned that he was holding his arm sometimes but she did not reference him being in pain, crying or showing distress. The focus of this visit was on R's feeding and a drop in his weight. That is significant because the agreed medical evidence was that the left elbow fracture was about 3 weeks old when R was taken to hospital on 12 March and the other three fractures were more recent, in the region of 7-14 days. In the circumstances the focus on R's feeding and weight when he had four fractures is difficult to explain.

[10] What causes huge concern about both parents is the response to the emergence of the four fractures when R was examined at hospital. Inevitably, questions were asked of them about what had happened by doctors, then social workers and eventually the police. The picture they were given was that the parents were a happy couple but that they lived separately rather than together with the father only staying occasionally in the mother's home. That was not the true story. As their frequent text messages showed, the father regularly stayed with the mother and the children but they were fighting, drinking and very stressed.

[11] After R was taken to hospital by his mother on 12 March he did not go home to his parents. By 14 March the mother was texting to the father "our versions have to match" and "make them see it was an accident". These messages read to me as a clear effort to set up an agreed version of events, an innocent version but not a true version. And indeed such a version was later advanced by both of them. That version was that due to a defect in the manufacture or assembly of R's cot he sometimes got his arm caught in it and as a result sustained injuries. An engineer's report was even obtained to identify the problem and advance this theory. However, the doctors who provided written reports and then discussed the case at a minuted meeting described this explanation as follows:

"I think the cot scenario is, well, frankly it is absurd."

And the reason for it being absurd is that even if the baby's arms caught he wouldn't have the strength to twist his body against his trapped arm with the force required to cause the multiple fractures. Not only that, having done it with one arm he would then have had to do it the same way with the other arm if there was any credible basis for this theory.

[12] This ridiculous scenario was initially advanced by both parents. Remarkably, despite all the evidence to the contrary, it still featured in the mother's case to me though it had changed to a degree to a suggestion that the father had lifted R from the cot when his arm was trapped with such force that he caused the fractures. The mother asserted that the father had confessed as much to her in a conversation in

April 2017. Within a few days of that conversation there was a LAC review which the mother attended. For some reason which she could not explain she did not mention the confession at that meeting. That seems to me to be remarkable. If the father did admit that he caused the fractures, the mother would surely have seized on that fact in order to have her children returned to her as the innocent mother. I do not believe there was any admission or confession. I accept that there was some sort of discussion between them but I believe it was only a contrived effort to explain away what had happened to the baby. Had there been a confession of the sort suggested in her evidence to the court by the mother, the mother would inevitably have raised it instantly with the paternal grandmother with whom she had a good relationship and who was only a few feet away but just out of earshot.

[13] The mother did subsequently report the so-called confession to the police who then interviewed the father. What is striking and unconvincing about all of this is that when the mother gave evidence she said that she had never even seen the father being aggressive with the children, never mind hurting them. She also told the court in October 2016 in a statement that he was a good parent, pleasant, quiet and supportive. Despite this she now contends that I should find that he caused the injuries and that there is no real possibility that she did.

[14] In my judgment the cot issue is a red-herring. I do not believe that the defect in the cot was the direct or indirect cause of any of R's four fractures. The attention paid to it is a distraction from what was going on in the home – a couple with a child who was hard to feed and unsettled, a couple under financial pressure, a couple who both sometimes drank too much, a couple whose relationship was strained. All of this is borne out by their text exchanges.

[15] The mother's GP notes and records were relevant to the issue of whether she was a possible perpetrator of the injuries to R. An entry which was only belatedly provided by the mother (without explanation for the delay) shows that on 9 March 2016 she told her doctor that she did not want to get out of bed and she felt like she wanted to start drinking again. As if to prove this she did go out drinking (and had already been drinking recently). This was relevant, not because her drinking was worse than the father's but because she too was drinking to excess at this time. In fact on 11 March 2016, the night before she took R to hospital, she stayed out overnight drinking with her friend despite thinking by then on her own case that R might have something wrong with his arm.

[16] In her evidence the mother highlighted the fact that she took R to the general practitioner on 10 March because he was not his usual self – he was unsettled and crying. No issue with either elbow or shoulder was identified during that visit which is somewhat difficult to understand. What is even more difficult to understand is that despite the medical expert saying that R was bound to have been visibly and obviously distressed by the multiple fractures he suffered, neither parent picked up on that distress when the injuries were caused. I do not conclude that the parents were so un-observant as to have missed that. Rather, I conclude that

between them they know what happened and have withheld that information at all times since then.

[17] I have considered carefully the case advanced by and for the mother, that she should not be included in the pool of possible perpetrators. I accept that to a degree there were abusive aspects to her relationship with the father though I am not satisfied that they were as bad as she has made out. However, I found her to be quite unconvincing in her evidence. It is the mother who took the lead in the text messages about misleading anyone who asked questions and “getting their story straight”. She advanced the case for the “happy family” which was a long way from the truth. She was drinking, stressed and did not want to get out of bed. On her case she did not see the signs of four fractures until sometime well after they were inflicted.

[18] On all the evidence it is quite impossible to find that the father was the perpetrator and that the mother is not in the pool of possible perpetrators. I find that there is a real possibility that she caused the injuries to R, or some of them. The same finding has been conceded by the father. I also find that neither parent has provided any plausible explanation for the injuries. And I further find that medical attention was not sought for R in a timely fashion – his left elbow fracture was approximately 3 weeks old and his other fractures were between 7 and 14 days old. Accordingly, the threshold criteria proposed by the Trust are established in relation to each child and both the mother and the father are in the pool of possible perpetrators.