IN THE FAMILY COURT
WATFORD

WD20C00667

Neutral Citation No: [2021] EWFC 16
Royal Courts of Justice
Strand
London, WC2A 2LL

24.03.2021

Before:

MR JUSTICE NEWTON

(**In Private)**

B E T W E E N :

A COUNTY COUNCIL — Applicant

- and -

(1) M
(2) S
(3) R
(4) THE CHILD
(via his Children's Guardian)

Respondents

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MS C. HARRIS and MS L WILLIAMS appeared on behalf of the Applicant.

MR M. TWOMEY QC and MS A. DIXON appeared on behalf of the First Respondent.
MS N. CARPENTER appeared on behalf of the Second Respondent.
MR R. HOWLING, QC and MS L CHEETHAM appeared on behalf of the Third Respondent.
MS A. BROOKS appeared on behalf of the Fourth Respondent.

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**J U D G M E N T**

MR JUSTICE NEWTON:

1 This is an *extempore* judgment given over Zoom. As a result, I shall make a determined effort to keep it as brief as possible.

2 On 2 October 2017 H, who was born in June 2017, and was therefore three months' old, was found dead. Whilst the cause of death was, and remains unascertained, post-mortem six bone fractures were identified:

1. Two complete transverse fractures of the posterior ribs L6 and L7, thought to be between one and three weeks' old, and therefore sustained between 11 and 25 September.
2. A fracture of the anterior rib thought to be between three and seven days' old, and therefore sustained between 26 and 30 September.
3. A non-displaced metaphyseal fracture of the distal femur CML, thought to be between three and seven days' old, and therefore sustained between 26 and 30 September.
4. A partially non-displaced fracture of the tibial diaphysis thought now to be between the ages of five and fourteen days' old, therefore between 18 and 28 September. That was not visible radiologically, but periosteal reaction identified the injury.
5. A resolving small proximal fibula CML, again between five and fourteen days' old, sustained between 18 and 28 September.

All those injuries were observed radiologically save for the anterior rib fracture which was only identified histologically.

3 Police enquiries ruled out that the injuries had arisen at birth, or by subsequent medical intervention, including the day of death, (by CPR, )and that remains the position - for

reasons which are not immediately apparent to the court - the police investigation did not proceed further.

4 L, H's half-brother, was born in May 2020. The Local Authority issued proceedings. Historically, there had been significant interventions by the Local Authority in 2017 as a result of a number of aspects of the mother's lifestyle: drug-taking; sustained alcohol dependency; the mental health and depression of the mother, including attempted suicide and self-harm - the mother had been diagnosed as having an unstable personality disorder; and finally the mother having a history of abusive relationships. As a result of the unresolved issue of the injuries found to H, and no doubt fuelled, although not a factor in this hearing, by his death, those were all matters raised by the local authority.

5 The current matter was made no easier because in fact the mother's pregnancy only came to light three weeks prior to L's birth. Initially the mother and L were placed together in mother and baby foster care , and then subsequently in a residential unit. It was whilst there, although the concerns had increased throughout the period, that the Local Authority - anxious that the conditions provided for L appeared to be replicating those apparently given to H, i.e., the mother was tired and emotional, and was unable to care for L properly - applied on 15 July 2019 for separation. That was sanctioned by HHJ Clark on 17 July, since when L has remained in foster care.

6 No satisfactory account has been given for any of the injuries, and during the course of proceedings further expert evidence has been adduced. Then mother was a suspect, she being the primary carer, and the grandmother too was joined, she having provided supportive care given as one might anticipate. In addition, somewhat later, two further people, A and B, were also added as intervenors.

7 At the conclusion of the medical, and of their evidence, in what was, an unusual step, it was submitted to me that I could" rule out" both of those later intervenors, i.e., A and B, as being potentially responsible for any of the injuries sustained by H. On the evidence, which was clear, I agreed, and at the conclusion of that second week gave judgment removing both from the ambit of enquiry. Having now heard all the evidence , I am fortified that that was entirely the correct decision, strengthening the conclusions that I reached then, even though it must be a rare case when such a course could or even should be taken.

8 This judgment is given at the conclusion of the third week, there being a break between the second and the third. I do not propose to summarise every witness. I shall simply point to some of the headlines of some of the witnesses, both the medical and the lay witnesses, but it should not be thought that I haven't taken into account all the evidence .I have received some very helpful and thought-provoking written submissions. In a case such as this, it illustrates the importance of specialist advocates who are able to focus on the issues.

THE LEGAL PRINCIPLES

9 In determining the issues at this fact finding hearing I apply the following well established legal principles. These are helpfully summarised by Baker J (as he then was) in *A Local Authority v M and F and L and M* [2013] EWHC 1569 (Fam).

i. The burden of proof lies with the Local Authority. It is the Local Authority which brings the proceedings and identifies the findings that they invite the Court to make. The burden of proving the assertions rests with them. I bear in mind at all times that the burden is fairly and squarely placed on the Local Authority, and not on either parent. Recent case law (such as *Re B* 2013 UKSC and *Re BS* 2013 EWCA 1146) reinforces the importance of proper findings based on proper facts; the principles are the same for whatever the proposed outcome. Here there is, as in many cases, a risk of a shift in the burden to the parents to explain occasions when injuries might have occurred. Whilst that can be an important component for the medical experts, it is not for the parents to explain but for the local authority to establish. There is no pseudo burden as Mostyn J put in *Lancashire* v *R* 2013 EWHC 3064 (fam). As HHJ Bellamy said in *Re FM (A Clinical Fractures: Bone Density):* [2015] EWFC B26.

"Where… 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 that alternative explanation been proved" but rather… "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."

ii. The standard of proof of course is the balance of probabilities (*Re B* [2008] UKHL 35). If the Local Authority proves on the balance of probabilities that baby A was killed by the mother or sustained inflicted injuries at her hands the Court treats that facts as established and all future decision concerning the future welfare of B, based on that finding. Equally if the Local Authority fails to prove those facts the Courts disregards the allegations completely.

"the "likelihood of harm" in s31(2) of the Children Act 1989 is a prediction from existing facts or from a multitude of facts about what happened… about the characters and personalities of the people involved and things which they have said and done [Baroness Hale]"

iii. Findings of fact must be based on evidence as Munby LJ (as he was then) observed in *Re A (A child) Fact Finding Hearing: (Speculation)* [2011] EWCA Civ 12:

"It's elementary proposition that findings of fact must be based on evidence including inferences that can properly be drawn from the evidence, not on suspicion or speculation."

That principle was further emphasised in *Darlington Borough Council v MF, GM, GF and A* [2015] EWFC 11.

iv. When considering cases of suspected child abuse the Court must inevitably survey a wide canvass and take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth Butler-Sloss P observed in *Re T* [2004] EWCA Civ 558 [2004] 2 FLR838.

"Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence, and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the Local Authority has been made out to the appropriate standard of proof."

v. The evidence received in this case includes medical evidence from a variety of specialists. I pay appropriate attention to the opinion of the medical experts, which need to be considered in the context of all other evidence. The roles of the Court and the experts are of course entirely distinct. Only the Court is in a position to weigh up the evidence against all the other evidence (see *A County Council v K, D and L* [2005] EWHC 1444, [2005] 1 FLR 851 and *A County Council v M, F and XYZ* [2005] EWHC 31, [2005] 2 FLR 129). There may well be instances if the medical opinion is that there is nothing diagnostic of a non-accidental injury but where a judge, having considered all the evidence, reaches the conclusion that is at variance from that reached by the medical experts, that is on the balance of probability, there has been non-accidental injury or human agency established.

vi. In assessing the expert evidence, and of relevance here, I have been careful to ensure that the experts keep within the bounds of their own expertise and defer where appropriate to the expertise of others (*Re S* [2009] EWHC 2115 Fam), [2010] 1 FLR 1560). I also ensure that the focus of the Court is in fact to concentrate on the facts that are necessary for the determination of the issues. In particular, again of relevance here, not to be side-tracked by collateral issues, even if they have some relevance and bearing on the consideration which I have to weigh.

vii. I have particularly in mind the words of Dame Butler-Sloss P in *Re U: Re B* [2004] EWCA Civ 567, [2005] Fam 134, derived from *R v Cannings* [2004] EWCA 1 Crim, [2004] 1 WLR 2607:

1. The cause of an injury or episode that cannot be explained scientifically remains equivocal.

2. Particular caution is necessary where medical experts disagree.

3. The Court must always guard against the over-dogmatic expert, (or) the expert whose reputation is at stake.

viii. The evidence of the parents as with any other person connected to the child or children is of the utmost importance. It is essential that the Court form a clear assessment of their reliability and credibility (*Re B* [2002] EWHC 20). In addition, the parents in particular must have the fullest opportunity to take part in the hearing and the Court is likely to place considerable weight of the evidence and impression it forms of them (*Re W* and another [2003] FCR 346).

ix. It is not uncommon for witnesses in such enquiries, particularly concerning child abuse, to tell untruths and lies in the course of the investigations and indeed in the hearing. The Court bears in mind that individuals may lie for many reasons such as shame, panic, fear and distress, potential criminal proceedings, or some other less than creditable conduct (all of which may arise in a particular highly charged case such as this) and the fact that a witness has lied about anything does not mean that he has lied about everything. Nor, as *R v Lucas* [1981] 3 WLR 120 makes clear does it mean that the other evidence is unreliable, nor does it mean that the lies are to be equated necessarily with "guilt". If lies are established I do not apply *Lucas* in a mechanical way but stand back and weigh their actions and evidence in the round. I bear in mind too the passage from the judgment of Jackson J (as he then was) in *Lancashire County Council v C, M and F* (2014) EWFC3 referring to "story creep".

x. Very importantly as observed by Dame Butler-Sloss P in *Re U, Re B (supra)*

> "The judge in care proceedings must never forget that today's medical certainty may be discarded by the next generations of experts, or that scientific research will throw a light into corners that are at present dark"

That principle was brought into sharp relief in the case of *R v Cannings (supra).* As Judge LJ (as he was then) observed

> "What may be unexplained today may be perfectly well understood tomorrow. Until then, any tendency to dogmatise should be met with an answering challenge."

As Moses LJ said in *R v Henderson Butler and Oyediran* [2010] EWCA Crim 126 [2010] 1 FLR 547:

> "Where the prosecution is able by advancing an array of experts to identify non-accidental injury and the defence can identify no alternative course, it is tempting to conclude that the prosecution have proved its case. Such temptation must be resisted. In this as in many fields of medicine the evidence may be insufficient to exclude beyond reasonable doubt an unknown cause. As Cannings teaches, even where, on examination of all the evidence, every possible known cause has been excluded, the cause may still remain unknown."

10 Strongly submitted, and I bear in mind, is the need to avoid speculation or jumping to a particular conclusion from an unknown cause: *E v Harris* 2005 EWCA Crim 1980 (in relation to the triad of head injuries); *Re R, Cannings and R v Henderson* all demonstrate situations where injuries singly or taken together could give rise to presumptive or misconceived findings, especially where there may be (as here), naturally occurring conditions that may have caused or contributed to, a particular medical finding.

11 I have in mind also what Hedley J said in *Re R* [2011] EWHC 1715 (Fam), [2011] 2 FLR 1384:

> "A temptation described is ever present in Family Proceedings and in my judgment, should be as firmly resisted as the Courts are required to resist it in the Criminal Law. In other words, there has to be factored into every case which concerns a discrete aetiology giving rise to significant harm, a consideration as to whether the cause is unknown. That affects neither the burden nor the standard of proof. It is simply a factor to be taken into account in deciding whether the causation advanced by the one shouldering the burden of proof is established on the balance of probabilities… a conclusion of unknown aetiology in respect of an infant represents neither a professional or forensic failure. It simply recognises that we still have much to learn and…it is dangerous and wrong to infer non-accidental injury merely from the absence of any other understood mechanism"

12 Finally, when seeking to identify a perpetrator of a non- accidental injury the test as to whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or real possibility that he or she was the perpetrator (see *North Yorkshire County Council v SAV* [2003] 2 FLR 849), and Re B (children : uncertain perpetrators (2019)

EWCA Civ 575. In order to make a finding that a particular person was the perpetrator of non-accidental injury the Court must be satisfied on the balance of probabilities. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interests of the child although where it is impossible for a judge to find on the balance of probabilities that for example parent X rather than parent Y caused injury, then neither of them can be excluded from the pool and the judge should not strain to do so (*Re D* [2009] 2 FLR 668 and *Re SB* (children) [2010] 1FLR 1161).

**The expert evidence:**

13 Dr Watt, consultant paediatric radiologist:

1. He described the fractures, both the sixth and seventh posterior ribs. He did not, as I have indicated, identify the anterior fracture. He thought that those fractures would have occurred by manual compression, (the most likely cause. ) CPR was a possibility but unlikely. In fact, he gave me the striking figure that CPR can compress the ribs by as much as 50 per cent. His conclusion was based on the periosteal reaction of the fractures, which were not caused therefore on the day of death.

2. In relation to the leg injuries, he concluded that they had been caused by a pulling or a twisting force, that they could have occurred together, later indicating that he thought that they probably did. In relation to both those sets of injuries, there would be obvious signs of pain.

3. In relation to bone density and osteogenesis imperfecta, and dentinogenesis, he advised that those conditions were difficult to diagnose radiologically; that the fractures, when sustained, would have been the result of some trauma; so far as osteogenesis is

concerned, radiologically the bones might be normal , but the injuries would still require an incident. In conclusion he did not rule out mild osteogenesis imperfecta, but did not consider it to be a factor in this case. I bear in mind that his evidence is positioned in the context of the other expert evidence , but I have focussed on his own conclusions and professional judgment.

4. The thrust of his evidence and of his conclusions were clear, and he brought together, it seemed to me, the differing factors in a natural, rational, coherent, and balanced way, upon which I rely.

5. Whilst he did not exclude osteogenesis imperfecta, either radiologically or in fact clinically, and was open-minded about it, a factor which seemed to strengthen his evidence, nonetheless he was clear that it was not a matter which the court in the balance of its considerations needed to consider.

6. He was open-minded, but maintained his conclusions.

14 Professor Mangham is a well-known consultant histopathologist. One of the few, if not the only, consultant histopathologist who is available to the courts in these matters; if there are others, I am not familiar with them. He described the three rib and leg injuries. I am well aware of the comment expressed by this court in relation to another case, but there were different facts and considerations there .

15 Professor Mangham was pressed quite firmly in relation to his conclusions in relation to osteogenesis imperfecta. Some of those exchanges made for somewhat uncomfortable listening. He understood and appreciated Dr Cartlidge's more open consideration of osteogenesis imperfecta, and agreed that there was and is, a difficulty in relation to the

clinical differentiation of mild osteogenesis imperfecta from abusive injury, which may, in suitable circumstances, be dealt with by a genetic testing.

16 There was an especially difficult exchange when he was asked to describe his assertion that under light microscopy the bone appeared to be normal. He based his conclusions on his undoubted very considerable experience of looking at bone tissue on a daily basis. He agreed that he could not rule out osteogenesis imperfecta but concluded that there was no evidential basis for further testing, whether that be histological, genetic or bone scanning. As he put it: "Can I prove I am not a Martian? How many tests do you want me to take to prove that I am not a Martian?" Professor Mangham is a leading, possibly the leading, possibly the only expert in this field, and I weigh his conclusions carefully. It was evident to me that notwithstanding his expertise, that very often in different investigations (crime for example) he is simply asked for an opinion, and the different considerations are not necessarily examined in the way in which in which they been in these proceedings although the analysis must surely be the same. In any event he was in fact in agreement with the other experts , as I shall deal with later, using their own expertise, not necessarily specifically to this field, who were able to endorse his approach.

17 Nathaniel Cary is an extremely well-known leading consultant forensic pathologist. He was very clear as to the mechanisms, supporting mostly what Dr Watt had said, that in relation to the ribs there had been a forceful side-to-side squeezing, he thought at the severe end of force. In relation to the gripping, he thought that it would be the cause of extreme distress. In relation to the leg injuries, he did not consider that that may have been caused by what has been referred to as "flailing limbs". In fact, he supported what the other witnesses had found, on the day-to-day presentation, I intend no disrespect , I prefer Dr Cartlidge, who as a consultant paediatrician, has had more day-to-day clinical experience of the living.

18 But notwithstanding that, Mr Cary is a witness of conspicuous experience and learning, he was careful to confine himself to his speciality, and that was the more evident as the questioning proceeded. He reached clear conclusions, which I adopt; and in common with the other experts and other disciplines, was keen to confine himself to the disciplines of his speciality.

19 I turn finally on the medical aspect to the evidence of Dr Cartlidge, a witness extremely familiar to the court with an enviable reputation. Firstly, in relation to osteogenesis imperfecta, some of the query in relation to Professor Mangham's opinion had arisen from the experts' meeting, and he, Dr Cartlidge, was astute as to the observance or otherwise of bone disease or fragility or some other condition. He expressed some disquiet about the pathological opinion; whilst relying on Professor Mangham, nonetheless, was properly able to question it himself.

20 Although it has led to some comment, in fact the way in which his opinion developed during the course of his evidence, if anything, strengthens the force of it, because although he was prepared to contemplate the possibility of the existence of osteogenesis imperfecta in a mild form, or possibly some other condition, and did not exclude it, nonetheless his final position was that he considered that nonetheless the injuries were consistent with a use of force. Of course, with osteogenesis imperfecta there would be possibly less force, possibly very little force, but nonetheless he still considered that , despite submissions to the contrary, there would have been some memorable event.

21 He described the same mechanisms, both in relation to the ribs (circumferentially squeezed), and timing. With regard to mechanisms on the leg, he was consistent with all the others. A number of other possibilities were put to him as to how they may have been occasioned, and he commented upon those, which I will deal with a little later.

22 He considered that the ribs would be very painful for about ten minutes or so, and then the pain would lessen. A child would be in considerable distress. It would be the same pain as might occur in an adult, and in relation to the leg it would be painful for five or ten minutes and would reduce movement for up to seven days but would not necessarily thereafter be noticeable.

23 So, all in all, before I turn to my conclusions on the medical evidence, it is worth commenting that the medical witnesses were reasonably well aligned as to their conclusions, each depending on their own expertise but considering that of the others.

24 I turn shortly to the evidence of the mother and the grandmother.

**The mother**

25 There is no doubt that the mother loved H, and indeed L, very much, and self-evidently wanted to be the best mother that she could. But the mother herself was only too well aware that the reality and responsibility of motherhood was very different . H was a demanding baby, who did not settle, and who required very different care to L. I have read many messages from the mother at that time, when H was having a purple rage or indeed on other occasions when she was struggling with his care, for example: "I really can't do this anymore"; she exhorted her mother to take him; she really felt like "chucking" him; she had lost patience, and was suggesting that she would hit the "fucking wall"; and many more in a similar vein.

26 Whereas I am sure some of them were simply expressions of her frustration and upset, they are troubling. In any event, they are all examples that the mother was not coping and brought very much to the fore her own very acute difficulties. The mother has, indeed as

she told me herself, difficulty in controlling herself, and explaining her emotions. The mother is volatile, and voluble, and given to outbursts. She not infrequently gives vent to her very considerable temper, and on occasions not just verbally. There have been occasions when she has been violent to objects, and in particular to her own phone. She told me, that so bad is the problem (in relation to the phone) that she had to attempt to address her behaviours .

27 Sitting side-by-side with those factors, that is a vulnerable baby and a fractious mother, was the lack of clarity in relation to other factors in the mother's life. It should not be forgotten that the Local Authority were anxious about the mother and her care of the child because of her involvement with drugs, alcohol, her own stability , unsavoury men - about which I am completely satisfied the mother was less than straight, keeping much of the detail away both from them and indeed her own mother. She was, I have concluded, deliberately delusive and deceitful.

28 Those weeks, after H's birth, were in a way a perfect storm in that they brought together all the factors about which the Local Authority were quite properly worried, as well as a number of other intrusive stressful dynamics. The mother had problems with money, illustrated by non-payment of rent, going to the food bank. Her benefits were at one stage suspended. She had problems with neighbours. She had difficulties with the men in her life, with whom in any event she should have been having no contact. She had had difficulties from time to time with her mother, and she had of course the Local Authority breathing down her neck.

29 I have concluded without any hesitation that I have simply not been told the truth about any of these by the mother. During the period, and in particular in September 2017, the mother's own condition evidently deteriorated. She was, I have little doubt, exhausted. She was

losing patience, she did not know what was wrong ; she kept crying all the time. Those matters built up, and whilst her mother was able to support her as much as she could , and indeed exhorted her to seek medical help because she thought she might have post-natal depression. It is not uninstructive to look at the early signs which were apparent, for example, and illustrated by the text messages of 11 and 17 August when H was just a few weeks' old, to the full flood of messaging that took place in September.

30 Though the mother's condition today is nothing like it was then, indeed the mother presented mostly very well in evidence, she was keen to deflect much of the blame onto others, either explicitly or implicitly, much as she had done in relation to Aand B. In relation to the former, it was perfectly obvious that the mother was not telling the truth about that. I simply do not accept her account about Aat all, but the mother was happy for the edges to be blurred, and for the waters to be muddied if it deflected focus and responsibility away from her, and it was illustrated equally clearly by her evidence in relation toB, who was at the time she was complaining about in reality just feet away from her. Indeed, as was evident during the hearing, photographs were taken of what was taking place that day, and if something really untoward had occurred, it is inconceivable that the mother, who was trying very hard to be a good mother, would not have intervened, and have done and said something.

31 In relation to her own mother, the maternal grandmother, who was clearly on instructions robustly cross-examined on a number of difficult areas, I have concluded that the mother's approach to her is similar, and in a not unsophisticated way, i.e., she endeavoured to drive suspicion away from herself, illustrated perhaps all too obviously by the one occasion that she does assert abrupt and inappropriate conduct by her mother in relation to H. It is inconceivable to me that the mother would not have intervened had her own mother acted in

that way. It was something which came to light fairly late in the day, and indeed it seems to me was so obviously made-up ; it was unattractive.

32 Overall, I found the mother's evidence to be unreliable. She was not a good witness. It was riddled with contradictions and untruths, many of them admitted. I conclude, I am afraid, that the court has not heard the truth in relation to so many facets of the mother's life. The mother presented as clear, but as each inconsistency was laid bare, even on the most gentle of probing, it was difficult in fact to really know what had been or was taking place in her life; what was happening now, both for the mother herself and what was happening more generally in her life; the men in her life; and most importantly what was happening in relation to the care of her child.

**The grandmother**

33 The grandmother presented as an altogether different figure, anxious, but - notwithstanding assertions made by the mother, some of which, as I have said, were difficult and were firmly put – she was clearly doing her best to be honest. Her evidence did have a different quality to it. She seemed to me to have endeavoured to provide as much support as she reasonably could for her daughter - the mother, for whom she clearly has a very strong bond and regard - and that was especially so in September 2017, notwithstanding the very many issues which she had in her own life; most pressing, I suspect, was her own health.

34 This mother and daughter have a very difficult - indeed argumentative, even combative - relationship. They are drawn to each other but argue, and yet they are dependent on each other. They are both capable of an enormous lack of self-control and self-indulgence, and that dynamic has been especially unhelpful to the mother, who has very considerable difficulties and struggles of her own.

35 The grandmother described her daughter on more than one occasion as manipulative, I have concluded that that is a not unfair description of her. But it should not be thought that the grandmother does not have a very high regard of the mother and described more than once how proud she was of the achievements she had made, in no doubt difficult circumstances.

36 The difficulty in a way was, notwithstanding the messages and I have no doubt conversations that occurred in September 2017 why the grandmother did not act more than she apparently did in protecting her grandson, and in helping her daughter. I have concluded, having thought about it, that I accept that she did not understand how far or how quickly the mother was falling. She did notice a considerable change in her daughter. She was tearful, irascible, angry, certainly frustrated, and more withdrawn. It was, after all, the maternal grandmother who urged that the mother should have some urgent medical intervention because she was so anxious that she was suffering from post-natal depression. It should not be forgotten that she was, in any event, deliberately being kept in the dark by her daughter of many aspects of her daughter's domestic life, especially in relation to men.

37 Whilst there are aspects of the grandmother's evidence which are unimpressive - and I have in mind here for example , drugs - I understand why she did what she did. I am confident that she would have and indeed would have been capable of protecting H better had she known in fact the whole truth .

38 So, finally, having reflected on it, whereas the grandmother herself has been guilty of some untruths, and less than creditable conduct on occasions, applying properly the legal principles to her evidence I am satisfied that what I heard was as close to reality, as close to the truth, as it is likely to hear. In fact, having reflected on it further, overall, I found the grandmother to be quite a good witness.

**Discussion**

39 Inevitably, where it is contended that injuries may have a natural or an organic cause, I exercise caution, and I pay particular regard to what the medical experts say since self-evidently today's medical certainty may be discarded by the next generation of experts. Rare and unknown conditions do arise and do exist, and it is sometimes not possible to identify what is not currently understood or known. So, particular scrutiny is required, even where, as here, the medical experts effectively are broadly in accord.

40 Of course, I bear in mind that the medical evidence is only one part of the evidence, and as there is no direct evidence of inflicted injury or indeed any reliable evidence of any other occurrence, any diagnosis may simply in fact be a hypothesis. Self-evidently of course it is not for the mother or the grandmother to prove anything.

**The approach of the medical witnesses**

41 I have very shortly recorded the thrust of each witness. All from appropriate specialisations, they gave evidence appropriate to their professional standpoint and each specialism within their own field. Each respected the perspectives of others but possessed importantly a good knowledge beyond their specific specialisations, putting their own evidence in that context.

42 I also bear in mind that it would be easy to look at each piece of evidence in isolation rather than endeavouring to look at the canvas overall, and I have been careful to examine each both together and separately.

**Conclusions of the medical evidence**

43 Caution is necessary where there may be a reasonable possibility of a natural cause, or it is being suggested, or a combination of natural causes. I have taken time to reflect on the helpful and thought-provoking submissions particularly that have been filed in this case. It should also be borne in mind that although I have recorded aspects of the witnesses' evidence, the full nuanced detail of the scientific opinion is not here replicated, nor would it be appropriate to do so. But it is remarkable that there is in fact a considerable degree of unanimity between those experts.

44 Essentially all the witnesses, including Dr Palm, conclude that there is no evidence of natural disease; there is no evidence of osteogenesis imperfecta; and there is no evidence of genetic mutation or manifestation of such on examination.

45 I turn to consider shortly osteogenesis imperfecta or any unknown condition. There is, on the evidence, no evidence of any bone disease or osteogenesis imperfecta, but a propensity to fracture has not been excluded. Neither Dr Watt nor Dr Cartlidge could exclude it, and in evidence Dr Cartlidge was very obviously weighing the considerations before reaching his final position, i.e., weighing the possibility that mild osteogenesis imperfecta might cause injury, which was not necessarily abusive but clumsy. Indeed, far from undermining his evidence, it seemed to me that that thoughtfulness, strengthened it. Ultimately, it seemed to me that his deferring to the other medical opinion was at least in part based on the absence of any observable microfractures.

46 It is of course the case that as an expert consultant paediatrician, relying on the specific expertise of Professor Mangham and to a lesser extent Dr Cary, and in relation also to the relevance or otherwise of the absence of any evidence of internal trauma, those are matters

which may or may not support the hypothesis of an unknown cause or an unknown bone abnormality. Nonetheless his conclusions are in fact what you might expect. There is a tension, evidenced in this case - where there is the instruction of an expert within prospective criminal proceedings, as opposed to family proceedings - and the way in which the report is approached , which seems to be very different.

47 The report here has been produced as a result of the original police investigation and, as is nearly always the case, the findings are set out quite summarily. Clearly, had an expert's report been sought within these proceedings, there would be a different process of instruction, a different expectation. Indeed, as is common, those reports, a report within these proceedings, would have set out the basis for coming to the conclusions, and the potential differential diagnoses, if any. Indeed, frequently reports, as many psychological reports do, set out all the processes too.

48 Here, of course, Professor Mangham sets his findings based on his not inconsiderable experience, and on the basis that he is trained to examine bones, and gave, as I have recorded earlier, the rather bald answer. That is how he reached his conclusions. Two things therefore arise. They do not necessarily in fact undermine his conclusions, but it does demonstrate the importance of advocates being astute to enquire about those processes, and how that is gone about, and also advocates being astute as to the possibility of the existence of other explanations which might arise, especially since the advices of that expert are likely to have an effect, sometimes a significant effect, on the advices of other experts involved in the proceedings.

49 I have to conclude that some of the answers that I heard were candidly somewhat circular, for example Professor Mangham says, "How do I prove I am not a Martian?", but in fact he concluded his evidence conceding the fact that in the absence of any credible alternative, the

injuries would be characterised as inflicted, as non-accidental injury. He was in fact prepared to acknowledge the existence of the matters put to him by Mr Twomey QC, but nonetheless maintained his position, and indeed it is a position about which he was firm. Notwithstanding the matters put to him, they are matters upon which I can and should rely.

50 So, although he was subject to considerable censure, I do accept the force of his opinion. It is not derogated from by the other witnesses, nor indeed from the matters which were put to him. Thus, in conclusion in relation to this matter, I can come to these conclusions:

1. I have greater difficulty in adopting a conclusion that the medical findings are in whole or in part as a result of some unknown or unidentified condition or combination of conditions. They were not ruled out, but the collective view was that H did not suffer from them;
2. I do not accept that H's condition arose from some identified medical condition;
3. I have greater difficulty in adopting a conclusion that the findings are as a result of osteogenesis imperfecta;
4. There is no other known or overlooked condition;
5. H's condition is not as a result of some unknown pathology;
6. Finally, that H had normal bones.

51 So, how many episodes of injury or assault were there?

1. I conclude on the clear evidence of the expert evidence, which I accept, and which is not in conflict, that the anterior and posterior rib fractures are distinct, and could not have occurred at the same time;
2. The leg injuries could have all occurred at the same time;
3. The leg injuries could have occurred at the same time as some of the rib fractures;

4. Therefore, there have been at least three events on at least two occasions;
5. Finally, I do not exclude the possibility that the six injuries could have occurred on six separate occasions;

**Mechanism**

52 In relation to the posterior ribs, they were caused by squeezing or circumferential pressure. In relation to the anterior rib, it was caused from a front-to-back or a side-to-side pressure; at least one witness commented that would require significant force or impact. In relation to the leg injuries, they were caused by traction, twisting, yanking or bending. Normal bones would not fracture without excessive force.

53 In relation to alternative causative mechanism, had they been caused by some accident ? In fact, very few are suggested as possibilities, and I will deal with them reasonably summarily.

**Co-sleeping**

54 Neither the mother nor the maternal grandmother admit to co-sleeping in the strictest sense. There is in fact some evidence to suggest that it did occur. The mother was spoken to about the danger of co sleeping , as a routine, not because of anything in particular. Sometime later, a month or so , the messages of 14 September 2017 and 26 September 2017 do seem to support the possible contention that it may have occurred. The issue was explored in evidence with the medical experts in that it might occur for a rib injury, and in relation to the leg it was less plausible, but just possible.

55 Reviewing the totality of the evidence, I have concluded that I have greater difficulty in accepting that it was a possible mechanism. Nothing else is described by either the mother

or the maternal grandmother, and they do not admit it in any sense, and it seems to me that in relation to the possible side effects and causes, and the illustrations that would come from H, I have greater difficulty in accepting it as a possible mechanism.

**Dropping, the car seat & collision with railings**

56 These are all accounts asserted by the mother – none previously mentioned - and in any event do not account for some or all of the injuries. Again, I have very much greater difficulty in accepting any as possible explanations.

**The hotspot**

57 I am quite sure that when the grandmother described a scream, she was being accurate, an overuse of force particularly by a person who is an experienced parent as the grandmother would not in my view be described that way , had she been culpably responsible.

58 In fact, it seems to me that none of those possible explanations are ones which the court can look at in these circumstances.

59 There is no alternative "innocent" or organic explanation . So, an uncomfortable diagnosis of exclusion.||The injuries must therefore have been caused by an individual as a result of trauma, is the court able to identify who ?

60 With that background, I turn to the evidence of the mother and the maternal grandmother. Their evidence and my assessment of them in the witness box is strongly determinative of my conclusions. There is no reliable account at all for any mechanism for causation regardless of the level of force. The mother was the primary carer; the grandmother gave

occasional respite care. It is reasonable to look to both but to the mother's testimony in particular with particular care and ask how it was that these injuries occurred. This does not reverse the burden of proof.

61 The mother loved H. She loved her son more than anything else and was appropriately anxious to be the best mother that she could. The reality, I am clear, was far from the aspiration and very much not what the mother herself had anticipated or hoped for. Witnesses: the health visitor; the social worker; the support worker; the maternal grandmother, all speak highly of the mother's attuned care, and of her strong desire to be as good a mother, indeed a perfect mother, as she could. The maternal grandmother knowing of her difficulties in particular was proud of what she had achieved.

62 But it is not difficult to envisage, being solely responsible for a small child who was restless and demanding, how a carer might momentarily lose control, and with that background it is instructive to examine both the mother's and the maternal grandmother's evidence.

63 The evidence of the maternal grandmother was of a very different quality to that of the mother. She no doubt has had a number of challenges, some of which were really quite severe and relevant, in the late summer of 2017. It is clear that so far as her relationship with the mother is concerned, and indeed others, that she has on occasion been explosive. She certainly reacts to the behaviour of the mother. But for one example - that is the one described by the mother, against her, which I do not accept - there is no evidence at all of any inappropriate conduct towards H.

64 I have not lost sight of the grandmother's surprising behaviour on the day that H died, nor that self-evidently she was not completely open to the police, though it is in fact easy to

understand why, a good example of the application of fairness and common sense, and of the principles of *Lucas*.

65 It is the case that the grandmother, as I have said, had her own issues: housing; health; neighbours; a personal relationship; and importantly the dynamic and unpredictable relationship with her own daughter. Whilst there were some inconsistencies, which I do not overlook, it was plain as day to me that the grandmother was endeavouring to be as truthful as she could be, and in fact was obviously truthful.

66 In contrast, the mother was inconsistent on just about every aspect, whether it be some of the incidents to which I have referred above: the co-sleeping, the car seat, the railings; whether it was her involvement with others; whether it be A or B, both of whom it seemed to me were deliberately brought in in an effort to protect herself; or whether it was the factors which the court has taken into account - her involvement with drugs and with the men in her life.

67 The Local Authority had quite legitimate concerns about those issues, they had been quite accurately identified in 2017, and the mother did just about everything she could (a) to keep it from them, and her own mother, and (b) carry on in every single respect. She was deliberately, I am afraid, deceitful and disingenuous. The evidence now clearly discloses that she had involvement with drugs and alcohol; that she had contact with C,D,E,F and was deliberately keeping all of that, and indeed a number of other matters, from her own mother.

68 I do not overlook the fact that the mother was herself stressed. H was not the easiest first baby, and mother was suffering from inadequate sleep; insufficient help, as she saw it, from her mother and others; the Local Authority involvement, as I have said; paternity testing; financial worries; and no doubt many others. In listening to the mother, it occurred to me on

more than one occasion that she did seem to me to be really focussed on getting H to sleep and was only really happy when he was.

69 Taken together with the medical evidence, those factors and my assessment of the mother's evidence present a formidable catalogue of behaviours, which I find unfortunately all point in one direction. The mother was ill-equipped to manage the care of H, and whilst I have no doubt she did her very best, I am satisfied she was unable to contain herself and her frustrations.

70 I have very deliberately left one aspect to the end, having already reached my conclusions, and that is in relation to L, who is the subject of these proceedings. L left hospital on 28 May 2020, first was placed in a mother and baby unit, and then from 18 June to 17 July was placed with the mother in a residential unit. Very unusually, the court has seen recordings taken by CCTV of the mother and L in her room. Those recordings demonstrate a number of matters: the throwing of objects, which the mother admits; and of rough behaviour which the mother acknowledges but I am not convinced admits.

71 It seems to me that I should ask myself: do the proven (observed ) facts that I have seen form a sufficient basis to sustain a finding of propensity? Or, to put it another way, am I satisfied on the basis of the proven facts that a propensity has been established? It has been strongly submitted to me that there is an insufficient nexus between the observed behaviours directed towards L, and that is not the same as the excessive force and what would have occurred in relation to H, that is to say resulting in injury.

72 Of course, the observed behaviours, i.e., observed on the CCTV, as well as the matters in relation to drugs and alcohol and the other men, are all each of them capable of being prejudicial. There is clear evidence that during the course of 2020 the mother was tired and

short of patience. I note an early untested comment of the foster carer that the mother could cope if L was asleep most of the time, an observation which had already occurred to me as I have said when I was listening to the mother in relation to H.

73 It is evident that the mother's tiredness and frustration and exasperation bubbled over. Whilst the mother makes complaints about her time in foster care at the mother and baby unit, and the time in the residential unit, L was a much easier baby than H, and yet nonetheless the mother kicked out, and indeed threw items in exasperation when holding L - and indeed was complaining of L's behaviour, much as she had in relation to H - and evidently, as the video demonstrates, handled L roughly.

74 I do not accept the submissions in relation to this aspect. It seems to me that those behaviours directly mirror and echo the very matters which I have no doubt H would have been subjected to. Indeed, of course the only differences are that it was three years ago and with a different child who behaved differently , significantly of course the mother was not being surveyed or monitored in the way she was in this case.

75 So, finally, putting the evidence together, I find as follows:

1. The medical evidence points to a unified diagnosis of trauma;
2. The mother was the primary carer, assisted occasionally by her own mother;
3. There is no reliable reported mechanism for any of the injuries;
4. There is no explanation as to how H might have sustained the injuries both to the ribs and the twisting injuries to the leg;
5. The mother has been deceitful and delusive in her behaviours, and in particular in relation to: drugs, drink, men and indeed in relation to others - both the Local Authority

and her own mother. I bear in mind the difference in her presentation the day she saw the doctor and the social worker.

76 All those matters were very proper points of concern and had been properly identified by the Local Authority in the first place. The mother was aware of what she was doing, but was unable to manage those concerns, and herself, she was unable to put H first.

77 Having now heard all the evidence and considered the submissions in relation both from the Local Authority and the mother, as well as others, nonetheless it seems to me that everything is at large. I am satisfied on all the evidence taken as a whole, and in relation to the evidence that I have heard from the mother in particular, that she was much more likely to be responsible, I am satisfied that all the injuries were inflicted by the mother.

78 Accordingly, I find that the Local Authority has proved that it is more likely than not that H was subjected to inflicted injuries as contended. I conclude that the injuries were more likely caused by the mother. The Local Authority make a number of additional contentions, upon which they rely. Insofar as I have made observations or findings about them, then I find that those are made out too, but I make no specific findings about them. That is the court's judgment.

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