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IN THE FAMILY COURT
(Sitting at Northampton)

No. NN21C00109

[2024] EWFC 197

Northampton Crown, County and Family Court
85-87 Lady's Lane
Northampton
NN1 3HQ

Thursday, 25 January 2024

Before:

MRS JUSTICE LIEVEN DBE

(In Private)

B E T W E E N :

NORTH NORTHAMPTONSHIRE COUNCIL

Applicant

- and -

(1) A MOTHER
(2) A FATHER
(3) & (4) THE CHILDREN
(via their Children's Guardian)

Respondents

J U D G M E N T

APPEARANCES

MR N O'BRIEN (instructed by Pathfinder Legal) appeared on behalf of the Applicant.

MR A VINE KC and MISS A TURNER (instructed by HLA Family Law, Solicitors) appeared on behalf of the First Respondent.

MISS A COLLINSON (instructed by Wilson Browne Solicitors) appeared on behalf of the Second Respondent.

MR A FORBES (instructed by Brethertons LLP) appeared on behalf of the Third and Fourth Respondents via their Children's Guardian.

MRS JUSTICE LIEVEN DBE:

- 1 I start with a very brief summary, which the parents can hear, and then leave if they wish. I am going to make the findings sought by the local authority. I find that the father caused the injuries; the mother failed to protect the children. The medical evidence is compelling. There are a number of points where I am confident that the parents and the maternal grandmother have lied to the court and, taking the evidence as a whole, it is, in my view, well beyond the balance of probabilities that the father caused these injuries.
- 2 This case concerns two children, J, aged nearly six, and B, now aged four. These are the second set of care proceedings and the third fact-finding hearing concerning these children. The decision of Judge Wicks, dated 8 June 2023, was overturned by the Court of Appeal, and I have heard the re-hearing of the matter over three days. I heard oral evidence from the mother, the father and the maternal grandmother. All parties agreed that no medical witnesses needed to be called, but I was provided with all the medical evidence from the earlier hearings, as well as extracts from many of the transcripts. I will refer as necessary both to the oral evidence, the written evidence of the medical experts and the witnesses of fact below.
- 3 The first proceedings concerned a skull fracture to B when he was five weeks old in early February 2020. The second, a series of serious injuries to B culminating when B was taken to hospital on 16 August 2021.

Background

- 4 On 7 February 2020, B, then aged five weeks, was admitted to a local Hospital with a head injury which, on examination, was found to be a skull fracture. J was examined and no injuries were found. The children were placed with the grandmother and her partner, Mr Y, initially under s.20 of the Children Act. Proceedings were commenced on 19 February and an interim care order was made.
- 5 The case was managed throughout by HHJ Wicks. Both parents denied responsibility for the injuries and a fact-finding hearing began on 28 September 2020. There were three medical experts involved in the first proceedings: Dr Oates, a paediatric radiologist, Mr Lawrence, a paediatric neurosurgeon, and Dr Cartlidge, a paediatrician.
- 6 They held an experts' meeting in which they agreed that B had two fractures to the right parietal bone, that the window for injuries was between 31 January and 7 February 2020 and there was no underlying condition which would predispose B to fractures. They agreed that the possible events identified by the parents did not provide an explanation, and I will go into that in more detail below.
- 7 Dr Oates rejected the possibility that the injuries could have been caused by J throwing a toy – that has not been persisted with further – or that the injuries could have been birth-related. He thought that the possibility of J jumping from the sofa onto the bouncer was a possibility but very unlikely.
- 8 Mr Lawrence was of the opinion that the two fractures were the result of B's head making forceful contact with an unyielding object, with the point of contact being in the right parietal region. Again, he rejected the birth injury idea or the flying toy or iPhone. He considered it to be unlikely, given the clinical presentation, that it was the result of J jumping off the sofa onto B, largely because of what would have been B's likely response.

He also said at that stage that in such a scenario the head would have had to be turned to the right, so that it was the right parietal area that would have contacted the floor.

- 9 Dr Cartlidge, who is the paediatrician and gave a paediatric overview, considered that the level of distress that B would have presented after an injury of this type would have been a very loud cry, involving a sudden change in volume and the nature of the cry when the fracture was sustained.
- 10 The fact-finding was adjourned before the parents could give evidence because of late police disclosure, I believe, and the court granted permission for an expert to be instructed in biomechanics. That expert was Dr Van Ee, who produced two reports. He concluded that if J jumped off the sofa onto his brother, he would have generated or could have generated sufficient force to have caused the skull fracture, even though B was in a bouncer chair at the time, but if J had jumped from the floor, he would not have generated sufficient force. Dr Van Ee's report very much focuses on an examination of pressure and force rather than how the mechanism would actually have worked to have caused the specific fractures in question.
- 11 In the light of Dr Van Ee's evidence, the medical experts reviewed their conclusions. Mr Lawrence accepted the theoretical possibility of that scenario, but said that such an incident would have resulted in symptoms of pain, distress or altered consciousness that would have been noticeable and obvious to a carer, even if that carer had not witnessed the episode. Dr Cartlidge also accepted the theoretical possibility, but, like Mr Lawrence, thought that the scenario was unlikely, indeed more than unlikely, given the absence of any reactions of J, and that J would probably have hurt himself as well. Dr Oates did not alter his original opinion.
- 12 The parents gave oral evidence to Judge Wicks at that hearing when it was resumed in February 2021. I am told that the mother became very upset during the evidence. I do not think it is necessary to record anything more about the mother's evidence at that stage. I note that there are some discrepancies between accounts that have been given in their precise details by the mother, the father and indeed the maternal grandmother. I very much take into account, and I will come back to this when I come to the law, the fact that February 2020 is now almost four years ago and that accounts have been taken on a number of different occasions. These kind of minor differences in chronological sequence where there is no objective evidence such as texts to establish a clear chronology, do not carry much, if any, weight.
- 13 The evidence of the mother at that stage was, and I do not think this has materially changed, that the father had both children on the night or late afternoon of the 6th for about three hours while the mother went out for what is described as work experience, and that that was the first time the father had been left alone with the two children. She said that, on the day of the 7th, according to her oral evidence and her statement, she had gone into the kitchen at around lunchtime in order to make some toast and a bottle for B, she had left B in his bouncer chair in the living room with J, and she could hear J playing on the floor while making something to eat. Toys were on the floor before she left the room. She did not say she heard any incident while the two boys were in the room. She said she took the boys to a local park and it was on her return, that is when B was being taken out of the pram by the father, that the swelling to B's head was noticed. She then contacted her mother, saying that she did not know how the injury had occurred. They went round to the grandmother's house and then the grandmother said they should take B to hospital.

- 14 The suggestion that J might have jumped onto B was not one that was made by either parent initially, and the mother accepted, as I understand it, right from her evidence before Judge Wicks at the first hearing, that she had not said that was a possibility at the start. The father also gave evidence to Judge Wicks and the father, as is the case with the mother, has been consistent that he did not cause the skull fracture.
- 15 Judge Wicks gave judgment on 18 March 2021. He decided that B suffered skull fractures when he was sitting in a bouncer chair and his older brother, J, had jumped off the sofa and landed on him, striking his head against the wooden floor. Threshold was not established and the proceedings were dismissed.
- 16 The children, returned from the maternal grandparents to the parents a few days later, so at a date in late March 2021.
- 17 On 16 August 2021, so some five months after they had been returned to the parents, B was again presented to hospital, having developed bruising and swelling to his face and scalp. The view of the treating paediatricians was that this was not an accidental injury and, following a referral to the local authority, the second proceedings were issued.
- 18 The parents said, and continue to say, that, in the early afternoon of 15 August, while playing in the sitting room, B was running, slipped on a rug and landed on the laminate floor and bumped his head. They said that, and continued to say, he appeared fine that day, but presented with bruising and swelling to the head the following day. Neither called for medical advice at the time; rather the mother called her mother, and the mother and the grandmother took the boys to the landlord's agents to complain about the hard floor. The father stayed at home.
- 19 Later that same morning, a friend of the mother's called round, who works at a hospital. She examined B and advised the mother to get medical help. The mother then took B to the hospital. He was examined and, in addition to the swelling to the left side of his skull, bruising was noted and recorded on a body map, including bruising to his left ear. The parents were arrested and then interviewed.
- 20 The father's phone was seized, and he explained that it was a new phone and provided the PIN. However, it appeared that he had wiped his phone. His explanation is that he routinely does that to save on storage.
- 21 Subsequent examination of the mother's phone and what is described as a memory book of photos were produced to the court before Judge Wicks and have been produced to me. I will refer to some of those in detail later, but what they show is B extensively and repeatedly showing bruising to his face from 15 April, so not very long after he returned home.
- 22 An interim care order was granted on 25 August and, as I understand it, the children initially stayed with the grandparents, then moved to a foster care placement for a period, and then returned, I am not sure on precisely what date, to the grandparents.
- 23 There was a lengthy case management history, at which Judge Wicks allowed the reopening of the causation of the 2020 injury. In the second proceedings, Dr Oates, Dr Lawrence and Dr Cartlidge were again instructed, but Dr Keenan, who is a haematologist, was also instructed to give an opinion on whether B had any underlying disorder which would have made bruising more likely. He said no abnormality of the blood clotting system had been

identified. The bruising and bleeding seen in B should be considered to have occurred in a child with a normal blood clotting system.

- 24 Dr Oates stood by his view of what had happened in 2020 and said, in respect of the CT scan undertaken on 16 August 2021, there was very extensive tissue scalp swelling, predominantly adjacent to the left side of the lower head and upper face region.

“In my opinion, there is evidence of a skull fracture or intracranial injury. I believe the injury sustained is at the very severe end of the spectrum that may be expected, but I do not believe I could exclude the scenario as described by the mother.”

That was the forward fall. I note that there was, in fact, no skull fracture when the various scans were undertaken in respect of that injury.

- 25 Mr Lawrence referred to the CT scan revealing a large left-sided scalp swelling, and the most likely cause was trauma to the left side of B’s head. He said it was likely to have occurred within twenty-four to forty-eight hours of the mother noticing the injury, and he said:

“I would consider it unusual for the fall of 15 August as described by B’s mum to have caused the scalp swelling experienced by B, but it is possible.”

And he said it was very likely it would have been caused by B banging his head on the wall.

- 26 Dr Saggar, who is a clinical genetics expert, was also instructed. He said that B has a mild degree of hypermobility spectrum which might contribute to bruising and swelling, although bruising and swelling would still require some trauma, that there was a possible link between hypermobility and fractures, but that was a controversial thesis by all accounts. He said that the bruising to the ear would still have required a plausible force.

- 27 Dr Cartlidge, who, again, will have taken a sweeper role, said it was clear, both from Dr Cartlidge’s written evidence and from the oral evidence he gave to Judge Wicks, that he was significantly more concerned about some of the bruises than others, and that that was the case even taking into account Dr Saggar’s diagnosis. He was particularly concerned about the bruises that are shown, and I am going to come back to this, in the photographs taken on 21 July 2021. He did not accept that those injuries would have been caused by a fall between a bed and a chest of drawers, which was one of the suggestions put forward by the parents. He was of the opinion that these injuries were the result of a blow from something which wrapped around the face. The injury to the ear would have required it to strike something when it fell, if it happened in a fall to the floor. The injuries to the ear would have required striking two objects.

- 28 There were a number of witnesses at that second set of proceedings, who did not appear before me. The witness who is most important for the purposes of this judgment is the health visitor, Ms P, who confirmed that the mother had declined a visit, or cancelled an appointment, on 14 July, on the grounds that the family had a sickness bug. She also said she had seen B, in June, fall when he tripped over or stood on and slipped over a toy, and he landed on the floor and there was a mark on his neck. She also recorded that the mother had said to her that she was anxious about taking B to hospital as he might be removed from her care.

- 29 The maternal grandmother gave evidence to Judge Wicks and said she had never seen or heard any problems in the relationship between her daughter and the father. She gave evidence then, and she did again to me, that she had a vague recollection of J having jumped off the sofa when B was in a bouncy seat before the first proceedings, and she gave evidence about B being clumsier than his brother. Her partner, Mr Y gave evidence, and he said that he had never seen B with the sort of bruises that are shown in the photos on 14 July. He did not want to look at the photographs. He described an incident when J had jumped off the sofa onto the bouncer. But these were not the incident when B was injured.
- 30 The mother gave evidence at those second proceedings in tranches. I understand that she became very upset at times and I think there were at least two sessions where she tried to give evidence and then, in the end, answered questions in writing. She said she had cancelled the July health visitor appointment because all four members of the family had a sickness bug, and she was thinking about what was best for the health visitor and her children. I do not think there are any points out of her evidence at that hearing which really move matters further on than the oral evidence she gave to me. She did accept that there were stresses in July and August with the father, and she conceded that she had an inkling that the father was using cannabis, but she claimed not to have asked or challenged him about it.
- 31 The father, when he gave evidence at that hearing, accepted that he had been using cannabis until September 2021; he said he had then stopped. He claimed that the mother did not know that he was a cannabis user. He also maintained that the whole family suffered from sickness and diarrhoea for more than a few days in July 2021. There is some confusion over precisely which events the father was referring to, but his evidence was, at those second proceedings, that there had been a time when B had been climbing out of bed and had fallen between the cabinet and the bed. I think the position is, although it probably does not matter very much, that, in those second proceedings before Judge Wicks, he was saying that that was the incident in July. But when giving that evidence, he accepted in cross-examination that the gap between the bed and the chest of drawers was wide enough for B's head not to have been caught between them.
- 32 Judge Wicks gave a judgment, but that has now been set aside by the Court of Appeal, so I do not need to say any more about it. I did not rely on any of Judge Wicks' factual findings, nor his findings in respect of the credibility of the mother, the father or the maternal grandmother because I have heard all three witnesses myself.

The Evidence Before Me

- 33 Turning to the evidence before me, the mother gave evidence from the judge's room. She was asked questions by Miss Turner in chief and by Mr Forbes in cross-examination. We had a break, but she managed reasonably well through giving her oral evidence. I note at this point that the mother has been diagnosed with psychiatric adjustment disorder and anxiety disorder and with a longstanding history of generalised somatic and psychic symptoms for which she has been prescribed a variety of psychotropic medications. For the purposes of the hearing in front of me an intermediary was appointed. Apparently the mother did not have an intermediary at the earlier hearings. I have no difficulty in accepting that the mother has found this process, and in particular giving evidence, intensely traumatic and has struggled both to listen to the evidence but also to give evidence herself. I note at this point the great assistance that has been given by the intermediary, Miss Climpson, who I think has done sterling service in helping the mother to remain calm, although there have been large parts of this hearing which the mother has not felt able to attend. It seems to me

she managed to give evidence reasonably calmly and probably in the best way that was possible.

- 34 She was, in her oral evidence before me, deeply emotional about the children, spoke movingly about her love for them and very much emphasised that they did not deserve “all this”, by which she means the proceedings. She was adamant that she had never hurt the children and neither had the father. I note, however, that she effectively avoided all the difficult questions because, at every point where things got difficult, she said she could not recall. I note that if I had simply heard the mother’s oral evidence in the absence of any other evidence, I might have believed her evidence, but, in my view, all that does is show the problems of relying on demeanour. In the light of all the other evidence in this case, I am afraid I have little doubt that the mother was lying to me on a number of critical points, and I have no doubt she knows what happened in respect of the bruising injuries in 2021. How much she and the father have discussed the skull fracture is simply impossible to know.
- 35 In respect of the 2020 skull fracture and the suggestion that J caused it by jumping off the sofa, she said she had not seen J jumping off the sofa, and I note that she never suggested she did. She said there was a short period where the boys were alone in the living room while she was in the kitchen making toast and a bottle. The living room is at the front of the house, there is then a vestibule or a hall where the staircase goes up and the kitchen is behind. I note that this is a small house, so any significant noise in the front room would undoubtedly have been heard in the kitchen. The mother was clear that she heard nothing when she was in the kitchen, and there was no evidence when she went back into the front room, that either child was very upset. The evidence is, at one point, she says that B was crying, but there was no evidence of anything that comes close to the level of upset that Dr Cartlidge thought B would have been in if he had had a skull fracture. I also note, because it is important, that when she says she went back into the front room, B was still in the bouncer seat, still facing the right direction and there were no physical signs that anything had happened.
- 36 In terms of the 2021 bruises, with a little prompting she said she had been very reluctant to go to the doctor because she was so worried that she and the father would be blamed for the injuries. That might, in my view, just be a reasonable approach up to the injuries shown on the phone on 21 July. It is clear from the photograph that that injury is so serious that it is not possible to believe that any responsible parent would fail to get medical help for the child unless they were trying to hide something.
- 37 The maternal grandmother (“MGM”) gave oral evidence and she said initially that she had rarely seen B in July 2021 because the normal pattern would be she would go to collect J, to take him to nursery, but she did that from a layby near the house and did not go into the house. However, the text messages which were put to her by Mr Forbes showed that that account simply was not true. The texts showed beyond any reasonable doubt, that she saw B on 11, 14, 15 July, then over the weekend of the 16th and 17th and then on 21 July. It is therefore extremely unlikely, in the light of the photographs on 21 July, that she did not see the very severe bruising to the left side of B’s face.
- 38 Like both parents, MGM said she could not recall a number of critical issues. Although I accept that July 2021 is a long time ago, I am confident that her failure of memory in terms of seeing the bruises was deliberate. Further, a series of texts were shown to her which show that she had B in her care on the evening of 14 July at 19.36. That was the day when the health visitor appointment had been cancelled on the grounds that the family had a

stomach bug. There is no mention in any of those texts of there being a stomach bug in the family.

- 39 Mr Forbes then asked her about the idea that B's skull fracture was caused by jumping off the sofa. She oscillated between suggesting that the parents had said to her on 7 February that that is what happened, but when she realised that was unsustainable in the light of the police interview which was put to her by Mr Forbes, changed to saying she could not recall and trying to deflect from the question by saying she never signed the statement in question.
- 40 I rarely place much weight on a witness's demeanour but, in my view, watching MGM in the witness box, there was very little doubt that she was deliberately lying to the court. I have no doubt that she was lying when she suggested that the parents had told her about the baby bouncer theory on 7 February. I note, with considerable concern, that the texts between her and the mother when B was in hospital with the skull fracture show her telling the mother not to answer questions put to her. There is an overwhelming likelihood that she was trying to protect the mother over the protection of B.
- 41 The father also gave oral evidence. He, again, perhaps even more than the mother and the maternal grandmother, simply said he did not recall at virtually every important question. He denied, absolutely denied, injuring B with the skull fracture or, apart from one incident on the stairs with J which, on the face of it, was a perhaps rough handling, not in any sense a deliberate injury, he denied ever injuring B in 2021.
- 42 There were numerous inconsistencies in his account of the sequence of events. I put little weight on those inconsistencies *per se* because of the passage of time and because I accept that the father was struggling to remember the sequence of events. I do note, however, that on 7 February 2020, he told the police, when first questioned, so very close to the date in question, that one of the parents (I think he probably meant the mother) had rung the GP as soon as they got back from the playground. However, he had no explanation as to why it was some hours later, (it is very unclear how many hours because the timeline is so unclear from the parents) that they went to the maternal grandmother and then went to hospital. I think the evidence suggests very strongly that he was lying to the police on 7 February.

The Law

- 43 There is no dispute between the parties on the legal principles and I intend simply to give a short distillation of those principles given the vast amount of applicable case law, much of which says the same thing. The principles are set out in a very helpful summary by Baker J in *Devon County Council v EB* [2013] EWHC 968. I do not need to read out the passage. The burden of proof is on the local authority. There is no obligation on the parents to provide explanations for injuries or memorable events, although the court is entitled to weigh the absence of such explanation alongside all other evidence in the case. The civil standard of proof applies, namely the balance of probabilities. If the local authority proves that it is more probable than not that a disputed event occurred, then it becomes an established fact for the purposes of the proceedings.
- 44 The court must reach decisions in relation to disputed allegations on evidence, not speculation or rumour. However, the court may draw logical inferences from evidence that is accepted. Although the court must reach a conclusion in respect of each separate allegation, it must be careful not to compartmentalise its analysis. The entire canvas of evidence must be surveyed and each piece of evidence must be considered in the context of the other evidence. Although the court must take into account medical evidence, it is not

bound by it, and it must weigh up that medical evidence in the light of the totality of the evidence before it.

- 45 The court must take into account what I would describe as the fragility of human memory, especially when events were a long time ago or when accounts have been given on frequent occasions. Where it is alleged that a person has lied, the court must approach this allegation with considerable care (see the very well-known case of *R v Lucas*). First, the court must consider whether the person in question has lied, and then the court must be concerned to bear in mind that people may lie for a broad range of different reasons, including embarrassment, shame, desire to hide some other wrongdoing. The court must seek to distinguish a lie from, for example, story creep, mistake or confusion. If a lie is proven, then the relevance of a lie to the court's inquiry must always be considered. In this case there is an allegation of failure to protect, and the court must be careful that such an allegation does not simply become a bolt-on to the central issue. (See, for example, King LJ in *LW (Children)* [2019] EWCA Civ 159 at [64].)
- 46 At the welfare stage of the analysis, I must apply the welfare checklist in the Children Act 1989, but I am not at the welfare stage of the analysis so we do not need to worry about that.

Parties' Positions

- 47 I can very briefly outline the position of the parties, because it necessarily follows from the evidence I have referred to above. The local authority seeks findings in respect of both periods of injury and failure to protect. When I somewhat pushed Mr O'Brien at the end of the hearing, having heard all the oral evidence, he said that the local authority was seeking findings against the father in respect of the injuries rather than a pool finding, but also a finding of failure to protect.
- 48 The mother's position is that she has never harmed B and does not believe the father has done so. However, in closing, Mr Vine did point out that there was a period on 6 February 2020 when the mother was out of the house and the father was alone with the children.
- 49 The father says he did not cause the injuries and does not know how the skull fracture was caused, but the important thing is he is adamant that he did not cause any of the injuries.
- 50 The children's guardian seeks findings against the parents, but does not differentiate between a pool finding against the parents and a finding against the father. I should have said, in respect of the law section, the case law suggests that, before making a pool finding in a case such as this, the court should consider very carefully whether findings can be made against one specific person rather than simply leaping to a pool finding.

Conclusions

- 51 The parents are both adamant that they have not harmed B, and I accept there is no direct evidence, in the sense of CCTV footage or third-party evidence, of either of them having done so. As I have already said, the mother was persuasive in expressing her love for the children, her feeling that the family was being treated unfairly and that all she wants is the family back together. In those senses, she was a compelling witness. She was extremely upset during much of the hearing and could not listen to much of the evidence. I am afraid, and I say this just to make it very clear in the light of some of the comments Judge Wicks made, that I have reached the conclusion that she could not bear to listen to the evidence because she knows how B has been harmed and she was in a very emotionally conflicted

position. I do not accept that the mother's level of upset, which I am quite happy to accept is genuine, supports a case that she does not know what happened.

- 52 I noted that the maternal grandmother was very reluctant to look at the rather horrific photograph of B's injuries on 21 July, as indeed had Mr Y at the previous hearing. Again, I am afraid that, in my view, they do not wish to face up to the reality of what was happening to B in that house and their responsibility for covering it up.
- 53 The father was a reluctant witness who had total lapses of memory over most of the key points. Whatever the vagaries of memory, on his contemporaneous statement to the police there was a significant gap between B returning from the park on 7 February and being taken to hospital later. The father said he could not recall why he had said he called the GP around lunchtime, was advised to take B to hospital and then did nothing. In my view it was because the father had harmed B and the family were presumably planning what to say. I suspect that the parents did not ring the GP but, ultimately, that does not matter.
- 54 The medical evidence in respect of the causation of the skull fracture is fairly overwhelming. Of course I am not bound by the medical evidence, and I have to consider all the evidence together. However, the medical evidence, combined with some judicial commonsense, I am afraid points to only one conclusion. B's injury in February 2020 was when he was five weeks old. In other words, he was completely non-mobile. He had a serious skull fracture across the left side and towards the front of his skull, but the parents say they saw no injury and never noticed B being particularly upset.
- 55 There are two periods which come under particular scrutiny. The children were alone with the father for about three hours on the night of 6 February. There were texts around that time that suggest that the parents were arguing and that the father was finding it hard to cope with the children. The father was a regular cannabis user, a fact that the mother has been very unwilling, in the past proceedings, to accept she knew about. That evening falls within the time window when the experts say the injury could have been inflicted. On the balance of probabilities, I think that this is the most likely point the incident occurred. What the father did that evening is impossible to know unless he tells the truth.
- 56 I do accept it is possible that the mother did not realise that B was badly injured until the next day when the swelling arose, and I also accept that the texts suggest to some degree that the mother did not know what had happened. The mother says there was a short period on 7 February when the children were alone in the front room while she was in the kitchen preparing some toast and a bottle for B. I place very little weight on the slight inconsistencies of her account about this period. I accept she would have been extremely stressed when being interviewed by the police and that, since then, she has recounted the events so often it is hardly surprising she has given slightly different accounts. However, the suggestion that, whilst the children were in the front room, J jumped off the sofa onto B in the bouncer chair in such a way as for B's skull to be fractured is, in my view, vanishingly unlikely.
- 57 There was much consideration in the expert material and submissions about B's hypermobility and possibly propensity to bruise easily, however, it is important to remember that there is no evidence of any propensity towards having skull fractures.
- 58 The reasons for my conclusions about the alleged sofa incident is, firstly, the basic improbability of the injury. Although Dr Van Ee demonstrated that, in mechanical terms, it was possible, he did not consider how the forces that could have caused the injury could actually have been inflicted on B's head at the places they were. The injuries were towards

the front of the skull, but B must have been propelled backwards so his skull hit the floor for this theory to work. How the part of the skull with the fracture could have impacted onto the floor is very unclear. Dr Lawrence said he must have had his head turned for it to happen. Although that is, of course, possible, the mother herself has said that B generally lay with his head back, though of course there are always outliers and there are always very unlikely events, but this one is definitely on the very unlikely scale on those grounds alone.

- 59 Secondly, all the clinical experts said they thought this was an unlikely mechanism to have caused an injury of this type, although accepting it was theoretically possible. In a jurisdiction which applies a balance of probability test, a theoretical possibility is by no means sufficient.
- 60 Thirdly, and importantly, the mother does not suggest she heard or noticed anything at the time. Dr Cartlidge was clear that B would have been upset and cried at the type of injury that would have led to a cracked skull. Even assuming a highly stoic baby who rarely cried, and that is not the evidence about B, for a five-week-old not to cry out and be very upset after a skull fracture is more than extremely unlikely.
- 61 Fourthly, if J had launched himself off the sofa so energetically as to cause his brother a skull fracture, it is little short of extraordinary that J did not cry and there was no general fracas in the front room.
- 62 Fifthly, the idea of this causation seems only to have arisen after the maternal grandparents said they had seen J jumping off the sofa towards the bouncer. In my view, this was a concocted story. If the mother had been aware of any kind of incident on the day of the injury, then surely she would have mentioned it immediately to the police.
- 63 I take all those factors into account to dismiss, with little hesitation, the sofa theory. I find the injury was inflicted by the father when he was alone with the children the day before. There is nothing to suggest that the mother caused the injuries, and I find on the material before me, both in terms of timing and the other evidence referred to above, that it is far more likely that the father inflicted the injuries than the mother.
- 64 I turn to the injuries in 2021. The children were returned to the parents in late March. This must have been a very difficult period, particularly for B, who had lived with his maternal grandmother since he was six weeks old. There is plenty of evidence that the parents struggled with the children at this time, particularly the father. There is some evidence of B bruising fairly easily and of being hyperactive. The parents have a small house and there were two young and active children in that house. However, the series of injuries shown in the photographs is striking and the facial injuries shown on 21 July are shocking. I have looked at the photos of the bruises on B when in the maternal grandmother's care and in foster care. Although B plainly does have bruises at those times, they are not of anything approaching the severity of the injuries shown in the summer of 2021 when he was with the parents, and I note and rely on the fact that that is precisely the same view Dr Cartlidge, a very experienced paediatrician, took.
- 65 I accept the parents may have been very reluctant to seek medical advice given their fear of the children being taken back into care, but I note that their lawyers have been keen to stress that they were not hiding the children from medical attention. In my view, any responsible, however nervous, parent would have taken B to get help with the injuries shown on 21 July if they had not been trying to hide something.

- 66 In terms of causation, some of the bruises may have been caused by B's clumsiness and running into things. However, some of them, in particular 21 July and 14 August (I used the dates of the photos because we do not know the dates of the injuries), are unlikely to have been caused by such events, in fact more than unlikely, extremely unlikely. There were very serious bruises on the left cheek and side of B's face on 21 July. By far the most likely cause of that injury is a very hard slap from a right-handed person across his face, around his face, a wraparound injury, and that was the view of Dr Cartlidge. In terms of the August injury, the injury to the ear, as the expert said, is a very difficult one to cause accidentally. It is of course, as Mr Vine says, possible. There is such a sequence of unlikely events in this case that I find them not to be believable.
- 67 The story of B falling out of bed and ending up between the end of the bed and a bedside cabinet, although, again, not impossible, seems very unlikely. For one thing I would have expected B to scream loudly if he had incurred such an injury, but neither parent suggested that had happened. The mechanism seems strange, with a gap between a bed and a cabinet wide enough for B to bump his head but not to cause the massive bruise on his cheek and the black eye.
- 68 The parents have a series of explanations for the various bruises, including B running into a baby gate, running into the fridge and running into a door. The likelihood of this happening so often in a short period seems low, but even less likely given that the same level of injury did not happen a few weeks later when he was back with the maternal grandmother.
- 69 A final piece of the evidential jigsaw is the excuse for cancelling the health visitor on 14 July. I am confident that the story of the stomach bug was a lie. The parents were texting each other that day about having sex and getting a takeaway. This is the point where the evidence concerning the maternal grandmother is particularly stark. There are texts between her and the mother on 14 July which show beyond any doubt that she had B that day and which makes no mention of a stomach bug. The story is a lie and the maternal grandmother has deliberately supported it.
- 70 I cannot determine which of all the photos of injuries were deliberately caused rather than accidental, but I do find that the injuries shown on the photos of 21 July and 14 August were caused by the father losing his temper and hitting B. I cannot make specific findings in respect of the other bruising but, on the balance of probabilities, I find that the father hit B on other occasions during the period he was at home.
- 71 There are, I acknowledge, surprising elements of the case which do support the parents' case. B does not seem to have been reluctant to go to his parents, including to his father, which one might expect to be the case if either parent was regularly hitting him. But children can behave in unexpected ways as can adults. I do not put anything close to this issue as did HHJ Wicks. Also, the fact that the parents took a series of photos when B was showing such serious injuries is an odd thing to do if one of them had caused the injuries. However, these were photos on phones, so they may not have appreciated that they could ultimately be retrieved by the police. I give those matters weight but, ultimately, in the balance, they are well outweighed by the other factors.
- 72 In terms of looking at the case overall, I do not think I need to analyse propensity or take an overly technical or complex approach. B had a serious head injury for which the parents put forward no possible explanation other than the one that I consider utterly improbable. This was a five-week-old baby, never out of their care, non-mobile and rarely out of their sight. In the times when B was out of their care, i.e. after he was taken into care the first time and after he was returned the second time to care, he incurred no serious injuries. In the five

months he returned to the parents' care there was a series of photos with very serious bruises. In the overview is also the fact that the parents lied about 14 July.

- 73 So the evidence here is overwhelming that the injuries were non-accidental injuries caused by, in terms of the bruising, I find, the father. As I say, I do not think it is helpful to try and analyse this in terms of propensity, but once I have found that the father caused the skull fractures and once I have considered the nature of the bruising, and also once I consider their overall presentation in evidence, I think it is much more likely than the father caused the injuries than the mother. I also take into account the evidence that he was struggling with B when B returned in 2021.
- 74 Finally, I make a finding that the mother has palpably failed to protect B. Although I accept she may not have known for certain that the father caused the injuries in 2020, she must have known what was happening in 2021. She has, in my view, lied to the police and the court about the stomach bug, and I am confident that she has been covering up for the father. Quite apart from all of that, at the most simple, most unanswerable level, a failure to take B to the doctor on 21 July with those facial injuries was also a failure to protect. She has, and I say this deliberately, utterly let down a young child in her care.
- 75 Combined with all of that is a series of injuries, some of them serious, largely to his face, for some of which the explanations vary from the unlikely to the very unlikely. She was living with the father in a small house and must have known what was happening. I therefore make a finding of failure to protect.
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