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IN THE FAMILY COURT AT OXFORD

CASE NO: OX19C00093

IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF A AND B

Date: 11th February 2020

Before: HHJ Vincent

Between:

OXFORDSHIRE COUNTY COUNCIL

Applicant

and

a mother

First Respondent

and

a father

Second Respondent

and

A AND B

(acting by the Children's Guardian, LM)

Third and Fourth Respondents

and

Y, an intervener

Intervener

Oliver Wraight instructed by Oxfordshire County Council
Sara Granshaw instructed by Reeds solicitors for the First Respondent mother
Matthew Brookes-Baker instructed by Boardman, Hawkins & Osborne LLP solicitors for the Second Respondent father
Michael Trueman of Trueman's solicitors for the children's guardian
The intervener represented himself in the proceedings

JUDGMENT

Hearing dates: 27th, 28th and 29th January, 5th and 11th February 2020

Introduction

1. I am concerned with two children, A who is four and started primary school last September, and B who is 18 months old.
2. Their parents were together for five years but separated in April 2018, a few months before B was born. They have remained friends and following separation the children were living with their mother, but spending two afternoons during the week with their father, as well as seeing him every other weekend, and at other times as arranged.
3. In April 2019 the mother entered a relationship with Y. The relationship developed quickly and within a few weeks he was effectively living with her and the children.
4. On Monday 24th June 2019 the mother left B in Y's care while she went with A to his induction day at primary school. He called her fifteen minutes later, but she did not reply, he texted her three minutes after that to say that B had been scratching a chicken pox scab (having come down with chickenpox a few days earlier) and also had scratched her own lip.
5. Later that day the mother noticed that the inside of B's lip was cut and swollen, and 'bloodshot inside'. She asked Y whether she had fallen when he was looking after her and he said he didn't think so, but again suggested she could have done it when scratching herself earlier.
6. On Tuesday 25th June 2019 the children were with their father when he noticed bruising on B's bottom and thighs. He sent a photo to the mother, they discussed it by text and agreed to keep an eye on it. The following day the bruising appeared worse. It developed further during the day and in the evening, having discussed with her own mother and with the father, the mother called 111. The mother and father went with B to the out of hours clinic and from there were referred to the [name redacted] Hospital. B was examined and found to have a very large area of bruising extending over both thighs and buttocks.
7. Neither the parents nor Y have been able to give an explanation as to how B came by these bruises.
8. The local authority applied for care and interim care orders on 28th June 2019. The children's father was excluded from the pool of potential perpetrators at an early stage and the children have been living with him and spending regular time with their mother. Interim supervision orders are in place.
9. Both mother and Y were interviewed by the police. A review by a police inspector on 15th July 2019 concluded that there was '*no evidence available that purports natural mother or father as being responsible for the injuries.*' However, until mid-way through the evidence in this case, the local authority has continued to seek findings that either Y or the mother was responsible for causing B's injuries.

10. Y was joined as an intervener on 29th July 2019. Despite the seriousness of the allegations against him and that he is not a high earner, he was not eligible for legal aid. The local authority provided funds for him to meet with a solicitor, and she has assisted him to prepare two witness statements and a formal response to the threshold document. She helped him make a referral to Advocate, the bar's pro bono unit, but unfortunately without success. Y has therefore been in the invidious position of having to represent himself at this fact-finding hearing. He has reported to me that he has been suffering from a high level of anxiety as a result to the extent that he has been self-harming.
11. Together with the advocates I have done all that I can to try and reduce the stress and pressure upon him and to make the hearing as fair as it can be, but inevitably he has been significantly disadvantaged because he has not had access to advice and representation from a lawyer.
12. Despite this and the anxiety he has felt leading up to the hearing, he showed courage in getting himself to Court and in giving evidence.
13. The proceedings have been no less of a strain on the father and mother. They have attended every hearing, listened patiently to the evidence and the mother gave evidence herself and was cross-examined. Screens were in place so that the mother and Y would not be in sight of one another when they gave evidence.

Findings sought

14. After Y had given his evidence the local authority changed its position. It now seeks findings that only Y was the perpetrator of inflicted injuries upon B. The findings sought against the mother are now limited to a failure to protect B and a failure to seek prompt medical care for her.

The law

15. The Court only has jurisdiction to consider whether to make a public law order if the threshold test set out at section 31 of the Children Act 1989 is crossed i.e. 'the Court is satisfied that the child is suffering or is likely to suffer significant harm, and that the harm or likelihood of harm is attributable to the care given to the child, or likely to be given to him or her if the order were not made, not being what it would be reasonable to expect a parent to give to him or her'.
16. The approach the Court should take to a fact-finding exercise was helpfully summarised by Baker J (as he then was) in *Re L and M* [2013] EWHC 1569 (Fam) at paragraphs 46 to 58, set out below with the points not so relevant to this case omitted:

“46) First, the burden of proof lies at all times with the local authority.

47) Secondly, the standard of proof is the balance of probabilities.

- 48) *Third, findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation. I have borne this principle in mind throughout this hearing.*
- 49) *Fourthly, when considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. 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.*
- 50) *Fifthly, amongst the evidence received in this case, as is invariably the case in proceedings involving allegations of non-accidental head injury, is expert medical evidence from a variety of specialists. Whilst appropriate attention must be paid to the opinion of medical experts, those opinions need to be considered in the context of all the other evidence. It is important to remember that the roles of the court and the expert are distinct and it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. It is the judge who makes the final decision.*
- 51) [Paragraph omitted re cases where input from experts of different disciplines, each expert to keep within bounds of own expertise.]
- 52) *Seventh, the evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability.*
- 53) *Eighth, it is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see R v Lucas [1981] QB 720).*
- 54-57) [Paragraphs omitted re issues around medical uncertainty and the possibility of an unknown cause of injury]
- 58) *Finally, when seeking to identify the perpetrators of non-accidental injuries the test of whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator. In order to make a finding that a particular person was the perpetrator of non-accidental injury the court must be satisfied on a 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 interest of the child, although where*

it is impossible for a judge to find on the balance of probabilities, for example that Parent A rather than Parent B caused the injury, then neither can be excluded from the pool and the judge should not strain to do so."

17. On behalf of the mother, Miss Granshaw referred me to the case of Re L-W (children) [2019] EWCA Civ 159 in which the Court of Appeal overturned a finding of failure to protect where it had not been shown that on the particular facts of that case, the mother should have identified a risk to the child. The Court of Appeal found the evidence of the perpetrator's behaviour in the home and his two past incidents of aggression did not go anywhere near to supporting a causative link such that the mother ought to have known he presented a risk of physical abuse to L or her other children. At paragraph 40, the leading judgment refers to earlier cases:

40. In Re J (A Child) [2015] EWCA Civ 222, the Court of Appeal approved guidance earlier given by Sir James Munby P (as he then was) in Re A (A Child) [2015] EWFC 11, 2015 Fam Law 367. Lord Justice Aikens summarised the Re A principles. Of relevance to the present case he said as follows:

"56. [v] It is for the local authority to prove that there is the necessary link between the facts upon which it relies and its case on Threshold. The local authority must demonstrate why certain facts, if proved, "justify the conclusion that the child has suffered or is at the risk of suffering significant harm" of the type asserted by the local authority. "The local authority's evidence and submissions must set out the arguments and explain explicitly why it is said that, in the particular case, the conclusion [that the child has suffered or is at risk of suffering significant harm] indeed follows from the facts [proved].

[vi] It is vital that local authorities, and, even more importantly, judges, bear in mind that nearly all parents will be imperfect in some way or other. The state will not take away the children of "those who commit crimes, abuse alcohol or drugs or suffer from physical or mental illness or disability, or who espouse antisocial, political or religious beliefs" simply because those facts are established. It must be demonstrated by the local authority, in the first place, that by reason of one or more of those facts, the child has suffered or is at risk of suffering significant harm..."

.....

62. Failure to protect comes in innumerable guises. It often relates to a mother who has covered up for a partner who has physically or sexually abused her child or, one who has failed to get medical help for her child in order to protect a partner, sometimes with tragic results. It is also a finding made in cases where continuing to live with a person (often in a toxic atmosphere, frequently marked with domestic violence) is having a serious and obvious deleterious effect on the children in the household. The harm, emotional rather than physical, can be equally significant and damaging to a child.

63. *Such findings where made in respect of a carer, often the mother, are of the utmost importance when it comes to assessments and future welfare considerations. A finding of failing to protect can lead a Court to conclude that the children's best interests will not be served by remaining with, or returning to, the care of that parent, even though that parent may have been whA exonerated from having caused any physical injuries.*

64. *Any Court conducting a Finding of Fact Hearing should be alert to the danger of such a serious finding becoming 'a bolt on' to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable. As Aikens LJ observed in Re J, "nearly all parents will be imperfect in some way or another". Many households operate under considerable stress and men go to prison for serious crimes, including crimes of violence, and are allowed to return home by their long-suffering partners upon their release. That does not mean that for that reason alone, that parent has failed to protect her children in allowing her errant partner home, unless, by reason of one of the facts connected with his offending, or some other relevant behaviour on his part, those children are put at risk of suffering significant harm.*

This professional and realistic approach allowed the Court to focus on what was, in reality, the only live issue, namely; was GL's history of violence sufficient to lead to a finding of failure to protect upon the mother's part?'

Evidence

18. I have read all the documents in the bundle which includes statements from all parties, B's medical records, and police disclosure which includes transcripts of police interviews and some screenshots of text messages on the mother's and Y's phones. I heard oral evidence from Dr Robinson, Y and from the mother.

Dr Robinson

19. Dr Robinson's report is dated 14th November 2019. He has reviewed all the medical notes and photographs and statements from all relevant parties. In conclusion he describes extensive bruising over both of B's thighs and over her buttocks in a horseshoe shape, measuring 13cm across and 10 cm vertically. The bruising is more extensive on the left buttock and thigh than the right. There are petechiae in a linear pattern within a larger area of bruising on the left buttock and a scratch mark on the right upper buttock. There is a further linear bruise parallel to the gluteal cleft.
20. Dr Robinson notes that bruises on the buttocks and thighs are highly suspect for inflicted injury and the pattern of bruising over the buttocks suggests impact with an implement. Apart from thin linear bruises parallel to the gluteal cleft, the central area of the bottom is spared, this suggests that the injury might be what he described as a 'slamming injury', i.e. compatible with a child being slammed down into a hard surface like a potty.

21. Dr Robinson's conclusions in respect of each of the separate injuries can be summarised as follows:

Buttocks:

'On the balance of probabilities bruising with observed petechia was inflicted either by impact against a hard-immovable surface or application of a blunt instrument (hand/other) with the nappy protecting the central areas. ... Considerable force would have been applied with the perpetrator being immediately aware that excessive force was being used. B would have cried out in pain but settled within a few minutes if comforted.'

Thighs:

'In the absence of an account of an accidental event and its aftermath, clustered linear bruising over the left upper thigh (and the single bruise over the right thigh) is considered, on the balance of probabilities inflicted most likely by a gripping/slapping action from an adult hand. Impact against a hard-immovable surface cannot be excluded.'

Mechanism and force required:

'Considerable force will have been required to cause the significant injuries to B's buttocks and legs far in excess of normal or rough handling.'

Mouth / lip:

'The force required to injure the frenulum or adjacent structures cannot be measured but exceeds normal care for an infant. Rough handling during feeding, with the bottle forced into the infants mouth may be interpreted as accidental, a momentary loss of control or part of a pattern of inflicted injury.'

In the aftermath of injury an infant will cry out in pain with bleeding observed.

Severe frenular tears bleed considerably. For lesser injuries bleeding may be minimal and short-lived. If fed and comforted an infant will settle. Some remain fractious for longer feeling the discomfort within the mouth.

If it is accepted that mother observed significant blood stains along with abnormalities to the lip (swollen and bloodshot on the inside, inside lip and gum slightly swollen, C74 text: inside of her lip is all (obliterated) and her lip is getting swollen) on the balance of probabilities B sustained an inflicted injury to her mouth sufficient to cause bleeding but not to injure the frenulum.

Swelling observed could have resolved by the time of clinical examinations.

Y told mother that bleeding was from a chickenpox spot. [*The mother*] could not see one that looked like it had bled. It would be highly unlikely for a scratched chicken pox to bleed to the extent described. Mother saw no bleeding point but reported oral injury.'

Medical attention:

‘Medical attention should have been sought after blood was observed on the vest and pillow with swelling of the lip. Failure to have done this is considered neglectful (medical neglect). Bruising to the buttock was observed by both parents on 25.06.19. Medical attention was sought the following day after bruising appeared worse. [*The father*] stated that on 25.06.19 at 5.30pm he observed bruising on B's bottom. He saw them again at 6pm, they looked worse. He took photographs and sent them at 6.08 pm. Mother stated that on 25.06.19 she observed a small bruise on B's bottom/thigh. Father returned children at 19.15hrs but she did not check B's bottom despite having been sent images by father. Father was clearly concerned about bruising and should have considered seeking medical advice. Mother should have checked B on her return.’

22. None of the parties challenged Dr Robinson’s evidence about the nature of the injuries sustained nor his conclusions that on a balance of probabilities they were inflicted. The mother does take issue with his conclusions about her failure to seek medical attention.

Y

23. I took the decision that Y should give his evidence next, in an attempt to manage his anxiety by getting it over and done with, and so that I should get a clear idea of his case in order to be able to assist him if necessary to formulate questions to put to the mother.
24. In many ways he came across well. He listened to the questions put to him, and in the main he answered naturally and instinctively, he was not trying to put a persona across or to sell a particular version of events. Although he had his own perspective which he was well able to articulate, he was open to seeing that others may have seen things in a different way.
25. Y’s home life growing up was not easy for him, there was significant domestic abuse between his parents, his mother had a range of disabilities leaving him to take on a caring role for her and for his younger siblings when he was himself still a child. Notwithstanding this he has grown up to be a kind and caring person, holding down a job and with a large group of friends. In an email sent in support, his colleague [*name redacted*] described him as one of the most kind-hearted people she knows, trustworthy, loyal and an inspiration to others. At the same time he has had struggles with his mental health, in particular with anxiety. He told me that very quickly after he met the mother he was overwhelmed by his feelings for her. He fell in love within weeks, she made him feel happy and safe. He had a strong desire to look after her, support her and live a family life with her. It is apparent that over the weeks of their relationship, he was putting a huge amount of pressure on himself to live up to an idea he had in his mind of what the perfect partner would be. Unfortunately as well as creating stress for him personally, he appears to have

been so focused on his need to fulfil that role, that he sometimes lost sight of the mother's and the children's needs.

26. For example, if the children woke in the night he offered to go and see to them. Y's motivation was genuine - he wanted the mother to have a chance to rest and he wanted to bond with the children and improve his parenting skills. However, he came to insist that the mother did not get up to the children, and on two occasions, when he was up with B, she was not settling and the mother came in to see what was going on, he physically lifted the mother up and carried her out of the room. On another couple of occasions when the mother was holding B, and comforting her, he again insisted on taking over, physically removing B from her arms, telling her to let him take care of her. Neither he nor the mother saw any difficulty with this at the time, but in hindsight, she has come to recognise, and he has accepted that with these actions he was putting his needs before both hers and the children's needs. He was preventing her from looking after her children as she wished to be allowed to, and putting his wish to develop a bond with the children and to become a better carer before the children's need to be comforted and soothed by their own mother.
27. In general he had a good recall for details and was able to describe his own feelings and memories of particular conversations and events. However, there was a stark difference between his evidence in general and the evidence he gave about the particular events of the morning of 24th June 2019. He has given a very different account in his more recent witness statement to that which he gave to the police three days later. In his witness statement he says that B was asleep for fifteen to twenty minutes then she stirred and as she rolled over he saw blood on her tummy. In his police statement he describes a lot more activity. He was unable to account for the difference. His oral evidence about this particular day was vague, confused and inconsistent.
28. He accepted that as the relationship went on he began to feel more insecure about whether he was being a good enough partner, he also struggled with feelings of jealousy about the children's father and on occasions, he found the children difficult to manage. He admitted that he found it difficult that B had screamed when he took her in his arms and only stopped if she went back to someone else, that A took time to warm to him, or that A sometimes wanted to play when he wanted to relax. He said he was liable to become stressed and he would storm off, to give himself a bit of space. He also wanted to be fully involved in decision making for the children and wanted the mother to follow his approach, for example in disciplining A.
29. These difficulties led to arguments. In one text exchange the mother says that whatever she says or do she seems to annoy him, *'I am always trying to help you or try to at least make you feel better. I never intentionally try to hurt you or annoy you and it's all I seem to do. You say you love me so much and you don't want to lose me and all these things but you seem to be pissed off with me just as much.'* Y replies, *'Whys there no point?? You can't make me feel better I'm in so much pain all the time and it causes me to be pissy, not at you just pissy. Because of that things I say come across wrong, I do love you. I*

am 100% sure you're the one!! But this pain, on top of my head being messed up causes too many issues.'

The mother

30. The mother is softly spoken and a shy person but her evidence was clear, and she was able to explain not just what was said but what the emotions or dynamics of a particular situation were. I thought she was doing her best to give a truthful and accurate account of events. She acknowledged where there was a discrepancy in her recollection and did not strain to find an explanation to fill a gap. I thought she was bravely unselfconscious – not thinking of how she might look or how something might come across – but just trying her very best to tell me how things were, without thinking of herself. Similarly she was not trying to cast Y in a bad light - she has reflected on all the evidence as now presented to her and accepts the local authority's position that B's injuries were inflicted by him, but was not trying to build any sort of case against him with the benefit of hindsight, just honestly trying to explain to me how the situation appeared to her at the time. She does not accept that on the morning of 24th June she could have known that B was at any risk of harm from Y, and while she was willing to accept with the benefit of hindsight that she might have done things differently, she does not accept that she should have sought medical treatment for B sooner.

Findings in general

Relationship between mother and Y

31. The relationship started in April 2019 and Y had effectively moved in with the mother within a few weeks.
32. He has accepted the mother's evidence that on occasions he would prevent the mother from comforting B. He told me that in the first few weeks B would scream when he picked her up and would settle when she went back to her mum and that he found this hurtful. He accepted that he had on occasion physically remove B from her mother. She has described this not as him being forceful but insistent and that she, who always tries to avoid any sort of confrontation, thought it best to release B to him as she did not want her to be tugged from her arms. Y accepted that he would insist that the mother did not go to the children at night, again his intention was that she rest and he become a better carer and improve his bond. He accepted that he physically removed the mother from the room. She says this happened twice and while now in hindsight it seems an extreme thing, at the time it did not seem uncaring, or controlling to her. Y does accept that on one occasion when he physically carried the mother back to her bed, he left B alone on the kitchen worktop. He accepts that he should not have done this. Y has now accepted that whatever the motivation, the effect was in fact to dominate and to control and that he was preventing the mother from doing what she wanted to do - and what her children needed - to reassure and comfort her own children.

33. He accepts that he would have mood swings and punch the walls in the home. By June this was happening at least twice a week. There were stresses at work and he had also been very upset when friends had suggested to him that he had no time for them and was choosing his relationship with the mother over his friendships. It is evident from texts and both his and the mother's evidence that he at times found the children frustrating and on those occasions he would storm out.
34. He is a keen gamer. He told me that A would like to play on his Xbox and he set up an account for him so that nothing A did would interfere with what he was doing. He described how B, eleven months at the time, had found the on-off switch to the x-box and he said she liked that – the sense was that he felt she got some pleasure from interfering with his game.
35. He said that he did have disagreements with the mother about childcare and that he wanted things to be his way. He accepted that his way was stricter and perhaps would be seen as harsher. He had not really considered until put to him in cross-examination that it was not really his place at this early stage of the relationship to be telling the mother how she should be parenting her children.
36. He accepted that he was feeling increasingly insecure in the relationship and had been jealous of the father, that he had sent messages using mother's phone and answered it for her. While he was committed to the children, they took time to get used to him, and he also wanted to have time alone with the mother, rather than always having the children there.
37. They had a row because he wanted to go to A's parents' evening with the mother. He did not want the mother to go out on her own to speak to the father when the children were being collected or dropped off and started to feel increasingly jealous, worrying that the father still had romantic feelings for the mother.
38. On 21st June he texted the mother telling her he had been up all night with panic attacks and that he felt he was always letting the mother down, always finding something to annoy or upset her. She replied, *'I think you need time to work on yourself and help/heal yourself, because you shouldn't be feeling like that it's not good or healthy it shouldn't be like this I shouldn't have to feel like this, when we are on our own it's fine but then when the kids are around I feel on edge I feel like I'm gonna do something wrong or agree to something with A and you'll moan at me for it when you shouldn't and it's bringing me down. I don't want to have to keep worrying about if I'm gonna say something or do something or how long its gonna be till you storm off again .. and how can I help you when you won't let me. I'm trying I really am but I feel like I am not being me and I'm being different with the kids and thats what I didn't want. It's moved soo fast and I don't think I've actually thought about how it's made me feel.'*
39. Y accepted that some of his actions could be looked at as controlling and over-possessive. For example he would give love bites to the mother, as soon as

one faded he would give her another. He accepted that she would try and resist this and that she was not best pleased about it, saying what is she going to do at nursery when the other mums see it. He didn't really have an explanation for this save to say he had got carried away.

40. On the evening of Sunday 23rd June the mother's sister [*name redacted*] and her partner come to visit. Because [*mother's sister*] was pregnant and B had chickenpox they didn't come into the flat. The mother went outside to see them leaving B crying on a pillow on the floor in the living room with Y. While she was outside, Y closed the living room window and curtains, turned all the lights off and then popped his head out of the kitchen window to say he had locked her out of the house. He accepted that he had done this but didn't have an explanation for it.
41. During the course of the relationship Y was never violent to the mother, nor to the children. He did not shout but could be moody. He accepted that he had on a couple of occasions tripped A up and played a game with him where he had trapped him between his legs and not let him go. When asked about this he said these were the games his own father had played with him and he had liked it so he assumed A would.

24th June 2019

42. At 9.15 a.m. the mother took A to his induction session at primary school leaving B with Y. B was lying on a pillow in the living room. Prior to this she had left B in Y's care a few times but B had been asleep when she left and she was taking A to and from nursery, which usually took around twenty-five minutes.
43. At 9.30 a.m. she had a missed call from Y.
44. At 9.33 a.m. she received a text message from him, '*she's been scratching and popped a spot on her stomach which has bled. And she's scratched her face and looks like she's cut the top of her lip.*'
45. She arrived home at about 11.15 a.m. B was on the floor near the TV with her vest removed. Y immediately brought a pillowcase and vest to show the mother, both had blood on them, the mother said the size of a golf ball. The mother looked B over, could not see any broken skin on her body but saw a small graze above her top lip which she thought was consistent with B scratching herself.
46. Y has given different accounts as to what happened for the two and a quarter hours that he was looking after B. He invited me to prefer the evidence in his witness statement which suggests that B lay sleeping for fifteen to twenty minutes then stirred, and he saw as she rolled over that there was a big spot of blood on her baby-gro. He says he panicked and called [*the mother*] but even though he got no reply nor to his subsequent text, he felt reassured. It is not clear why. He then says in the statement he noticed B was scratching her top

lip but otherwise everything was normal and B was happy in herself, laughing and crawling round the room.

47. In his police interview, only five days after 24th June, Y gave a lot more detail but told me that he thought he had in fact muddled up a couple of different days. However, there was only one time that he had sole care of B for this length of time. In the account to the police he says he was playing on the Xbox and B was crawling around, but there was a bit of time when they played together. He says that he left her alone when he went to the toilet:

‘So I’ve left her in there and when I’ve gone back in, she’s then sort of bawled her eyes out, still screaming because obviously like she was alone and someone’s turned up and she’s not exactly like screaming screaming, just sort of like someone’s actually here sort of thing and we played for a little bit and then she started wiping her eyes and obviously she was tired, she’d been up a few hours. I’ve laid her down on a pillow less than sort of like half a metre away from me. I’m playing on the Xbox and one, well, I even sort of like patted her on the back as well to try and get her back to sleep and she’s woke up sort of a few times when I stopped patting her on the back to get her to go back to sleep and that. And then, I noticed that she was sort of like scratching, obviously like she’s got chicken pox and she’s a baby, I can’t stop her from scratching while she’s asleep and things. She’s rolled over and I’ve noticed the blood sort of on the stomach area, like through her clothes, and it was on the pillow where obviously her stomach had been, and her head. The first thing I did was call [the mother].’

48. The police asked Y if B could have fallen or knocked herself against something. He said, *‘obviously she has sat on the X-Box controller a few times like she’s she’ll gone over turned the X-box off cos its just a touch button, turned it off sort of started laughing and she’s sort of sat back, she’s sat right on top of the controller.’* However, he did not suggest this had happened on 24th June. The mother says she has never seen B fall on an Xbox controller.
49. When cross-examined about this Y said he couldn’t remember very much at all now. He thought his witness statement was more accurate but in fact the patches of memory he did have seemed to be closer to the details set out in the police interview. He said he remembered going to the toilet and leaving B in the living room but did not know if that was on 24th June or another time. He said he could also remember a time when he had played on the Xbox and she had crawled round the living room but again, did not know if that was on 24th June. He said he remembered patting B on the back to get her back to sleep, and then resumed playing his game, then patting her again when she stirred. But he then said he was not a hundred percent sure of the day.
50. He repeatedly told me that he was not certain, he didn’t remember what happened, couldn’t remember clearly, or that he remembered ‘bits and pieces’ but not the whole day. He was asked why he didn’t remember and said he had tried to blank it out. However, he repeated a number of times that he had not hurt B.

51. In circumstances where Y has been able to remember details of conversations, and of events at all times of day and night during the period of the relationship, his inability to remember the events of this morning does not come across as genuine. This was the first time that he had been entrusted with B's care for a whole morning, it was a different situation to minding her while she was asleep for twenty-five minutes or so while her mum did the school run.
52. In my judgment Y has not told me the truth when he says that he cannot now remember what happened.
53. B was irritable and grizzly for the rest of the day, though settling for a nap between 12.00 p.m. and 2.30 p.m.
54. At 3.15 p.m. the mother was out with the children and members of her family, Y having gone out to work. Before other members of the family arrived and the mother was alone with maternal grandmother, the maternal grandmother said that she was a bit concerned about Y's behaviour and that she had seen him trip up A a couple of times. B was crying more than normal, her mother described her as 'visibly upset' and 'incredibly unsettled'. The mother says that thinking B was teething, she looked inside her mouth and saw that the inside of B's lip and gum was swollen and there was a lump.
55. At 6.55 p.m. when she got home the mother texted Y: *'Hey got a question I've just got home from picking up A Did B fall when I was out because the inside of her lip is all cut and her lip is getting swollen I noticed when I picked up A and showed mum her teeth xxxxx'*. He replies that he doesn't think so, *'as I said she was scratching all her face when she scratched her stomach earlier. Could she have done it then?'* The mother replies, *'Naah I doubt she can give herself a fat lip and it's all bloodshot inside xxxx'*. He responds, *'could she have done it when she woke up? You said you heard her bang her head?'*, mother texts, *'I would of noticed the cut and blood .. that's why I'm confused and asked'*.
56. B continued to cry throughout the evening and eventually mother put her in bed with her at about 11.00 p.m., she finally got to sleep around midnight, Y returned from work half an hour or so later and slept on the sofa.
57. I am satisfied to the standard of a balance of probabilities that B's injuries were sustained on the morning of 24th June 2019. There is clear evidence of her having a symptom of injury – the blood and later swollen and cut lip - and showing signs of being in pain and distressed throughout the rest of the day. The extent of the bruising that later came to the surface of her skin over the next few days is indicative in Dr Robinson's words of 'a beating'. It is of course for the local authority to prove its case and not for Y to prove that he did not cause injury to B. However, the fact that he has been unable to give a consistent or coherent account of the time that he spent with B at this crucial time leads me to the conclusion that he is not telling the truth. I find that the

reason he has not done so is that he is seeking to conceal from the Court and from B's parents the fact that he was responsible for B's injuries.

Tuesday 25th June

58. The mother noticed a small bruise on B's thigh when changing her nappy in the morning but didn't think anything of it, perhaps that B had sat on a toy. They had a normal day, Y left for work as normal around 2pm. The father collected the children about an hour later. At 6.05 p.m. the father texted the mother sending a photo of a *'big bruise'* asking, *'How's B got this'*. They had a discussion by text, remembering that mother bruises easily and wondering if B is the same. They agree to keep an eye on it. Neither appears to be unduly concerned. The father returned the children to the mother having fed them, given them a bath and got them ready for bed. The mother says that B was virtually asleep and so she put her straight to bed, not thinking to check her for bruising. At 9.22 p.m. the father texts mother, *'I'm guessing u forgot to look at B as so did I'*. The mother replies *'oh yeah I did and she's in bed now, will look in the morning.'* Father replies, *'yeah'*.

Wednesday 26th June

59. The mother noticed first thing that the bruises on B's bottom were worse, but that B seemed ok in herself. She says that Y was asleep when she took A to nursery so she took B with her to drop him, then came home and she and B slept for a couple of hours. Y is unclear as to whether he found out about the bruises on Tuesday evening or Wednesday morning but accepted if mother said Wednesday that was probably the case. He was unclear as to whether he had seen photos or the bruising on B herself. The mother's evidence is that she did not show him either the photos or the bruises on B's skin but that during the course of Wednesday morning she told Y about the bruises and that afterwards his behaviour changed immediately. He became grumpy, avoided her and didn't speak to her for the rest of the day.

60. On a balance of probabilities I prefer the mother's account to Y's. He does not have a clear memory of this, whereas she does. If he had seen the bruises on B's skin I would expect both him and the mother to have a vivid recollection of that.

61. At 12.00 p.m. the mother left to collect A, this time leaving B asleep in the care of Y. While she was out he texted her asking why her mother had blocked him on social media. She replied they would speak when she got home but when she did, he took a bath and then left the flat without speaking to her. The father collected the children at 3.30 p.m. He contacted the mother later as the bruising appeared to be worse than the day before. The mother sent her mother photos of the bruising and talked to her about it. She discussed it again in texts with the father. At around 7.30 p.m. they jointly decided to call 111 to seek medical advice. The mother was told to take B to the out of hours clinic.

62. She, Y and the children went to her mother's house, the father then collected her and B and they went to the clinic leaving Y and A with maternal grandmother. From there, B was referred to the [hospital] and eventually seen at about 11.15 p.m. They stayed the night and the next day B had scans and further investigations. A came in for a child protection medical.
63. There is a note that A had said to his teacher on this day that his mum had said that B had got beaten up. This was not reported directly to the mother and she says she does not know if A said this, or if he did, why he said it. She says she never said such a thing to him. I have not been given any more information about this. In the circumstances, I cannot find to the standard of a balance of probabilities that A did say it, or if he did that this is reliable evidence that his mother had said it. It does not take me further.

Thursday 27th June

64. The mother had by this time spoken to a number of doctors who had raised concerns about the bruises. Her mother and sister had also shared their concerns about Y with her. Her sister told her that his previous relationship had ended because of his controlling behaviour. Her mother told her that when he was with her during the evening of 26th June his behaviour had in her opinion been peculiar - she has set her observations out in a witness statement which is not challenged. She said that Y spoke harshly to A about giving him medicine for epilepsy. He insisted on sleeping in the maternal grandmother's bedroom with A there, refusing her offer of a blanket and a sofa but following her into the bedroom and saying he wanted to sleep there.
65. The mother had shared with her mum that Y had stopped her seeing to the children, that he shuts her in the bedroom, didn't like her wearing certain clothes, that she wasn't allowed to collect the children from their father on her own and that he would turn the baby monitors off at night. Again, Y has not denied that this all happened in the relationship.
66. At 1.15 a.m. on 28th June the mother texted Y, ending the relationship:
- 'I've felt so trapped and that I can't do anything as little as getting the kids on my own or when I have there's always an argument after because you don't agree with something I've done or said which is stressing me out so much. I also need to take into consideration the kids and they need to come first to me. ... I just think it's best if we call it a day... hope you can appreciate the fact that I need to be with my kids.'*
67. The mother hasn't had any contact with Y since that time.
68. At around 10.00 a.m. on 28th June the mother had a lengthy conversation with the hospital social worker and a safeguarding social worker in which she described her concerns about Y. Later that day it was agreed at a strategy meeting that the mother should be treated as a victim of domestic violence. Y was arrested later that day and interviewed by police.

Specific findings re threshold document

69. I deal with allegations 1 and 2 together.

A. INJURIES

1. Injuries to Buttocks and Thighs:

Injuries: (i) B sustained extensive bruising to both buttocks, including petechiae in a linear pattern on the left buttock; and (ii) bruising to both upper thighs.

Causation: The bruises were inflicted injuries, caused: (i) either by direct impact from an adult hand or other blunt instrument, or by impact against a hard surface; and (ii) by a gripping or slapping action by an adult hand, or by impact against a hard surface.

Force: Considerable force was required to cause the bruising, far in excess of normal or rough handling. The perpetrator of the injury would have been immediately aware that they were using excessive force.

Reaction: B would have cried out in pain following the injuries.

Dating: The injuries were caused on 24th June 2019.

2. Injury to Mouth:

Injury: B sustained an injury to her mouth, resulting in bleeding and a swollen lip and gum.

Causation: The injury was caused by direct impact and/or rough handling.

Force: The force required to cause the injury was in excess of normal handling.

Reaction: B would have cried out in pain following the injury

Dating: The injuries were caused on 24th June 2019.

70. Each of these matters is accepted by the mother, father and Y on the basis of Dr Robinson's report, although Y says he has no knowledge of how the injuries could have been caused.

71. The overwhelming weight of the medical evidence is that B's injuries are likely to have been inflicted upon her by use of excessive force, well outside what one would normally expect to see in normal handling of a child. Having regard to Dr Robinson's evidence in particular but also the evidence as a whole I am satisfied that each part of these allegations is proved.

B. PERPETRATION:

3. At the time she sustained her injuries, B was not suffering from any condition or underlying disorder which predisposed her to spontaneous or easy bruising.

72. Again this is accepted by all parties on the basis of Dr Robinson's report and I find it proved.

4. At the time she sustained her injuries, B was in the care of Y.

5. The injuries were caused by Y.

73. Having regard to the weight of the evidence I am satisfied to the standard of a balance of probabilities that B's injuries were inflicted by Y during the time that she was in his sole care on 24th June 2019.

74. I am unable to say what the mechanism for causing the injuries was. I have noted Dr Robinson described 'a beating' but also said the pattern of bruising was consistent with a child being slammed down into an object with a rim, for example a potty or loo seat. The shape of the bruising across B's lower back and buttocks was described as a horse shoe but in fact it is much more like a bridge in shape. The measurements of an X-box controller are 13 centimetres across and its 'handles' are 10 centimetres long. These are the same dimensions as the area of bruising and its form is very similar to that of an X-box controller. It is noted that Y suggested to police that B may have fallen or sat onto an X-box controller at some point. He said to the police and again to me in evidence that he was repeatedly patting B on her back. It is noted that Y has spoken with a trace of irritation when thinking of the way the children interfered with his gaming and the mother confirmed that he played a lot and did find it annoying when the children interfered.

75. Although his evidence was generally very vague the description to the police of B screaming and screaming and crying tears when he was looking after her is vivid, as is the way he recalls his panic when he saw the blood, and suggests to me that at this point he was recalling to the police actual events. This interview was conducted close in time to events. The impression given is that at these points when he was looking after B, he felt stressed and under pressure.

76. There is no single incident that occurred in the days and weeks leading up to 24th June that leads me to conclude it was more likely than not that Y inflicted injuries upon B. However, surveying the evidence as a whole, the context is that Y was feeling increasingly stressed and under pressure. He was feeling insecure in the relationship and worried by the mother suggesting they needed space. He was struggling with his mental health, was finding work and social life stressful. He had put huge pressure upon himself to build a bond with the children and for them to respond well to him, but had moments when he felt hurt and frustrated by them. In the way he behaved towards the mother and the children, he had made decisions which prioritised his need to feel better

about himself or to be in charge of a situation, over their needs. He had experienced panic attacks in recent days. In all the circumstances, it is conceivable, indeed it seems likely, that finding himself in a situation where he had to take sole responsibility for a vulnerable baby may have caused him a level of stress and anxiety such that he became unable to cope and in some way lost control.

77. However, because he has not been able to tell me the truth about what happened I cannot say how it was that he came to inflict these injuries upon B. I am satisfied that the reason he is not sharing that information is because he is unable to admit to what has happened and is seeking to hide the truth from the Court and B and A's parents.

C. FAILURE TO PROTECT

(i) Y (allegations 6 and 8)

6. Y failed to seek prompt medical attention for B's injuries.

8. Y has not been open and honest with professionals in relation to the causation of those injuries.

78. Because I find that Y has inflicted the injuries upon B but not told the truth about it, it follows that I find both these allegations proved to the standard of a balance of probabilities.

(ii) The mother (allegations 7, 9 and 10)

7. The mother failed to seek prompt medical attention for the injuries to B.

79. The local authority suggests that the mother should have taken B to the doctor when she discovered that her lip and gum was swollen and 'bloodshot', having earlier in the day been shown both the pillow case and B's babygro with blood on them. If not then, it is asserted that she should have taken B to the doctor on Wednesday morning when she saw that the bruising had worsened.

80. I would agree with the local authority that perhaps alarm bells should have been ringing having seen the blood and B's mouth, and I would agree with the mother's own assessment that she ought to have pressed Y for an answer about what had happened. She was not convinced by what he said, did not have an explanation for B's injuries, but did not ask him anything more.

81. I have considered carefully Dr Robinson's view and his acceptance in oral evidence that the decision to monitor the lip injury without seeking medical attention could have been a reasonable judgment call and, having regard to all the evidence, I do not consider the mother should be criticised for failing to take B to see a doctor on Monday 24th June. B had been suffering with chicken pox for the past few days, she was grizzly and she was teething. Her mother saw the swelling to her lip and gum and assumed that B had fallen over. That was imaginable – B was at the stage where she was crawling but

sometimes falling forwards or pulling herself up and falling. I am not persuaded that B's symptoms required medical assessment or intervention at that time. There was no treatment that a doctor could give to B that the mother could not reasonably give herself. She kept an eye on it and in fact the swelling and redness went down.

82. The bruising came on over time and the mother responsibly had conversations with B's father about it. They agreed to watch and wait, and continued to talk to one another as the situation developed. On the Tuesday evening B was sleepy and settled when returned by her father. I do not criticise the mother for choosing not to wake B up or undressing her to inspect her. The following day as the bruising developed and worsened she took advice from her mother, continued to be in touch with B's father and eventually sought medical assistance. It is easy in hindsight to find a link between the cut lip and the bruising but I can see that at the time the mother was more inclined to make a link between the bruising and the chickenpox – those were the internet searches she and her mother were following up. She identified the cut lip as an isolated incident that was irrelevant to what was going on.
83. B was in fact more settled on the Tuesday and Wednesday than she had been on the Monday. In the circumstances it was not obvious that she needed medical attention until later in the day by which time the bruising had developed further.
84. The mother said she did not have any reason to suspect Y, and although by that time concerns were gradually creeping in, she did not want to accuse him without knowing what had happened. It is not in her character to seek out confrontation.
85. For these reasons, and in all the circumstances as they existed at the time I do not consider that the mother should be criticised for failing to seek medical attention any sooner than she did.
9. **At the time that B suffered her injuries, the mother was aware of significant concerns in relation to Y in that:**
 - (i) **He would prevent the mother from comforting B;**
 - (ii) **B would scream when Y picked her up;**
 - (iii) **He would physically remove B from the mother, using force to the extent that the mother was fearful that B would be injured;**
 - (iv) **He would insist that the mother did not attend to the children at night;**
 - (v) **On occasions he physically removed the mother from the room where he and B were;**
 - (vi) **On occasions he prevented the mother from seeing the children at night;**
 - (vii) **He would have mood swings and punch walls in the home.**
86. The mother acknowledges these concerns – they are all raised by her in her witness statement. Although he did not accept them in his response document,

Y did acknowledge in his oral evidence that he had behaved in this way towards the mother. He said that his intentions were only to be as supportive and helpful as possible to the mother, but he does now accept that she may have experienced them as controlling.

87. The mother's statement was prepared after she had completed the Freedom Project online, and with the benefit of a period of hindsight and reflection. Her thoughts and understanding of the situation have evolved over time. But what did she know on the morning of 24th June?
88. In the text exchanges between them a few days before 24th June she describes to Y how difficult she finds it to cope with his moods but she does not make any specific complaint of how he was treating her or in particular that he would physically prevent her from caring for the children. This may well be because it is not in her nature to challenge or criticise, but she was also very clear that at the time she did not see his behaviour as controlling. He was never aggressive to her, even when he was insisting on something, she felt it was because he was asking her to be supportive of him, to help him, not to seek to exert control over her.
89. Her mother had mentioned something to her later that afternoon about Y, but it is not challenged that neither maternal grandmother nor her sister had shared any concerns they had about him before then.
90. I am satisfied that by 24th June the mother was aware of the behaviour described at (i) to (vii) above. The concerns were significant enough to raise questions about the nature of the relationship and Y's mental health. She had gently and sensitively raised this with him in text conversation suggesting he needed space to help and heal himself.
91. By 24th June the mother was developing a creeping sense of concern, fuelled by the events identified, by conversations and text messages with Y, and a feeling in herself that she was adjusting her own behaviour around Y and the children more than she felt comfortable with – she had told him she felt she wasn't 'being me', that she was being 'different around the children'.
92. However, I do not consider it can be said that those matters of which the mother was developing a sense of concern could or should reasonably have put her on notice by the morning of 24th June 2019 that either of her children was at risk of suffering significant physical harm from Y.
93. So far as allegation 9 is concerned I therefore find the basic elements proved but my interpretation of the word 'significant' in this context is of concerns that were significant enough to be of notice, as opposed to a concern that Y posed a threat of significant harm to the children.
94. It follows that I am not satisfied that allegation 10 is proved. It is pleaded as follows:

10. Notwithstanding the matters at paragraph 9 above, the mother failed to take any reasonable steps to protect the children from the risk posed by Y. In particular, she left B in Y's sole care on occasions, including on the morning of 24th June 2019.

95. In my judgment the mother could not reasonably have done anything to protect B from the injuries that I have found she sustained at the hand of Y. She could not have known that he posed a risk of significant harm when she left her with him on 24th June. She had left B in his care for brief periods of time before without incident. A was never left in Y's sole care.

D. THRESHOLD:

96. The final paragraph of the threshold document is pleaded as follows:

11. By reason of the matters set out above, at the relevant date, namely on 1st July 2019 when the Local Authority commenced proceedings, A and B were suffering and/or likely to suffer significant harm attributable to the care given to them not being what it would be reasonable to expect a parent to give to them, on the basis that:

(i) B was suffering significant physical and emotional harm as a result of her injuries.

(ii) A was likely to suffer significant physical harm due to the risk of suffering physical harm of a similar type to that sustained by B, and significant emotional harm by virtue of the risk of exposure to his sister being subjected to physical injury.

97. B suffered significant physical and emotional harm as a result of the injuries inflicted upon her by Y. That care fell well below what it would be reasonable to expect from a parent or carer in the position of a parent to give.

98. Within a couple of days, and having listened to doctors, social workers, members of her family and reflected on her own feelings and observations, the mother ended the relationship with Y and blocked him from contacting her, as did other members of her family. She has maintained that separation.

99. On 1st July 2019 B may still have been suffering significant harm as a result of her experiences in the care of Y. However by that date she was not suffering harm or at risk of harm attributable to the care given to her by either her mother or her father. Both her parents love her dearly and have always provided her and her brother with loving and attuned care of a high standard.

100. With the benefit of hindsight the mother has shown an ability to reflect. It was probably not wise to introduce a new partner to her children so quickly, nor to allow him to get quite so involved in parenting when the relationship was so new and he had little experience of caring for very young children and was struggling to manage his own mental health. However, for the reasons given, I do not think she could reasonably have been expected to

identify that either of her children was at risk of significant harm from Y. Her actions on 24th June or the following days in my judgment did not constitute a failure to protect her daughter. By 1st July 2019 when she had grounds to believe that her daughter had suffered significant harm in the care of Y, she had taken all necessary steps to protect her children.

101. In the circumstances, given that I have not made any findings against the mother, it cannot be said that on 1st July 2019 B was suffering or at risk of suffering significant physical or emotional harm attributable to the care given to her at that time.
102. Similarly, given my findings, there is no evidence that on 1st July 2019 A was at risk of suffering significant physical harm, nor that he had suffered emotional harm by virtue of the risk of exposure to his sister being subjected to physical injury attributable to the care given to him at that time.
103. For these reasons I conclude that while findings have been made against Y, the threshold for making public law orders is not crossed.

Joanna Vincent

11th February 2020

HHJ Vincent
Family Court, Oxford