

LANCASHIRE COUNTY COUNCIL v M (INJURY- FLAWED INVESTIGATION)

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

JUDGMENT

HH JUDGE ROSS DUGGAN

1. The court spent last week conducting this fact-finding hearing within care proceedings. The allegation concerns the elder of two children, a boy who was eight years old at the time. He lived with his three year old half sister in their mother's care in the Preston area where their mother's then partner frequently visited and stayed. On 19 January 2021 the mother sought medical attention for the boy and the hospital saw injuries which they suspected to have been inflicted. The local authority seek a finding that these were inflicted injuries for which either the mother or her partner were responsible. The adults deny responsibility and assert that the injuries have accidental causes. I have concluded that they are right but a major contribution has been the level of control and supervision over the children.
2. The local authority have produced three excessively large bundles. I have read the evidence and my attention has been drawn to relevant supporting materials. I have heard oral evidence from an independently instructed paediatrician Dr Cleghorn, the investigating detective constable, three social workers, the mother, her former partner and three members of her family. The two adults facing allegations attended court in person with their legal representatives while others participated remotely.
3. The local authority make these allegations and the burden of proof lies with them. The mother and her partner need prove nothing. Allegations must be proved on the balance of probabilities. In this case this extends to the injuries, their cause and the identification of any person responsible. Allegations must be based on evidence not on mere suspicion or speculation. My task is to take into account all the evidence including the wider

social canvas and to consider each piece of evidence in the context of the whole. This approach extends to the medical evidence and while I give appropriate attention to the opinions expressed, these must be considered in the context of all the other evidence. It is the judge that is in the best position to weigh up the expert evidence against the findings on the other evidence so it is the judge who makes the final decision. The evidence given by the mother, her family and partner is of the utmost importance and my task has included forming an assessment of their credibility and reliability. This is not a case in which I find lies to have been told. I have reflected on the possibility that even modern medical science cannot explain what was seen but we are here concerned with simple bruising. Appropriate checks have been completed and the overall picture confirms that trauma must have been the cause, leaving the circumstances in dispute.

4. It is necessary to set out the investigation of responsibility for these injuries which I find to have been seriously flawed. At the hospital the boy was examined and questioned by the medical staff in a conventional manner. An emergency social worker then attended the hospital accompanied by a police officer who was wearing a body camera which recorded the social worker questioning the boy. This social worker accepted that she had no Achieving Best Evidence (ABE) training and agreed that it would enhance her work even for a preliminary interview of this kind. There was none of the preparation or structure which an ABE interview would entail. The recording by body camera does not appear to have been planned but was very valuable. No significant allegation emerged from this initial conversation and thought needed to turn to planning an ABE interview.
5. The Detective Constable saw the boy in hospital with a colleague on 20 January 2021. This first session was not recorded save by incomplete handwritten notes which contain the first allegations. I will return to this interview.
6. On 21 January 2021 there was an introductory visit from the allocated social worker who had no ABE training. She started by telling the boy that she had come because he had told the police that he had been strangled by his mother's partner. She proceeded to investigate the allegations by questioning, making no notes until a couple of days later. She knew that an ABE interview was planned but stridently asserted that she had a duty of care to her newly allocated client to conduct her own investigation.
7. Later the mother and aunt spoke with the boy and were overheard by a nurse. The latter suggests that the discussion was more extensive than the family recall. It is impossible to be clear about this session but the family were clearly motivated by having learned from the detective constable that the boy was making an allegation of strangulation against the mother's partner. The aunt has unrelated social work experience but took it upon herself to investigate the boy's command of truth and lies. It seems the boy

concluded by alleging that it was his mother's fault as she knew that her partner had strangled him.

8. The Detective Constable conducted the ABE interview on 28th of January 2021 and I have studied the recording. She had ABE training but as she was taken through this interview she quickly recognised that the Guidance had not been followed in many respects. Her planning had ascertained that the boy was performing below average levels at school but not his reputation for dishonesty. With hindsight she regretted that no intermediary had been engaged. It was unsatisfactory that most of the rapport building preliminaries were off-camera and therefore not available for approval. On camera, free narrative was not encouraged as the detective proceeded to questioning which was sometimes of a leading and reinforcing nature. Very serious was the opening steer when the detective ignored the child's account of accidental injury and told him to repeat what he had told her at the hospital. Overall there remained confusion as to the apparently developing number of incidents, who was involved and when. Eventually the detective accepted the child's suggestion that she guess the answer to one question!

9. This interview was recorded so its unsatisfactory nature is manifest. More important is the first interview when the first allegations were made and this was the unrecorded interview conducted by the same Detective Constable at the hospital. I am driven to conclude that the deficiencies in the recorded interview are likely to be present in the unrecorded interview. There had been no preplanning. The detective had not seen the earlier interview recorded by the police body camera. She did not have the medical report. She knew that the doctor had interviewed the boy but was under the incorrect impression that the boy had complained to the doctor about been strangled. Since the recorded ABE interview starts with a request to repeat what had been said previously my expectation is that the incorrect information about an allegation made to the doctor affected the unrecorded interview.

10. Since the ABE interview there have been occasions when the boy has referred to strangulation by the mother's partner to family, foster carers, social workers and schoolteachers. Inevitably there is no recording or analysis of the questions, the answers or the surrounding circumstances. These would have been justification for a properly organised ABE interview at which detail was received to allow an analysis of credibility. However that opportunity was lost by the wholly unsatisfactory approach of January 2021.

11. I am driven to conclude that the succession of interviews from the first intervention of the detective on 20 January 2021 are so flawed as to be unreliable. The suggestions and leading infect everything that follows. I must consider the case on the basis of the other evidence.

12. The medical evidence describes petechial bruising to the sides of the face, some in a linear pattern. There was bruising to one ear, under the jawbone, on the upper chest and shoulder. Dr Cleghorn was asked whether this was consistent with the allegation of strangulation and she explained that it was consistent with this but also with other causes. Strangulation could not explain all these injuries so another element must be present. Accidental causes were possible for all. The number of injuries and elements like a part linear pattern and involvement of protected areas drove her to conclude that inflicted injury and the alleged strangulation were more likely than not.
13. Before the unsatisfactory later investigation, there is the hospital report including discussion with the boy himself and the first visit by social worker and police recorded by a body worn camera. The boy seems unable to account for all the injuries beyond rough and tumble but he clearly does not attribute them to his mother or her partner. The local authority point out his use of the word “we” revealing discussion at home and his early omission of the partner from his accounts but this is suspicious rather than probative of coaching. Both adults would have had the opportunity to inflict injury, together or apart. The major discovery was when the boy complained of pain as he was cuddled by his grandmother and at that point he had been in the sole care of the partner for about 45 minutes and of the mother for about 30 minutes plus periods between visitors earlier in the day. No doubt there were earlier opportunities.
14. It is necessary to put this evidence into a wider context. I have formed a favourable impression of the mother’s partner. He has a child elsewhere with whom he has a committed contact relationship. The mother and her family describe the very positive contribution he made with these children, especially when the mother was struggling. He is said to have had a particularly good relationship with the boy at a time when the mother accepts that her relationship with the boy was a poor one. There was no sign of a crisis or word of complaint when the mother and grandmother came home and brought his period of sole care to an end. Nobody in the family contemplates that he assaulted the boy, even if this would tend to exculpate the mother and reflect what the boy said during the investigation. I was not persuaded that there was some concealed continuing relationship between the ex-partners, involving a conspiracy.
15. The mother’s social circumstances were more difficult. She was a very young mother and struggled to form an attachment with her son. She had an abusive ex-partner and was unable to shield the boy whose behaviour became difficult. Her own health impeded her, particularly debilitating back pain and depression and she used cannabis as a coping mechanism. She accepts the picture confirmed from other sources of a chaotic household in which there were times when she was unable to supervise and control children running amok. Impacts with floor, wall, patio door, window frame and other children are all in evidence. 18 January 2021 is confirmed by the visiting aunt as one of those days. As a young mother she attracted some social work attention. This

largely reflects the accepted poor relationship between mother and son and her attempts to control him. Previous violence is not established but I am asked to infer that under these manifest pressures the mother lost her temper and inflicted the injuries. This formed no part of the boy's allegations before or during the flawed investigation and I must not speculate what a different approach would have produced. His contact with the mother includes affectionate sessions reflecting his wish to return to her care which he has described as safe. There are also sessions of uncontrolled behaviour confirming the earlier picture.

16. For me the crucial element in the case is the clear evidence that the child's difficult behaviour coupled with weak supervision and control, produced an unusually dangerous home environment. For example the mother was unaware of an incident in which he was stuck climbing through a window, until it was revealed by his sister. As I have explained, it is improbable that any injury was inflicted by the mother's partner but the mother needs more consideration. The medical evidence prefers an inflicted cause over an accidental cause citing the position and number of injuries but with each not inconsistent with accident. Having read the assessments of the mother and seen and heard her give evidence I do not find compelling an inference that she assaulted the boy in a crisis. It is more likely that this challenging boy when poorly supervised and controlled, brought on himself an unusual number and range of accidental injuries. The medical evidence does not drive me to reject this proposition which would not be so compelling in a less chaotic household.

17. My conclusion is that the local authority have not established on the balance of probabilities that these injuries were inflicted. They are however in part attributable to the supervision and control provided by the mother not being what it would be reasonable to expect a parent to give. This proposition must be added to the otherwise agreed threshold statement. The outcome of the case has not been in issue in that it is agreed that the children must be subject of Care Orders and must remain in foster care with contact to their mother. She will engage with support and services while pursuing her ambition to secure the return of the children in due course. Her ex-partner is discharged.

HH Judge Ross Duggan

Leyland

17.1.22