Case No:
Neutral Citation Number: [2024] EWFC 122 (B)

IN THE FAMILY COURT AT CHESTER
IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF A CHILD "R"

BEFORE HER HONOUR JUDGE HESFORD

BETWEEN:

A COUNCIL

Applicant

-and-

MOTHER

1st Respondent

-and-

FATHER

2nd Respondent

-and-

THE CHILD

(BY HER CHILDRENS GUARDIAN)

3rd Respondent

WRITTEN JUDGMENT FOLLOWING FACT FINDING HEARING

"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."

<u>Representation</u>

Ms Begum	**For A Council**
Ms Smith	**For the Mother**
Mr Gorton	**For the Father**
Ms Noon	**For the Child via her Guardian**

Her Honour Judge Hesford:

1 INTRODUCTION

1. This judgment concerns R a girl aged x months. R is a happy, healthy child. Her parents are a couple and cohabit.

2. In the interests of attempted brevity I have not set out all of the evidence which I have heard and read but have highlighted particularly relevant matters. Nevertheless all evidence has been considered and taken into account.

3. This judgment is structured as follows:

   Section 1: Introduction

   Section 2: The proceedings

   Section 3: The nature of the hearing and case management

   Section 4: The parties positions

   Section 5: The local authority evidence, threshold and findings sought

   Section 6: The father's evidence (fact finding only)

   Section 7: The mother's evidence (fact finding only)

   Section 8: Submissions

   Section 9: The legal principles regarding fact finding

   Section 10: Analysis

   Section 11: Findings

   Section 12: Decision

2 THE PROCEEDINGS

4. The application before the court is the local authority's application for a care order which was issued on [a date] 2023.

5. This is a finding of fact hearing with the Court tasked with determining whether R has suffered non-accidental/inflicted injuries and if so, then to determine the perpetrator of the injuries if possible. Depending upon my findings (if any) and the parties positions thereafter, I will consider the welfare of R at a future hearing.

6. On [a date] 2023, shortly after midnight, the parents took R, then aged x weeks, to A Hospital A&E due to reflux and vomiting following advice from NHS 111. She had been unwell for a few days. During examination, staff noted several bruises on R's spine, back and sides. The Child Protection Medical concluded:

R has a number of small, faint bruises to her back, to both her right and left sides in the flank areas covering over the area of her bottom ribs and also over the back of her left side of her iliac crest. There is also a small bruise to her left thigh. In my opinion, this is unexplained bruising in a non-mobile child. Although the parents have offered two possible explanations to me, I do not feel that these fit with the timeline or explain the bruises.

The second skeletal survey concluded that:

Her initial skeletal survey showed several areas of concern involving the long bones of both wrists and the right lower leg, the radiologist reported that these were likely to be fractures. On the second skeletal survey these areas appeared normal with no indication of a fracture. However, on the rib views there was a clear healing fracture of the right 9th rib. A rib fracture associated with bruising of the torso indicates a non-accidental injury".

Explanations put forward by the parents as to the possible cause of the injuries were not accepted by medical professionals.

7. The parents agreed to R being cared for by the Local Authority under Section 20 of the Children Act 1989 and she was taken to foster care as a place of safety. R remains there to date and has settled into her placement well.

8. The parents have engaged fully with the local authority, assessments, contact, the Guardian and the proceedings generally. The mother denies being responsible for the injuries and has not been able to offer a credible explanation. The father ultimately offered changing explanations that the injuries were caused by his "tics" although he cannot say when they happened. He was diagnosed with a "simple motor tic" in [a year]. The tics are involuntary. There was no detailed explanation for any of the bruises which Dr Cardwell considers were caused at different times although again father latterly blamed his tics.

9. This is a single-issue case, the cause of the physical injuries to R are the only findings ultimately sought by the local authority.

10. The family was not known to Childrens Services prior to the index event.

3 THE NATURE OF THE HEARING AND CASE MANAGEMENT

11. On the first morning of the 4-day fact finding hearing the father filed a further statement which indicated that he now considered that R's injuries had been caused by him on [a date] 2023 when he had handled her roughly during a crying episode and then compressed her chest during a notably strong tic.

12. The statement was referred immediately to the experts and the matter adjourned to the following day. The medical experts still do not accept any of the father's explanations for the rib injury to R.

13. The hearing took place over 4 days including submissions.

14. I had the unique opportunity of seeing the parents give evidence in the witness box and to form my own opinions about their evidence and credibility. It was extremely useful to do so.

15. The medical experts gave evidence remotely.

16. The proceedings are now beyond the 26 week target and the delays were caused by the need to obtain expert medical evidence, in particular a consultant neurosurgeon to assess the father and additional blood testing for R. Indeed an experts meeting took place only shortly prior to this hearing to discuss the father's recently suggested explanation, and also delay in listing the hearing when the experts were available.

4 THE PARTIES POSITIONS

17. The Local Authority seek findings against the parents in relation to the injuries. During the hearing it became clear that they no longer seek any findings against the mother in relation to perpetrating the injuries but there were some issues as to failure to protect. The pool of perpetrators had reduced to just the father who now accepted causing the injuries in whatever manner. They will consider the longer-term position thereafter depending upon whether findings are made or not.

18. The mother denies causing any of the injuries and seeks for R to be rehabilitated. The findings which I make may impact upon the precise arrangements for this.

19. The father submits that he caused the rib injury during a tic episode on [a date] and the bruising by how he has held R when 'tic-ing'.

5 THE LOCAL AUTHORITY CASE, THRESHOLD & FINDINGS SOUGHT

20. *(1) The local authority assert that the s.31 Children Act Threshold is met on the basis that at the relevant date when protective measures were instituted, R was suffering and was likely to suffer significant physical and emotional harm and neglect due to the care given and likely to be given to her by her parents, not being what it would be reasonable to expect a parent to give by virtue of the following facts:*

Rib Fracture

(i) At the time she was presented to hospital on [a date] 2023, R had sustained a fracture to the posterior right 9th rib inflicted between [dates], approximately.

(ii) At the time the fracture occurred, R was less than x months of age and she would not have had the strength or level of development to self – inflict this injury.

(iii) The rib fracture is the result of significant force applied to the bone. The amount of force required to cause the fracture is significant and excessive and greater than the force used in the normal care and handling of a child or from over – exuberant play or rough inexperienced handling.

(iv). The force applied to cause the fracture was either severe excessive squeezing compressive force applied to the chest or a direct blow or impact at the fracture site.

(v) At the time the fracture occurred, R would have been in pain and would have appeared to be distressed and upset in the form of crying and tearfulness. The parent caring for her at the time would have recognised that the nature of this upset was different to other episodes of upset that R will have experienced, for example when hungry, colicky or needing a nappy change.

(vi). In the period after the initial discomfort had lessened, R would have displayed variable responses including some unexpected discomfort when moved or handled, if pressure during the routine handling and care, was applied to the area overlaying the fractured rib.

Bruising (Dr Cardwell)

(vii) At the time she was presented to hospital on [a date], R had sustained a series of 5 small, round bruises to her lower back – each >1cm apart from each other. One presents over the spine measuring 3mm x 3mm; one to the left of this, on the same line, measuring 6 mm x 3mm; one to the right of the spine within the same line measuring 3 mm x 2 mm; another bruise was on the spine, below the first one, measuring 3mm x 3mm and another bruise to the right of this, on the same line, measuring 6mm x 4mm.

(viii) A small, faint bruise green/yellow in colour on the right flank of the level of the twelfth rib measuring 1.5cm x 0.6cm.

(ix) A series of 3 small, round, faint, yellow/green bruises sited to the left flank at the level of the lower ribs – one bruise measuring 1cm x 1cm. To the right of this bruise, separated by 1 cm in space, was another bruise measuring

0.5cm, is a 3rd bruise measuring 0.3cm x 0.3cm

(x) A mark over the back of the left iliac crest measuring 2cm x 1cm. This is a faint, oval shaped area, the majority of which is light blue and within this light blue area is a small 0.5cm x 0.5cm red mark which is round.

(xi) At the left mid-thigh there was a small, very faint, light green bruise with a tinge of blue in the centre measuring 0.5cm x 0.5cm.

(xii) R does not have any abnormality in her blood clotting system or any propensity to bleeding that might account for the bruising. [Dr Keenan].

(xiii) R was 3 months old at the time the bruising was noted. She was considered a non-mobile child and would not be able to cause injury to herself to the multiple areas of her body where bruising was recorded.

(xiv) The bruising was caused by the application of forceful pressure, beyond that of normal routine handling to various parts of her body

(xv) The force applied to cause the bruising would have caused pain and discomfort. The parent caring for her at the time would have recognised that the nature of this upset it different to other episodes of upset that R will have experienced, for example when hungry, colicky or needing a nappy change.

Findings sought:

(2) Whilst in the care of her mother and/or father, prior to her presentation at hospital on [a date] 2023, R had sustained inflicted injuries in the form of a fracture to the posterior right 9th rib and bruising to multiple areas of her body; which on the balance of probability have been caused by the application of forceful pressure applied to various parts of her body by her mother or father for which no plausible explanation has been given.

(3) The non-perpetrating parent would have been aware after the event that R had been injured due to discomfort displayed on being handled or by the visibility of bruising.

Failure to Protect

(4) The mother and father were aware that R has sustained bruising prior to her attendance at A&E on [a date] but failed to seek timely medical attention in respect of them.

(5) If mother and father were aware that there was a risk that the father could apply excessive pressure to R's body during a tic episode, they both failed to protect her by allowing the father to handle her.

21. Both parents have fully responded to the threshold and provided further information and timelines in several statements. Mother has continued to deny causing any harm to R. Father initially responded and offered further explanations in later statements. Both parents have filed formal responses to threshold and findings sought.

The Medical Evidence

Dr Karl Johnson - Consultant Radiologist

22. Dr Johnson has filed one report and also responded to the late statement by the father in an email. In his opinion, the physical rib injury suffered by R is specifically *"a fracture of the posterior right 9th rib which, in [my] opinion, is no older than 11 days of age on [a date]".*

23. He noted:

The radiological dating of any fracture is difficult, imprecise and a subjective estimation. The radiological appearances of the fracture are non-specific with regard to the exact mechanism of causation. The same fracture pattern could occur from an accidental or inflicted injury.

The fracture is the result of significant force applied to the bone. The amount of force required to cause this fracture is unknown, but in his opinion, it is significant, excessive and greater than that used in the normal care and handling of a child.

This fracture would not occur from normal domestic handling, over-exuberant play or rough inexperienced parenting.

At the time that the fracture occurred, R was less than x months of age and she would not have had the strength or level of development to self-inflict this injury.

At the time the fracture occurred, he would expect that R would have been in pain and shown signs of distress which would have lasted for some moments. Following this initial distress, the signs and symptoms related to this fracture could have been variable and he would defer to the paediatricians in all aspects of clinical presentation, both at the time that the fracture occurred and subsequently.

To cause any fracture requires both a suitable mechanism and a significant level of force.

Rib fractures are typically the result of severe excessive squeezing compressive force applied to the chest. The amount of force required to cause these fractures is unknown, but in my opinion, it is significant. For example, in life-saving cardiac massage where the chest is forcibly compressed by one third of its diameter, rib fractures very rarely occur.

Alternatively, an isolated rib fracture could occur from a direct blow or impact at the fracture site. From the radiological appearances, I am unable to determine whether the posterior right 9th rib fracture is the result of squeezing compressive force or a direct blow/impact.

He confirmed that in his opinion none of the explanations proffered by the parents in relation to R being injured throwing herself forward and being stopped to prevent her from falling, being in her pram and jolted when her father had a tic, breastfeeding, lifting her up into the air and down again would generate sufficient force to cause the rib fracture.

He opined that if R was being held during a tic and her chest was squeezed then this could potentially create a suitable mechanism to cause the rib fracture but he was unable to determine the amount of force which these tics could generate and would defer to a neurologist/other suitable medical expert with regard to the likelihood of these tics being a possible cause of the rib fracture. He considered that it would be helpful to know whether or not the level of involuntary movement of the father's hands during a tic would be severe enough to compress R's chest by one third of its diameter in order to determine the likelihood of this action being a possible cause of the rib injury.

24. Having been provided with a copy of father's very late statement, he replied:

"*To cause any fracture requires both a suitable mechanism and a significant level of force. In my opinion, holding R close to her father's chest and gripping her could create*

some degree of chest compression. To cause a rib fracture, there would need to be excessive and significant compression of the chest.

In my opinion, this is beyond that of heavy-handed restraint. In my opinion, unless R was held with excessive force, this would not result in a fracture.

I would defer to Dr Ameen as to the significance of holding R and then having a tic."

Live evidence:

25. Demonstration: By agreement, when Dr Johnson joined the hearing via Teams, the father demonstrated to the camera with a doll how he said his tic/twitch happened. He was standing and had R lying against his chest, right hand shoulder side with his right arm across her back (R effectively being held in the crook of his elbow). When he demonstrated how the twitch occurred his shoulder tensed inwards, the bicep clenched and became rigid, his wrist curled up and the hand clenched. The strength was quite severe, he estimated it lasted about 2-3 seconds. He said that R cried out in pain, at a higher level than she was crying before and it lasted for 15-20 minutes. Dr Johnson queried whether the level of force demonstrated was the same as applied at the time of the broken rib and father confirmed it was less in the demonstration and then attempted to demonstrate further.

26. Dr Johnson confirmed that the mechanism demonstrated by father could, in an adult, be a suitable mechanism to fracture a child's rib if there was sufficient force which would be have to be significant, inappropriate, excessive and greater than normal handling. He could not, however, say if the force caused by the tic and demonstrated by father was sufficient and deferred to Dr Ameen.

27. Father also demonstrated a potential bruising mechanism, showing how he held R around her hips with his fingers on her back and explaining how his hands formed into a claw "like spider's legs" when he twitched. R reacted differently – sometimes a simple acknowledgment, other times she would tear up and her bottom lip would twitch.

28. Given that Dr Johnson was satisfied that a potential mechanism had been identified for the rib fracture, it was agreed that father's demonstrations (not recorded by the court) would be recorded by father's counsel with counsel for the child also present and sent to Doctors' Cardwell and Ameen for comments. I have also viewed these recordings.

Dr Keenan - Consultant Paediatric Haematologist

29. Dr Keenan filed one report and an addendum following additional testing. These reports confirmed that R has no underlying blood clotting or bleeding disorder. This was not challenged.

Dr Ameen – Consultant Neurosurgeon

30. Dr Ameen's assessment and report primarily addressed father's "tics" to assess whether he could have unintentionally caused the injuries to R as well as other associated matters including diagnosis and potential risk. The interview/assessment part was

conducted via Teams. He had considered Dr Johnsons report when undertaking his assessment. He later considered Dr Cardwell's reports.

31. In summary regarding father's relevant medical history, "*Father has been diagnosed with involuntary complex motor tics since [a historic date] treated medically with clonidine. He reports that his biceps tense, his eyes can blink, sometimes his teeth chatter which has caused some teeth to break. He also reports that his right wrist can flick up and his right leg can tense and stiffen, and his foot can turn".* Father is also partially sighted. He has previously been diagnosed with anxiety and depression.

32. The father told Dr Ameen that the cause of the bruises on R were his pinching movements with the stiff fingers of his right hand whilst holding R and that the fractured rib could have been caused by sharp and full squeezing of her chest wall whilst holding her. He gave an example of when he had injured himself (bruising) in his sleep

33. Father reported to Dr Ameen that his movements are triggered and exacerbated particularly when he is stressed.

34. Dr Ameen witnessed no twitches in father's upper limbs or hands during the interview although he did see frequent abnormal twisting movements of his neck. The father attributed the (95%) improvement to taking Clonidine since the injuries to R. He had previously been prescribed Clonidine but chose to cease taking it.

35. In summary he considered that the fractured rib could "potentially have been caused by the forceful squeeze of her chest wall superimposed on the attacks of the muscle spasm" but did not accept that the bruises were caused by the tics.

36. He had viewed father's 2 recent demonstration videos.

<u>Live evidence:</u>

37. Dr Ameen was subjected to significant and challenging cross examination by counsel for the father, the generality of which was that it was argued that he had radically changed his opinion from that in his written report. Dr Ameen was adamant that he had not and was challenged to such a level that he ultimately indicated that he considered that attempts were being made to distract him and he was clear and stated several times that the tics alone would not be expected to fracture a rib without forceful compression or pressure, he had not said that the tic could do this in his report as the father appeared to believe. He agreed with Dr Johnson and accepted that the tic demonstrated by father could be a potential mechanism for the broken rib and stated that pressure without a tic could cause the fracture or pressure with a tic but not the tic alone. He repeated this many times when challenged and stood firm in his opinion that the compression/pressure was required, not just the tic.

38. It was suggested that if father was able to generate sufficient force to injure himself during a tic (bruising whilst sleeping) then it was sufficient to injure R. He disagreed that the force generated could fracture a rib but could cause bruising.

39. He reiterated this again when it was again suggested that his answer to question 5 was that a tic could cause the rib fracture. The answer was "potentially yes, particularly if associated with the pressure of the hands on the chest wall." It appears to me that the father has "cherry-picked" this response in a rather simplified way, jumped to the conclusion that it supported his case and relied on it to challenge Dr Ameen's evidence at the professionals meeting and live evidence. I note that in the conclusion, the report states "potentially have been caused by the forceful squeeze of her chest wall *superimposed on the attacks of the muscle spasm*" (my emphasis) ie. 2 separate matters. Dr Ameen again stated that the pressure needed to be differentiated from the tic itself, he was emphasising pressure. Father's cross examination ultimately failed to persuade Dr Ameen to change his live evidence, he stood steadfast and even later expanded that he had never in his experience, or in the body of any research which he had seen, found evidence of a rib being fractured by a tic.

40. So far as the bruising was concerned, Dr Ameen was asked if a tic could cause bruising and he agreed that this was possible. However he had concerns about the number and areas of bruises and had suspicions that father's mechanism may not be the cause. There then followed further questions about bruising and Dr Ameen's knowledge of the same within a sustained cross examination and Dr Ameen was accused of exceeding his remit, Mr Gorton for the father suggesting that he should defer to the paediatric expert. Dr Ameen refused to do so and confirmed that he was fully capable of speaking about bruises from his own surgical knowledge and experience. I note that Dr Ameen has been a surgeon for 38 years and as such appears more than capable to offer an opinion relating to bruises – there is no rule that says that only paediatricians can have an opinion on bruising. In any event, counsel was actually cross-examining Dr Ameen about possible causes for the bruises at the time, it seems unusual to question a witness about something and then argue that they are not qualified to offer an opinion.

<u>Dr Cardwell - Consultant Paediatrician</u>

41. Dr Cardwell has filed one report and an addendum.

42. He confirmed that the bruising injuries were in summary:

(i) 5 small round bruises to lower back;
(ii) bruise on right flank;
(iii) 3 round bruises on left flank;
(iv) bruise on left iliac crest;
(v) bruise to left mid-thigh.

And in detail:

(i) A series of 5 small, round, bruises present on the lower back – each <1 cm apart from each other. One presents over the spine measuring 3 mm x 3 mm; one to the left of this, on the same line, measuring 6 mm x 3 mm; one to the right of the spine, within the same line, measuring 3 mm x 2 mm; another bruise was on the spine, below the first one, measuring 3 mm x 3 mm; and another bruise to the right of this, on the same line, measuring 6 mm x 4 mm.

(ii) A small, faint bruise green/yellow in colour on the right flank of the level of the twelfth rib measuring 1.5 cm x 0.6 cm.

(iii)A series of 3 small, round, faint yellow/green bruises sited to the left flank at the level of the lower ribs – one bruise measuring 1 cm x 1 cm. To the right of this bruise, separated by 1 cm in space, was another bruise measuring 0.5 cm x 0.5 cm and then below this, separated by 0.5 cm, is a third bruise measuring 0.3 cm x 0.3 cm.

(iv) A mark over the back of the left iliac crest measuring 2 cm x 1 cm. This is a faint, oval-shaped area – the majority of which is light blue and within this light blue area is a small, 0.5 cm x 0.5 cm red mark which is round and looks possibly like a graze. The area of blue looks like a bruise.

(v) At the left mid-thigh there was a small, very faint, light green bruise with a tinge of blue in the centre. The circular blue area measures 0.5 cm x 0.5 cm. The parents have said they feel that this was from R's immunisation she had 4 weeks ago.

43. He had read the reports of Dr Johnson, Dr Keenan and Dr Ameen.

44. Due to R's age of x months and that she could not crawl or walk, the injuries were in his opinion non-accidental injuries.

45. So far as the bruising was concerned, they could not be dated accurately.

46. He deferred to Dr Johnson with regard to the fracture but noted that significant force would have been required, applied to her chest and this would have been painful, causing distress and upset – crying and tearfulness at the time of the injury, a different type of upset which parents would be able to recognise. It could be either accidental or non-accidental in cause.

47. He had read the parents initial statements and considered their potential explanations for the bruising. In his opinion the immunisation was not a realistic cause for the bruise to the left mid thigh [(v)], any bruises caused by the father's other children staying on *[a relatively recent date]* for 8 nights would have resolved, normal handling would not cause the bruising if R lost her balance or whilst being breastfed; jolting in the pram was not a suitable explanation and nor was lying on a dummy. He also did not consider that the father's described tic was responsible as there were no reports of R crying or suffering pain or discomfort prior to admission and the force was not excessive. In his opinion, on the balance of probability, forceful pressure has been applied to various areas of R's body by another person and, to date no plausible mechanism has been described, which explains how that may have occurred.

48. In his addendum report following receipt of the additional blood clotting testing by Dr Keenan his opinion was unaltered.

49. Having received the father's late statement and admission, he remained of the opinion that the tic described by father would not cause the specific bruising seen on R, due to the effects of the tic being dissipated over a wider area. He deferred to Dr Johnson and Dr Ameen in relation to the rib fracture and force.

Live Evidence:

50. Dr Cardwell confirmed that the rib fracture would require significant force. At the time it would be very uncomfortable and distressing and R's crying would be different to usual, a parent would realise that they had harmed her. It was not possible to say how long the acute phase would be as babies were variable but after settling, if she was later touched or pressed again she would become upset and cry. She may have more upset when feeding. The bruising again needed significant force and would be painful and uncomfortable. R would be tearful crying and upset – again different to before, but it would be shorter lasting and no later issues. He confirmed that a different carer who was unaware of the injuries would not necessarily have been aware of the reason for the upset when handled and it was reasonable for the new carer to consider that the cause was reflux, that nothing significant had happened.

51. Father's final updated description of R's presentation following the rib fracture was compatible with what would be expected, being a cry out and crying for 15-20 minutes and he would have known that he had caused injury to her. However, significant force was needed, such as in resuscitation, and accidental rib fractures were very uncommon.

52. Dr Cardwell deferred to Dr Johnson and Dr Ameen in relation to the tic/force required to fracture the rib and to Dr Ameen in relation to the tic/force required to cause the bruising.

53. He was firmly of the opinion that a single action would not result in all of the bruising and differentiated between the bruises which could feasibly be caused by fingertips (i) and (iii) and the others. Bruises (ii) and (iv) to the flank and iliac crest were larger and bruise (v) was possibly but less likely to be fingertips as it was a single bruise. They were all caused by pressure and (ii) and (iv) were not older fading bruises. None were caused by normal handling.

54. He remained of the opinion that non-accidental injury could not be ruled out for either the bruises or the rib fracture and agreed that the combination of both added to concerns about child abuse, particularly with multiple areas of bruising.

Experts Meeting

55. The experts had received all updated documentation including the father's latest statement and his initial video with a teddy bear as to a potential mechanism. Dr Johnson confirmed that the action in the video did not indicate a significant level of force such to cause a rib fracture. Dr Ameen and Dr Cardwell agreed. The rib fracture was the result of a single episode of significant force or trauma, not the effect of compound effect of multiple episodes of lower force. The force would need to compress the child's chest by about one third of its diameter. When asked by Dr Johnson if Dr Ameen thought the tic would cause such force, Dr Ameen stated that he did not consider that the father's tics by themselves would cause the rib fracture, the tics were not so excessive. There would need to be additional forceful compression of the chest wall. He considered that there may have been a misunderstanding with his report; his position was that the tic alone would not be sufficient, force was needed too. Dr Cardwell confirmed that there would not necessarily be bruising with a rib fracture.

56. Dr Cardwell confirmed that in his opinion the bruises were from separate incidents due to the multiple areas where they were located. Dr Ameen did not consider that the tics would cause bruising and clarified this from his report – for the bruising you need to have something sharp rather than a blunt trauma in general. A pinch would cause redness but not bruising. Dr Cardwell confirmed that the bruises were inflicted injuries but he could not describe the mechanism. Generally, bruises resolve within 2 weeks

57. Dr Keenan confirmed that no further blood testing was required or justified.

6 THE FATHER'S EVIDENCE (fact finding only)

58. Father gave live evidence prior to mother in view of his recent admissions.

59. He has provided various suggestions in his statements that the injuries could have been caused accidentally by his tics, indeed he has become more positive that this is true although until the first day of the fact finding hearing he failed to confirm specific incidents. He stated that he has about 1000 tics per day ranging in frequency and severity, alleviated by medication, and they affect all of his body.

60. He admitted in an early statement grabbing R to stop her from falling and on one occasion where the pram was jolted during a tic and R cried both times. No dates are given. He could not recall any other occasion when R has cried or shown discomfort.

61. He first noticed bruising to R (he does not state where but I believe that this refers to the bruise to her back revealed to 111) on around [a date] when the mother was changing her nappy and pointed it out to him. He has poor eyesight but they agreed it was a small bruise which was not troubling R. Like the mother, he states that he only saw the other bruises when she was at the hospital. Like the mother he suggested immunisation as a possible cause for the leg bruise.

62. In his statement of [a date] he recalled a notable tic the day before R was taken to hospital *"I recall that R had been crying a lot and was colicky. [Mother] had gone for a nap between 4-5pm. R was extremely unsettled and was crying a lot. I remember holding her, I was stood up in a front facing position, and I did have a tic; her cry did get a bit worse but it went back to normal. I held R in many positions including facing me, facing away from me, in my left and right arm and on my chest in attempt to settle her. I had to wake [mother] as I was stressed as I can normally settle her but nothing would work. My tics can be worse when under stress so I believe there will have been several."* He had not mentioned this earlier as he did not think it was notable or that he had hurt R. His description of this incident was ultimately expanded on the first day of the hearing.

63. This explanation and his teddy bear video were put to the experts at the experts meeting but was rejected as a possible cause, along with all of his other explanations.

64. He maintained that he believes that he had caused the injury to R during a tic but that at the time of the hospital admission he was unaware of this.

65. In his formal response to the findings sought, father:

(2) Accepted that his tic may have caused injury / injuries to R by handling her during an episode, but only upon consideration of the medical evidence which initially seemed to suggest that this was a possibility

(3) Did not accept that R showed symptom of an injury

(4) Accepted the presence of a bruise on [a date] but thought nothing of it

(5) Accepted that he failed to protect R by handling her when there was a risk due to his tics.

66. On the morning of the fact finding hearing, the father provided another explanation for the injuries, this time stating that he had been heavy handed on [a date] 2023 (incident para 62 above) and compressed R's chest during a strong tic causing her to cry out in pain and continue crying for 15-20 minutes after. He did not admit this to the mother or any professionals and denies that it was intentional harm. He admits "deflecting" and not being forthcoming to professionals. In reality he was being dishonest.

Live Evidence

67. I have addressed earlier the part of father's evidence in relation to the demonstrations to Dr Johnson etc.

68. The father was sworn only to the truth of his final statement; he could not swear to the truth of the others. Thereafter he continued with his live evidence which was in line with his most recent statement. He admitted being terrified and ashamed of what he had done and was adamant that mother knew nothing about it. He had been stressed, which made his tics worse, as R wouldn't settle. He stated that his tics had got worse as he got older and that he had never before had a tic as strong as the one which injured R. He admitted that some of his previous evidence was untrue.

69. His new evidence was that R had been hurt – both the rib fracture and bruising – by the very unusual and strong tic and other tics whilst holding her on and around [a date] 2023. She had teared up after one tic whilst holding her but he failed to check if he had caused injury. Her crying (from colic originally) had changed after the strong tic and he knew he had harmed her but kept quiet, did not seek help as he wanted to save himself from the consequences of his actions. He was adamant that the injuries were accidental and not deliberate or the result of losing control due to stress. He accepted injuring R with excessive inappropriate force but that it was not intentional.

70. He admitted being stressed when R would not settle, she had had colic for a few days and he was worried about her. He tried to settle her for about 30 minutes whilst mother had a nap but nothing was working. He realised that he had hurt her, she cried out for a few seconds, a "whelp" and then cried afterwards whilst he tried holding her in many different ways to console and settle her. He did not seek help and was terrified of getting into trouble. He said nothing to mother who was wholly unaware of what he had done. He eventually admitted that her cries were comparable to those at the hospital when she was having x-rays having initially said they were "louder, not like that" at hospital. He admitted that his concern was for himself and not R, he was ashamed of how his

behaviour had impacted the mother. He had never lashed out. He was scared of bad things happening. He described his behaviour as a “mistake”. He was now telling the truth; we should believe him.

71. The bruises, he claimed, were caused by holding R too tight when he had tics during the day, causing her to tear up on a few occasions although at no point did he bother to check her. She stopped crying so he was not worried. He was, however, wholly unable to provide specific details of any of these incidents, not even the particular day in question. He was evasive and on several occasions shrugged, nervously laughed or replied that “it’s in my statement” in response. He was an unsatisfactory witness. His demeanour whilst giving evidence, as pointed out by Ms Noon, did not resonate as someone relieved of a large burden of guilt.

72. The father’s evidence has been wholly inconsistent and had changed throughout this matter although he has sought to blame the tics/twitches for the injuries. At the beginning of the case his evidence was specifically that “I do not know how R sustained the injuries however I will say that I have not caused this” in his first statement. In the next statement concerning the injuries he stated that there was “nothing untoward about R’s presentation before she was admitted to hospital”. By [a date] 2023 he had recalled a “notable tic” where “her cry did get a bit worse but it went back to normal” and he did not believe that he had hurt R, until following receipt of the expert evidence. He also “reiterates that R was already crying at that time so I didn’t make any distinction between her cries”.

73. In the next statement, not long before this hearing he maintained that he did “not know when R sustained the injury” but then on the first day of the hearing, following the late experts meeting and circulation of it’s minutes, another statement was filed which provided a very different explanation. In this statement he admitted that he had been rough with R on [a date] and described a very unusually strong tic in very specific terms, adding also that he recognised that R’s cry was different afterwards. His submissions at the end of the case were that a highly unusually strong tic had coincidentally caused the rib fracture, such a tic never having happened before or since.

74. His demeanour whilst giving evidence was mainly unemotional until questioned about the impact of his lies during the last year upon the mother when he actually showed some upset. He admitted wanting to protect himself and failing to check R or mention events to the mother even though he knew he had caused injury.

7 THE MOTHER’S EVIDENCE (fact finding only)

75. The mother has filed 5 statements dealing with the injuries and the timeline for the same. They do not reveal any specific incident throughout the 3-week period prior to discovery of the injuries. They are consistent. She explains that R was being sick / suffering from reflux for a few days prior to the hospital visit. It was only on [a date] when speaking to the 111 operator that she recalled noting a bruise on R’s back a few days earlier which she had mentioned to father but she had not seen any other bruising until she was examined at the hospital. The possible explanations for bruising or fracture put forward include having caught R around her middle to stop her falling; the father’s children being present at the end of May; the pram jolting due to a tic; breastfeeding; a

dummy; R "lunging" or being lifted into the air. Any bruising to toes could have been caused by zip teeth on the pram.

76. These explanations were all discarded by the experts save for Dr Ameen considering that it was possible that a tic may have caused the broken rib if combined with significant pressure to R's chest.

77. In her formal response to the findings sought, mother:

(2) Accepted that R sustained a rib fracture as detailed and bruising to multiple areas of her body but did not accept that the injuries were inflicted. She denied inflicting any injury on R.

(3) Did not accept that R displayed any discomfort at being handled or from visible bruises. She admitted seeing a small bruise on the small of R's back a couple of days before her hospital admission but was not aware of the other bruising until she was examined at hospital.

(4) Accepted that she did not seek medical attention in respect of the bruise she saw on [a date], before R's hospital admission but did not consider, at the time, that the bruise required medical attention.

(5) Accepted that she failed to protect R by allowing father to handle her when there was a risk due to his tics.

Live Evidence:

78. The mother was an impressive witness. She was clearly devastated by events, having only found out the evening before the hearing commenced that the father was prepared to admit to hurting R and had hidden and lied about it, after he had had talks with his legal team. Her evidence was heartbreaking to listen to and she was clearly aware that she has some significant decisions to think about in view of the fathers lies and deceit. She was very angry and let down.

79. She knew nothing of the injury and assumed that R was crying and unwell due to colic when she awoke from her nap. She had showered with her and then R fell asleep on her chest. On waking R was sick after food so they called 111. She had noticed the bruise to R's back a few days before but was not sure if it was a bruise or shadow but she didn't think it was serious and would keep an eye on it. She told the father of the bruise and he admitted nothing. She had not seen any of the other bruises before arrival at hospital. She has undergone some awareness training and would be more careful in future.

80. She had never seen a tic hurt R and had no reason to suspect that R was at risk from father. Most tics did not really affect him.

8 SUBMISSIONS

81. I heard submissions from all parties and I have carefully considered these when coming to my conclusions and writing this judgment even if I do not specifically address all

points made. Very briefly they state the following:

The experts agree that father's demonstration of his tic would be a potential mechanism for the fractured rib subject to the level of pressure or compression. Father submits his tic alone was sufficient. The experts disagree.

The local authority invites me to make findings against father but not mother. These are that the injuries were caused by loss of control, temper or stress. They no longer seek findings that the mother failed to protect R.

Ms Smith, for mother, was careful with her submissions, not seeking to blame father for any deliberate injuries. Mother was exonerated by both father and the totality of the evidence.

The father remains of the opinion that the injuries were accidentally caused by his tics. In other words, they did not result from any unreasonable parenting on his part. He, however, in his evidence submits that he has suffered significant tics on occasions and so should have been aware that if he did suffer a significant tic whilst handling R, this could potentially hurt her. He also continued to handle R, in many positions, after he knew, and had admitted, that he had hurt her and caused harm.

The Guardian aligns with the local authority

9 THE LEGAL PRINCIPLES REGARDING FACT FINDING

82. The legal framework resolving the schedule of findings sought is now well settled and I will set out a summary here. All has been applied.

83. The core principles are summarised by Baker J (as he then was) in Re JS [2012] EWHC 1370 (Fam) and approved in many cases since.

"36. In determining the issues at this fact finding hearing I apply the following principles. First, the burden of proof lies with the local authority. It is the local authority that brings these proceedings and identifies the findings they invite the court to make. Therefore, the burden of proving the allegations rests with the local authority.
37. Secondly, the standard of proof is the balance of probabilities (Re B [2008] UKHL 35). If the local authority proves on the balance of probabilities that J has sustained non-accidental injuries inflicted by one of his parents, this court will treat that fact as established and all future decisions concerning his future will be based on that finding. Equally, if the local authority fails to prove that J was injured by one of his parents, the court will disregard the allegation completely. As Lord Hoffmann observed in Re B:
"If a legal rule requires the facts to be proved (a 'fact in issue') a judge must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1."
38. Third, findings of fact in these cases must be based on evidence. As Munby LJ, as he then was, observed in Re A (A Child) (Fact-finding hearing: Speculation) [2011] EWCA Civ 12: "It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation."

39. 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. As Dame Elizabeth Butler-Sloss P observed in Re T [2004] EWCA Civ 558, [2004] 2 FLR 838 at 33:

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

40. 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. The roles of the court and the expert are distinct. It is the court that is in the position to weigh up expert evidence against the other evidence (see A County Council & K, D, &L [2005] EWHC 144 (Fam); [2005] 1 FLR 851 per Charles J). Thus, there may be cases, if the medical opinion evidence is that there is nothing diagnostic of non-accidental injury, where a judge, having considered all the evidence, reaches the conclusion that is at variance from that reached by the medical experts.

41. Sixth, in assessing the expert evidence I bear in mind that cases involving an allegation of shaking involve a multi-disciplinary analysis of the medical information conducted by a group of specialists, each bringing their own expertise to bear on the problem. The court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers, where appropriate, to the expertise of others (see observations of King J in Re S [2009] EWHC 2115bFam).

42. 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. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them (see Re W and another (Non-accidental injury) [2003] FCR 346).

43. 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).

44. Ninth, as observed by Hedley J in Re R (Care Proceedings: Causation) [2011] EWHC 1715vFam:

"There has to be factored into every case which concerns a disputed aetiology giving rise to significant harm a consideration as to whether the cause is unknown. That affects neither the burden nor the standard of proof. It is simply a factor to be taken into account in deciding whether the causation advanced by the one shouldering the burden of proof is established on the balance of probabilities."

The court must resist the temptation identified by the Court of Appeal in R v Henderson and Others [2010] EWCA Crim 1219 to believe that it is always possible to identify the cause of injury to the child.

45. 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 (see North Yorkshire

County Council v SA [2003] 2 FLR 849. 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 (see Re D (Children) [2009] 2 FLR 668, Re SB (Children) [2010] 1 FLR 1161)."

84. In Lancashire County Council v C, M and F (Children; Fact Finding Hearing) [2014] EWFC 3, Jackson J, after citing Baker J above, added this:

"To these matters, I would only add that in cases where repeated accounts are given of events surrounding injury and death, the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process that might inelegantly be described as "story-creep" may occur without any necessary inference of bad faith".

85. In Re A (Children) (Pool of Perpetrators) [2022] EWCA Civ 1348, King LJ re-emphasised that judges should apply the simple balance of probability standard when determining whether it is possible to identify a perpetrator from a list of those who could be responsible. In coming to a conclusion each person should be considered individually by reference to all of the evidence. Glosses such as 'straining' to identify a perpetrator should be avoided. The unvarnished test is clear: "*following a consideration of all the available evidence and applying the simple balance of probabilities, a judge either can, or cannot, identify a perpetrator. If he or she cannot do so, then, in accordance with Re B (2019), he or she should consider whether there is a real possibility that each individual on the list inflicted the injury in question*."

86. In Re A (A Child) [2020] EWCA Civ 1230, the limitation of oral evidence was once again highlighted and the courts warned to assess all the evidence in a manner suited to the case before it, and not to inappropriately elevate one kind of evidence over another.

87. In Re H-C (Children) [2016] EWCA Civ 136 the Court of Appeal reminded judges in family cases of the proper approach to witnesses who tell lies as originally set out in R v Lucas [1981] QB 720. There are many reasons for this which do not denote guilt, for example, fear, shame, loyalty, panic and distress. An innocent person may lie to bolster their case. A lie should never be considered as direct proof of guilt. In criminal proceedings, to be capable of amounting to corroboration a lie must be deliberate, relate to a material issue and be motivated by a realisation of guilt and a fear of the truth. The same principle applies here. This point was emphasized again in Re A, B and C (Children) [2021] EWCA Civ 451.

88. In Re L-W (Children) [2019] EWCA Civ 159 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. Lady Justice King stated:-

    "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.

89. Such findings were made in respect of a carer 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 wholly exonerated from having caused any physical injuries.

90. 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 longsuffering 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?" Similar points were made in G-L-T (Children) [2019] EWCA Civ 717.

<u>10 ANALYSIS</u>

91. I have considered all the evidence which I have read, watched and heard and it has all been taken into account in performing my analysis.

92. The standard of proof required to identify the perpetrator or perpetrators of R's injuries is the balance of probabilities and if I am able to identify the perpetrator to that requisite standard it is my duty to do so. R has a right to know who injured her and needs to know the truth, if possible. The perpetrator is self identified as the father. What was not resolved is how and when the injuries occurred.

93. Father's case is now predicated upon the basis that the tic/s and forceful compression are one and the same, that it was a very forceful tic which caused bruising and the rib fracture. It is clear that having deferred to each other's expertise where appropriate, the experts do not agree.

94. I have of course considered the direction in Lucas in relation to father. The reality is that he has lied throughout this matter, from the day that R suffered the fractured rib onwards. He has lied to the mother, to the professionals at the hospital, to the professionals in this matter, to his legal team, to the local authority, to the guardian and to the court. Suddenly he expects everyone to believe that he is telling the truth.

95. Where it is alleged that a person has lied, as here, the court must approach this allegation with considerable care, as highlighted in Lucas, above. Here the father has actually admitted lying throughout this matter in relation to all of R's injuries and indeed was unable to swear to the truth of his prior statements. Father claims to be telling the truth now, the Local Authority and the Guardian submit that he is not, that the injuries to R were caused not by a tic but by a momentary loss of control, father snapping when stressed and frustrated (possibly on more than one occasion). Having identified the alleged lies in issue, the court must ask itself whether the local authority has proved, on the simple balance of probabilities, that the alleged lie has been told. The court must accordingly seek to distinguish a lie from, for example, "story creep", mistake, confusion, memory failure or distortion arising from impairment. Once the court has undertaken that analysis it moves to consider why the proven (or accepted) lie has been told. This is important because people may lie for many different reasons - embarrassment, a sense of shame for having caused an injury accidentally, a desire to hide some other wrong-doing or a mistaken belief that lying might improve their position. Of course, it is also imperative that the court reminds itself that just because a person lies about one issue, it does not automatically follow that they have lied about everything. Father has consistently lied throughout.

96. Here it is claimed by father that he lied due to panic, shame and fear and to protect himself but in reality whilst it was partly for all of the reasons above including attempting to deflect blame for the injuries, mainly he lied to cover his guilt and he has continued to do so for almost x months.

97. It was submitted by the local authority that the father's version of events was "story creep" whereby he changed his story to fit in with the evidence of the experts; that the changes to his evidence followed the filing of the expert evidence and the experts meeting. Father actually admits that his evidence changed when he considered the evidence of the experts as possible explanations occurred to him. It is clear that he considered that Dr Ameen's report could exonerate him from blame but clarification in the professionals meeting and in evidence confirmed that the issue was not necessarily the tics themselves, but added pressure with or without a tic. At the time of the father's final statement he, in my judgment, believed that admitting to a very strong tic would be sufficient to explain the injuries, in particular to R's rib.

98. It is not just that father's evidence changed in relation to the force of the tic. Father's evidence also changed throughout in relation to R's behaviour – father having initially stated that R cried just the same after the tic and changing this to her cry having changed when he admitted knowing he hurt her. In the experts meeting it is clear that Dr Cardwell expected R's behaviour to be different following the fracture.

99. There were no proper explanations by father for any of the bruising which he has now admitted causing, not even in his response to threshold nor even in his late statement and it is only when giving evidence that he now rather conveniently claims that they were caused by separate tic incidents. The experts meeting minutes had confirmed that there were multiple occasions for the bruises with separate incidents of force and not necessarily caused by the rib fracture.

100. It is striking to note that the father has never previously mentioned the possibility of additional events causing bruises by tics. Further that the mother, who I consider to be an honest and truthful witness has never seen father tic-ing to such an extent that it could cause injuries or any other bruises or injuries to R over the x-month period from her birth until her removal. If the father was having constant tics and squeezing her as he says now, then it is likely according to Dr Ameen, that she would have had bruises before the [date] which would have been noticed by the mother. I can and do accept that the mother saw only one bruise on around [a date], and I consider it inconceivable that she missed bruises since R's birth. She would have mentioned them as a protective mother, as she mentioned the one bruise on R's back to father and to 111.

101. It seems to be a highly unlikely co-incidence that father also had severe tics causing bruising only around the time R was injured, and not in the x months since birth as well as the one-off rib-injuring tic, another co-incidence, at roughly the same time. Dr Ameen stated that he would have expected to see more injuries on different days with such tics, not a single injury with bruises around one single period of time. The evidence from father about bathing suggests that R had a bath every 2 days so there would be many opportunities for the mother to note any bruising since birth. She has reported none and I found her to be a truthful witness whose evidence I accepted. She was clearly bewildered by the father's admissions but even in her grief sought to be kind to him and not directly seek to blame him in her final submissions. I do not accept that she would have failed to act if she saw regular bruising, she would protect her child as she is clearly a doting and committed mother.

102. I am sure that she deeply regrets not noticing any other bruises at the time of admission to hospital or indeed questioning the father further about the bruise to the back, which she knew she had not inflicted herself, but put simply she trusted the father and had no reason to suspect that he had injured R. I accept her evidence about the shower and swaddling in a towel and not checking for injuries – it would not be normal to do so when you trust someone as she did the father. Additionally I do not criticise her for not seeking immediate medical attention for a small bruise alone, she did of course mention it to 111.

103. Even now father has not provided the court with any detailed explanation of when and how all of the bruises occurred and if the court accepts the opinions of the experts, then father's explanation for the fractured rib and at least some of the bruises is unsupported. He went to the lengths of filing a detailed timeline with photographs and yet failed to mention any injuries he had caused.

104. Of course I remind myself that the experts are to guide and assist the court and I should of course consider the whole canvas of evidence. Father willingly accepts the evidence of Dr Johnson and Dr Cardwell which fits with his own final explanation, at least to some

extent. Even then, however, whilst there is a mechanism which could have been used to cause the fracture, the issue of force is deferred to Dr Ameen and Dr Cardwell does not accept father's explanation for at least some of the bruises. Mr Gorton for father urges me to disregard everything Dr Ameen said after his written report, both at the professionals meeting and in evidence. He has no legitimacy after the report, he stated, Dr Ameen was a "politician" who exceeded his authority, did not physically examine the father, dared to express opinions about bruising and his evidence was non-sensical and should be discarded. Despite these alleged misgivings about Dr Ameen, however, it was submitted that it is perfectly fine and acceptable for me to rely on his written report which father argues supports him. That approach is contradictory to say the least. If he was, as submitted by father, such a poor expert how can it be appropriate to rely on even the written report? I have already highlighted the fact that the father appears to hold the opinion that the written report supports his latest admissions but it simply does not and Dr Ameen stood firm to his opinion in the face of significant and forceful challenge. I have already commented on the issue of bruising and Dr Ameen's expertise as a general surgeon for many years.

105. I do not dismiss Dr Ameen's evidence, to the contrary I accept it. He was quite clear that father's demonstration and explanation for the fracture were a potential mechanism, but only if there was sufficient force/compression to R's chest. The simple difference between he and the father is that the father submits that his tic alone provided sufficient force, Dr Ameen does not consider this to be possible.

106. Much was made by Mr Gorton of father allegedly being a "prisoner" to his tics and there was reference on several occasions to him having a 1-minute arm spasm which could not be stopped by the GP. I note that this event actually took place 8 years ago, and question how it is relevant now, certainly there is no suggestion or evidence of repetition. I do not seek to minimise father's affliction with his tics but the only recent evidence of any significant tics recently comes from father himself self reporting, including an event allegedly reported to the hospital after R's injury had taken place according to counsel for R. No proof has been provided by the father to substantiate this incident or visit.

107. In relation to bruising, there are actually very limited differences between the medical opinions. Again it is simply the case that father submits they were caused by his tics; the experts do not fully agree. Dr Cardwell does not rule out inflicted injury and opines that whilst it is it is feasible that 2 of the bruises are "more typical of fingertip bruising" at least 2 and possibly 3 of the bruises are not explained by father's explanation or demonstration. Further the number and areas of bruising cause concern about child abuse particularly when linked with the rib fracture.

108. I have considered the totality of evidence and evaluated it on the balance of probabilities. At the time of the injuries, this was a father under stress, and struggling with a colicky baby. He was also having tics but his evidence suggests that these happen 1000 times each day and he will to a degree be used to them and their effects. In my judgment eventually his frustration, stress and failure to cope led to R being injured.

109. I do not accept that the injuries were all caused by a tic/tics, however great those tics allegedly were. It is too much of a coincidence, unsupported by evidence and indeed not accepted as a cause by the totality of the medical expert evidence. This is a father who has lied and lied throughout these proceedings, to everyone involved and his credibility is extremely low. He was a poor witness and seriously lacks credibility. I accept the submissions of Ms Begum for the local authority and Ms Noon for R that this was a father who could not cope and suffered a momentary loss of control and squeezed R too tight, fracturing her rib, possibly whilst also having a tic but that the tic alone was not to blame. It was not deliberate but was reckless and caused by stress and failing to cope.

110. He knew that he had injured her but wholly failed to check her health, to tell the mother or to seek any assistance, medical or otherwise. Instead he deliberately chose to protect himself and firstly did not admit what he had done and later lied again and again about what he had done. This included slowly "creeping" his story in line with the medical evidence and possible explanations for the fracture, increasing the alleged strength of the tic and the pressure in the hope that he would not be found out.

111. In addition, the father caused bruising to R, some likely during the events following the rib fracture according to his evidence and the video demonstrations when R was no doubt traumatised for a period of time and even harder to console and some in the days before. It is impossible to be precise with dating the bruises but Dr Cardwell was very clear that father had failed to explain the true basis for the bruises, particularly those numbered (ii) and (iv). The others were potentially caused by fingertips but the true mechanisms are not clear even with father's final evidence where he admits causing the bruises over different days/times. Certainly there is no evidence that anyone other than the father inflicted the bruising.

112. In summary, I find that the injuries were non-accidental in nature with bruises (i) and (iii) potentially be explained by fingertip bruises although still caused by rough, inappropriate and excessive pressure and not by normal handling. This was inappropriate parenting when he was struggling and trying to calm R after fracturing her rib (as he admits) rather than seeking help and admitting what he had done. On the balance of probabilities I find that all injuries occurred during the short period of time when R was suffering with colic.

113. The father has caused significant harm to R and to her mother with his lies and deceit throughout the almost x months since R's injury was discovered. He has caused mother to doubt herself and she has been exposed to being placed in the pool of perpetrators and had to hear that adoption was a potential outcome for R. He has undoubtedly caused emotional harm to R by her separation from her loving and caring mother and physical harm apart from the injuries by having to undergo blood testing. Even now I cannot accept that he has been truly honest about the events which caused the injuries but I do not need to make precise findings as to the exact version of events. It is sufficient for me to find as I have stated.

114. There is no evidence that the mother was aware of the risks posed by father with his tics, or with his loss of control or stress; she has never seen any significant tic and in any event, I am not satisfied that this was the cause of R's injuries. I am satisfied that the mother has not failed to protect R.

11 FINDINGS

115. I make the following findings, having applied the civil burden of proof and considered all of the evidence

Findings sought:

2. Whilst in the care of her mother and/or father, prior to her presentation at hospital on [a date] 2023, R had sustained inflicted injuries in the form of a fracture to the posterior right 9th rib and bruising to multiple areas of her body; which on the balance of probability have been caused by the application of forceful pressure applied to various parts of her body by her mother or father for which no plausible explanation has been given.

Finding (2) I make this finding against father but not against mother

3. The non-perpetrating parent would have been aware after the event that R had been injured due to discomfort displayed on being handled or by the visibility of bruising.

Finding (3) I do not make this finding

Failure to Protect

4. The mother and father were aware that R has sustained bruising prior to her attendance at A&E on [a date] 2023 but failed to seek timely medical attention in respect of them.

Finding (4) I make this finding against father but not against mother but in the following amended terms:

> 4. The father knew he had injured R and should have been aware that R had sustained bruising prior to her attendance at A&E on [a date] but failed to seek timely medical attention in respect of them.

5. If mother and father were aware that there was a risk that the father could apply excessive pressure to R's body during a tic episode, they both failed to protect her by allowing the father to handle her.

Finding (5) I make this finding against father but not against mother

12 DECISION

116. I make the findings as stated.

HHJ Hesford

Date 31 May 2024