

Neutral Citation Number: [2024] EWFC 390 (B)

Case No: ZW24C50086

IN THE FAMILY COURT AT WEST LONDON

Gloucester House,
4 Dukes Green Avenue,
London
TW14 0LR

Date: 6 December 2024

Before :

HIS HONOUR JUDGE WILLANS

Between :

London Borough of []

Applicant

- and -

(1) AL

Respondents

(2) DT

(3) J (by his Children's Guardian)

Kate Smith (instructed by [] **Legal Department**) for the **Applicant**
Paul Murray (instructed by **Griffiths Robertson**) for the **First Respondent Mother**
Ummar Ahmad (instructed by **Barrett & Thomson**) for the **Second Respondent Father**
Susan Quinn (instructed by **Creighton & Partners**) for the **Third Respondent Child**

Hearing dates: 2-3 and 5-6 December 2024

JUDGMENT

HHJ Willans:

Introduction

1. I am concerned with a 12-year child, [] (“J”). His mother is [] (AL) and his father, [] (DT).
2. On 7 March 2024 J’s teacher was concerned as to what she was told and by marks she saw on J’s hand and arm. The applicant and police were involved and equally concerned by these marks. The next day a full child protection medical (“CPM”) was undertaken. This disclosed much wider bruising and marking on J’s torso and limbs. This fact-finding hearing has sought to understand what caused these injuries and if relevant, who was responsible for causing the injuries to J.
3. The applicant seeks a finding that one, other or both of the parents were responsible for J sustaining these injuries which are alleged to have been caused by a belt or belt-like implement. The applicant alleges a failure to protect against a parent found not to have been responsible for the infliction of the injuries. Finally, it alleges DT failed to check if J had sustained injuries and seek medical attention and that AL failed to seek medical attention for J. Both AJ and DT deny any responsibility for causing these injuries or knowledge to the extent of the injuries prior to the CPM.
4. This judgment sets out my conclusions in respect of this dispute. In reaching my conclusions I have had regard to (i) the documents contained within the hearing bundle; (ii) the live evidence from Dr Rajiv Mittal (Consultant Paediatrician); F, T and S [teachers from J’s school]; Detective Constable Davis; AL and JT; the maternal grandmother (“MGM”), maternal grandfather (“MGF”) and maternal uncle (“MU”), and (iv) the written notes and final submissions of counsel for each party. I have borne all of the evidence in mind whether or not I refer to it within this judgment.
5. DT, MGM and MGF gave evidence with the assistance of an interpreter. DT was assisted throughout the hearing in a similar manner. MU was supported by an interpreter. AL did not require an interpreter.

Legal Principles

6. The applicant brings these allegations and must prove them. The burden rests entirely on the applicant. The respondents have no legal burden or responsibility for disproving the allegations. The applicant will only prove the allegations if it establishes each allegation as being more likely than not (the balance of probabilities). If the applicant is successful in proving an allegation, then it will be treated as a fact, otherwise it will be entirely ignored. As this is a single-issue case (with the applicant relying solely on these allegations) if it fails to prove the allegations the case will end. Otherwise, it will proceed to a welfare stage.
7. The allegations, if established, must cross the legal threshold, and must show the child has suffered significant harm as a result of the care given to him by his parents or one of them and that such care fell below the level to be expected of a reasonable

parent. There is no issue in this case that the allegations if established would cross the legal threshold set out in section 31 Children Act 1989.

8. Whilst there is much legal authority on the approach a Court should take to expert or medical evidence there is no need to spend particular time on the same given there is no material challenge to the conclusions reached by the Dr Mittal (see below). But I do keep in mind it is for the expert to advise and the Court to decide in cases of dispute.
9. In considering the disputed matters it is fundamental that I should consider the evidence given by the parents with the closest scrutiny. Whilst I will have regard to all the evidence, their evidence is central to my analysis. They bear no legal responsibility to explain what happened but any explanation they give must be considered with care. In considering the matters in dispute I should give regard to the wide canvas of evidence, not just the evidence directly related to the matters in dispute.
10. If I reach the conclusion a witness has told me lies then I should proceed with caution and should not simply treat all of their evidence as being unreliable. I must instead apply a rigorous legal approach to the probative value any lies have to the actual issues in dispute.

Brief Background

11. All family members derive from XX The parents married in around 2011 with J being born a year later. AL moved to this country with family members in 2018 and was joined by DT and J in 2020. Until recently and at all relevant times, the family have lived in communal circumstances including AL, DT and J; the MGF and MGM, and; MU his wife and adult daughter.
12. In 2022 the family came to the attention of the local authority when a report was made of J being hit with a book by his mother and physically chastised more generally.
13. On 6 March 2024 whilst at school, J was spoken to about reports he had been shoplifting from a local store. He accepted this behaviour and his mother was contacted and informed. He returned home later that day as per norm.
14. On 7 March 2024 J's mother accompanied him to school and raised whether J had been coerced by other school children to undertake the shoplifting with the threat he might be harmed otherwise. Later on, that day teachers received reports from other students of J reporting being beaten by one or both parents. He was spoken to by a teacher in the course of which marks were seen on his hand and arm. As a result, the applicant was contacted and both a social worker and DC Davis attended the school. Whilst at the school both the social worker and police officer witnessed the marks seen by the teacher. These were photographed. I have the photos in the bundle. J was accompanied home and his mother was spoken to about the reports.

15. On 8 March 2024, a CPM was undertaken. When examined far more extensive bruising and marking was observed on J's rear torso, arms, and legs. These marks were photographed and are available in the hearing bundle. As a result, J was taken into police protection.
16. On 11 March 2024 care proceedings were commenced. J was made subject to an interim care order and case management directions were given. Subsequently J was placed into the interim care of family members. This hearing has been my first involvement in the case.

A detailed account of the events of 6-8 March 2024

17. I commence this section with the meeting between J and his teacher following the report of shoplifting. T spoke to J on 6 March 2024 following the report. He accepted he had acted in the manner alleged. He advised he was with one other pupil when this happened. The other pupil confirmed the account and stated he was outside the shop when the events occurred. It was agreed T would inform AL and a process was agreed. T then called AL who thanked her for the call and told T that J was misbehaving at home.
18. That night J went home as per normal. I was told the home routine is one in which the family eat around 6pm before the various members retire to their own bedrooms, there being limited communal space. The sense was of this being a family which spent significant time in their own personal space outside of periods of eating. Whether this was to retain privacy for groups within the family in circumstances in which they shared limited living space is not clear. But it is the agreed evidence of all family members. As a result, each have limited insight as to the actions of the others outside of a limited period of time each evening. I was told of family member working routines with AL leaving a little after 6pm for her employment and returning after her night shift the next morning. I was told about DT's routine which appeared to have him out of the house very early in the morning and returning after his wife had left for work. As a result, on working days there would be little if any overlap between them. AL would eat before leaving for work and DT would eat on his return from work around 8pm or so. By this time everyone would normally have retired to their bedrooms.
19. I was told AL informed DT as to the shoplifting report that evening. This was done by text message due to coverage issues. It appears J told his mother his actions were related to bullying aspects and I am told this was conveyed to the father in the messages. In his evidence DT was unsure whether he was told by text or phone call. The messages were not retained for these proceedings and the telephones have subsequently been seized by the police. I was told DT responded to AL and encouraged her to go to school with J the next day to report the bullying. AL was unsure when this response was sent to her and whether it may have been after DT returned home.
20. DT told me he returned home that night and woke his son who was sleeping. J told him about a fall on the stairs but that seemed unremarkable given J seemed fit and

well. There was a conversation about the shoplifting and discussion about AL going to school in the morning with J. There was no anger or assault.

21. As a result of this AL returned home a little earlier the next morning than she would normally do and accompanied J to school. She told me she noticed a mark on his hand and on the back of his neck when travelling to school which he explained to her had been caused by falling on the staircase at home. At school she appears to have spoken to the teacher manning the school gate and told him about the bullying. She was unable to speak to the teacher she wished to speak to. I am told by AL that J was crying at this point. It seems later that morning AL repeated her message by calling the school.
22. This messaging was conveyed to teacher T who spoke to J about the reports of bullying and the fact he had not mentioned this the previous day. J was spoken to but did not suggest there had been any bullying. He gave the names of two identified students who were spoken to and denied any bullying, saying they became aware of the shoplifting when J showed them what he had taken.
23. Later that day whilst in class T heard a student speaking about J and saying he had been crying that morning and saying he had been beaten by his parents for stealing. The student was cautioned not to speak like this in front of other students. The student said this was true and that J had bruises 'all up his arm.' Shortly afterwards T asked the student to write a note setting out what he was saying. He did this and I have the note.
24. This student reported a second student had also heard what was said. This student was reported by T to be a close friend of J's. He was spoken to and confirmed J had spoken of being beaten badly with a belt by his father the previous night. He was asked to write down what he said he heard. He did this and I have the note.
25. T then spoke to J who denied these claims and said he had fallen on his stairs. He showed T bruises on his arm and hand whereupon T commenced a safeguarding process which led to Children Services and the Police being called. Teacher S was involved in the safeguarding process. She checked as to whether there had been any earlier safeguarding reports (see below). S spoke to the reporting students who confirmed their accounts and spoke of J claiming to have been hit with a belt by his dad, hit very hard by mum and dad, and that they showed no mercy. J was spoken to and repeated his claim of falling on the stairs. He said he had shown his mother the injuries. He showed S the injuries. He denied being hurt by his parents.
26. J remained at school awaiting the arrival of the police. This understandably caused worry in the family when he did not return home at the normal time. S was eventually able to make contact with AL to update her. J was accompanied home by the social worker and the police travelled separately. They spoke to AL at her home before she had to leave for work. Whilst at the property DC Davis asked J about the suggested fall on the staircase. He described falling up the stairs (which sounded like tripping on the stairs) and bumping into the banister.

27. Once again, the parents working patterns crossed over that night. The next day J was taken to the CPM. On examination he was seen to have extensive bruising and marking as described elsewhere in this judgment. Both parents were present and expressed shock as to the injuries seen on their son. Both parents have been subsequently interviewed by the police. Each prepared a statement. They denied assaulting J and made mention of the suggested fall and the role of bullies. J has been offered a police interview but has declined the same.

My analysis, consideration of the evidence and conclusions

How were the injuries caused?

28. I heard evidence from the Paediatrician as to the injuries seen and his views as to likely cause of the same. By the end of the evidence this did not appear to be controversial and I accept his conclusions. The photographic evidence provides strong support for the conclusion that J was likely struck by a belt or belt-like item. There are consistent parallel lines seen on the skin and various body marks that suggest such a mechanism. Further, some of the lines are associated with a box like mark which gives the impression of a likely buckle impact. AL accepts the suggestion that the cause was J being struck by a belt. DT appeared to agree the same by the end of his evidence.
29. It is implausible this was caused by falling on the stairs. I struggle to see how it could in fact be caused by a forward fall on the stairs as suggested to the police officer as most of the injuries are to J's rear and would be shielded during such a fall. Further, even if the fall were misdescribed and was in fact a fall down the stairs then it is most unlikely it would have occasioned the range of differing parallel lines found on different parts of the body. It is difficult to see what part of the stairs could in fact lead to such parallel lines in any event. Finally, a fall on the stairs sufficient to cause these injuries would have amounted to a very serious fall and I struggle to see how this would have happened without the knowledge of anyone else present in the property.
30. No other explanation is suggested (the bully account is as to perpetrator not likely cause) and in my assessment it is quite clear J was beaten by a belt or equivalent item. I agree it would need to be an item with appreciable flexibility, like a belt, to enable marking to travel around curves on J's body (as seen in the photographs). A rigid implement would not cause these marks. On balance I conclude he was hit on multiple occasions to various parts of his body.
31. For the avoidance of doubt (and it was not argued as such) this was not lawful chastisement as understood within the criminal law. The injuries were such as to suggest a sustained and significant assault. This is not behaviour which falls into the category of inadequate parenting that the Court has to accept to avoid social engineering.

Did this happen on one occasion or more than one occasion?

32. It is always difficult to date bruising with any degree of confidence. However, having reviewed the photographs and the evidence more generally it would appear the relevant bruises were occasioned at a time broadly proximate to each other. All of the bruises have a similar colouring with there being no older differently coloured bruising evident. The sense is they have a similar ageing. Of course, it is entirely possible they could have arisen at two different points in time broadly proximate to each other. The medical evidence doesn't answer this question save that the view is the bruises were no more than 2 weeks old. I will return to the broader evidence below.

Are there any further clues as to the timing of the bruises?

33. I am asked to consider the fact that no-one noticed any markings prior to 6 March 2024 and that the marks were present on 8 March 2024. The suggestion is the marks therefore likely arose between 6-7 March 2024. There are two items of evidence which support this narrowed timeframe. First, J's timing of the staircase fall to the period post-school on 6 March 2024 supports the notion the injuries were not present prior to leaving school on 6 March 2024. Whilst I reject the notion of the injuries being caused by such a fall it is clear J is seeking to explain the same by such a fall. As such he is clearly dating the injury to this period. I consider this telling evidence. J knows when the event occurred which caused his injuries. He is in my judgment seeking to excuse this with an alternative explanation. He is likely to time his explanation close to the actual events in question. Secondly, whatever I make of the purported reports to school peers it is clear these are said to have been referencing events of the previous 24 hours.
34. Subject to other evidence there is strong support for the conclusion that the injuries were caused between school on 6 March and school on 7 March 2024. I remind myself the arm marking was seen by AL on the way to school on 7 March 2024. That includes aspects of the parallel marking seen elsewhere and it would be beyond coincidence for there to have been two separate events leading to marking bridging the journey to school. I consider it likely J had all his injuries by this point in time (i.e. 9am on 7 March 2024).

Were the injuries caused inside or outside the home?

35. This is a key question. The applicant blames the injuries on one or both of the parents. The parents deny personal responsibility and consider the other was not responsible. They have held onto the suggestion that the injuries were likely caused by school bullies who may or may not have been associated with the shoplifting events.
36. A difficulty with the bully explanation is that J has not in fact suggested being hit by bullies. At most he says he was threatened by the same. He has retained this approach notwithstanding these proceedings, the allegations against his parents and

his removal from their home. One might have thought he would have identified the same if this were correct. It is also right to note there is no witnessed evidence of an event of such a nature which by its nature would have likely occurred in the public sphere and no known witness has reported such an event despite the fact it would have been quite a significant event to witness.

37. A further difficulty is that J has in fact attributed responsibility to his parents in the suggested conversation with children at school. It is difficult to understand why he would have chosen to blame his parents if they were not responsible and he had in fact been assaulted by another child. This is made more difficult to understand given the suggested good relationship with his parents.
38. In considering this question I have regard to the wide canvas of evidence. I take into account the evidence of a good relationship with the parents and their love for him. I accept this evidence. I have regard to the absence of equivalent injuries suggestive of a pattern of like conduct. I also have regard to the absence of evidence of substance misuse, domestic violence or mental health issues that might found such behaviour. In general terms this family had no such issues. I accept there is a level of financial struggle suggested by the shared accommodation but this can only go so far and it is clear the parents (and family) are hardworking and doing their best to improve their living conditions.
39. I also have regard to the family member evidence. I did not find this helpful. I accept one might expect a family member present in the house during the assault to have overheard the event and have some evidence to give to the Court. I appreciate each of the family members reported no such experience and this of course supports the parents. However, I found the familial evidence most unhelpful. Each of the witnesses gave an impression of a sense of personal isolation in the home with each individual withdrawing into their own space. Further the MGF and MGM had a surprising lack of knowledge or interest in the events in question. I place very little weight on their evidence.
40. But there is also wider canvas evidence which points against the parents. Both in 2022 and in 2023 there was evidence of reported improper chastisement of J. In 2022 AL accepted throwing a book at J when he struggled with his reading. In 2023 he appeared scared when a teacher indicated she would speak to his parents. He expressed the view that he didn't want this to happen as he would be 'whooped' and spoke of being hit with a belt. In 2022 he spoke of it being 'lucky his father had not hit him as he would have hit him harder'. There is also a suggestion of a harsher disciplinary approach being taken in X with the possibility of a differing cultural approach to physical chastisement.
41. Having considered the evidence with care I find the evidence points strongly towards the injuries having been occasioned whilst J was at home. The evidence with respect to it being caused by bullies is close to non-existent. J does not make this claim in any event but has chosen to focus on a wholly unlikely explanation of falling on the

stairs. The timing of the injuries supports this conclusion as does the weight of the evidence.

Can I say who caused the injuries?

42. There is no suggestion or basis for placing responsibility on a member of the wider family. The evidence suggests it was either his mother or father or both who caused the injuries. Whilst it does not answer the question there is a level of inherent improbability in suggesting each parent separately and individually assaulted J causing the injuries. I accept the evidence as to the timing of each parent within the home during this period and agree they were not there at the same point in time to have acted together.
43. In reaching my conclusion I do accept the fundamental truth of the reports provided by the two children at school. I accept J was heard to speak about what had happened at school. I found the suggestions that this was undermined by the way in which the reports were recorded unconvincing. On my assessment the teachers acted in an appropriate manner such that the evidence cannot be said to have been contaminated or otherwise impacted by the way in which it was gathered.
44. I appreciate there are conflicts in the accounts given by each child. One Pupil 1 (P1) as he was labelled, speaks of J saying his father had hit him with a belt and his mother had comforted him. Pupil 2 (P2) spoke of J being hit very hard by his mum and dad and they had shown no mercy. I accept the evidence of the teachers that P1 was J's close friend whereas P2 was not. As such I consider the conversation with P1 was likely to be the most open conversation had by J. I consider it likely P2 may have overheard the conversation rather than had it related to him directly by J. As such I consider P1 is likely to provide the more reliable and fuller account. I bear in mind the suggestion of his father hitting him with a belt fits with the historic reports although I note his mother was also responsible in the past.
45. As to parental opportunity I consider both had the opportunity to assault J although I note AL's opportunity was around the time of communal family time whereas DT's time was after the family members had separated.
46. I found the account of an understanding approach to the allegation of shoplifting difficult to accept. Both parents appeared to suggest they would have treated the report in a caring and easy manner. There was no suggestion at any anger at J for what he had done. I do not consider I was being told the truth in this regard. I find it easy to believe J will have latched onto bullying as an explanation for his behaviour. I do not entirely reject it as an account. However, I bear in mind he was previously struck with a book for a minor reason and feared school contacting his parents over a minor infraction. On the evidence I have I consider the parental response to an allegation of shoplifting would be more significant than accepted. I judge it was this allegation which led to him being beaten whether because of the shame it brought on the family or for other unknown reasons.

47. On balance I find it unlikely there were two events with both parents separately beating J. This is improbable. I remind myself I need to simply apply the balance of probability in considering the question of responsibility.
48. Having considered all the evidence, I have reached the conclusion J was assaulted by DT. I have reached this conclusion having particular regard to the following:
- i) Importantly, this is what I find J actually said to his best friend. P1 referenced a belt being used at a point prior to any evidence of a belt being used. This is a credible report of what was said to the friend. I prefer this account to the account overheard by P2. His account has to be understood in the context of not being so close to J and the fact the parents were not in fact at home together at the same point in time and my finding as to improbability of two separate assaults.
 - ii) It fits with the historic reports in which J spoke of his father hitting him harder and referenced a belt. It is beyond coincidence that J spoke of being hit with a belt in 2023 and then was in fact hit with one in the following year. I find he was speaking from experience and events likely repeated in 2024.
 - iii) I also consider DT's opportunity was greater and at a time of heightened isolation.
49. On balance I find J was hit with a belt on multiple occasion over the evening of 6 March 2024 although likely within one sustained assault. I find this caused the injuries seen and this was done by DT. I am little doubt this was due to the allegation of shoplifting being reported to the parents. He was hit because he had been found to have engaged in shoplifting and his father responded in this inappropriate disciplinary fashion. For what it is worth I do not find the behaviour was consciously sadistic or cruel but rather reflected the manner in which DT has likely come to understand appropriate disciplinary response.
50. I do not believe this was a wholly isolated incident although I have no evidence beyond 2022 and 2023. I find it likely physical chastisement had become a mechanism of discipline and this is why it was resorted to on that occasion.
51. I do not find a failure to protect on the part of AL as I find she was absent when this occurred and did not return until the following morning. I also do not find a failure to seek medical treatment or to further investigate the injuries. The strong sense of the evidence is that everyone who saw J that day was underestimating the extent of his bruising. I have no basis for believing this was a failure for which AL should bear particular blame.
52. I am however troubled by her inability to reflect on the evidence and the implications of the same. The real issue for me has been as to which parent was responsible. On my finding AL knew it wasn't her. The suggestion as to falling on the stairs was most unlikely. Once she attended the CPM this must have been obvious. J

had said his father did it with a belt. He did not say it had been done by bullies. It is concerning she was therefore willing to close her eyes to the obvious answer. This is particularly so as she will likely have been aware of previous discipline within the family as noted above.

53. This is my conclusion. The case will now move onto the welfare stage of the proceedings.

HHJ Willans