Case No: LS18C00220

IN THE FAMILY COURT AT LEEDS
(Sitting at Leeds Crown Court)

NCN: [2020] EWFC 100

Leeds Crown Court Leeds LS1 2BG

Date: Friday, 27th November 2020

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Before:

MR JUSTICE COHEN

- -

Between:

WAKEFIELD METROPOLITAN DISTRICT COUNCIL **Applicant**

- and -

(1) HR

(2) IH

(3) THE CHILD **Respondents**

(Through her Children's Guardian)

- -

MR J. HARGAN and MS HILDYARD appeared for the **Applicant**
MR W. TYLER Q.C. and Mr DENNETT appeared for the **First Respondent**
MR S. BICKLER Q.C. and Ms McCURDY appeared for the **Second Respondent**
MS L. MCCALLUM appeared for the **Children's Guardian**

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Approved Judgment

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Telephone No: 020 7067 2900. DX 410 LDE
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Web: www.martenwalshcherer.com **MR JUSTICE COHEN :**

1. S was born on 2nd October 2017, the daughter of HR (the mother) and IH (the father). She was born at 37 weeks and she was diagnosed pre-birth as suffering from various abnormalities, including ventriculomegaly, meaning that two of the four brain ventricles were enlarged and filled with fluid, a cleft palate and micrognathia, that is an undersized lower jaw, and a series of other conditions which do not matter for these purposes.

2. The combination of conditions presented significant difficulties with feeding and breathing and S spent her first six weeks in the special care baby unit at hospital, initially at Sheffield Hospital where she had been born, and then at Pinderfields Hospital. On 18th October an MRI head scan showed no intracranial haemorrhages and, specifically, no subdural haemorrhages.

3. S was discharged from hospital on 10th November to her mother's home. I describe it as that because the father was not living there permanently, but was spending most of his time there, including most nights. By then, both parents, who had spent much of the previous six weeks in hospital, had received training in dealing with S's particular needs. She had to be, amongst other things, positioned on her side to assist her breathing and she was fed by means of a special oral bottle with high calorie feed. Her parents were, understandably, anxious about her breathing and feeding and this was a challenging situation for any parent.

4. There was an open door policy in place with the hospital, which meant that at any time, if the parents were worried, S could be brought straight in to Pinderfields Hospital.

5. The mother, at this time, was aged nearly 34. This was her fourth child and her third child is R, now aged nine, whose future I shall need to determine next week.

6. The father was 13 and a half years younger, aged 20, and this was his first child, so there was a huge difference between them in experience.

7. S was seen by medical professionals on nine occasions between her discharge and 15th December, some five weeks later, the last occasion being on 8th December. By all accounts, S and her parents were doing well in the difficult circumstances that presented.

8. On 15th December a 999 call to the ambulance service was made at 19:35, reporting that S had been vomiting all day, feeding poorly, had a fever and was exhibiting jerky movements, with her arms stiffening and her legs going stiff and shaking and her eyes rolling back. The ambulance arrived quickly, by when S had turned blue and her heart had stopped beating and she was seen to be retching. She was rushed to Pinderfields Hospital with a preliminary diagnosis of possible meningococcal septicaemia.

9. A CT scan of the head was carried out the next day, to which I shall return, and nothing abnormal was observed. It is unfortunate to have to report that this scan was

the first of five occasions during S's admission, when clear signs of trauma were not picked up.

10. It is now accepted by the parents that a proper examination of S and analysis of scans would have shown:

    i) That she has suffered subdural haemorrhages over both hemispheres of the brain; and

    ii) A fracture of the ninth rib at the posterior lateral aspect.

11. It is not possible to time, with precision, when these injuries were caused, but it was agreed by the medical experts, and accepted by the parents, that they would have occurred within a maximum period of 12 hours preceding the call to the ambulance service, that is during the day of 15th December.

12. This relatively long timeframe is given as, on the scan, no brain damage was visible and no evidence of soft tissue swelling or scalp injury was seen. This means that the injury was at the lesser end of severity of what is, in any case, a severe event. The parents accept that the likely mechanism causing the subdural haemorrhages was S being shaken and the blood vessels in the brain being ruptured by the forces of acceleration and deceleration that shaking brings. It is also agreed by the medical professionals and the parents, and I accept, that it is impossible to date the rib fracture with precision, but its positioning is consistent with someone holding S tightly around her chest, and that the probability is that the rib fracture occurred at the same time as S was being shaken, so as to cause her brain injury.

13. These injuries could not have happened with normal and proper handling of a child, or even by rough handling of a child, but are caused, or likely to be caused, by a tight gripping of the chest, with the hands around the side and back of her body, and an acceleration and deceleration of the head, which any perpetrator must have known was a wholly unacceptable and dangerous way of handling an infant.

14. The parties and the Court have been privileged to have had the assistance of some of the country's leading doctors to advise and I will come back to them in a moment, but it is right to record also that all parties have also been excellently represented. The parents have, respectively, had the benefit of the expertise of Mr Tyler QC for the mother and Mr Bickler QC for the father, and they have both argued their client's cases with great skill. The local authority have been represented by Mr Hargan and Ms Hildyard with conspicuous fairness, and they have provided me with exemplary documentation for which I am grateful. The guardian has, through Ms McCallum, very helpfully taken the active part in the proceedings that I wished.

15. It was the doctors' unanimous conclusion that neither these nor her subsequent injuries could not have been the result of S's congenital condition, but were the result of inflicted injury and that has led the parents to accept at the end of the medical evidence that there was no medical reason for the injuries S had suffered and that that they must have been inflicted by whichever of them had S's care at the time.

16. The doctors were not in complete agreement about how S would have presented, following this assault. Her abnormalities might lead to or influence an unusual presentation.

17. Dr Cartlidge, consultant paediatrician, said that so far as this injury is concerned, that following its infliction, S would have demonstrated, first acute and worrying symptoms, followed by secondly, a slight amelioration, what we have called during the hearing a plateau, and then thirdly a severe decline, which may be marked by seizures and loss

    of consciousness. In the first phase, S may not appear acutely unwell, but by the last stage, she would obviously have been very unwell and in need of immediate help.

18. Mr Lawrence, consultant paediatric neurosurgeon, said that there were a range of possible reactions that S might display, including irritability, altered consciousness, vomiting, inconsolable crying. It is not easy to predict in any one case, but she would not have been normal or well, by her standards, at any time. Mr Lawrence could not say whether or not she would be more susceptible to brain damage because of her congenital abnormalities, but nevertheless it would be plain that she had suffered a trauma.

19. It was agreed that the symptoms of brain injury would dwarf the symptoms of the rib fracture if the events happened at the same time.

20. The parents accept, and I agree, that as between the two of them, there is no evidence which, on its own, points to one parent rather than the other as being the perpetrator of the injuries caused on 15th December.

21. There is a wide timeframe for the injury and the failure of the subsequent medical investigation meant that less is known of the timetable for that day than would be the case if there had been proper investigations. I rule out the father's belated suggestion that A, the mother's friend, and/or her partner B might have inflicted the injury. This idea only came to the father's mind a couple of days ago, nearly three years after the event. I do not take that against him as the mother accepts that, at some stage around this time, A and B did indeed care for S for about two hours without either parent being present, but I am sure this was not on 15th December, as when the parents were asked for a history at hospital, they would inevitably have mentioned it if S had been cared for by others that day and the mother herself is certain that it was not on the 15th, whilst the father himself is not sure which day it was.

22. I had mentioned that the history of the day is less detailed than otherwise might be the case because no one was suspicious of any injury at the time. It seems to have been in the minds of the treating team that S's presentation was a development of her preexisting difficulties. I understand the problems that doctors are faced with when a child who is well-known to them as having acute medical problems is re-presented, and there is a natural temptation to assume a recurrence or development of existing problems but it is right that I should refer to the five missed opportunities.

23. Two head scans were carried out. The first was a CT scan on 16th December and the second was an MRI scan on 4th January. Both show subdural haemorrhages. Dr B, on viewing the scan of 16th December, found no intracranial haemorrhage and on later review Dr K felt that the scan showed low density subdural collections but, for whatever reason, possibly because no comparison was done with the earlier pre-discharge scan or perhaps because it could not be determined whether the bleed was acute or chronic, the significance was overlooked.

24. Dr C, on 4th January, noticed the subdural collections, but because of the child's history, felt non-accidental injury was unlikely, a conclusion which she could not have reached if she had compared what she saw with the scan that had been taken on 18th October.

25. Circumference measurements were taken of S's head at various times throughout her life. On 10th November the head circumference was on the 9th centile and on 22nd December, the 25th centile. That difference, in itself, is not hugely significant, but by 9th January, S was close to the 90th centile and by 15th January, was on the 91st centile. The importance is that the increase in head circumference is caused by the collection of fluid, blood, at the back of the brain, yet it appears that no one sought to log the readings. Any comparison should have rung alarm bells.

26. On 9th January 2018 a further chest x-ray was taken, the third since admission, and whilst the first two might have been equivocal, this third x-ray unequivocally revealed a fracture of the rib. In fairness to the treating team, that x-ray was carried out for the purposes of checking the installation of the nasogastric tube and the clinicians will have focused on that, but the radiologist reviewing the x-rays should have picked it up. And, advises Dr Cartlidge, if any of these flags had been noticed, S would not have been discharged home.

27. S went home on 9th January 2018. She had a nasogastric tube in place which was required for feeding as she could no longer suck sufficiently on a bottle. Because of her cleft palate, the feed often choked her during her three hourly feeds, and she was sick through both her nose and mouth. If she could not easily be cleaned up manually, she had to be suctioned to remove the sick and, at some-times, given oxygen. These demands on any carer would have been very significant.

28. S was visited by healthcare professionals on 12th, 15th and 16th January, and her presentation and the parents' handling of S gave no cause for concern.

29. On 19th January 2018 S suffered a fatal injury and it is necessary to examine the events of that day with as great a clarity as one can, although that is not easy for reasons that I will explain.

30. Neither parent says there was anything remarkable about the morning or early afternoon, save that during the course of the morning the mother's great friend, MW, came round and the two women agreed that the mother would have her first evening out since S's birth and that they would go to the bingo in Castleford, leaving S in the care of the father. The journey was some 20-25 minutes and they left by taxi at 5:30 pm or thereabouts.

31. The known facts thereafter include these: Very soon after eight o'clock, the father's brother, J, came round as had been arranged between them. J has said that he was there for a period, which he had initially described at three hours, but later revised to two hours. That revision came about because it is known that at 22:14, he rang the father, the clear implication being that he had just got home, a journey of ten minutes by car, and was ringing to check on S whose presentation had caused both him and the father anxiety.

32. At 20:20 the mother received a message sent by the father about S being sick. She rang home and spoke to the father, who assured her that there was no need for her to

come home. She tried ringing again at 20:50, presumably for an update, but got no reply. The father says that he rang the mother, requiring her to return but that cannot be timed because no trace of the call has been found, but if he did make it, it shows the level of his concern.

33. At about 21:30 the mother and MW were collected by taxi for their return journey. The mother says that they were dropped at the end of the street where they both live and, whether by accident or plan, and it is not clear which, met up with the father's mother who was standing outside the club in which she works, and they chatted and went inside for a drink. The mother says that they were there for about 20 minutes. It is curious that this diversion was never mentioned by the mother or MW in their statements or indeed by MW in evidence, and the Court knew nothing about it until the mother said it. It is impossible to evaluate because I have heard evidence only from her on it, but there is some support for it because the mother spoke to the father's mother at 20:05 and it is not unreasonable to assume that it was to arrange a rendezvous.

34. The mother has repeatedly said, first in a police interview just a week after 19th January and thereafter on other occasions, including her statements in these proceedings, and the father does not disagree, that she got home between 22:00 to 22:30. She has put forward no other timeframe for her return and so I accept it at face value.

35. It is known that at 23:39, the mother rang MW and asked her to come round urgently and that at 23:45 the parents rang the ambulance service. The crew arrived very quickly and immediately assessed that they were dealing with a very seriously ill child.

36. S was rushed to hospital but tragically she died on 5th February. She was found to have suffered acute subdural haemorrhages and acute subarachnoid haemorrhages with collections of blood where they had not previously been seen. She had suffered from severe hypoxic ischemic brain damage.

37. The doctors say that S's injuries, which must have been inflicted on 19th January, would have caused an almost immediate decline in her. There was, they say, a qualitative and quantitative difference to these injuries when compared with those of 15th December. There would have been an almost immediate deterioration in S's presentation after the injuries were inflicted and if there was any plateau, it would be at a high level. At all times, it would have been obvious that immediate help was needed.

38. Neither Dr Cartlidge nor Mr Lawrence could exclude the possibility of an injury having happened some six to seven hours before the ambulance service was summoned, thus going back to a period before the mother left for bingo, but S would have been in a
'parlous state', to use Dr Cartlidge's words, and it would have required a very high degree of parental neglect to leave S in that situation without calling for an ambulance.

39. It was, they say, very likely to be a recent event, that is recent before the ambulance was called. To quote another phrase that the doctors used, this was not a 'slow burn' injury. Behavioural changes would have been noticed almost immediately. As Mr

Lawrence put it, this was not a low level trauma that S suffered. It was the equivalent of what he sees in high speed road accidents. This was a very severe injury, which would have had an almost immediate effect on S, notwithstanding her general ill health. Any carer would have known that there was a problem. A perpetrator would, of course, have known immediately. Whilst a non-perpetrator coming to the scene later might take a little time to realise the severity of the illness, it would have been quickly apparent that S was severely compromised.

40. Both parents now accept that S suffered a catastrophic assault on 19th January. That assault was almost certainly in the form of a severe shaking injury. Each parent blames

the other and denies knowing or having any grounds for suspicion. Each claims to have acted in an appropriate way and without any blame for what has happened.

41. In this case the law can be stated very simply. The burden of proof lies with the local authority. The local authority brings the proceedings and it must establish the findings which it invites the Court to make. The standard of proof is the balance of probabilities. If the local authority prove, on the balance of probabilities, that S sustained nonaccidental injuries, and if it is caused by one or other of the parents, the Court will treat the fact as established. Findings of fact must be made on evidence. Evidence includes inferences that can properly be drawn from evidence, but it does not include suspicion or speculation.

42. I must take into account all the evidence and each piece of evidence in the context of all the other evidence. I have to form an overview of the totality of the evidence to come to a conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof. I obviously give appropriate attention to the opinion of medical experts, but I bear in mind that what the experts say is opinion and has to be seen in the context of all the other evidence.

43. The evidence of the parents is of the utmost importance. It is essential that the Court forms a clear assessment of the parents' credibility and reliability. In considering their evidence in particular, but for all witnesses, I bear in mind that witnesses may tell lies in the course of investigation or in evidence. There may be many reasons for that, including embarrassment, panic, fear, and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything. I have to bear that in mind in reviewing every aspect of the parents' evidence.

44. As I consider the events of 19th January, I find that S was in her normal condition when the mother left at 17:30. It is what both parents say and I am sure that the mother would not have left if S had already become poorly. As I have already mentioned, although Dr Cartlidge and Mr Lawrence were both prepared to accept that an event could have happened before 17:30, it would have required the mother to be leaving S with the father when S was in a parlous condition, the father accepting S's care in those circumstances, without complaint, and without him even contacting the mother until at least two and a half hours later when S would have been obviously very unwell. I do not accept that scenario.

45. The evidence of J is valuable. He said that, for some 30-60 minutes after he arrived, S seemed all right but then deteriorated markedly over the next hour. He said that he and his brother, the father, discussed calling an ambulance. By the time he left, S

was, 'not breathing, grey, lifeless and floppy.' His account was not challenged, except on the timing. J's recollection was that he was there in the home when the mother got back from her evening out and was there also when MW came round. He was not there, he said, when the ambulance was called.

46. Looking at the account of J and the account of the mother, there is a period of time which would fit in with both accounts. If J had left soon after 22:00 on his short journey home, before he rang his brother, and if the mother had got back at about 22:00, which is at the early end of her bracket, the scenario that is postulated works; but J must be wrong, as he agrees, about being there when MW came round because that was not until 23:40, unless she had made an earlier visit of which there is no evidence. J's evidence clearly suggests that the assault happened shortly before he arrived because the medical evidence is that the signs of something seriously wrong would not take long to be apparent and he says that they were apparent by about 20:30-21:00, after his arrival soon after 20:00.

47. It is no part of the mother's case that she did not get back outside the bracket that she has given and so that leaves the big unanswered question of what was going on in the home between, say, 22:15 to use the midpoint of the mother's bracket, and 23:39 when MW was rung.

48. I regret to say that I have received no coherent explanation of that at all. The mother herself, when she first gave an account of the events when she was interviewed by the police on 26th January, put this gap as long as an hour or even a little more. She said that when she got back into the house, J and the father were talking in the living room. She said she went and picked up S and then about an hour later, when S was still not right, she took action. We know that the first thing she did was ring MW and then six minutes later, ring the ambulance.

49. Subsequently, the mother has reduced the timeframe, initially to saying it was 45 minutes and then possibly less than that. These seem to me to be attempts to reduce the window of apparent non-observance of S's condition or inaction in dealing with it. I was left with the distinct impression that the mother was holding back. I do not know what information she was holding back, but I am satisfied that I do not have a full explanation from her as to what was happening in the home between 22:15 and 23:39.

50. Notwithstanding my reservations about the mother's account, and I will return to the mother, I am confident that what happened to S happened when the father was in sole charge. I reach that conclusion, in summary, for these reasons:

    i) S was well when the mother went out and left her in the father's care;

    ii) If she was not well, the father's inactivity for the next five hours or so would be completely inexplicable;

    iii) J's evidence establishes that some reverse had taken place around eight o'clock, just before his arrival;

    iv) That is consistent with the father ringing the mother for reassurance at 20:20, just as the decline which J observed was beginning;

v) The father says that he rang the mother to summon her back, which is only consistent with a very severe decline;

vi) I simply cannot envisage this assault happening after the mother returned. It is highly unlikely that it would happen in the presence of both parents, but it is far more likely to happen when one parent is in sole charge. I accept that, in theory, the mother would have had the opportunity, for example when the father was putting the kettle on, but it would require a very sudden loss of control which is a far less likely scenario than a response to a build-up of tension over a period of time and then a sudden loss of such control; and

vii) An assault after the mother's return would be inconsistent with S's presentation declining before the mother got back, which the witnesses report.

51. I also take into account the following matters. This was the first time that the father had ever been left in sole charge of S for any length of time. He was faced with a very challenging task, including having to provide her with suction and oxygen on a number of occasions, a task which he himself says is much more easily done by two people than done singlehandedly, which is what he was faced with.

52. The father is not a man of great reserves at the best of times, and this was not the best of times. He had been suffering with a mouth abscess and had been seriously under the weather earlier in the week. The father has a large number of convictions or cautions for public order offences, in which violence has been used by him, either towards members of his family, particularly his younger sister, and complete strangers. He has a history of loss of control. I accept that he had not given cause for concern of his treatment of S before and I have no doubt that he loved her dearly, but faced with challenging circumstances, he had little by way of reserves to fall back on.

53. I bear in mind that the mother has not been without her difficulties. In the past she has suffered from postnatal depression and has turned to alcohol. She has formed a series of disastrous and abusive relationships, but there was nothing in the recent past that I have been told of which might cause alarm bells to ring.

54. I have come to the clear view that the father was responsible for the assault on 19th January and I agree with Mr Tyler that this makes it far more likely that he was responsible for the injuries of 15th December. I say that because it is inherently more likely that one parent, having been found to behave in a reprehensible manner on one occasion, would have done so on a second occasion, than both parents would have independently committed the same sort of assault, on one occasion each.

55. I would have reached this conclusion even without consideration of the events that happened after 19th January. On 20th January, the day after S's admission, the mother twice messaged the father to tell him to make sure that the house did not smell of the weed that he took and that he did not drink. On 24th January she told him that he was heavy-handed towards her (the mother), which led him to respond 'I just hope I haven't done it while getting her sick out.'

56. On 7th March the father, who was in a bad way after S's death, created a scene at a small gathering where the mother was with a couple of friends. The mother says the father was asked to leave and she told the police that, following the scene, she spent

the night with her friend, MW. She says that the father could not have spent the night at her home because he did not have the key.

57. At 03:50 a phone call was received by the police, in which a man said 'I have done it.' The phone call was traced and the father now admits, having previously denied it, that it was him who made that phone call. The father's initial denial had included a story, that he now says was false, about him spending that night with his aunt, but that account is shown to be untrue because the call that the father made to the police was made on the landline from the mother's home. The father says that after the row, he went to the mother's house. It was not locked. He went in and took himself to bed and was subsequently joined by the mother, who returned home late. In the early hours, he got

up and phoned the police and then later told the mother what he had done and she told him off for being stupid.

58. There is no doubt that the father rang the police, saying that he had done it and that he did so from the mother's home. It is hard to take what he said as being anything other than admission that he had carried out the assault on S. He has not put forward any other sensible explanation. I accept his evidence that the mother was there. I do not know why she has lied to the police on it and she has offered no explanation. I of course understand why the father should want to distance himself from the phone call of admission. I do not accept that he was saying anything other than the truth because I cannot imagine why he should seek to take the blame for the mother if he felt that she was responsible for S's death. As to the mother, this is another example of her giving an account which is unreliable.

59. I turn finally to an assessment of the local authority's allegations against the mother in the light of the findings that I have made against the father. As I have said, I clear the mother from any direct involvement in the causation of S's injuries. I accept that she had no reason to suspect what the father might have done, and I find has done, on 19th January. In part, as I have already said, this is because of the failings of the hospitals in the period between 15th December and 9th January.

60. The local authority, supported by the guardian, say two things. First they say no reasonable parent could have delayed calling for medical help for the prolonged period that happened on 19th January. It should have been obvious to the mother that S was very ill from the moment that she got back in. There was a very severe change in S when compared with how she was when the mother went out.

61. I agree with the local authority on this. To delay for what I have found to be a prolonged period, in excess of an hour, a figure that the mother gave, could only have increased S's suffering and that caused her significant harm, and on that basis the s.31 threshold is crossed. As I say, I do not have any clear picture of what was going on in that hour because I have not been given an explanation.

62. Secondly, the local authority and guardian say that leaving S with a known cannabis user, as the mother plainly did know, was unreasonable parenting. The mother, in evidence, sought to distance herself from knowledge of the father's cannabis-taking in a way that does her no credit. She said that she was unaware of his taking cannabis, certainly with any frequency, yet on 13th January she expressly gave him permission by text to use cannabis when he had the care of both R and S. He says that he smoked

cannabis most days and I am sure that the mother knew that. Her texts on 20th January further establish her knowledge of his cannabis use; but I am not prepared to find that knowledge of his taking cannabis, in itself, is sufficient to pass the threshold, even in the case of a child like S, who needed exceptionally good parenting. I have no evidence of the effect of cannabis upon the father, what impact it had on his perception, what strength of cannabis he was taking and so forth.

63. It follows from the findings that I have made, that I find the threshold passed by both parents in the way that I have described and I shall turn next week to deal with the question of R's future.

64. By way of conclusion, I shall direct that a copy of my judgment be promptly sent to the Chief Executive of Pinderfields Hospital by the local authority. This tragedy would probably have been avoided if the warning signs were picked up, as they should have been. I do not know the reason why they were not and I hope that there will be a proper investigation. It may not have helped that scans were taken not only in Wakefield but also in Sheffield and Leeds. Whether information was shared as it should have been must also be established.

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(This Judgment has been approved by the Judge.)

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