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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 07/12/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

Between:

A HEALTH AND SOCIAL CARE TRUST

Applicant

-v-

A MOTHER

-and-

A FATHER

Respondents

IN THE MATTER OF SP (A FEMALE CHILD AGED 2 YEARS 7 MONTHS)

Ms M Connolly QC with Ms K Hughes BL (instructed by the Directorate of Legal Services) for the Health and Social Care Trust

The mother was a personal litigant

Ms J Hannigan QC with Ms V Ross BL (instructed by Worthingtons solicitors) for the father

Mr A Magee QC with Ms K Downey BL (instructed by McIvor Farrell solicitors) for the guardian ad litem on behalf of the child

McFARLAND J

Introduction

[1] This judgment has been anonymised to protect the identity of the child. I have used the cipher SP for the name of the child. These are not her initials. Nothing can be published that will identify SP.

[2] The parents are nationals of a state in the European Union which I will call

“EUC.” The Father has been resident in the United Kingdom since he was 8 years of age. Although not his mother tongue the Father has good English. The Mother came to the United Kingdom more recently in or about 2016. She has very limited English.

[3] On 27 May 2019 the parents brought SP to the Royal Victoria Hospital arriving at 23.40. She had sustained a number of fractures to both legs, a finger and her skull. The Trust asserts that these fractures were non-accidental in origin and could only have been caused when SP was in the care of the Mother and/or the Father. After an early intervention by the Trust, SP has been cared for in a foster placement with the consent of both parents on a ‘no order’ basis.

[4] A hearing was convened for the purposes of fact finding to determine how SP sustained her injuries. Prior to the convening of the hearing on 22 November 2021 the Mother dismissed her legal team and left Northern Ireland returning to live in EUC. Her expressed intention was to instruct other legal representatives and attempt to have the case dealt with in the courts of EUC, SP being a national, through birth, of that country.

[5] During the hearing the Mother, who was representing herself, made an application that I transfer the case. It was an application made without notice but I was content to deal with it on a summary basis. SP was born in Northern Ireland and had lived all her short life in Northern Ireland. Although the parents were from EUC, the Father had lived a significant part of his life in Northern Ireland. The Mother had lived in Northern Ireland for a shorter period, but at the time of SP’s birth they were an unmarried couple settled in Northern Ireland. It is an obvious and compelling conclusion that SP was, at the time of the commencement of proceedings, habitually resident in Northern Ireland. The Father continues to live here. SP has continued to live here. All social work and medical involvement has been in Northern Ireland and there is no valid reason why jurisdiction of this case should switch to EUC, on the very modest grounds that the Mother has departed these shores in the past few months. I therefore refused her application.

[6] Despite leaving the country, the Trust were able to maintain contact with the Mother. She was able to participate in the hearing by remote video live link. Two court appointed interpreters were able to translate the evidence and submissions. Although not an ideal situation, I am satisfied that the Mother was able to engage in the court process to an adequate degree. The difficulty was created entirely by her own actions in dismissing her legal team and by leaving Northern Ireland. She did raise the issue that she did not have the court papers, but again that was her own fault as on the dismissal of her legal team she had declined to sign the usual undertaking that was required from self-representing parties concerning confidentiality. Eventually mid-hearing she signed the undertaking and papers were released to her. With English not being her mother tongue this did, no doubt, create an additional burden for her, although court appointed interpreters were present throughout the hearing to assist her.

[7] The court has a duty to ensure that all parties before it have an ability to participate in proceedings. In this case the Mother had access to publically funded solicitors, junior and senior counsel. She refused to engage with them and had indicated that she wanted to instruct other lawyers. That, of course, is her right but there is a limit to the extent to which a court can facilitate a party who deliberately disengages and leaves the country, and then fails to engage either directly, or indirectly, with the court. To have afforded the Mother an adjournment to enable her to engage other lawyers (if that was her wish) and to prepare for the hearing in Northern Ireland, when there was little evidence that she would actually do this, would have added further significant delay to the case. The father was ready for the hearing as were the other parties and professional witnesses. There was a pressing need to resolve the issue of threshold in this case. There was a clear and compelling benefit for SP that this was done, so that her future can be determined. She is now over 2½ years and has been out of her parent's care for all but 5 weeks of her life. The delay of the court process has not served her well and there was a need to press on with the case. The Mother's application to adjourn was refused and the case proceeded.

Threshold

[8] The Trust asserts that SP has suffered significant harm and the harm is attributable to the care given to her by the parents (see Article 50(2) of the Children (NI) Order 1995).

[9] No issue is taken that the harm suffered by SP was significant. She was a baby who was 39 days old when presented to hospital on 27 May 2019. The injuries were an extensive left sided skull fracture, a fracture to the distal end of the left fourth metacarpal (the 'ring' finger), a fracture to the right distal tibia, a fracture to the left distal tibia and a fracture to the left proximal fibula. There was a large subgaleal haematoma adjacent to the skull fracture. There was also soft tissue injuries (bruising) to the forehead, back, shoulder, knee and to both lower ankles.

The parents' explanations

[10] At different stages both parents gave explanations to the treating physicians. Both parents were interviewed (under caution) by the police. They made statements in these proceedings and gave oral evidence.

[11] There is no recorded background of any involvement with social services or criminal justice agencies in Northern Ireland or in EUC. The couple appeared to have been in a reasonably settled relationship, with the father in employment. Both were in their early 20s and this was their first child.

[12] The statements made at hospital were largely consistent. Possible explanations for the injuries were presented and they included the parents carrying

out exercises with SP's legs to deal with a condition of talipes in respect of her feet, SP banging her feet on her pram and play with a young relative several days earlier. All these explanations were rejected at the time as possible explanations for the injuries. The parents also reported that when bathed on 26 May 2019 they noticed SP had redness in the area of her ankles and that she had been generally presenting as being disturbed and unsettled during the day of 27 May 2019.

[13] Given the suspicions surrounding the circumstances of SP's injuries and the explanations given, both parents were arrested on 28 May 2019 and then interviewed by police under caution. Both denied assaulting, or causing harm to, SP. The Father did offer a different explanation to police stating that on the evening of the 27 May, he was with SP in the living room and the Mother was in the kitchen. The Father described how he lifted SP and started to carry her up the stairs to put her down to sleep. He was not wearing shoes and as he was carrying SP in his arms up the stairs he slipped and both fell forward. He said that he had not told the Mother or the staff at the hospital about this as he was in shock and was afraid.

[14] Subsequent statements were made to the police on 27 August 2019 (again under caution), and in these proceedings (10 February 2020 from the Mother and 9 October 2020) from the Father. These statements have been consistent with the version given by the Father to the police on 28 May 2019.

Expert evidence

[15] The treating physicians were of a view that the nature of the injuries and the explanations offered by both parents gave grounds for suspicions that the injuries were non-accidental in origin. Three consultants were retained for the purposes of these proceedings, Dr Mark Rollins, a consultant paediatrician, Dr Roisin Hayes, a consultant paediatric radiologist and Dr Sally Tennant, a consultant paediatric orthopaedic surgeon. Each prepared a report and participated in a joint experts' meeting. At a later stage, Dr Michael Jones, a biomechanical engineer, prepared a report, and in light of the contents of his report, a further experts' meeting was convened. (Additional reports had been received from a consultant clinical geneticist and a paediatric physiotherapist but they add little to the issues in this case.)

[16] I do not consider it necessary to recite the opinions of the experts in detail because there was a high level of agreement between them as to the nature and timing of the injuries.

[17] The skull fracture and the haematoma were regarded as closely associated. The haematoma could have arisen up to 4 days before presentation. The fracture itself was impossible to date, but given the close association to the haematoma it could fall within that time span. The other fractures could have occurred up to 10 days before presentation to hospital.

[18] It was impossible to say if all the injuries were suffered in the same incident or in a series of incidents occurring at or about the same time.

[19] The nature of the injuries suggests that the skull and finger fractures were caused by blunt trauma. The leg fractures were caused by a twisting or sheering type trauma. Dr Hayes was of the opinion that the left leg injuries were consistent with this sheering trauma given the injuries to the different ends and aspects of the tibia and fibula.

[20] All experts were agreed that the injuries could not have been caused by movement of the legs as described by the parents or the child kicking its legs against a pram or other hard surface. A baby of this age is immobile and whilst capable of moving and kicking its legs when lying on its back the force and nature of the kicks could not have caused these injuries.

[21] After the first experts' meeting there was a clear and consistent view from the medical experts.

[22] Dr Michael Jones provided his report on the 13 April 2021. Dr Jones is not a medical doctor and his speciality is biomechanical engineering. He did not interview the Father concerning the mechanics of the fall. He did rely on what the Father told the police and what the Father said in his written statement in these proceedings. The Father described, and demonstrated, to the police that he fell on his left shoulder. Paragraph 9 of his statement sets out what the father remembers -

"On going to go up the stairs I was holding [SP] with her head against my shoulder. I was cradling her facing into me and I was walking up the stairs. I had gone up about 5 steps when I slipped and fell on top of her. The back of her head hit the edge of the stair and I fell on top of her. The back of her head hit the edge of the stair and I fell on top of her. [SP] was a tiny baby and I fell heavily upon her. I think I slid down the stairs a little as I tried to regain my footing. This fall happened very quickly and I do not recall how exactly I landed upon [SP]. I grabbed at her around her shoulders were I was holding her to try and break the fall but again it happened in an instant."

[23] Dr Jones acknowledged in his report (at [15]) that the Father's account lacked detail and therefore any opinion provided could only be expressed in relatively general terms.

[24] Dr Jones stated that on carrying SP on his shoulder and then twisting to his left to take the impact on his left shoulder the father would have been orienting the right side of SP's skull towards the stair which on contact could create the potential for the skull fracture.

[25] Dr Jones accepted that the cause of the lower limb fractures was tensile and

torsional (pulling and twisting) force. He made some calculations based on SP's crown to heel length of 40cm and assumed measurements for the stairs. He was then able to come up with a scenario and with an appropriate contortion of the child's body whereby tensile and torsional forces could be applied to the child's lower legs by the Father sliding down the stairs. Such forces, in the opinion of Dr Jones were an explanation for the leg injuries and the hand injury. The required position of SP's body would have been sideways with the right side against the stairs and facing to the left as one ascends the stairs with the body crumpled into the stair. This position with the child lying on its right side could have the left arm hanging to the front of the body and the fingers coming into contact with the stairs creating a potential for the injury to the finger. Diagrams of the body position were set out in his report.

[26] The medical experts were able to consider this opinion and to discuss it with Dr Jones at the second experts' meeting. There was a consistent view from the medical experts that the biomechanical evidence could provide an explanation for the skull fracture and the finger fracture. They were more guarded by the explanation for the leg injuries, and their collective considered opinion can be best summed up by Dr Hayes in her comment that this explanation for the total of all five fractures was "*not beyond the realms of possibility.*"

Consideration

[27] The Trust must prove its case on the balance of probabilities and the consideration of the evidence must be seen in this context. One of the difficulties with the expert evidence of Dr Jones is that it is speculative in nature, and he is relying on a very vague and imprecise explanation given by the Father in different statements.

[28] When considering the explanations given by the Father I do take into account the unblemished history in relation to his previous conduct. I also bear in mind difficulties that he may have in giving an explanation in the English language.

[29] The theory set out by Dr Jones depends on certain facts. One of the facts is the Father sliding down the stairs. Without this downward motion with the Father on top of SP there could be no tensile and/or torsional force applied to SP's body. I accept that this incident, had it happened, would have occurred over a very short period of time, would have been extremely harrowing for the Father and in the aftermath he would have been focussing on the child and her welfare. In the circumstances recollection of precise details would have been difficult. The only reference to sliding is in his written statement - "*I think I slid down.*" No reference to sliding was made in the police interviews.

[30] Of more importance was the oral evidence of the Father. He described carrying SP on his right shoulder. I consider this to be important. Dr Jones did not state in his report what shoulder he understood the child was being carried on.

[31] Dr Jones must have assumed the child was on the father's left side. He described the father twisting clockwise to take the impact on the left shoulder and the child's right hand side being exposed to the stair, hence an explanation for the fracture to the right hand side of the skull. There then could follow a compensatory roll by the Father when on the stairs in an anti-clockwise direction with the Father ending up on top of the child, followed by a sliding down the stairs, hence an explanation for the injury to the hand and leg. As the child was on the right shoulder, and the Father twisted to take the impact on the left shoulder (a perfectly natural instinctive reaction when carrying a baby), the child's right hand side is still orientated towards the stair, but the skull is protected by the Father's chin and head with the Father impacting the stair leaving the child about a foot (or 30 cms) from the stair. For the child to have come into contact with the stair she would have had to have become dislodged or dropped, a fact which the Father does not describe in any of his statements. If there then was a compensatory anti-clockwise roll I am not convinced that the child would remain in a static position on its side, and would be likely to move in a similar direction to the father as he rolled across her.

[32] I accept that body and limb movements, particularly in a child, can be hard to predict, but it is extremely difficult to understand how SP having been carried up the stairs on the Father's right shoulder and being cradled in a manner that would be required to stabilise her head and neck, could have ended up in the a position on the stair as described by Dr Jones. That position would be in contact with the stairs on her right side facing to the left, crumpled into the stair with her father on top.

[33] In his conclusions in *Re A & B* [2015] NIFam 14, O'Hara J at [24] stated that:

"A conclusion as to whether injuries are accidental or otherwise will involve careful consideration of a range of factors such as those which I have identified in the course of this judgment and which are likely to go far beyond medical evidence about the injuries"

[34] The range of relevant factors in this case would include -

- The evidence from both parents that SP was presenting with redness to both legs at least a day before the presentation at hospital.
- The baby was not settled in her behaviour during the day on 27 May 2019.
- The nature of the injuries was such that the treating physicians and the retained medical experts all formed a view that they were non-accidental in origin.
- The explanations offered by both parents at the hospital were not adequate explanations to explain the injuries.

- The father's explanation about the fall on the stairs was only given when interviewed by the police on 28 May 2019.
- The explanation had not been given to the mother at the time, or in the immediate aftermath, of the accident.
- The biomechanical exercise carried out by Dr Jones is speculative in nature and relies on a vague description given by the Father.
- If the child was on the Father's right shoulder as he stated in oral evidence it is unlikely that the scenario speculated by Dr Jones could have occurred.
- Even if the basis of scenario created by Dr Jones is correct, at its height it creates no more than a possibility that the injuries were caused in that fashion.

[35] After considering all these factors, I am satisfied that the injuries were caused as a result of an incident, or a number of incidents, which was or were non-accidental in nature. I do not discount the possibility that the Father may have, at some stage, slipped when walking up the stairs and carrying SP in his arms. However, had that happened, I am satisfied that any fall associated with that slip would not have caused the injuries to the child that were present when she was presented to hospital on 27 May 2021. The Trust have furnished an 11 paragraph document entitled 'Threshold Facts.' I am satisfied, on the balance of probabilities, that the Trust has proved each of the facts set out in that document.

[36] Although a relative of the Mother was present in the home with his partner and child on Saturday 25 May 2019 I do not consider that any of these visitors could have perpetrated all or some of the injuries.

[37] There is no evidence to assist me in determining whether the injuries were caused by the actions of either or both parents, but I consider that both have to be considered as being in the pool of perpetrators for causing the injuries and failing to protect SP from physical harm whilst in their care.