

Neutral Citation No. [2012] NIFam 6

Ref: WEI8534

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

Delivered: 25.06.2012

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

11/29493

WESTERN HEALTH AND SOCIAL SERVICES TRUST

Applicant;

-and-

L AND K

Respondents.

WEIR J

Confidentiality

[1] This judgment has been anonymised to protect the identity of the children concerned. Nothing may be published of or concerning this matter that would lead directly or indirectly to the identification of the children or their families.

The Nature of the Proceedings

[2] The Applicant ("the Trust") applies for Care Orders in respect of the twin children of the Respondents.

Background

[3] M and N who are non-identical twins were born to the Respondents in 2006. L, the mother, has had a long and very sad history of involvement with Social Services since childhood; a previous child born to her of whom K was not the father had been permanently removed from her care due to her then inability to parent satisfactorily and upon the birth of M and N they too were removed from the care of L and K because of these historic concerns and placed in foster care. The

Respondents ultimately underwent a residential placement in Thorndale Family Centre which lasted for some five months. The outcome of the assessment was positive and the children were discharged from it to live with their parents in the community. The Trust initially considered that the children should remain subject to a care order as both the Trust and the Guardian Ad Litem ("GAL") encountered great difficulty in working co-operatively with the parents in their home setting. The father, K, adopted a confrontative attitude to social workers while the mother, L, tended to adopt a rather subservient position to that of the father, she being a person with significant intellectual and social impediments. K's declared attitude was that the family wished to be left alone to parent their children in peace and resented what he saw as the unwarranted interference of social workers and of the GAL. Ultimately, at a hearing in October 2009, the Trust decided to apply to withdraw the application for a care order in the hope that that might induce the parents to work more collaboratively with it on a voluntarily basis. The GAL opposed the application to withdraw, believing that the parents were unlikely to work collaboratively on a voluntary basis and that the Trust should therefore retain the statutory powers which the making of the care orders would afford it. I acceded to the Trust's application and upon determination of those proceedings the GAL was formally discharged.

[4] Regrettably it did not take long for the concerns of the GAL about the likelihood of voluntary cooperation to be realised. The parents did not, as they had promised, work collaboratively with the Trust but rather actively obstructed the efforts of social workers and of the health visitor to visit the children and confirm their well-being. When the parents failed to attend at an initial case conference in June 2010 the children were placed on the Child Protection Register. This did not produce any greater level of cooperation. It had been planned that the children should commence nursery school in September 2010 but this was not realised because the parents did not send the children there. The only professional who had some contact with the children was their general practitioner since K flatly refused to allow the health visitor to visit the children.

[5] This on-going lack of co-operation on the part of the parents presented the Trust with a dilemma. In December 2010 there was a further case conference when it was decided to remove the children from the Child Protection Register in the renewed hope that the parents would thereby be encouraged to work with the Trust. Unfortunately this strategy did not succeed and for some time the family remained to all intents and purposes below the Trust's sonar.

The circumstances leading to the present application

[6] The family suddenly resurfaced on 3 March 2011 when L brought child M to hospital where he was found to have a broken right arm. X-rays were taken which were transmitted electronically to a consultant orthopaedic surgeon at another hospital. Upon reviewing the x-rays the surgeon noted a spiral-type fracture of the child's right humerus and immediately suspected a non-accidental injury because

accidental injury of this type is very rare in this age group. M was transferred to his hospital where he took a history from L that M had fallen on a wet bathroom floor which was slippery. According to L the fall had been witnessed by K who had said that M's arm was angled behind him when he fell but that his arm did not get caught or trapped at all. The surgeon continued to be suspicious of non-accidental injury and recorded that the fracture of the mid/distal humerus was in keeping with a large torque or rotational force. The arm was manipulated under general anaesthetic on the following morning at which time the surgeon observed bruising and marks on the forearm, possibly in keeping with finger marks, which he photographed.

[7] Social workers had been informed of the admission to the first hospital and went there to investigate what had happened. They had difficulty in obtaining the voluntary cooperation of the parents and ultimately had to obtain Emergency Protection Orders and a Recovery Order in respect of the other child, N, because the parents were unwilling to tell the social workers where that child was other than to say that he was being looked after by relatives "across the border". N was in fact located living with family members in Northern Ireland and it was agreed that both boys would live meanwhile with a paternal aunt. After about a fortnight that aunt felt unable to continue to care for the children and they then moved to a foster placement where they have been since.

The evidence before me

[8] Mr Kieran Lappin, a consultant orthopaedic surgeon with a particular interest in upper limb surgery, gave evidence that upon reviewing M's x-rays his immediate thought was that this was a non-accidental injury of a twisting nature. The history that he had taken from the mother indicated that M's hand had not become trapped at any stage when he fell which would have been necessary in order to accidentally effect this twisting or rotational injury. He was struck by the fact that after the operation on 6 March when M woke up in the recovery room he told the staff that he did not want his mother and on the previous day the witness had noticed that there was very little interaction between the mother and child, the mother having taken a seat in one corner of the room while M was two beds away from that seat. In his experience a mother normally sits in a chair beside a child's bed or nurses the child. His conclusion was that due to the age of the child, the pattern of the injury and the explanation given by the mother as to how it came about he considered that there was a high probability that this spiral fracture of the humerus was caused non-accidentally. There would have had to have been a twisting type force either applied directly to the arm or in circumstances where the hand became stuck and the body twisted around the thus fixed arm. Such an injury is extremely unusual in this age group. The pattern of injury and the history provided were not in keeping with each other. Even if the child had had its hand stuck in a pocket you would have tended to see a simple fracture configuration. In his opinion there was a high probability that this was a non-accidental injury. Under cross-examination, Mr Lappin said that he had spoken briefly to K on the Sunday morning after theatre. K had asked the witness how he thought the injury had happened. It was put to the

witness that K would say that he had never spoken to Mr Lappin, but Mr Lappin was confident that he had spoken to him and said that he had not asked K what happened but rather that K had asked him how he, Mr Lappin, thought the accident had happened and I said that it would be by a twisting-type force. Mr Lappin was pressed to agree that the injury was consistent with M falling on the wet floor of the bathroom with his feet in the bathroom and his back in the hall. Mr Lappin maintained that the child's hand would have had to be caught and he considered that a large force of a twisting type had to have been applied to the arm in order to cause the injury. "If your arm is in your pocket then your arm is fixed and you get a transverse or oblique fracture - not a spiral or twisting force". He agreed that he was not ruling out the possibility of an accident but that he considered that there was a higher probability of non-accidental injury.

[9] Dr Joanne Nelson, an experienced consultant paediatrician specialising in child protection gave evidence that while she had initially thought that the parental explanation for the injury was most likely she had not negated the possibility of non-accidental injury and had now altered her opinion. In the light of the further information made available, her conclusion was that all the material available suggested a non-accidental injury and she gave a number of the factors which she had been made aware of since expressing her initial opinion and which had cumulatively caused her to alter her opinion. These included a divergence in the history as to how the accident was said to have happened because K had told her and she had drawn in her notes at the time that M had fallen with his feet in the hall and his head in the bathroom and not the opposite way round. She was also concerned about the fact that M did not want his mother after he recovered from the operation, the lay-out of the house which afforded no opportunity for M to build up speed between leaving the living room and arriving at the nearby bathroom door and the lack of parental interaction with M while he had been in hospital. She explained that, at variance with her normal practice, she had taken the history of events from both parents together instead of interviewing them separately because they had arrived in the interview room together. She said that her experience of children of 4-5 years was that they were usually very keen to see their parents when in hospital and that a child emerging from an operation would usually look to its closest supporter, the primary carer. She found the child's disinclination to see his mother quite unusual and deeply worrying.

[10] Ms Aideen Kelly, a senior social work practitioner in the Trust, gave evidence of the attempts made by the Trust to work with the parents in the period between the withdrawal of the care order application in October 2009 and the sustaining of M's injury in March 2011. It had been agreed when the care order application was withdrawn that K and L would work with the Trust under the remit of family support. In fact the parents did not honour this agreement, did not attend arranged meetings and obstructed visits by social workers to the family home on which occasions K was typically very aggressive. He had said that social workers had promised to go away and leave them alone and that "over his dead body" would social workers be seeing his children. On the occasion of one visit to the home social

workers did see the children coming out from the back door of the house whereupon K had ordered them to go back inside. As a result social workers had at no time been enabled to see the children prior to M's admission to hospital.

[11] After M had been admitted to hospital Social Services were informed and on the following day the witness had gone to the hospital where, with a colleague, she saw M and spoke to K who refused to allow them to speak to M on their own and only after much persuasion did he agreed to let them speak to him with K present. M appeared very frightened, his speech was difficult to understand and he did not say how he had hurt his arm. The mother, L, did not come into the room but walked up and down outside and did not want to discuss anything with the social workers saying that she had already given her account to hospital staff and would not be going over it again. The parents said they were finding it difficult to understand why social workers had become involved and they wanted M to go home with them and not remain in hospital. They were resistant to the involvement of the doctors and it was impossible to have a forensic medical examination until an Emergency Protection Order had been obtained. When the child transferred to the second hospital the interaction between M and the parents was extremely concerning to the witness. M was very sad and watchful and sat on his own a lot. Before the arrival of K the mother was at the hospital on her own with M and while they were together M was heard to say "stop telling lies mummy" to which the mother did not respond. When M was told that his father was coming to the hospital he did not respond but just stared ahead and when both parents were there the witness did not observe any level of affection or physical contact between either of the parents and M.

[12] The social workers had explained to K that it was necessary for them to see the other child, N, and this was arranged after much negotiation. K again refused to allow the child to be spoken to on his own and he asked N to say what had happened to M's arm to which N said that M had slipped and fallen on the bathroom floor. K was unwilling to allow the social workers to arrange to see N again the next day and his attitude was that N had told them what had happened and that the social workers should now go away and close the case. At the second hospital on the Saturday K had said that if the social workers were going to be involved with M he would be willing to "sign M over" to the social workers on condition that they would have no future contact with N.

[13] On the Sunday, 5 March, the social workers were insisting on seeing N again but K said that they did not need to know where he was other than that he was "with family across the border". Emergency Protection Orders for both children and a recovery order for N were therefore obtained and the police located N at the home of a brother of K living within the Trust area and not "over the border". The children were then placed with a sister of K until 21 March when she indicated her inability to care for them any longer because, she said, of her own family commitments and they were then moved to their present foster placement.

[14] In the foster placement the children quickly settled. They have since consistently and repeatedly said that they do not wish to return home to their parents and have indicated this to their present carers, to the witness and to their parents during contacts. Subsequent contacts with the parents had been very unusual. The atmosphere was tense and without spontaneous interaction. The children were watchful and seemed anxious to keep the contact pleasant while the parents asked recurrent questions and there was really no physical contact at all. It was noted to be better when K was absent and L was there on her own. N had refused to attend the second contact despite encouragement and between 12 May and 17 August 2011 there was no contact at all. On 31 August there was a contact between the children and their mother at which the father did not attend. The contact was not of good quality and although the mother had not seen the children since 12 May she made no particular fuss upon seeing them after the long interval. Two contacts later N had said "Why have you two tins of Coke? M is not coming, he is frightened of you and daddy". The mother said that the social workers had put this into N's head. Contact between N and L did occur on 27 October 2011 when N said that he was not coming back. He had since said that he does not want to see his mummy and daddy as they are "bad" or "bold". In the experience of the witness it is really unusual for children of this young age to be unwilling to attend contact with their birth parents. Encouraging the boys to go to contact had caused them distress and in the opinion of the witness to further force contact would be traumatic.

[15] The witness summarised the Trust's position as being that rehabilitation is not an option because:

- (i) The Trust believes that the children have suffered physical and emotional harm and neglect while in the care of their parents.
- (ii) The parents are unable to look in detail at the concerns that they need to do a lot of work to change their parenting style and cooperate with the Trust.
- (iii) Even if the parents did agree to cooperate, the work would take so long that it would not be practicable within the timetables of the children.
- (iv) The children do not want to return to the home of K and L and want a home where they will be safe.
- (v) The children have asked the social workers to tell the judge that they do not want to go home.

[16] Cross-examined by senior counsel for the parents, it was put to the witness that the parents' view was that if the boys were allowed to go home and there were no social work intervention that that would be better for them. The witness replied "I don't agree, social workers did not see these children for 18 months and we had a child in hospital with a broken arm and all these problems have come to light". She

agreed that there had been a long history of dispute between Social Services and the family because the children had been removed at birth and said that they had tried to work collaboratively with the family in the light of this history. They had used staff to whom K had not initially objected but one by one he had fallen out with them. It was pointed out to the witness that a number of the specific allegations made by the children since they had come back into care were not borne out by other evidence. For example, the police had carried out a detailed search of the home and had not found any of the various items which the boys said had been used by the parents to abuse them. It was put to the social worker that the reason why the quality of contact was not good was because there was tension surrounding the presence of social workers to which the witness replied that the children wanted the social workers to remain present during contact and now were refusing to go at all. It was further suggested that the idea that they had been ill-treated had been put into the children's heads but the witness replied that the children had independently brought up the topic. She agreed that the foster carer had noted in her diary that the children tell lies and that she had recorded that she did not trust or believe some of the things that they said.

[17] Dr Christine Lavery, a consultant clinical psychologist specialising in children, gave evidence in amplification of a very detailed report that she had provided for the court. She had reviewed all the papers and she had been afforded a belated opportunity to interview K in the week before she gave evidence. She had interviewed the children and observed a video of contact together with other contact records. Her impression of the contacts between L and the children was that there was a lack of spontaneous warmth and that the conversations were repetitive. Her impression of L was that she had an IQ of 70 or below but should still have been able to have fun with her children and be interested in what they were doing. Her concern, and this was only a matter of impression because she had not had the opportunity of speaking to L who had declined to see her, was that L herself had suffered difficulties in her own developmental and formative years and, not having herself experienced a loving and caring upbringing, this did not come naturally to her. She would have been able to make a better assessment of this if L had agreed to see her. She had observed that during contacts either when N was there on his own or when both boys were present, L had a tendency to lose sight of the children, become absorbed and do things herself and there were times when she sat with her back to the children. At one contact N had said to L that "it is not nice to hit" and asked his mother "why does daddy"? The mother had replied that daddy did not, but he persisted and said "when we are bold". Later in the same session N had begun to ask his mother about the dog "Diesel" and the mother had said that the dog had been got after the boys went away and that "there were no dogs in our house." N persisted in reminding his mother about the dog and seemed confused by her responses. The witness' impression was of a child who was trying to get an explanation from his mother in order to make sense of his experiences. L after a time disengaged from the child and seemed pre-occupied with her own thoughts. In the witness's opinion the children's contact can be re-traumatising for them as it evokes traumatic memories and they have trouble coping in the contact setting. They are

confused at attending contact with parents whom they report have chastised and in some cases abused them and they are reminded of the neglect they are reported to have suffered. On 13 and 27 October N was reluctant to attend contact and arrived 30 minutes late on both occasions. In order to compensate for the late starts L had been offered an extra 30 minutes at the end but on both occasions she declined the additional time offered saying that she had messages to do in the town. In the witness' opinion the children require to be placed either in foster care or other permanent placement where the carers are skilled in dealing with difficult behaviours and that the children would need on-going therapeutic intervention by professionals with specialist knowledge of working with traumatised children.

[18] In relation to her interview with K, which he had belatedly agreed to only the previous week, her view was that he was not yet in a place to consider the children's psychological well-being. At their meeting he had very ably listed a number of grievances focusing particularly on the GAL, Social Services and the foster carers. He had also complained about a decision of a District Court Judge and the surgeon, Mr Lappin. When he had finished listing his complaints the witness had asked him to think about the children and imagine what he would say to them if they were present in the room. K had demonstrated significant difficulty in doing this. In her opinion before contact could resume the parents would have to move from their current mind-set which is that social workers and the GAL have encouraged the children to say that they were harshly punished to hearing what the children are saying and acknowledging it. In the first instance the parents needed to acknowledge what had occurred. She considered that the emotional attachment between the children and their parents was broken and that the children need to know that they are not going back to the care of their parents.

[19] Cross-examined on behalf of the parents, the witness agreed that the report from Thorndale indicated that while there the children were in a good routine with good appetites and no behavioural issues while they were placed there. However she pointed out that when they returned to the community with their parents the parents' lack of compliance with the health visitor and social work staff meant that there was no opportunity to ascertain any changes in the children's attachment style until M was presented to Accident and Emergency with his broken arm. It was suggested to the witness that K would say that the contacts were actually of good quality and that the notes that suggested otherwise were not accurate and that on two occasions M had said during contact that he wanted to go home. The witness pointed out that the contact notes recorded that when the boys were told by their parents at contact that they were going home they both replied that they were not. It was also said that there would be evidence that the dog "Diesel" was only purchased after the children had been removed and it was further suggested to the witness that L was not offered additional contact when N arrived late to which the witness replied that it was evident on the video recording that this had occurred and that L had declined the offer. The witness said that the last thing that she thought the children could cope with was being told that the various things of which they

complained did not happen. "I have never met children who were so entrenched in saying these things happened".

[20] At the conclusion of her evidence I asked Dr Lavery to summarise her overall impression of K following her interview with him. She said that she had been a clinical psychologist for sixteen years during which time she must have interviewed hundreds of parents. She had formed the opinion that K is very concrete in his thinking and he has excellent recall for events and incidents that have occurred since he entered into his relationship with L. When he had finished giving her his list of grievances and she had asked him the abstract question as to what he would say to the children if they were in the room he was honest in saying to her "You have put me on the spot there" and only by affording him a little time had he said that he would give them a hug and ask them "what's the craic". He had detached himself from the witness and ended the meeting there. She said "I don't think he can take on the viewpoint of other people or put himself in the shoes of health visitors and social workers". Her difficulty was that she was giving her impression and she came away asking herself lots of questions about the need for the assessment of K. She considered that a cognitive assessment and a personality assessment would be required and that looking at K's own experiences of being parented might be very informative.

The evidence of K

[21] K summarised the history of the period between the birth of the twins and their return to the parents' care for the purposes of the Thorndale assessment and, following its successful outcome, their move into the community. He said that the boys were very good natured and easy to look after and very kind. There might have been the occasional argument between them over a toy and occasional discipline issues which would be sorted by sending the children to their room for five minutes. It was not true to say that the children had been physically punished either by he or by L. He described the children's daily routine in some detail. He said in relation to the dog "Diesel" that it had only been acquired after the children had been removed in March. The relevance of this was to counter a suggestion that a mark on M's face which both M and N had said had been caused by a bite from the dog was not in fact so caused but resulted from M falling off a toy lorry while playing. He denied that there was a lack of co-operation with Social Services and said that there had been no visits to the family home and similarly that no health visitor had ever called and that the reason that the children were weighed by the family doctor rather than a health visitor was because that had been suggested by the doctor. In relation to the mark on M's cheek it had not been caused by a dog bite and had been seen by the doctor. "It was just like a scrape, there was no depth in it. It didn't need stitches, it wasn't wide open". According to K the accident on 3 March to M happened at about 5.15 pm after dinner. The boys were in the front room with K watching television while L washed the kitchen floor, the back hall and the bathroom. The living room had a polished wood strip floor and the kitchen and hallway had linoleum with a tiled effect. The bathroom had ceramic tiles. L had

come into the front room from the kitchen with a cup of tea and sat down. M had jumped off his seat and gone running out of the living room into the adjoining kitchen where he immediately turned left and then again immediately right into the bathroom and fallen. At that point the court rose for the day.

[22] On resuming the next day K said that he had a problem and needed to speak to his counsel and leave was given for him to do so. When he was recalled to continue his evidence he again said that he required to consult with his counsel and again the matter was adjourned to enable that to be done. On returning, senior counsel for K indicated that his clients did not have the requisite confidence in their representation and that counsel and solicitor were therefore making an application to come off record. Some discussion then ensued in relation to this and I directed that K and L should again consult with their legal team to see whether whatever difficulty existed between them could be resolved. On their returning I was informed by senior counsel that they found it impossible to continue and I accordingly granted leave to counsel and solicitor to withdraw from the case. K and L then indicated that they would like an adjournment to enable them to seek a new legal advisor and I allowed time for that to be done. I also arranged for a recording of the proceedings to date to be made available to any fresh legal team that K and L might instruct.

[23] Three weeks later the hearing resumed with a new legal team. Senior counsel indicated that they had listened to the recording of the hearing so far and wished to recall K so that he could take up his evidence at the point which he had reached before the adjournment. K said that he found that M had fallen with his feet in the bathroom and his head in the hallway outside the bathroom door. His right arm was underneath him and he was lying down straight on his back and crying. The witness noticed that the arm was "a wee bit swingy" and he had sent L to hospital with M while he remained at home with N. He went to the hospital on the following day, Friday 4 March, at around 9.00 am having, he said, had no conversation with L in the meanwhile. Social workers had arrived at about 5.30 pm when K had told them what had happened. He agreed that he did not allow them to talk to M on their own but that he would have to be present. He said that he had told M to tell these two girls what happened to your arm and M had replied "Me and N was just dancing about the bed". He had not said anything about falling in the toilet. K added "that's what I mean when I say he wasn't making sense". Social workers wanted to see N and he said "okay" and went home and later they arrived. He said that he called N into the front room and when he was asked what had happened to M's arm N said that M had fallen at the bathroom. The following day, the Saturday, at about 9.30 am L had phoned to say that they were taking M to another hospital and that she was going with him in the ambulance. He told her that he would be there and he went to the other hospital about 2.30 or 2.45 that afternoon. He agreed that he did not tell social workers who were present where N was but only that he was being looked after by members of the family. His reason for not telling them was because social workers had always been biased towards them "they have a hate for us". On the Sunday morning the social workers had told him that they were

going to obtain a recovery order for N and a protection order for M. He denied that he had ever spoken to Dr Lappin either at the hospital or anywhere else and nor was it true that there was a distance between him and the child when at the hospital. After the children were removed from their care contact was good, although sometimes he did not feel relaxed because the social workers were watching from behind the two-way screen. He said that their house had been searched by about ten car loads containing thirty policemen who were searching the property for specific items. They had not found any of the items despite searching for three hours. He denied the allegations made by the boys that they had been assaulted in various ways saying that they were always properly treated and that no difference was ever made between the two boys. He agreed that N is a more forward and intelligent child than M but it was not true that he had told the social workers that they could take M so long as they left N - "that is made up". He recalled speaking to Dr Nelson but said that she was mistaken in saying that she had been told by him that M's head was found in the bathroom and his legs in the hall, he had told her that M's legs were in the bathroom. Asked for his response to the case being made by Social Services he said "In my opinion the social workers have seen their opportunity and have bounced on us. They are very biased towards us. We don't have a relationship with [the GAL], there is hate in her for us. It doesn't surprise me she thinks the children should be taken into care because they have a vendetta against us".

[24] K was cross-examined by counsel for the Trust and agreed that he had had issues with a different Social Services Trust before he had moved to the Western Trust area and he also agreed that he had specified particular social workers that he would not work with and that the Trust had facilitated him in that regard. He agreed that since October 2009 he had not allowed social workers to meet the children nor had he sent them to nursery school. He also agreed that he had decided that he would rather deal directly with his GP than with the health visitor. He had only encountered one social worker with whom he could work co-operatively. He denied that Dr Nelson had drawn her sketch of the position in which he said he had found M while he was still in her presence. It was pointed out that his own statement to the court dated 18 January 2012 at paragraph 12 said "M was lying on his side with his right arm caught underneath his right leg. He was lying with his head in the bathroom and his body in the doorway." He said that he had not read his statement before he signed it and he did not know where his then counsel had got this from. K was questioned about a statement made by a nurse to the police in which she had said that she had overheard L speaking on the telephone and saying "I told them what you told me to say, that he slipped and fell on the bathroom floor". K denied any knowledge of such a conversation.

[25] Regarding the mark on M's cheek, K said that he did not see the accident but that N had told him that M had been standing on a toy lorry and fallen. He described it as a graze which was not bleeding and said that M was taken to the GP as there was an appointment for the boys to be weighed and he had gone with them. At that point the evidence concluded for the day.

[26] On the resumed hearing it was agreed that the nurse who had told the police that she had overheard the conversation earlier described, be interposed as a witness. Her evidence was that she had worked in the first hospital to which M was brought for about twenty years, the last five in Accident and Emergency. She adopted her police statement dated 15 June 2011 and said that she had first become involved in M's care at about 6.30 or 7.00 pm on 3 March. A doctor had referred the child to her at which time they had been concerned about the nature of the injury and decided that Social Services would have to be informed. The doctor informed the mother of this and when the witness went to speak to her subsequently the mother had asked whether they would take the child off her. The witness asked the mother whether she had had contact with Social Services before and the mother had said no. She then said that she needed to telephone and the witness had offered her the use of the portable landline because there is poor reception within the hospital for mobile phones. She had shown her how to use the phone and waited outside the curtain from where she could hear the mother talking. The mother had said that this was going to Social Services and that the child was going to be admitted. She had overheard her say "I told them what you told me to say, that he slipped and fell on the bathroom floor". She had then gone behind the curtain and asked if everything was OK and L switched off the phone and gave it back. M had been a very quiet and withdrawn child who didn't stay close to his parent. "He very much stood on his own". Cross examined by Mr Ferris the witness said that she agreed that her evidence was based upon her police statement which had been made in June about three months after the event but that she remembered the events clearly. She had told the emergency nurse practitioner about what she had overheard and said that they were both concerned about the child. The mother wanted to remove the child from the hospital and the child appeared frightened and withdrawn.

[27] K then resumed his evidence and was asked whether he was aware that the children had made many allegations of ill treatment including the allegation that M had been bitten by the dog "Diesel". K denied each of the allegations as they were put to him and denied that "Diesel" was at the house while the children were living there, claiming that the dog had only been acquired after the children had been taken into care. It was pointed out to him that when interviewed by the police he had not said that the dog had arrived after the children had been taken away and he said that that must be a mistake. He was asked about a family meeting that occurred after the children had been removed at which he was recorded as saying that M was difficult to manage, called his mother names and refused to do what he was told. His response was that none of that was true and that what he had said had been taken down wrongly. The allegations made by the children to the foster carer about their treatment by K and L were, he said, all made up. He said that he had no problem working with anyone "if they show me an honest hand" by which he meant treated him properly. He said finally "I don't need any help from Social Services - no I don't".

[28] It was then indicated by her counsel that L was not intending to give evidence and that it had been explained to her that an adverse inference might be drawn from her failure to do so.

[29] A brother and the father of K then gave evidence to the effect that when visiting K and L they had always observed the children to be well looked after and that there was no cause for concern which they observed. Had they observed any concerns they would have spoken to the parents and reported the matter to police or welfare authorities without hesitation. K's father said, in agreement with K's evidence, that there had been no dog in the family home in the period before the children were removed.

[30] Finally, the GAL gave evidence in which she adopted both of the reports that she had prepared for the hearing and added that, having been a GAL for 11 years and a social worker for 20 years, she had never encountered consistent refusal by children of this young age to attend contact. She supported the Trust's care plan for permanence away from the family and considered that future contact for the birth parents was likely to be a difficult area because these young children had decided to have no contact with either parent. In her view the children would require some certainty regarding their future care before the possibility of contact could be advanced. She recalled that she had first met the children on 14 March 2011 following her appointment and that during that meeting she had done drawings with the children in the course of which they had told her that they had a dog.

[31] Cross examined on behalf of K and L, the GAL accepted that there had been some evidence of affection between the children and L during contact but that there were long periods of no interaction and very limited demonstrations of physical affection which was not the predominant feature of the contact. She had noted that when N told his mother that he wouldn't be coming for contact again the mother had declined the offer of an extension to the contact and had left without any show of physical affection. When it was suggested to her that nothing had happened at the contacts to put the children off attending yet they had been put off, she replied that she could only suggest that the children's reluctance to attend is founded in their relationship with their parents and that that in four year old children was deeply worrying.

Consideration

[32] By reason of the age of M and N it was plainly impossible for them to give evidence to the court. It has therefore been necessary to judge the probable truth of the various matters alleged against K or L or both and to gauge the children's wishes and feelings by reference to the evidence of those witnesses whom I was able to hear and to reach conclusions based both upon the content of that evidence and the manner of its being given. Having carried out that exercise I have reached the following factual conclusions on the balance of probabilities:

- (i) That M suffered a spiral-type fracture of the right humerus caused by a large force of a twisting type.
- (ii) That the fracture could not have been caused by a fall as described by K because the description does not permit of M's hand having been caught or trapped and his body rotated around it.
- (iii) That the account given by K of the circumstances and mechanism of the fracture is incorrect and untruthful and intended by him to deliberately conceal its true aetiology which was non-accidental and involved the deliberate application of a twisting force to the arm by either K or L.
- (iv) That L gave this false explanation to the hospital on the instruction of K which she later confirmed having done in the telephone conversation which was overheard by the nurse and which I am satisfied she made to K.
- (v) That K did speak to Mr Lappin at the hospital following the operation on M and did ask him what he, Mr Lappin, thought had caused the injury.
- (vi) That K did give an account to Dr Nelson of the position in which he claimed to have found M following the accident which was the opposite of the account that he gave to the court. Dr Nelson did make her drawing of the position in his presence and in accordance with K's indication.
- (vii) That the children M and N each suffered significant emotional and physical harm at the hands of K and L prior to and continuing at the time of the Trust's intervention and would have been likely to suffer significant continuing harm had it not been for the fact that M's fracture obliged the parents to bring him to hospital and the Trust was then able to intervene.
- (viii) That the children's complaints of ill treatment by their parents were spontaneous and not prompted by social workers, foster carers or the GAL.

[33] With regard to the other very specific allegations made by the twins of ill-treatment and that M was bitten on the cheek by "Diesel", while highly suspicious that some or all of these allegations may be true, I am not satisfied to the requisite standard as to what precisely K or L may have done. There is an absence of corroboration in relation to the allegations and some evidence from the present carers that the boys are or have in the past been inclined to tell lies. The search of the family home by the police produced nothing in the way of real evidence to

corroborate some of the very specific allegations made and while I am suspicious that "Diesel" was indeed kept at the family home before the boys were moved into care in March 2011 I am not satisfied to the requisite standard that M was bitten by the dog on the cheek. It is however plain on all the evidence of the social workers, foster carers, GAL, Dr Nelson and Dr Lavery that the children are ill at ease with their parents and, most unusually for children of their age, have vociferously expressed their refusal either to see them or to return to live with them due to the harmful way in which their parents treated them up to the point of the Trust's intervention. I am therefore satisfied that if the children were to be returned against their clear will to the care of their parents, with whom their emotional connection seems to have been entirely fractured, they would suffer serious emotional and probably physical harm as a result.

[34] Lest there be any room for doubt, I make it clear that I found K to be a wholly unsatisfactory, cunning and untruthful witness. At every point where his evidence conflicted with that of another witness I preferred the evidence of that other witness. I listened carefully to and closely watched K while he gave his evidence and concluded that he is an intelligent and devious person who has sought to exculpate himself and L (because I cannot decide which of them injured M) by concocting an explanation for the injury which, unknown to him, was incapable of explaining it in medical terms and inducing L to give the lying explanation to the doctors. His disreputable and wholly unconvincing attempts to discredit other witnesses wherever their evidence conflicted with his served to reinforce my conviction that his evidence was dishonest and unworthy of belief.

[35] In relation to L, however, I was unable to form any opinion as to her veracity because she declined to give evidence. She could, for example, have denied having said what the nurse reported her to have said in the course of her telephone conversation with, as I conclude, K. She chose not to do so or, it may be, K so chose on her behalf. L is, as I have earlier said, a lady with considerable intellectual and social frailties and, I find, very much under the malign influence of K. Accordingly I do not draw any adverse inference against her from her failure to give evidence.

What of the future?

[36] K and L deny that they have ever ill-treated either child. I am satisfied that the medical evidence in relation to the fracture and the overwhelming evidence of all the experts points clearly to the fact that these children have suffered serious harm while in the care of K and L. It is not possible for me to decide whether K or L or both are responsible. The children are determined not to see or return to the care of their parents and in that are supported by the experts. In this regard I am particularly impressed by the very detailed and careful report of Dr Lavery who has analysed the case in very great detail and was unswerving in her evidence in relation to the children's need for a settled home away from these parents. I entirely accept that proposition. Whether it would be possible at any future time to resume any form of contact between the children and their parents would depend upon the

ability of the parents to acknowledge that they have harmed the children and upon the children's feeling secure in a home away from those parents. The second I hope will be achieved but the first I think highly improbable on the basis of present indicators. K is, as Dr Lavery has observed, a concrete thinker with a deep-seated suspicion of authority and an invincible conviction of his own rectitude. He made clear in evidence that he feels perfectly able to look after his children and in his opinion needs help from no one. That attitude was evidenced by his refusal to allow any external oversight of the children by Social Services or by the health visitor despite having agreed to work with Social Services at the time when the first application for a Care Order was withdrawn. That agreement was cynically broken and I reject his absurd assertions that he was not visited by social workers or by the health visitor in the period leading up to the injury to M. Unless he were able to accomplish a sea-change in his attitude to authority there is little hope of his ever working effectively with Social Services to improve his relationship with the children and to make contact a worthwhile experience for them. In my judgment, while L remains living with K she would find it impossible to think or act independently of him whether in relation to the children or anything else.

[37] Accordingly I make final care orders in respect of both M and N.