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IN THE EAST LONDON FAMILY COURT

No. ZE17C00714

11 Westferry Circus
Canary Wharf
London E14 4HD

12 July 2018

Before:

HER HONOUR JUDGE ATKINSON
(sitting as a Deputy Judge of the High Court)

(In Private)

BETWEEN :

AN EAST LONDON BOROUGH

Applicant

- and -

(1) MOTHER
(2) FATHER OF SARAH
(3) FATHER OF PATRICK
(4) SARAH & PATRICK
(by their Children's Guardian)

Respondents

[REPORTING RESTRICTIONS APPLY]

JUDGMENT

APPEARANCES

MR C. POOLE (instructed by Legal Services) appeared on behalf of the Applicant.


MR Z. SAMUEL (instructed by Blackwhite Solicitors Limited) appeared on behalf of the First Respondent.

MR W. DIRIWARI (Solicitor, Wilsons Solicitors) appeared on behalf of the Second Respondent.

MS K. White (solicitor, Goodman Ray Solicitors) appeared on behalf of the Third Respondent.

MR A. RYATT (Solicitor, MW Solicitors) appeared on behalf of the Fourth and Fifth Respondents.

JUDGE ATKINSON:

- 1 At around 3 pm on the afternoon of 28 August 2017, a three-and-a-half-year-old girl called Sarah was presented at a Hospital's emergency department by her parents. She had been bleeding from her genitals. There is some dispute as to whether she was still actively bleeding. The parents informed the staff at the hospital that Sarah had fallen from a kitchen worktop and suffered a straddle type injury on an open door with a metal top. Sarah has a brother, Patrick. He was in the flat at the time of her injury. He too maintained that this was an accident caused by her falling onto a cupboard.
- 2 By 9.30 pm the lead clinician for obstetrics, Mr F, had been called into the hospital to urgently operate on the child. Sarah was observed to have the significant injuries.


. The doctor sutured the cuts. He suspected that the child had been subjected to an attempt at female genital mutilation ('FGM').
- 3 The parents were arrested. They were subsequently released on police bail; they await a charging decision. By 31 August, both children had been placed together in a foster placement pursuant to section 20 of the Children Act 1989.
- 4 On 1 September Sarah was examined by Dr Hodes, who is a community paediatrician with particular expertise in FGM, and Professor Creighton, who is a consultant gynaecologist and works closely with Dr Hodes in a clinic that they both established - in fact, the only clinic, I believe, certainly in the country, possibly further afield - dealing with FGM. Their findings largely support the findings of Mr F. In their view, there were no clinical signs typical of a straddle injury or any consistent with the history recounted of a fall on to a cupboard door. Further, Dr Hodes was of the view that a three-year-old would not have the ability to climb on to a kitchen worktop without a chair or another piece of furniture acting as a step. Their conclusions, therefore, were that the injuries to this child's genitalia were consistent with recent type 2 female genital mutilation.
- 5 On arrest, the parents' phones were seized and interrogated, and on those phones a number of indecent images were found. On the father's phone there were images of children, which included a video of a five-year-old boy and a 12 to 13 year old girl mutually masturbating, performing oral sex and engaging in penetrative sex. There was a video of a five-year-old boy and girl engaging in penetrative sex. The video of the five-year-old and the 12 to 13 year old was also found on the mother's phone. In addition, there were a series of videos of extreme pornography, a video of an adult male penetrating a dog, a woman masturbating and performing oral sex on and being penetrated by a horse, a video of a woman vaginally penetrated by a dog, and a video of a woman being penetrated by a live snake. With the addition of one other, I think those videos were found on the mother's phone, certainly the woman being penetrated by a live snake.
- 6 The local authority position is that the injuries suffered by Sarah are inflicted injuries are consistent with an attempt at FGM. Patrick, says the LA, has been coached into giving a

false account. Further, the local authority maintains that the parents' possession of such extreme material on their phones indicates that these parents have an interest in extreme pornography and indecent images of children. This, says the local authority, raises a risk of harm to both children. On these facts the threshold is undoubtedly crossed.

- 7 There is no dispute that in the hours leading up to her presentation at hospital, Sarah was in the care of her parents. The parents insist that other than her brother no one else came into contact with her during this time. They insist that Sarah suffered her injuries in an unwitnessed fall on to a kitchen cupboard. They are adamant that neither of them would have ever deliberately cut her genitals, as described, or allowed anyone else to do so. They admit that the videos and items were on their phones but they deny an interest in pornography and they deny coaching Patrick, Sarah's brother, into a false account.
- 8 At this hearing the issues for me to determine are:
- a. what injuries were suffered by Sarah,
 - b. whether those injuries were deliberately inflicted and, if so, by whom,
 - c. whether those injuries are consistent with FGM or an attempt at FGM;
 - d. whether the parents have sought to influence Patrick in his account of what happened to his sister, and
 - e. what follows from finding indecent images of children and extreme pornography and bestiality on the phones of both the mother and the father.

Decision

- 9 I am satisfied that the injuries suffered by Sarah to her genitalia were deliberately inflicted and were not caused by a fall. I am satisfied that these injuries amount to a mutilation of Sarah's genitals and are consistent with an attempt at type 2 FGM.
- 10 There is no dispute that the injuries occurred whilst Sarah was in the care of her parents. There is nothing that would enable me to be satisfied that it was one or other of them; nor is there sufficient evidence for me to be satisfied as to the presence of a third party, although I should add that neither am I satisfied that there was no other person there. I am satisfied that both parents were involved.
- 11 Turning to the additional matters, I find that Patrick has been coached in the false account that the family has maintained. I decline to find that he has maintained this out of fear. I am satisfied that the parents had the pornography and the indecent child images on their phones, but I am not satisfied that I can assess them as being "interested" in pornography on the strength of that evidence alone. Nor am I satisfied that there were any separate risks flowing from that to the children. Let me explain why.

The law

- 12 It is the local authority that brings the case and it is for the local authority to prove it. The local authority seeks the findings set out in its schedule and findings that the threshold is crossed.
- 13 The way in which the local authority proves the case is by satisfying me that on the whole of the evidence the facts that they assert are more likely than not, true. In short, the standard of proof is the simple balance of probabilities. Where an allegation is a serious one, there is no requirement that the evidence must be of a special quality; nor does the seriousness of the

consequences of a finding of fact affect the standard to which it must be proved. To quote Jackson J in *Re BR (Proof of Facts)* [2015] EWFC 41:

“It is exceptionally unusual for a baby to sustain so many fractures, but this baby did. The inherent improbability of a devoted parent inflicting such widespread, serious injuries is high, but then so is the inherent improbability of this being the first example of an as yet undiscovered medical condition. Clearly, in this and every case, the answer is not to be found in the inherent probabilities but in the evidence, and it is when analysing the evidence that the court takes account of the probabilities.”

14 Evidence comes in many forms, and in my discretion the different forms of evidence will be more or less persuasive. In this case, there has been evidence from experts and from lay parties. There is no magic in the evidence of an expert. All witnesses come to the witness box as equals. They may not leave as equals, but that is a matter for me to assess. The medical evidence is important, and the court must assess it carefully, but it is not the only evidence.

15 The evidence of the parents is of the utmost importance, and the court must form a clear view of their reliability and credibility. Each piece of evidence must be considered in the context of the whole. I am entitled to draw inferences from the evidence. In drawing inferences, I must be satisfied that the inference sought is a proper one and that there are no other explanations for the combined evidence presented. Whilst it is not for the parents to provide an explanation as to the possible causes of any injuries, there are situations in which the medical and other evidence suggests that the absence of any explanation is of significance. Again, to quote Jackson J, as he then was, in *Re BR*:

“It would of course be wrong to apply a hard and fast rule that the carer of a young child who suffers an injury must invariably be able to explain when and how it happened if they are not to be found responsible for it. This would indeed be to reverse the burden of proof ...

Doctors, social workers and courts are in my view fully entitled to take into account the nature of the history given by a carer. The absence of any history of a memorable event where such a history might be expected in the individual case may be very significant. Perpetrators of child abuse often seek to cover up what they have done. The reason why paediatricians may refer to the lack of a history is because individual and collective clinical experience teaches them that it is one of a number of indicators of how the injury may have occurred. Medical and other professionals are entitled to rely upon such knowledge and experience in forming an opinion about the likely response of the individual child to the particular injury, and the court should not deter them from doing so. The weight that is then given to any such opinion is of course a matter for the judge.”

16 It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything. See *R v Lucas* [1981] QB 720.

Background history:

- 17 Let me just set out a brief background. The parents in this case are the father and mother of Sarah, the three-year-old girl who suffered the dreadful injuries to which I have already referred. Sarah has, as I have mentioned, an older brother, Patrick. Patrick was born in 2008, and is ten years of age. In fact, his father is not the father in this case. Patrick's father was born in Uganda, as was his mother. Patrick's father has now been located and is living in the United States. He has played no part in this part of the proceedings.
- 18 The father of Sarah is from Ghana. Sarah was born in [REDACTED] 2014, so she is now four years of age. The day before she was presented to hospital, Sarah had an accident at home. This came to be of some significance during the case. She cut her eye on a TV stand and bled, although the extent of that is in some dispute.
- 19 On 28 August, as I have already described, she was presented at a Hospital's emergency department with vaginal injuries, and she was treated, as I have described, by Mr F, who was the clinical lead for obstetrics.
- 20 On 30 August the first interview took place of Patrick. The mother and father had been arrested but later were bailed by the police on strict conditions. Patrick maintained that his sister had fallen on a cupboard in accordance with the accounts that had been given, largely at the hospital, by the parents. I am not able to be totally clear about all of the accounts given by the parents at hospital, because the statements from the staff at the hospital were not disclosed into these proceedings until during the fact-finding hearing. In any event, on the same day that Patrick had his first interview, and I have had access to that. The father and mother were interviewed, and I have that. The mother signed a section 20 agreement and the children were placed together in a foster placement on 31 August.
- 21 On 1 September, Sarah was examined by Dr Hodes and Professor Creighton in their clinic. On 8 September there was a second interview of Patrick. He maintained his version of events that a fall from the cupboard caused the injuries to his sister, although he has throughout maintained that he did not witness that fall.
- 22 On 18 September the local authority issued its application. On the same day Sarah was examined for the second time by Dr Hodes and Professor Creighton. The matter came for a first hearing before Her Honour Judge Staite on 21 September, and was adjourned and listed before me on 5 October. On 23 September, Sarah was ABE interviewed for the first time. She was interviewed in the company of an independent social worker with some expertise in interviewing children in these circumstances, and an intermediary. No allegations were made by her against the parents during that interview. Sarah gives an account in that interview that she fell on a kitchen cupboard.
- 23 The matter came before me on 5 October. I adjourned to a further CMH on 13 December. Officers attended to assist the court on that occasion and the first of a series of focused disclosure orders was made.
- 24 On 18 October there was a second interview of Sarah, together with the independent social worker and intermediary, and she made no disclosure.
- 25 On 3 November, the children moved to their current foster carer. On 17 November the mother's home was searched and a large number of items were removed, including a frozen

cow's tongue, which was wrapped in twine, had screws through it and in the centre, was subsequently discovered to conceal a kitchen knife.

- 26 On 17 November the parents were interviewed again by the police, and the allegation of FGM and the information about the child pornography was put to them. Two days later, on 19 November, Sarah is said to have made a number of disclosures, quite spontaneously, to her foster carer, with whom she had only been placed for a matter of a couple of weeks. She said, *"My mum, she is go to jail, she has cut my privates"*, and then later on said, *"An old lady cut me, my mum and dad hold me, the lady cut me, there was blood everywhere."* On 27 November Patrick was interviewed for the third and last time. No disclosures were made.
- 27 Sarah had her third interview on 10 December. In anticipation of that, I had acceded to an application by the local authority to suspend contact between the parents and the children arising out of concerns from the police that they were being influenced into not saying anything during that contact. Out of an abundance of caution I made that order, suspending contact for a specified period of time, only until 13 December. As I have said, Sarah's third interview took place on 10 December, again by the independent social worker and with an intermediary. Her demeanour in that interview is noticeably different. The interview does not take place in the same location, it takes place I think at the foster carer's home. There were no allegations made spontaneously. There were questions asked directly about the disclosures that were made to the foster carer, but there are no real spontaneous unsolicited answers. I have to say, I think that Sarah's demeanour in that interview is quite troubling. She gives the distinct impression that she does not want to discuss anything.
- 28 On 12 December, so two days after that interview, there was a further application to suspend contact because it was intended to try and interview Sarah one further time. Also, the family home was searched again and further bizarre items were removed, including 40 frozen limes from the freezer that had various names inside them. The limes were cut and the names were inside.
- 29 On 4 January, Sarah was taken for a further session with the police, and on the way home, having said nothing, the foster carer says that Sarah said to her, *"I can't tell the police."* The foster carer had asked if she had told the police, and she said to her foster carer, *"I can't, I promised my mum."*
- 30 On 12 January, the mother and father were interviewed for a third time by the police, and they denied that anybody had cut Sarah. On 15 January of this year as a result of the nature of the allegations, the likely criminal charges, the difficulties with disclosure and the media interest, I allocated this case to myself sitting as a Deputy High Court Judge.

Evidence

- 31 I do not intend to recite all of the evidence that I have heard and read. I have four lever arch files stuffed full of documentation, though it would appear that I do not have all of the information held by the police. I have got an additional bundle of documents that were handed in during the course of the hearing. I have heard evidence from a series of medical experts, from the forensic scientist involved in the police investigation, from the parents and from the foster carer. That evidence was broken in the middle whilst we paused and I ordered the attendance of a police officer so that I could satisfy myself that all documentation necessary to a fair determination of these issues had been disclosed.

32 It is obvious, I hope, that an absence of documentation could have a significant impact upon this hearing. Thanks to Mr Poole, who spent a lengthy period of time with the officer and secured the exhibits list, all parties in the case were satisfied that we had got as much as was necessary for our hearing to proceed and that nobody was prejudiced by not having every single document in possession of the police. Certainly, the parents were not prejudiced by the absence of any information. There will be an enquiry by me into what has gone wrong in terms of disclosure in this case [REDACTED]. On the fact finding, although I have read all of the evidence I intend to highlight the evidence necessary for me to properly explain my decision making.

The injuries:

33 The injuries suffered by Sarah are not in dispute. There appeared to be a hint during the respective evidence by each of the parents that they did not accept that the evidence from the medics regarding the injuries was accurate. It seemed to me that what they were probably saying was that because they had not made those cuts they could not be described as 'cuts'. Of course, if I found that these were cuts made by a door they would accept that. I clarified the position with their representatives on a number of occasions, and I am satisfied that the parents do not challenge the medical description of the injuries, and indeed there was no challenge put to the doctors on that issue.

The medical diagnosis:

34 Mr F was informed of this case by his registrar at the hospital an hour after admittance. His evidence was that neither he nor the junior doctor was expecting that he would have to come in and deal with the injury. It had been difficult to assess the extent of the injury initially because it was covered with a clot. Sarah was anaesthetised in order to enable her to be examined that the junior doctor and it was after there had been a closer examination she considered that someone of greater experience was required to deal with what she had seen. Mr F told me that when his senior registrar removed the clot

[REDACTED] she realised it was far more serious because of the level of injury and it was above her expertise. He said to me, *"I was not expecting to go, but by eight o'clock I was told I was needed, and I arrived at 9.30, and there were three separate lacerations."* In layman's terms the principal lacerations were to the inner lips of the labia, not the outer.

[REDACTED]

35 I remind myself at this point of the evidence from Dr Hodes about the size of the labia minora in a child of this age. Dr Hodes says that research demonstrates that on average the size of the labia minora in a child of this age is about 9 mm in length, so that is tiny.

36 Four days later Sarah was examined by Professor Creighton and Dr Hodes. Professor Creighton and Dr Hodes are acknowledged to be the foremost experts in FGM in the UK and probably beyond. They run the first, and I think still the only FGM clinic out of UCLH. They have seen over 100 children. They see them together and one of them takes the lead. It is the only children's clinic dealing with these matters. It was agreed at an earlier hearing that their evidence would be given by one of them, and Dr Hodes was chosen

because of her additional expertise as a consultant paediatrician. Further, it is she who provided the report.

- 37 The combined evidence of the two experts was that their findings were entirely confirmatory of those of Mr F. Dr Hodes in her evidence, as I have already set out, assisted in how tiny the area of laceration would be. She told me that the level of the pain would be very high. *“We know from survivors”, she said, “that it is highly painful.”* She said, *“We can’t date the healing, but it’s striking that when she came to us she was walking normally and climbing on a bed”*, and she made the point that small children heal very quickly. She told me that the blood supply in that region is very high and that is why it heals very quickly.

Mechanics:

- 38 What is hotly disputed is the mechanics of the injuries - in other words, how they have been caused. The medics are united in their view that the most likely explanation for these injuries is that they were deliberately inflicted. Indeed, they are united in their view that it is not likely that this was as a result of a straddled type fall on to the top of even a sharp-edged cupboard door. Mr F told me, *“You can never rule anything out 100 per cent, but the pattern of injury is not right. I would expect there to be more bruising in the thighs and in the labia majora, that’s why I suspected NAI. In addition, it was a very clear cut. The precision of the lacerations, this looked like a sharp injury.”* He described the cuts as the *“perfect mechanical cut”*.
- 39 The parents’ lawyers explored with Mr F in cross-examination the ways in which it might be possible for Sarah to fall on the open door, straddling it with her legs, and suffer the injuries observed. This was described during the hearing as the *“perfect fall”*. Mr F has never seen the cupboard door other than in a picture shown to him during the hearing. He conceded that the top of a door was in theory capable of causing a cut if sharp enough, and if Sarah fell on it he conceded that with two even length sides she might be able to cut each side of labia minora. He said. *“If the door had two sharp edges and she was unlucky to fall on both, but it would be need to be a perfect fall, hypothetically that is the only way. She would have to come straight down. She’d need to fall precisely on it. I have never come across such an injury. It is unlikely.”* If there was the perfect fall, he told me it would also explain the third injury, although he did not explain to me how, [REDACTED], *“but I would still expect there to be more bruising. What I am saying here is that you would be likely to see more bruising. To happen bilaterally it would have to be a perfect fall.”*
- 40 Of course, it is worth observing at this point that the edge of the door does not have two evenly protruding metal ends. In fact, they are at different heights in order to make a handle; they are part of the handle top of the door. When that was pointed out to Mr F he had to accept that the child would actually have to fall slightly awkwardly and to the side in order to achieve the same, and by that means, he felt that the perfect fall became even more difficult. The parents rely heavily on what they describe as Mr F’s acceptance that there was a possibility that this could have happened accidentally. It seems to me that he was barely prepared to accept that possibility. More significantly, he was firmly of the view that it was unlikely to explain these injuries.
- 41 Meanwhile, Dr Hodes was far firmer in her rejection of the explanation. She is a paediatrician in this particular field and this may explain her greater confidence. It is worth observing, and this is no criticism of Mr F, but he is an obstetrician and unused to operating

on children. Dr Hodes, however, has a wealth of experience in observing such injuries. Dr Hodes' evidence was that there is a difference between tears and cuts, and these were cuts. A cut needed a sharp instrument. It was described by the surgeon as a "*perfect mechanical cut*", and that to her meant that it was more likely inflicted. She said that she could not say what was used to cut, only that it would have to be sharp, and she observed that she rarely cut her hand on the top of a cupboard door, so however sharp it was it was not sharp enough to cut easily.

- 42 So far as a straddle type injury is concerned, she said that what she observed was not consistent with a straddle injury. She says that in straddle injuries - and she referred to research on this - there is a tendency to fall to one side, typically there is unilateral anterior bruising, usually more to the front than the back. In any event, she made the point that the labia majora, the outer lips, on a child of this age completely cover the labia minora, and so the cut would simply not be possible. The perfect fall would possibly hit the clitoris but the inner lips would be protected by the outer lips. She says that with straddle injuries also you would expect to see bruising on the thighs or some kind of scrapes on the thighs.
- 43 She was asked whether or not the labia majora could be parted in the fall, and she said, "*Well, I suppose they could squash with the pressure and be parted back, but I would have expected to see swelling if that had happened.*" In a question from me she accepted that if that was the case there would have to then be another fall following the first fall in order to cut the labia minora. All in all this was "*highly unlikely to happen.*"
- 44 She was asked whether or not, if it proved to be the case that Sarah could climb on to a kitchen side, that would change her view, and she said that would not change her view. She was asked, if in fact there had been a fall on to the door and a straddling of the door, would that change her view about the injuries and she said it would not.
- 45 She told me that the police had shown her the door, brought it to her. It was then that we discovered there was more evidence from her in the police possession. The uneven ridge at the top was pointed out to her. She said that if there had been a straddle fall on the top of this door, she would be likely to fall to one side and there would have been bruising and swelling. At the end of her evidence she said, "*What I am saying is it is not possible for it to have happened this way.*"

Blood loss:

- 46 I have heard a reasonable amount of evidence regarding blood loss. As Dr Hodes observed, there would have been considerable blood loss following this injury, whatever the mechanism. The area of the body which has been cut is well supplied with blood. It is the mother's case that Sarah did bleed, but not profusely, in the kitchen, or anywhere at the flat. She reports that there were drops of blood towards the door to the kitchen, but no active bleeding around the cupboard. In her evidence she also referred to Sarah possibly bleeding into her wellies that mother says she was wearing at the time, but it is noticeable that there is no description of seeing it drip down her legs or that her feet were covered in blood when she was taken out of those wellies, as we know she was, before she left the flat.
- 47 This account conflicts with the father. In interview he said that there was a lot of blood and that he had cleaned it up when he got back to the flat, because he could not walk through it. He confirmed that in his evidence to me.

- 48 The forensic scientist who examined the scene was unable to identify any large areas of blood. It was curious, it seems to me, that there was no large area of blood identified. Of course, the father says that he washed it away but nor could the forensic scientist identify any significant areas or evidence of wiping or washing. He found a wipe mark on the kitchen door, but no similar marks on the floor of the kitchen. In fact, his evidence confirmed that the kitchen floor was quite dirty, likewise the door, suggesting that there had been no cleaning up afterwards.
- 49 We know that when Sarah was admitted to hospital she had a dangerously low haemoglobin level. A blood transfusion was actively considered. This would on the face of it suggest that there had been significant blood loss somewhere on the day in question. However, there is a disagreement between the experts as to the significance of the fact that she had had a bleed on the day before when she injured her head. This may have lowered her base line, as it were. It was during the evidence of Dr Hodes that we discovered that there had been a haematologist instructed by the police at her suggestion. That evidence was not disclosed by the police in advance of the hearing. We saw his report during the hearing and the parties were able to ask questions of this expert, but nobody has been able to properly explore this issue.
- 50 It was at this point that we also discovered that there were undisclosed statements from hospital staff. We have received those statements and read them. They support the local authority case that there was no active bleeding at the hospital. However, there was no real opportunity for exploration of this in evidence in these proceedings. The parents suggest that Sarah continued to actively bleed at hospital.
- 51 Why does all of this matter given that, as Dr Hodes said, the level of blood loss would not determine mechanism? Well, if there was considerable blood loss at the family home, and I accept that the forensic evidence suggests that there was little blood evidence in the flat, or evidence of clean up, then I can see that this begs the question of where the child bled. It undermines the suggestion that she bled in the kitchen where the accident allegedly happened. It is argued that this might enable me to infer that the blood loss was contained by a plastic sheet, or some sort of covering that was subsequently disposed of. There was bloodstained clothing that remained in the home, but no evidence of any sheet. Again, preparation for the possibility of heavy bleeding through the provision of a sheet would point away from accident.
- 52 However, the evidence as it currently appears in this case before me is not, in my assessment, enough to enable me to properly draw an inference on this issue of blood loss. This is partly due to the late disclosure of this evidence on the part of the MPS. As it happens, I do not think it prevents me from making a decision in the case, nor do I consider that the absence of the complete picture here impacts upon the parents' case, because I have approached this issue in their favour, assuming that it does not support the case of non-accidental injury. The suggestion that preparations were made in advance to contain blood loss is not capable of proof in my view and so the blood loss evidence does not assist in the determination of whether or not this was an inflicted injury.

Alum:

- 53 I reach a similar conclusion on the argument that alum has been used here and ordered in advance in order to stem the blood flow. Alum is a substance which can be used to stem the flow of blood. It can also be used for other things - as a deodorant, for instance. There is no

dispute that the alum was ordered by the parents, and that it is capable of being used to stop bleeding, although the mother maintains that was not the purpose of the order.

- 54 When we started this hearing, we knew nothing about alum. We had no idea that there had been any alum delivered to the parents, or that it had featured in the investigation. It was only after spotting that there was a report from another expert in the exhibit list that it was discovered that the police had investigated the use of alum in order to stem blood flow after discovering that the substance had been delivered to the mother's home, and ordered by her in advance of this date.
- 55 There is no dispute that alum was ordered around that time, and also there has been secured in late disclosure a series of messages between the parents in which the mother instructs the father to find the alum, which is about to arrive, and conceal it. However, on my reading of those messages she also seems to be suggesting that it should be used as part of one of her "spells", and should be added to the limes that ultimately make their way into the freezer.
- 56 Once again, I consider there is insufficient evidence from which I can properly draw an inference and any finding about this substance. I cannot find that the substance was ordered in preparation for cutting the child, because that would be speculation. I do not know whether or not the position would have been different had we full access to the criminal papers, but, as it is, I do not use that evidence against the parents, and there is no prejudice to them.

Witchcraft, prayers or spells:

- 57 There is no dispute that certain items were found in the freezer of the mother. I have already described the cow's tongue with the nail through it, which was 'deconstructed' by the forensic scientists and found to have a knife inside. There were limes which were cut open and inside were the names of various people, including, I believe, the DPP and the local authority's solicitor. There is no dispute by the mother that these were prayers - that is how she described them - offered up in order to stop people from saying things about their family. I have, again, incomplete evidence about that part of the investigation.
- 58 Originally the local authority sought a finding that there was an attempt to utilise so-called witchcraft in the influencing of their children not to say anything. I have insufficient evidence to make that evidential leap. There is no evidence, for instance, that the children were aware of these practises. I do not think this evidence helps me determine the issues in the case and so I disregard it.

Disclosures from Sarah:

- 59 I have already set out that there were three interviews of Sarah. I have watched them all; they are incredibly long. I accept the need to have a long play in with a child of this age, but I have to say that in at least two of these interviews I do wonder at the purpose of going on beyond the first 30 mins or so. In the first interview Sarah is fairly upbeat. She is a happy, fairly jolly girl, and she recounts very clearly that she has had a fall. I have to say that I found her telling of the accident to be rather mechanical, giving the impression that she was repeating a story. Her demeanour in that interview was playful. She delivers her account of how she was injured herself in a matter of fact way without any apparent emotion. If this was truly her own recollection, it was devoid of what we know must have

been a great deal of pain. That demeanour contrasts significantly with her demeanour in the last interview.

- 60 In the second interview she is relatively happy but takes matters no further. In the last interview she is subdued and reluctant to speak. She was visibly anxious. The presentation tends to support the comments that she subsequently made to the foster carer that she had promised not to tell. The disclosure to the foster carer about being cut by her mother or an old lady takes place between interviews, and the disclosure comes after interview three about not being able to say anything. In fact, I think it comes after the attempt at interview four.
- 61 Sarah is only three years old. I am quite satisfied that she volunteered the disclosure that the foster carer recounts, and I will set out in a moment why I so firmly prefer the foster carer's account. However, focusing on her ABE interviews for a moment her accounts are far from clear. In spite of my observations with regard to her demeanour, I cannot be satisfied that her accounts in ABE provide a sound evidential basis for a finding that she was cut by her mother or by an old lady. Indeed, the local authority does not invite me to do so. The most that we can take from these interviews is that if one accepts that the disclosure to the foster carer happened as she relates, and I do, then after a short period in the safety of foster care this little girl was no longer maintaining that her fall was an accident and she was beginning to give a different account. Precisely what that account was is difficult to be clear about other than it was no longer suggested that she fell. Other than that, her ABE interviews are of no assistance in determining the facts.
- 62 What for me is of greater significance is the approach taken by the parents to the evidence from the foster carer and the reasons why I prefer her account over theirs, and let me turn to that now. It is suggested by the parents that the foster carer who gave the account that I set out in the background information is lying. As I have already said, I prefer her accounts over theirs. Why is that? Well, in the first place there is a measure of support for her account in the changed presentation of Sarah described by me earlier. Her failure to stick to the accidental injury account is also in keeping with her disclosing something different. I think it unlikely that in the space of just two weeks the foster carer would really have been able to coach her into not repeating that account if she had really lived it. It is entirely in keeping with what we know of how children disclose, that Sarah might not have revealed the truth until in a place of safety. So, the timing of the disclosure points in the direction of the account being a truthful one, not the other way.
- 63 More significantly, however, the evidence of the parents is simply not credible on this issue. Unusually, both parents seek to suggest that the foster carer is nothing less than a malicious liar, not that she has misheard what Sarah said, or that Sarah was confused, but this foster carer has deliberately set about making the disclosure up. The father suggests that her motive is a financial one and points to certain inconsistencies in the account as shoring this up - for instance, reference is made by the child to a home in Chingford, which is not where the family home is, but it is where the foster carer came across the father. It is suggested that she might have thought that is where his home was and that shows that she was not telling the truth. Without more, I disagree. That does not sufficiently cause me to consider that the evidence is untrue.
- 64 It is suggested that the foster carer led the answers. I do not accept that is the case either. They were volunteered. The foster carer told me that she did not ask some of the questions

noted down in her police statement. I accept her evidence on that. Even if she had asked the questions set down, by then the disclosure had already begun.

- 65 The father goes on to suggest that the foster carer needs the children with her to earn money. The foster carer dealt with that admirably in her evidence. Without pausing to take a breath, she said that she did not need to keep Sarah and Patrick in her care to earn money. She said, *"I am a foster carer, that is my job, when Sarah and Patrick move on another two children will be put in their place."* The father has absolutely no basis to make the suggestion that this woman needs these two children in order to keep her income.
- 66 The mother takes another tack. She began her evidence announcing that it was not her case, as distinct from the father, that the foster carer was lying, and an attempt was made to explore with the foster carer the possibility that Sarah might have been confused when she had made her disclosure. That line of cross-examination bore no fruit, and the foster carer was clear that she was not confused about what Sarah had said and nor was Sarah.
- 67 It was at this point that the mother's position changed, and she asserted for the first time during the hearing that the foster carer was lying, interrupting her counsel in his cross-examination to do so. She then asserted through counsel that the foster carer had told her that she was being pressurised into lying about what Sarah had said but not to worry because she would tell the truth in court. It was quite an astonishing turn-around.
- 68 The foster carer was steadfast in her denials. She denied she had been "regular contact" with the mother. Accepting that she had sent photos at the behest of Patrick, the mother seemed to suggest that there were text message exchanges between them, but when asked that they should be shown to the witness she was not able to produce them, and accepted that actually the exchanges between them were in telephone calls and meetings. I asked that dates and times were put but there were no details available. The foster mother told me, *"These children were with me for two weeks. I asked this girl nothing. I needed to report what she had said."* After the foster carer had given evidence and the mother was asked to put her position into written form she went even further in her assertions.
- 69 There was a further shift in her evidence when the mother gave evidence. In her own evidence the mother's recall and detail were poor in giving her account of how these alleged exchanges took place, but crucially she had no explanation for how it was that she had failed to mention the allegations, whether in a statement or through her solicitor. The mother and father both knew that the foster carer had reported that Sarah had said these things. The disclosures were put to them by the police in May in interview. Had the foster carer really disclosed to the mother that she had been put up to it and was under pressure to maintain that lie from the police and the social worker, I would have expected the parents to have told their solicitors immediately and filed evidence about it. Failing that, I would not have expected the mother's position to be as was stated at the beginning of cross-examination.
- 70 Finally, to top it all, in her evidence from the witness box the mother sought to suggest, again for the first time, that the foster mother had mouthed an apology to her across the court room whilst in the witness box, an apology that was witnessed by nobody else in the room, and was not mentioned by the mother at the time.
- 71 It is ironic that at the end of the day the information that was relayed to the foster carer by Sarah has not actually weighed heavily in my decision making, but the manner in which the parents have handled this has been of some significance in my view. The mother in

particular has constructed a false account around the foster carer and their exchanges. I accept people lie for many different reasons, but having determined that these were lies and considered whether there is any innocent reason for doing so, I conclude that the only reason for attacking this witness in the way that she has is to seek to undermine what she feared would be powerful evidence against her and the father. This lie is not capable of proving the local authority case, but it adds weight to it if only because it undermines the mother's credibility.

The mother and father:

- 72 The mother and father's accounts of what happened on that day are consistent in saying that this was an accident but they differ in their detail and in significant ways. The mother's detailed account was not produced until after the case started. They both agree that Patrick was watching TV in the sitting room, father was in the garden watching videos of his mother's funeral, the mother was in the bedroom. Sarah, they agree, wanted to get a biscuit and went into the kitchen where she climbed on to the kitchen counter by opening the door of a floor level cupboard and placing her foot on an internal shelf. This detail they give having been told it by Sarah apparently, because neither of them witnessed it. She then fell on to the still-open door of the cupboard as she tried to get down. This is what they surmise as they saw biscuits on the kitchen floor and she was bleeding.
- 73 The mother says that she was first alerted to this accident by Sarah's screams. When she arrived in the kitchen Sarah was standing and was able to give her the detail I have set out. There was blood on her dress which caused her to take the child and sit her on her lap to give her a cursory examination. She did not look closely. In fact, she said in her evidence that she did not examine her, although in the 999 call she says that she has been cut "*inside on her private parts*". During her evidence she did say that at the front she could see some skin was torn. On the amount of blood, she maintained that the bleeding was mostly throughout the time at the hospital.
- 74 Father draws a different picture, or at least he did in his police interview. In interview and now he maintains that he rushed to the kitchen when he heard the child screaming, not that he was called by the mother. He says that when he arrived there was a lot of blood, he thought that it was not right that a child should bleed that much. He confirmed that to me in oral evidence. He said in interview that the child was screaming loudly, although he sought to back away from that in oral evidence.
- 75 On the issue of FGM the parents pray in aid the fact that they are each from parts of Africa where the prevalence of FGM is not great. That is correct. I accept that there is no extraneous evidence which might link either one of them, whether through their cultural roots or other means, to the practice of FGM. That, in itself, is, in my experience, quite unusual, by which I mean that one generally sees FGM perpetuated by families from certain parts of Africa and through generations. However, whilst I bear this in mind, the mere fact that someone does not originate from the usual FGM hotspots or has no history of the practise in their family does not of itself negate the possibility that it could or it would be carried out.
- 76 Overall, the parents were both rather evasive in their evidence, and a good example of this comes in their responses on the issue of the extreme pornography and the child pornography. They were both largely unable to explain how such things got on to their phones, and whilst it might be the case that the father had deleted the images from his phone - I have no idea

whether the evidence supports this or not, but assume in his favour that it does - the mother did not delete the images from hers. Although they described them as “disgusting”, I detected no sense of outrage or horror at being sent such things, not even in respect of the child pornography. These images were sent by people they know. I do not understand why you would continue to keep a contact who sends you such images, and yet I was not left with the impression that they had deleted any contact who had. I was left with the clear impression that we were not being given the full picture. I have listened carefully to them throughout, but I find I cannot rely on them as witnesses of truth.

The injuries to Sarah: discussion and findings:

- 77 In this case the parents acknowledge that the medical evidence is, on the balance of probabilities, stacked against them. The medics have rejected as likely their explanation. Indeed, Dr Hodes comes closer to suggesting that absent other signs such a fall would be near impossible. As Mr Samuel suggested in his submissions, the medical evidence is but one part of the jigsaw. It cannot be assessed in isolation. It has no special status. The account of those who were on the scene is equally important, and the accounts of parents who bring with them far greater knowledge of the behaviour of their child and of their family circumstances can change the appearance of medical evidence. However, in this case, the parents offer me no explanation for how their daughter can have suffered these cuts to her genitalia.
- 78 The parents do not have to prove anything. It is for the local authority to prove its case. However, in circumstances in which, as here, a child presents with such significant injuries, which are not explicable as part of normal day to day life, these injuries call for an explanation. That is not to reverse the burden of proof. This sort of damage to a hidden part of a child’s body had to be done somehow. Standing back and surveying the whole canvass it seems to me that overwhelmingly the evidence is that this child suffered injuries that were deliberately inflicted. I am quite satisfied of that. I cannot say who inflicted the injuries upon Sarah in the sense of who cut her.
- 79 I can say, however, that whoever did inflict these injuries did not do so alone. As Dr Hodes pointed out, after the first cut Sarah would have been in agony and severe pain. She would have had to be held down, so it would have taken at least two people to do this to her. I have considered whether there was a third person there, but the parents deny this to be the case. The only evidence I have is from what Sarah said, and so I cannot be satisfied that there was a third person present or, frankly, that there was not. It is the parents’ case that they were the only two adults there at the time that these insults were inflicted. I do not think it is likely that one of the parents would do this without the knowledge of the other. Accordingly, I am satisfied that they were both responsible, whether by actively causing the injuries by being the cutter, or by holding her down.

Was this FGM?

- 80 As I have said time and time again in this case, whatever we label this may not matter. It is certainly properly labelled as a “vicious and serious assault”. In criminal terms, it would be described as grievous bodily harm or more likely, wounding.
- 81 Female genital mutilation is a criminal offence and a person is guilty of that offence if he *‘excises, infibulates or otherwise mutilates the whole or any part of a girl’s labia majora, labia minora or clitoris.’* No offence is committed by an approved person, but that does not

apply here, and that approved person has to be performing a surgical operation which is necessary on the child. It is clear to me that on the facts as I have found them there has been an excising of labia minora, there has been a mutilation of this girl's genitals. There was no surgical necessity such that an approved person needed to carry out this cutting.

82 The World Health Organisation's published classification divides FGM into four categories. The second of those categories involves excision, partial or total removal of the clitoris and the labia minora with or without excision of the labia majora. Dr Hodes considered that what she observed here was consistent with an attempt at type 2 FGM, and I agree.

83 In making that finding I stress that I make no findings as to motivation. I accept the point that is made about the lack of apparent cultural link here through family geography or practice. I have no idea why anyone would do this to a child, and we may never know.

Coaching of Patrick

84 Patrick has persisted in his account of what happened to his sister. Because I have no idea of what happened in that flat on the evening I cannot know where Patrick was, or what he saw. Logically, given my findings, he must have, at the very least, heard his sister screaming. If Sarah bled in that flat then it is likely that he saw that. He may have been directly exposed to what was happening, he may not. However, he must also have been told that there was an accident, and I consider it highly likely that he knows that the detail he has given is not correct - for instance, his mother and father being in separate places. The detail of where everyone was when this happened is identical in the initial telling from Sarah. Given the findings I have made this was not true, I can properly infer, and I do, that he has been encouraged or coached to deliver the same story.

85 It is not so easy, in my view, to draw an inference that he has maintained this position so far through fear. It may well be that there is other evidence in the police papers relating to that. I do not know, but it has not appeared in this case. What I do know about Patrick is that he loves his mother and he loves Sarah's father, who he views as his father. He could have maintained this story out of loyalty to them and because he loves them. Without any other evidence I am unable to go any further.

Extreme and indecent images

86 I am asked to make findings about the risks that follow finding indecent images of children and extreme pornography and bestiality on the phones of both the mother and the father. I am invited to find that they each have an interest in pornography. They must accept that the images were found on the phones. It may well be, as I have said, that the father had deleted them, I do not know, but can I discern from the mere fact that they have this fairly limited number of images on their phones that they have an interest in this type of pornography? I am not sure what an "interest" means. I do not think that I can.

87 My own experience of sentencing cases involving indecent images of children in the Crown Court is that considerably more images are generally found on the electronic devices of people who genuinely have what can be described as an active interest in the collection of such images. Having said that, I do not know what the parents' attitude is to this form of pornography, and so I make no findings in that regard.

88 Are there risks that flow from the mere fact that those images were on the phone? Initially, I was invited to find that the risk included a risk of sexual abuse. That clearly is an

evidential leap that I cannot make in a case of this sort. At the end of the case the local authority accepts that perhaps the highest they can put it is that the children might catch a glimpse of, or see, the pornography. These children were nine and three. I was told that there were passwords on the phone. I do not know, because I have not had sufficient evidence from the police about how well these images were hidden. If, for instance, it is right and the images were deleted by father from his phone then they would not have seen anything. I do not know whether or not they were concealed in any way by the mother. It is impossible without full disclosure, for me to take these findings any further and so in those circumstances I am not prepared to make a finding that the mere fact that these images were held on telephones posed a risk to the children.

CERTIFICATE

Opus 2 International Ltd hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

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