



Neutral Citation Number: [2023] EWHC 2552 (Fam)

Case No: DE22C50190

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/10/2023

Before :

MRS JUSTICE LIEVEN

Between :

DERBYSHIRE COUNTY COUNCIL

Applicant

and

THE MOTHER

First Respondent

and

THE FATHER

Second Respondent

and

A and B

(through their Children's Guardian)

Third and Fourth Respondents

Mr Stefano Nuvoloni KC and Ms Faye Edwards (instructed by Derbyshire County Council) for the Applicants

Ms Hannah Markham KC (instructed by JMW Solicitors) for the First Respondent
Mr Brendan Roche KC and Mr Patrick Bowe (instructed by Eddowes Waldron Solicitors) for the Second Respondent

Ms Laura Briggs KC and Ms Louise Sapstead (instructed by Kieran Clarke Solicitors) for the Third and Fourth Respondents

Hearing dates: 27 September 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 13 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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MRS JUSTICE LIEVEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Lieven DBE :

1. This judgment follows a fact finding hearing I conducted on 27 September 2023. The case concerns care proceedings in respect of two children A aged 9 and B aged 4. On 9 July 2022 B incurred a very serious injury, whereby a 9cm knife entered her lower back and went through her abdomen and perforated her bowel. The fact finding hearing was concerned with how that injury occurred.
2. The Local Authority (“LA”) were represented by Stefano Nuvoloni KC and Faye Edwards, the Father was represented by Brendan Roche KC and Patrick Bowe, the Mother was represented by Hannah Markham KC and the Guardian was represented by Laura Briggs KC and Louise Sapstead.

Background and preliminary issues

3. The case has a complex procedural hearing. Both parents are English, but at the date of the injury the children and the Mother were living in Spain. In the aftermath of B’s injury the LA commenced s.31 Children Act proceedings and an issue immediately arose as to where the children were habitually resident. On 19 December 2022 I determined that they were habitually resident in Spain at the relevant date, see *Derbyshire County Council v Mother & Ors* [2022] EWHC 3405 (Fam). I also indicated that in my view the English court was the appropriate forum to determine any issues of fact. In summary, the children and the parents are UK citizens, the incident occurred in the UK, the parents (the only witnesses) speak English as their first language and all the clinical records and evidence is in English. It is manifest that England is a more appropriate forum than Spain.
4. Both parents filed responses to threshold and various statements in which they both denied causing the injury to B or knowing how it had occurred. Both however accepted that they were in the kitchen/diner when it occurred and the only other person in the house at the time was A.
5. The matter was listed before HHJ Williscroft for a fact finding hearing on 30 and 31 March 2023. However, after discussion at that hearing the parties agreed threshold, and that a further fact finding process was not needed. For reasons that are explained by the Court of Appeal in *Y and E (1996 Hague Convention: Article 11)* [2023] EWCA Civ 817, Judge Williscroft’s order was then set aside by the Court of Appeal. There were two issues before that court, the jurisdiction of the court to hear the matter given the provisions of the Hague Convention and whether or not the Judge should have held a fact finding hearing. The Court of Appeal held that the Court should not have proceeded to the fact finding stage without a clear understanding of the Spanish authorities likely response to the Article 9 request. Further, the Court of Appeal found that the Judge had not properly considered whether a fact finding hearing was necessary. The order was set aside on both grounds.
6. At paragraphs 62-64 of the judgment Baker LJ said:

“62. The next misstep was the compromise of the fact-finding hearing on the basis of the concessions offered by the parents which did not address the gravamen of the case. I share the concerns expressed in paragraph 5.11-12 of Ms Andrews’ report. I have not of course heard

the parents give evidence, but like her I am troubled by the absence of any useful detail whatever in their accounts.

63. There are a number of troubling questions which in my view plainly required exploration before any firm view could be reached as to the risk of future harm.

(1) In what circumstances did the parents come to have a heated argument in the presence of the children?

(2) Who was holding the knife? Why were they holding it? How was it being held?

(3) How did it come about that E [B] was stabbed?

(4) What was the cause or causes of additional cuts in her clothing? What was the cause of the damage to the dining chair?

(5) Is it true that neither parent is able to recall the details of this incident? If it is true, what is the explanation for their inability to recall? If it is untrue, why are they concealing information?

64. In my view these questions needed to be addressed. The concessions offered by the parents did not form a sufficiently clear factual basis on which the court could properly assess risk. The judge observed that, like others, she found it hard to accept neither parent had a physical memory of the incident, but she was “clear the court process was unlikely to provide more clarity.” It seems, however, that the judge did not take into account the possibility that a continuation of the court process could lead to a finding that one or both of the parents were deliberately withholding information about the incident and that such a finding would be relevant to the assessment of risk. Furthermore, the judge stated in her judgment that “a clear narrative about what took place and whose responsibility it was has to be shared with the children and the whole family – an agreed narrative.” Yet with the ending of the care proceedings without any court order, the responsibility for creating the “clear narrative about what took place” rested with the parents alone. In the light of the parents’ failure so far to provide any satisfactory explanation for what took place, there was no basis on which the court could have confidence that they would discharge that responsibility.”

7. The matter was remitted to me as the Family Division Liaison Judge for the Midlands and I held a case management hearing on 21 July 2023. I ordered that a request be made through ICACU to the Spanish authorities.
8. I also decided to hold a one day fact finding hearing, only to hear evidence from the parents. There is before me an expert report and addendum from Dr Haines, a forensic physician; and an expert report from Dr Smith, a forensic physician instructed by the police. I determined at the case management hearing that it was not necessary for me to hear oral evidence from either of these experts. As I explain below, Dr Haines’

report and supplementary answers cover the nature of the injury, B's likely response to the injury and the level of force that would be required, and Dr Smith on the distribution of blood and the tears to B's clothes. However, in light of the fact that both parents deny inflicting the injury or seeing it inflicted, I did not consider that either hearing oral expert evidence, or instructing a further expert, would materially assist me in determining the key questions in the case. I had in mind the President of the Family Division's exhortation to "make cases smaller". Having now heard the parents' oral evidence I am entirely fortified in my view that further forensic evidence, or cross examination of that evidence, would not have assisted me.

9. At the start of the hearing on 27 September 2023 the LA informed me of an email from ICACU suggesting that it was likely that jurisdiction would be ceded to England and Wales. In the light of this communication it was not necessary to consider further the Guardian's application to adjourn the fact finding hearing, inter alia on the ground that no response had been received from the Spanish authorities.
10. Ms Briggs also applied to adjourn the hearing on the grounds that a further expert should be instructed to assist with the way the injury was inflicted. At the start of the hearing it emerged that the police have themselves now instructed a further expert. The police indicated that they did not wish to disclose the questions that had been put to this expert. However, the expert was described as a medical examiner.
11. As I have explained above, I had already determined that it was not "necessary" within the meaning of FPR 25 to instruct another expert. I was concerned that if the matter was adjourned until after the police expert reported, and any further interview of the parents was conducted, in practice the case would not even reach a fact finding stage until probably January 2024. That would then be 18 months after the proceedings commenced. In light of the fact that there were only two people in the pool of perpetrators and they both say that they do not know how the injury occurred; the expert evidence that is already before the court; and the fact that any expert evidence is exceedingly unlikely to reveal to the court which parent was primarily responsible for the knife finding its way into B's abdomen, I took the view it was not proportionate or in the best interests of the children to adjourn for the outcome of further police investigations.

The events of 9 July

12. The events of the day before B's injury are largely agreed. However, the sequence of events immediately around the injury are not agreed, and various different versions have been given, particularly by the Father but also by the Mother.
13. The Father had taken A and B to a football match in the morning. The Mother joined them for a period and collected B, came home and B had been put down for a nap. When the Father and A came home the Mother realised that A was sunburned. The Mother blamed the Father for not applying suncream and allowing A to become burnt. This then escalated into a very serious argument.
14. The timescales and precise movements are not wholly clear but matter little. The Father says he went upstairs, got B up and brought her downstairs. Later in his oral evidence he said that B was downstairs for about half an hour. The ground floor of the house is an L shaped room with a kitchen/dining area and an area to the side with

sofas. The layout is the sink, dishwasher and hob along the wall, a breakfast bar in the middle of the room and a dining table on the far side of the breakfast bar. Looking at the dishwasher side of the room, the sofas are off to the right and the door out of the kitchen leading to the front door is between the kitchen side and the sofa side.

15. The family sat at the table to eat, with B diagonally opposite the Mother in a plastic booster seat. She was not strapped into that seat and the Mother said she could move about in it but she could only sit facing forwards or twisted round. It would not be possible for her to sit back to front so that her back was facing the table.
16. There was plainly a very serious argument going on throughout the meal. Towards the end of the meal both parents agree that a dessert bowl was smashed, although this is variously described as the Mother throwing it down and the Mother sweeping an arm so it fell off the table.
17. The Mother then got up to shut the front door. She accepts this was because the argument was loud, and rather belatedly she had not wished it to be overheard.
18. The Mother then said something along the lines of “if the Father could not be trusted to apply suncream A would not be allowed to go to football again”. At this point A, who had got down from the table, protested vigorously and the Mother told him to go to bed. There is a lack of clarity between the parents as to whether A did then leave the room. A, when questioned by the police on 10 July, said he had gone upstairs when the parents then called him down having “discovered” that B was injured.
19. Both parents deny themselves harming B and both deny seeing how she became injured. I will set out the detail of their evidence below.
20. As soon as they “discovered” B was injured they decided to drive her to hospital and called A to come downstairs.
21. When they got to hospital the medical notes record the parents saying that B had come into the kitchen saying she had hurt her back. They both now accept that was not true. They could not tell the doctors what had happened. B said “Daddy did it”. The Mother said “her dad didn’t do this, he has always been great with the kids”.
22. The Father then returned home with A, he says to collect clothes for A and B. He returned to the hospital and told the hospital that he had found a knife covered in blood (and faeces on the tip) by the sofa and that is where he thought B was injured.
23. The Father accepts that this was a lie. He says he found the knife under B’s chair. He says there was blood on the floor and on the booster seat. He says that whilst A was upstairs collecting clothes, he took the opportunity to do a quick clean of the kitchen, wiping blood from the chair and the floor and putting dishes into the dishwasher.
24. The Mother told Dr SurrIDGE, the Paediatric Emergency Consultant, that there was no knife in B’s back when she came into the kitchen. The Mother at this stage therefore appears to have been stating clearly that she realised B was injured when she was out of the booster seat and walking around.
25. Unsurprisingly Dr SurrIDGE did not feel the parents were telling the complete story and the police were called. The Father had three interviews with the police on 10 July.

- In the first interview he said that B had got down from the table and had gone off somewhere. Then she suddenly started screaming and the Mother ran and picked her up. He told the police that when he had gone home he had found the knife by the sofa.
26. A was then interviewed and he said that the knife had been on the table. He also said that B was still in the booster chair as no one had got her down. A said he had been sent upstairs.
 27. At the Father's second interview he effectively repeated what he had said earlier.
 28. Shortly thereafter he requested a third interview at which he said he had lied about the knife being by the sofa and said he had found it under B's chair. He said that everyone had got up from the table and the Mother was doing the dishwasher. He said the Mother "pushed" something or moved something too forcefully. She walked round to pick B up and saw the blood. So by this stage the Father is saying that B was still in the booster seat. He said that there was no knife in B when the Mother picked her up.
 29. The Mother was also interviewed on 10 July. She stated she was at the dishwasher and then B was covered with blood and she has no memory of what happened in between.
 30. Three neighbours were interviewed by the police and gave statements. An adult female neighbour heard the Mother shouting, then something like a plate breaking, then louder shouting. It appeared that the Mother and A were arguing. Then the little girl was crying a lot and was very upset and distressed. This went on for a couple of seconds, then everything went really quiet. A few minutes later a car drove off.
 31. A student neighbour described hearing the Mother shouting louder than normal and sounding quite aggressive. Some glass or china smashed and then there was the cry of a young child who was quite distressed. She also heard the other child shouting. She heard the Mother say, "Get a fucking ambulance then".
 32. The third neighbour, referred to the Mother as "shouty lady". He heard the Mother shouting loudly and a child shouting and screaming back. The Mother shouted, "Look what you've done". She sounded angry and as if she had completely lost her self-control.
 33. I note that the neighbours, entirely appropriately, were not called to give evidence. It is not possible to be confident of the precise timescales of what they heard. It is accepted that the parents were having an angry argument and that A and the Mother were arguing. The neighbours' evidence indicates that it was immediately after this that B's crying increased, and it is likely that was the point of the injury. But the timeline is not clear enough for me to feel able to draw any firm conclusions from this evidence.
 34. There are a number of statements from the parents, and their responses to threshold. The detail of the accounts vary but they are largely consistent with the parents' oral evidence which I set out below.

The medical evidence

35. The nature of B's injury is not in dispute. The knife is 9 cm long. It entered B's lower back on the left side. It penetrated her abdomen and caused a 5mm laceration to the anterior wall of her colon. The injury was serious and life threatening and required urgent and expert surgical intervention. The knife is covered in B's blood and the tip has faeces from her bowel on it.
36. Dr Haines's said that B would have been "likely to scream or faint" when the injury occurred. He also thought little force would have been required given that B's tissue was soft and the knife sharp. He also thought it possible the knife could have come out without anyone removing it.
37. Dr Smith is a police forensic examiner. He analysed B's clothes and there is a photograph of her top covered in blood. There were four rips to the fabric of her clothes. This is a confusing element of the case because B only had one injury. In the absence of the parents explaining what happened, it is not possible to be confident as to why the fabric had four tears.
38. He found droplets of blood on the booster chair and on the floor near it. He said it would seem highly unlikely that the damage to the clothing and hence the injury to B could have been caused whilst/ if seated correctly in the booster seat". However, as Ms Markham points out I cannot rule out the possibility that B was standing up in the chair, or had twisted round. Given the parents' evidence I do not consider I can, or need to, make findings about precisely where in the kitchen B was injured. Such a finding will not assist me in determining the culpability of either parent.

The parents' evidence

39. I have not the slightest doubt that neither parent was being honest with the court. I fully appreciate the vicissitudes of human memory, and the fact that the events of that evening were incredibly stressful and that impacts on memory. However much of the parents' evidence was simply impossible to believe.
40. The Mother accepts that she and the Father were having a very bad argument at the dinner table in front of the children. She says that B was "moaning" but she says the argument was dying down by the end of the meal. She accepts she was angry when A said it wasn't fair that he should not be allowed to go to football. She says that she went to shut the front door, sent A to bed and was then loading the dishwasher, but beyond that her recall is very unclear.
41. She has oscillated on whether she realised B was injured when she picked her up from the booster chair or from the floor. She seemed to be saying B was in the chair, but later said she wasn't sure. The Mother was consistent in saying that she only realised B was injured when holding her and feeling the blood. The Mother said she was terrified of blood and therefore had not lifted B's top to see the injury and had not looked when the Father saw the wound. She did however understand that B's injury must be serious by the amount of blood and immediately wanted to take her to hospital.
42. The Mother said she did not know where the knife was and had not propelled it in any way towards B. She did not know how B was injured or indeed when she was injured. She did say that B's crying changed from "moaning" during the argument to being

more upset and that is what triggered her moving to pick B up. I could not get any very clear understanding from either parent as to whether B moved immediately to screaming, as one might expect if a 9cm knife entered her abdomen.

43. The Mother presented as having poor recall of the events immediately around B's injury. To some degree this is understandable by reference to the issues around memory and traumatic events. However, there was a consistent attempt to minimise and what I felt was a rather strategic failure of memory. So she denied "totally losing it" during the argument, but that was certainly the impression given by the Father, and the neighbours' evidence. She was keen to stress that the argument was dying down by the time she left the table. I felt this was because this would reduce the potential for a finding that she had been the person who injured B in her anger against the Father. She seemed to me to latch onto the possibility that A had not left the kitchen when the injury occurred, thus introducing another element of potential confusion in what happened, and again lessening any finding against her.
44. The Mother also gave some answers that were simply incredible. If she genuinely had no idea how B's injury occurred, which is itself unbelievable for reasons I set out in my conclusions, then I do not believe that she would not have immediately asked the Father. This is in the context of a situation where the Mother had been blaming, probably fairly, the Father for allowing A to become sunburnt. She was not slow to cast blame there, and I find it totally inconceivable she did not immediately say to the Father – "what happened?", if she did not already know.
45. Overall I do not consider the Mother a truthful witness in key regards around what happened to B.
46. The Father presented himself as being more straightforward. He accepted he lied about saying he had found the knife by the sofa. He said he did that because he wanted to shift responsibility from B's injury away from the Mother so that she could be with B in hospital. One of the inconsistencies in his evidence was that he said he did this because he was worried that B might die, but on the other hand he said that he spent time cleaning the kitchen on his return to the house with A because he felt B was "stable" in hospital.
47. He too said he had not injured B, he did not know where the knife was before the injury and he did not know how B had become injured. He said that he was standing close to the door with his back turned, or partially turned to the Mother at the dishwasher when B's tone changed. He thought he saw something "out of the corner of his eye". The evidence at this point became so unclear as to be virtually meaningless. In my view he was trying to walk a very fine line between exonerating himself by placing responsibility on the Mother, but not making it clear he saw what happened and therefore getting into very great legal problems by not having told the truth before. He seemed to be saying he saw some movement, perhaps a "push" by the Mother, which by implication was of the knife. He was clear that B was in the booster seat when her cry changed, and when he and the Mother went towards her and the Mother picked her out of the seat and felt the blood.
48. This account, even if taken at face value, makes no sense. The knife did not enter 9cm into B's back by a "push" by the Mother from the dishwasher. If the Father did see that movement and somehow it was key to the injury, then he would have

immediately realised that a knife was involved and it is inconceivable that he would not have spotted the knife near B's chair. His story is not believable.

49. In my view both parents are lying to the court in order to preserve their own positions. They are being very careful to say enough to shift responsibility away from themselves, but not suggest sufficient knowledge as to admit they know what happened.

The law

50. There is no dispute between the parties on the legal principles. The following represents a distillation of those principles and the considerable volume of applicable case law. I consider that the summary set out below is an appropriate analysis of the relevant caselaw, and it is not necessary to set out the various cases that lie behind this summary.
51. The burden of proof is on the LA. There is no obligation on the parents to provide explanations for injuries although the court is entitled to weigh the absence of such explanation alongside all the other evidence in the case. The civil standard of proof applies, namely the balance of probabilities. If the LA proves that it is more probable than not that a disputed event occurred, then it becomes an established fact for the purposes of these proceedings.
52. The court must reach decisions in relation to disputed allegations on evidence, not speculation or rumour. It may, however, draw logical inferences from evidence that it has accepted.
53. The court must reach a conclusion in respect of each separate allegation but must also take care not to compartmentalise its analysis – the entire canvas of evidence must be surveyed and each piece of evidence must be considered in the context of the other evidence.
54. The role of the judge and the expert are very different. The responsibility for making decisions always rests with the judge and not the expert - the expert advises, and the court decides. It is important that the expert evidence in this case is considered as part of the overall evidence in the case and not analysed in isolation. When considering the expert evidence, the court must keep the following firmly in mind.
55. The answer to the issues or an allegation in this case cannot be provided by the expert opinion alone. The expert medical evidence must always be combined with the factual evidence before a proper conclusion can be reached by the court and inevitably the parents' accounts will be an important part of its analysis.
56. It is important that each expert keeps within the bounds of their own expertise and defers, where appropriate, to the expertise of others.
57. The evidence of the parents is very important. The court will assess their credibility and their accounts carefully. The court will factor in the difficulties and stresses inherent in giving oral evidence and the highly distressing and traumatic nature of the evidence regarding B's injuries. The court will also be mindful of the fallibility of memory. This aspect of the caselaw is particularly relevant in the present case where

the injury occurred in the midst of an accepted argument, and was itself very shocking. The court will acknowledge the dangers of inferring that because a parent has not explained how an injury was caused, the real explanation must be a sinister one.

58. It is accepted that the Father lied when saying he found the knife by the sofa. Where it is alleged that a person has lied, the court must approach this allegation with considerable care, as highlighted in *R v Lucas* [1981] QB 720. First, having identified the alleged lie in issue, it must ask itself whether the LA has proved, on the simple balance of probabilities, that the alleged lie has been told. The court must accordingly seek to distinguish a lie from, for example, “story creep”, mistake, confusion, memory failure or distortion arising from impairment.
59. Once the court has undertaken that analysis it will move to the second stage, by which it will consider why the proven lie has been told. This is important because people may lie for many different reasons - embarrassment, a sense of shame for having caused an injury accidentally, a desire to hide some other wrong-doing or a mistaken belief that lying might improve their position.
60. If a lie is proven, then the relevance of the lie to the court’s enquiry must always be carefully considered. Some lies, irrespective of how unpalatable they may be, will have absolutely nothing to do with the ultimate facts in issue of the case, save perhaps assisting the court with an analysis of the person’s general credibility.
61. Finally, it is also imperative that the court reminds itself that just because a person lies about one issue, it does not automatically follow that they have lied about everything.

Submissions

62. The LA’s case is that both parents are in the pool of perpetrators and it is not possible to determine which of them injured B. They submit that the other parent failed to protect, given that they did not tell the medics what happened and have failed to be honest with the court.
63. The Mother’s case is that she did not cause the injury and did not see how it was caused. Ms Markham submits that the Mother panicked when she realised that B was bleeding heavily, and her failure to recall where B was is explicable in the context of that moment. She also relies on the Mother’s inability to cope with blood or her children being injured as being a reasonable explanation for why she did not look at the injury or immediately try to understand what had happened.
64. She relies on the fact that the Father admits lying about the knife being by the sofa. She says it was reasonable for the Mother at the time to accept this story, even though it may now seem implausible.
65. The Father’s case is that he did not injure B and he did not see her being injured. Mr Roche submits that the evidence points to the Mother having injured B given what the neighbours heard, and her position in the kitchen. He also relies on the fact that the Mother has accepted that she had become very angry, and at some points over the last year has accepted that she “lost it” during the argument.

66. The Guardian seeks as specific findings as possible in respect of both parents.

Conclusions

67. I start with the factual and medical evidence. Dr Haines states that B was stabbed with the full length of a 9cm knife. Little strength would have been required for it to enter B's abdomen. However, having read Dr Haines' evidence and the evidence of the parents, I find that the person who "propelled" the knife would have realised their actions were inappropriate and caused significant injury to B.
68. I find I can put no weight on what the parents tell me about how the injury occurred. In my view they are both deliberately lying and refusing to tell the truth. I am going to resist the temptation to speculate as to what might have happened. In my view further medical or forensic evidence will not help to resolve the question of who, and precisely how, the injury occurred. Even if there was firm evidence as to trajectory or force of the knife entry, that would not assist in deciding which parent was holding the knife at the key moment, or how they came to be in that situation. If the parents continue to refuse to tell the truth then no amount of forensic evidence will force them to do so, or will enable the court to determine what actually happened.
69. However, I do consider, as Ms Briggs urges, that it is very important to be careful about the use of language in this case. The parents have referred to an "accident". There is no evidence to suggest that either parent intended to injure B. However, this was not an "accident" in the true sense of the word. On the basis of the medical evidence, and all the other evidence, I am entirely confident that B did not accidentally injure herself in the sense of falling upon the knife. This makes neither forensic nor common sense in the light of the nature of the injury.
70. I find as a fact that A was not in the room when the injury occurred. Both parents seemed in the majority of their evidence, both written and oral, to say that A had gone upstairs. Most importantly A was clear in his police interview that he was upstairs. Sadly, I think that A is the most truthful member of this family. It was an ABE interview, although may not have met all the relevant guidance, and there are some parts of what A said which do not seem to be correct, in particular that he and the Father came back to the house twice. But A was very clear that he was upstairs and then was called downstairs when the parents decided to take B to hospital. If he had been in the kitchen when the injury occurred then that would have been very traumatic for him, and even more so if he had had some role in the injury. There has been no suggestion since that A has said anything different to anyone. As the Mother said, if A had had a role then it seems very unlikely he would not have said anything in the last 14 months. The neighbours' evidence suggest he might still have been in the kitchen, but the timeline from the neighbour's evidence is impossible to establish. For all these reasons I find A was not in the room at the time the injury occurred.
71. It therefore follows that only the parents were in the room at the critical time. For absolute clarity the nature of the injury is such that it is impossible that B could somehow have done it accidentally to herself.

72. The injury was a very severe one and is highly likely to have been immediately painful for B. On the basis of Dr Haines' evidence and common sense, B would have made a noise when the knife entered her abdomen. She was almost certainly crying or "moaning" as the Mother puts it, because of the argument that had been raging around her. But her tone would have changed, probably dramatically when the knife struck her.
73. The kitchen/diner is not large and neither parent could have been more than a maximum of a few metres from B and from each other. To state the extremely obvious, knives do not fly and they do not propel themselves into children's backs. I therefore find that one of the parents gave the force that propelled the knife into B. Whether that was by picking it up or by a glancing blow to the knife (although that seems unlikely), I cannot tell. That parent obviously knows they did that. I have fully taken into account everything that is said in *Gestmin* and other cases about human memory. But however "in the moment" the parents were during their argument, the propulsion of a very sharp knife into their child's back would have brought them out of that moment very quickly. This is not a case where there is any suggestion of excessive alcohol consumption or drug taking on that day which might have impacted on their memory. So in my view at least one of the parents is lying to the court about their actions.
74. Ms Briggs asks that I make a finding as to whether the knife was held by one parent. It seems likely that this was the case, but I cannot rule out the possibility that the knife was inadvertently propelled by one parent in the course of the argument, rather than actually being held. But contrary to Ms Briggs' view I do not think this is critical in respect of "risk". The parents allowed a situation to develop where they were having such a heated row that somehow a very sharp knife found its way into B's abdomen and they refuse to tell the truth about what happened. That creates an obvious risk, which is going to require some very careful work with the parents, to mitigate so that, I hope, the children can ultimately be safely placed with them.
75. I also find that the other parent must know, or at the very least know more, than they are telling the court. The size of the kitchen and the nature of the injury means it is not possible to believe that the other parent does not know what happened. Even if that conclusion is wrong, the Mother's story about not immediately asking the Father is also not believable.
76. I therefore find both parents have lied. I do not accept Ms Markham's submission that I should put more weight on the Mother's evidence by reason of the fact that the Father has accepted he lied about the sofa. I do not think the Mother ever believed the sofa story. When the Mother picked B up she was bleeding heavily. The Mother says she picked B up either from the booster chair or the floor, so the idea that she was injured when bouncing earlier on the sofa is nothing short of ridiculous.
77. It is important to note that in telling these lies the parents have chosen to protect their own positions over that of the children. In particular, by not telling the truth at the hospital, and not immediately bringing the knife to the hospital, they made the medical assessment and treatment of B more difficult.
78. I have concluded that it is not possible to determine which of the parents propelled the knife. The language of which is the perpetrator is not helpful here, because it may be

that they are both equally responsible. Without one of them telling the court the truth it is impossible to know. I therefore find that they are both in the pool of perpetrators and have both actively failed to protect B.

79. They have also caused immense emotional harm to B and A by their refusal to tell the truth and put the children through the emotional turmoil of the last 14 months.