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Neutral Citation Number: [2014] EWHC 2163 (Fam)

Case No: SA14C00079

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

(Sitting at Swansea Civil Justice Centre)

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF A (A CHILD)

Date: 23rd June 2014

Before :

THE HONOURABLE MR JUSTICE MOSTYN

Between :

A BOROUGH COUNCIL

Applicant

- and -

YZ(1)

WX (2)

THE CHILDREN'S GUARDIAN(3)

Respondents

Hearing dates: 18th, 19th, 20th and 23rd June 2014

APPROVED JUDGMENT

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THE HONOURABLE MR JUSTICE MOSTYN:

1. This is a terrible case. In thirty years as a lawyer, of which the last thirteen were as a part-time Judge, and after four years sitting as a full-time Judge I have never read and heard evidence so macabre and chilling as I have heard here. This is not overblown or rhetorical language on my part.
2. The father WX admits that almost from the time that his beautiful newly-born daughter A returned from hospital at eleven days old until 13th January 2014 when she was only four months old, he systematically subjected her to a series of diabolical attacks (and I use for once the adjective advisedly), attacks of such frequency and severity that it was providential that A did not perish. In his statement of 6th March 2014, the father admits everything and says bleakly (at paragraph 55):

“I am a monster.”

3. I will describe the scale and frequency of the assaults later. At this point, I would only say that I doubt that even if Freud or Jung were alive today and able to advise me, that they would be able to give me an explanation for conduct that is so completely at variance with any understanding of human nature, conduct which has no basis rational or irrational, so it seems to me, but which violates the most basic and elemental taboos which govern our society.
4. The issue I have to decide is the scale or degree of the mother’s knowledge or suspicion of what the father was doing in the tiny house in where they were living with the father’s mother. I refer to the scale of the mother’s knowledge or suspicion because the mother through her Leading Counsel agrees that by virtue of hearing a loud bang in the bedroom of that house in November or December 2013 following which she was implausibly told by the father that A had banged her head on the cot, she should have realised that A was being abused.
5. That event had followed a series of injuries to A which the mother had observed, namely a graze to her back, grazes on her palms, a bruise to her cheek, a haemorrhage to her eye, blood on her bib and scratches to her ears. So it is not very surprising, therefore, that when the bang happened and the mother was peddled a ludicrous explanation by the father, that her alarm bells sounded or should have sounded.
6. On the mother’s own case (and I will have to decide if her own case is true or whether it has been significantly underplayed), by the time of the bang she must have known or at least very strongly suspected that something was seriously amiss. Yet even taking her own case at its highest and taking her case in her favour, she did nothing to protect her daughter. Rather, when the balloon went up and the investigations began, she went out of her way to lie and dissemble not only to protect just herself but the father also. Why, when her suspicions must have been sky high on her own case, she did nothing to protect the person who surely was the most important to her in the world, is another unfathomable mystery which I doubt we will ever get to the bottom of.
7. The third mystery is this. Following the father’s statement of 6th March 2014, where he confessed to this diabolical behaviour, the mother made her own statement of 2nd June 2014. In paragraph 7, she said this:

“After reading the further disclosure filed in these proceedings, I really cannot describe how I feel about Mr Y but suffice to say that he disgusts me. He is a monster.”

That is what I would have expected and the clear tenor of her statement is that her relationship with the father had irretrievably terminated.

8. However, on the first day of the hearing the father’s step-father UV gave evidence. The father is presently living in his house. UV said this to me:

“I have a feeling they have been meeting secretly because of texting. It is a gut feeling, nothing more.”

Whether the parties were texting could easily have been verified by a production of phone records, and indeed I have made an Order for disclosure against EE Ltd and Tesco plc for disclosure of those records and they are awaited. Their absence does not affect the decision I have to make, but their production may well be necessary to dispose of the welfare phase of this case.

9. This evidence from UV prompted the mother to reflect on her position. The following morning, she produced a statement written in her own hand and it read in part as follows:

“I want to and I have to be completely honest. For about the last three weeks I have been meeting up with W.”

She then goes on to give some details. She then goes on to explain how at an early meeting this happened:

“At one point we were stood looking at each other. W said to me for me to look into his eyes and that he can see I still care for him. I hate him for what he has done, but deep down I still care. What he was saying was true. I denied it at the time because I didn’t want it to be true. I hated and I can’t understand how I could possibly still have feelings for this person, for someone who has harmed my daughter. He was right, I do hate him for what he has done and I am angry at him and hurt and sickened. It isn’t a lie or an act when I say this. I hate that deep down. I hate that deep down I still feel care for him. I feel ashamed that I do. I feel a bad person for this and I’ve asked myself many times how I have betrayed my daughter very much by meeting up with him. I feel like I don’t deserve her now because of my silly actions the last three weeks. I clearly have not been thinking straight like I should have been. Whilst texting W and meeting up with him, I have felt guilty many times and I knew I was making a big mistake but I still continued.”

And then a little later she says this:

“I don’t expect people to believe me due to the big mistake I have made. I understand that. I have made myself look like a person that isn’t honest.”

And then she says a little later:

“I am sorry to A. I am sorry for doing something that has betrayed her. I am sorry for A and myself if I’ve ruined my chances of my daughter and I reuniting again.”

And then a little later:

“My daughter is whom I love and who I need. I’m sorry to everyone I have this but I am more sorry that it’s even happened.”

10. When I read this statement I concluded it was long on regret and short on detail, and so at my insistence a further statement giving the full details of the recommenced liaison was produced. Similarly, a statement was produced by the father. This confirmed that since about 17th May 2014 the parties had met many times and engaged in many acts of **unprotected** sexual intercourse and have engaged in much texting and telephone conversations. As I say, the father confirmed this in a statement of his own.
11. That this liaison should have recommenced is, again, utterly mysterious. Here is the mother at the very time that she is writing a formal witness statement in these proceedings in which she describes how much the father disgusts her and how he is a monster, actually sleeping with him. In her evidence given under cross-examination, she stated this:

“I do love him but I don’t understand why after what he did.”

That lack of comprehension on her part is shared I think by everybody in this room, including myself.

12. Having made these preliminary remarks and having identified these three mysteries, I turn to some of the background and in this regard I am much assisted by the thorough and helpful note produced by Leading Counsel for the Local Authority.
13. The mother is now aged nineteen. The father is now twenty.
14. The mother's birth parents are ST and QR. However, as a new-born baby, the mother was placed with Mrs OP who was a former partner of QR. She had a role as a form of step-mother to the mother here. Mrs QR had two children, B and C, already and she had already been approved as a carer for the mother's older full sister D at the time of the mother's birth. Eventually, a Residence Order under Section 8 of the Children Act 1989 was made in favour of Mrs OP on 24th March 1997.
15. It would appear that the mother had troubles during her childhood. She maintained some contact with her birth mother ST, but there were concerns about ST's behaviour in front of the mother. Mr R was also inconsistent and there were issues concerning Mrs OP's care of the mother centring around (among other things) her excessive alcohol use.
16. In May 2010, the mother left Mrs OP's home but by January 2012 she had returned to live with her. She took an overdose in April 2012 and was admitted to hospital. She admitted then or shortly thereafter that she had taken an earlier overdose. By July 2012, the mother had again left Mrs OP and was living with Mr R.
17. The father, by comparison, had a more stable and conventional upbringing in the care of his own mother MN. His own father had died when he was six years old and Mrs MN then began a relationship with Mr UV (whom I have already mentioned). Mr UV had a step-father role to the father but Mr UV and Mrs MN separated in 2003. Mr UV however remained a part of the father's life and as I have said, he provides a home for the father. There are some concerns about the father's conduct and behaviour when he was a child. These centred around issues of self-harming in 2006 and then in 2012 there seems to have been some trouble with the police.
18. The mother and father began their relationship in about September 2012 when the mother was seventeen and the father was eighteen. In a comment in the papers, the father says the mother expressed a desire to become pregnant very quickly and made threats to end the relationship if that did not occur. At all events, the mother fell pregnant shortly after the relationship began in January 2013. It was shortly after the relationship began that the mother moved to live with the father at Mrs MN's home.
19. It is plain to me that from the very start of the relationship between the mother and the father that it was (i.e. the relationship) highly conflicted. There were regular arguments, occasional acts of violence both ways and regular storming out of the home by the mother only for her to return, usually after a few hours. This immature and dystopic conduct happened both before and after A's birth. Although the reasons for it are, I think, only of marginal relevance, I am satisfied that the root causes were the mother's controlling, solipsistic and needy character. She certainly knew how to wind the father up and seems to have taken pleasure in doing so by acts of deliberate provocation. Thus she would watch pornography or pictures of handsome young men even though she knew that this would upset the father considerably. I have also little doubt that she was in their relationship highly didactic if not dictatorial.
20. After the birth the father undertook the lion's share of the care of A (paradoxically in light of the events which were subsequently revealed), including all night feeds for which the mother would express breast milk, and the changing of nappies and also most of the bathing. Again, this signifies to me that the mother was, if not fundamentally then to an important extent, both selfish and self-centred, and no doubt the pressures built up on the father from many angles. But none of this (to state the obvious) provides any kind of excuse or even a reason for what he did to his beloved and beautiful daughter.

21. In his witness statement and in his oral statement, the father admits the following assaults on his daughter:
- (a) squeezing her very tightly around her torso;
 - (b) pressing his thumb into her eye causing bleeding;
 - (c) picking her up by her legs and flicking her up in the air and catching her, and on one occasion dropping her on the floor;
 - (d) placing his hands around her neck and throttling her so that she would if not actually lose consciousness then nearly lose consciousness;
 - (e) when sitting on his lap, forcefully pulling her legs up, and pushing her head down so that she was bent double;
 - (f) holding her upside down by her ankles and shaking her;
 - (g) twisting her head so she was looking right over her shoulder;
 - (h) thumping her on the top of her head;
 - (i) pushing her toes backwards towards her legs;
 - (j) squeezing her hands very tightly;
 - (k) pushing hard down on her vagina to make her cry;
 - (l) inserting his finger into her anus in order to hurt her;
 - (m) pinching her cheek, causing a bruise;
 - (n) bashing her head against a cupboard, causing a bruise and a cut;
 - (o) scratching her hands;
 - (p) bruising her jaw;
 - (q) forcing her bottle into her mouth, causing it to bleed;
 - (r) pushing down on her tongue, thereby causing bruising; and
 - (s) submerging her in the bath, giving her the sensation of being drowned.
22. The assault at (e) above (namely, folding her double), which the father admitted occurred more than once, led to a neurological collapse by A on the night of 12th/13th January 2014. She was taken to hospital where a scan revealed that her neck was broken. There was also damage to the thoracic and lumbar parts of her spinal cord which may or may not have been caused on that occasion. Further investigation at the hospital revealed that she had the following fractures:
- (i) a fracture to her right seventh rib; this occurred between mid-October and mid-November 2013;
 - (ii) fractures to her right sixth and left tenth ribs; these were dated from mid-December 2013;
 - (iii) a fracture to her left first rib; this was dated between the end of December 2013 and mid-January 2014;
 - (iv) a fracture to her right first rib; this was dated from early January 2014; and

- (v) fractures to her left and right tibiae; there were at least three and possibly five such fractures to the tibiae which had been inflicted between mid-December 2013 and early January 2014.

This is a shocking catalogue of injuries.

23. In addition, we know that there were the following further injuries, some of I have already mentioned:

- (i) a graze to her back which was noticed on 25th September 2013;

Then there were the following injuries between 25th September 2013 and 8th November 2013:

- (ii) grazes to her arms;
- (iii) bruise to her cheek;
- (iv) bruise to her jaw;
- (v) bleeding gums;
- (vi) on 8th November 2013, the eye haemorrhage was caused and she was taken to hospital where it was treated;

After 8th November 2013, between then and Christmas, there were the following injuries:

- (vii) bruise to the abdomen;
- (viii) bruise to and cut to the head;
- (ix) further instances (twice) of bleeding gums;
- (x) bruise to the tongue;
- (xi) grazes to the ears.

24. It can be seen in such circumstances, when I have counted both the internal and invisible and external and visible injuries, why I say it was providential that A had not died. Also, it can be seen, I having given this description, why I have described the case in the way that I have.

25. The mother admits seeing or hearing the following injuries which I set out in the following order:

- (a) the graze to the back;
- (b) the grazes to the palms;
- (c) the bruise to the cheek, as to which we now have a photograph;
- (d) the haemorrhage to the eye;
- (e) blood on the child's bib;
- (f) grazes to her ears;
- (g) the bang, to which I have already referred, when M was dropped on the floor; and
- (h) she witnessed the father bending M double when she was there and when she told him not to do that for she might be hurt.

26. On each occasion, apart from the last when the mother was there, the mother was given a lame excuse by the father for the injuries. Therefore, he told her that the graze to the back had been caused by chafing from the nappy. He told her that the graze to the palms had been caused when she caught both hands in the lattice work of a plastic laundry basket. He told her that the

bruise on the cheek was caused when he hit her head on his collar bone. He told her that the haemorrhage to the eye was caused by A herself with her own finger. He told her that the blood on the bib came from naturally bleeding gums. The grazes to the ears were explained as deriving from dry skin. And finally, and perhaps most implausibly, he explained to her that the bang was caused when A hit her head on the cot.

27. I find that the mother must have been aware that something was seriously wrong. I reach this conclusion for the following reasons:
- (a) her admissions (which I have already recounted) about what she did see; in my judgment, not even the most credulous person would have accepted those excuses from the father. In relation to the bruise on the cheek, I accept that the parents argued about this and that she said to him "*I bet you did that to her*";
 - (b) I am satisfied that in addition she saw the bruise to the jaw, the bruise to the abdomen and the bruise and the cut to the head. She could not have missed these, yet she did not enquire at all as to their cause;
 - (c) I place reliance on the fact that on 11th January 2014 she asked KL if A should be gripping by then. She knew full well that A gripped perfectly well at that point, but she also knew that an impairment had arisen. This knowledge could only have derived from an awareness of the father's conduct;
 - (d) on 13th January 2014 at the hospital, the mother was very anxious to get A out of there and home as soon as possible;
 - (e) after the investigations began, the mother agreed with the father to put forward misleading evidence to the professionals and to the Court about their dysfunctional relationship;
 - (f) it is significant and noteworthy that no photographs exist of this infant between 19th September 2013 and New Year's Eve 2013, and it is admitted by the parents that there was a discussion between them that the photographs showing the bruise should be deleted. Fortunately, one photograph has survived on the mother's sister's telephone which clearly shows a bruise of A's face;
 - (g) I place reliance on the fact that on 17th February 2014 the father put forward his first admissions, yet a few days later, when the mother was in Court, she suppressed those admissions and sought to incriminate others;
 - (h) as I have recounted in relation to the resumption three weeks ago of the liaison, the mother sought to deceive the Court and all the professionals. That was a very serious act of litigation dishonesty. I am aware and remind myself of the principles in the decision of *R v Lucas* and I have to ask myself whether these lies are told for relevant or irrelevant reasons. It may properly be said I suppose that the reason these lies were being told was in order to avoid exposure of the shame at the revelation of the resumption of the relationship. However, it is not so much that the mother and the father sought to deceive the Court and all the professionals about the resumption of their relationship that strikes me as relevant for these purposes, but the fact that they resumed their relationship at all. That tells me a great deal about the mother's inclination to put her relationship with this abusive person ahead of her responsibilities to her child;
 - (i) I place significant reliance in reaching the conclusions that I do on the severity, scale and number of injuries. I conclude that the severity, scale and number are such that the mother must have been aware of them, if only by virtue of the cries of pain that A must have emitted. Almost all of these injuries were done when the mother was in the house, which I have seen, and the house is extremely small indeed. The walls are thin and noise carries from room to room almost as if there were not a wall there. I cannot conceive that the mother would not have been aware that something was amiss while these barbaric attacks were being carried

out. I make no finding as to whether the mother was actually present but was looking away when the final climactic assault took place on the night of 12th January 2014.

28. With regret, for obvious human reasons, I conclude that the scale of the mother's awareness took her state of mind beyond suspicion or belief into the realm of knowledge. I am satisfied that the mother knew that the father was harming their daughter, but for reasons which I cannot fathom she chose not to take any action to protect her.
29. It is plain to me that exceptionally serious crimes have been committed by the father against A. It is also plain to me, on the evidence which I heard, that the mother is guilty of neglect under Section 1 of the Children and Young Persons Act 1933. I would urge the Police and the Crown Prosecution Service to make their decision about whether to prosecute at the soonest opportunity so that all aspects of this desperately tragic case can be concluded as soon as possible.

That concludes my judgment