

THE JUDGE HAS GIVEN LEAVE FOR THIS JUDGMENT TO BE PUBLISHED ON CONDITION THAT THE ACTUAL NAMES OF THE CHILDREN REFERRED TO AS A AND B MUST NOT BE REVEALED. 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.



IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

2013 EWHC 3770 (Fam)

6 December 2013

Before :

THE HONOURABLE MR JUSTICE PETER JACKSON

Between :

WIGAN BOROUGH COUNCIL

Applicant

-and-

HAYLEY FISHER

1st Respondent

-and-

MARTIN THOMAS

2nd Respondent

-and-

A

(by her Children's Guardian)

3rd Respondent

Frances Heaton QC and Clare Grundy (instructed by Wigan Borough Council) for the Applicant
Gwynneth Knowles QC and Lukhvinder Kaur (instructed by Arthur Smiths Solicitors) for the Mother

Karl Rowley QC and John Chukwuemeka (instructed by Widdows Mason Solicitors) for the Father
Samantha Birtles (instructed by Stephenson's Solicitors LLP) for the Children's Guardian

Hearing dates: 27 November – 6 December 2013

Judgment date: 6 December 2013

JUDGMENT: Wigan Borough Council v Fisher & Thomas (fact-finding)

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Mr Justice Peter Jackson:

1. This is an application for a care order in relation to A, a 3-year-old girl now in foster care. Her mother is aged 25 and her father 29. Her baby sister Evie died in February 2013. Evie was found to have a large number of serious injuries, which have been the focus of this eight day hearing. Each parent denies responsibility for or knowledge of the injuries and says that the other must be responsible.
2. This judgment is shortened by the exemplary case preparation and advocacy. In particular, there are three agreed documents that I incorporate by reference: a history created by Ms Heaton QC and Ms Grundy, a medical chronology created by Ms Knowles QC and Ms Kaur and a timeline agreed by the parties that shows the windows of time during which individual injuries were caused.
3. I also note the extensive co-operation given by the Greater Manchester Police, which has shared comprehensive information collected during its investigation. This reflection of the spirit of the new national protocol means that decisions about A's future can be taken without unnecessary delay.
4. The issues are:
 - i. Who caused the injuries to Evie?
 - ii. Can the cause of her death be established?
 - iii. Has there been any failure to protect?
 - iv. Does any other aspect of parenting cross the intervention threshold?
5. I apply the law as set out paragraphs 5-17 of Ms Knowles' opening document. In brief:
 - i. The burden of establishing an allegation is on the party making it.
 - ii. The standard of proof is the balance of probabilities, namely whether an event is more likely than not to have happened.
 - iii. Conclusions should be based on all the evidence, and not just the expert evidence.
 - iv. A person can be excluded from a pool of possible perpetrators if there is no real possibility that they are responsible.
 - v. It is desirable, where possible, for the perpetrator of non-accidental injuries to be identified, but the court should not strain to identify a perpetrator if the evidence does not support such a finding.

- vi. Lying does not equal guilt. Where lies have been told, the court must carefully assess the possible reasons for them.

The background

6. The parents met in early 2010. The father has an older daughter, B, who lives with her mother. Up to the time of Evie's death, M, then aged four, was having regular contact with her father, including staying contact on the weekend before Evie died. The father and B's mother had a relationship before, during and, to a degree, after the relationship between the father and mother began.
7. When the parents met, the mother soon became pregnant with A, who was born on 24 November 2010. As a baby, she was brought up by the mother with the help of her parents. The mother then became pregnant again, but miscarried in November 2011. At this point, the father began to spend more time with the mother and A and between then and Evie's death, they lived together as a family. All witnesses, including the mother, the maternal grandparents and M's mother, describe the father as a good and fully involved parent, who did his full share of the care when he was not at work.
8. The father worked night shifts on weekdays, which took him out of the house between 21.00 and 06.00. On his return, he would then take over the care of the children, collecting Evie from her cot beside the mother's bed and looking after her downstairs, and giving A her breakfast when she woke up later. He would then hand over to the mother later in the morning and go to sleep himself. He would get up in the late afternoon, participate in the bedtime routine and return to work. There were therefore many nights when the mother had sole care of Evie and many early mornings when the father had sole care of her.
9. The mother has significant bilateral hearing loss and now wears hearing aids. She did not have these when Evie was alive. This affected her awareness of events outside her immediate vicinity. In particular, the evidence establishes that if she was upstairs, she would be unlikely to hear children crying downstairs.
10. Evie was born by caesarean section on 30 October 2012. She died on 21 February 2013 at the age of sixteen weeks.
11. There is a family history of Treacher Collins Syndrome ('TCS') affecting the father, A and Evie. In TCS the lower jaw and cheekbones are often smaller than usual. As a result of this diagnosis a number of doctors have been involved with Evie, the details appearing in the medical chronology.
12. On 6 December 2012, Evie, then five weeks old, was taken to hospital by her parents. She was found to have a widely fractured skull but was discharged home the following day. I will return to this.

13. For a month beginning in mid-December, the father sent a series of text messages of a sexual nature to B's mother, who responded. In order to do this, he took an old telephone belonging to the mother without her knowledge and inserted a new SIM card so that he would not be detected by her checks on his own phone. He kept the phone at work, even after the mother started looking for it. He also used it to send a number of anonymous jokey messages to the mother's younger sister. These included two messages with sexual content, which he says were intended for B's mother.
14. On 4 February 2013, Evie was seen by her GP with an upper respiratory tract infection and on 8 February with a chesty cough and difficulty in feeding. She was prescribed antibiotics and her condition improved.
15. On 11 February, the mother underwent a termination of pregnancy. The father took on a greater share of the childcare over the next couple of days while she recovered.
16. On the night of 20 February, the father was working. The mother says that Evie had a bottle at 22.00 and was put in her Moses basket. Evie woke and cried on several occasions during the night. The father returned home at about 06.00 on 21 February and took over Evie's care as usual.
17. At 10.08 on 21 February, the mother dialled 999 and requested an ambulance, which arrived at the home at 10.15.
18. During the 999 call, the mother spoke to the operator who asked her what had happened. She said "*I don't know. (To the father) Martin, what's happened?*" and gave the phone to him. He said "*she is just face down in her Moses basket... she's like been smothered*".
19. Attempts at resuscitation were unsuccessful. The ambulance reached hospital at 10.21 and Evie was pronounced dead at 10.48.
20. Evie's death was initially treated as a sudden unexplained death in infancy but a skeletal survey revealed multiple skull and rib fractures of different ages.
21. On 27 February, the parents were arrested on suspicion of murder and child neglect. They were interviewed by the police on 27 and 28 February and on 4 June. Their bail has been periodically extended and they are to answer bail on 9 December.
22. During the course of the police enquiry, the father gave two different accounts of the events on 6 December. In his first interview, he described in detail how he had been sitting with the children when A fell onto Evie. He was taken to the home and demonstrated this in a recorded reconstruction of the incident. However, during his police interview on 4 June, he said that he had not witnessed the event and had in fact been walking into the kitchen with his back turned. He repeated that account at this hearing.

23. On 27 February, A was placed with foster carers. She has supervised contact with her parents. The maternal grandparents have been assessed as potential carers.
24. The parents separated in May 2013 but continued to meet from time to time. The father has given the mother money towards her rent and there has been occasional sexual activity between them, most recently in about October. On an occasion in July, there was a fracas when the mother threw a drink in the father's face and he pursued her into her house, pushed her onto a sofa and held her down. The incident ended with the intervention of a neighbour.
25. On 28 May, the father left a "suicide note" in the mother's home. He gathered a large quantity of household medication, some of which he took, and bought a bottle of vodka. He set off for Evie's grave, but was intercepted. He says that he did this because he was afraid that the mother was about to learn about his having sent sexual text messages to her sister by accident.

Text messages between the parents

26. It is not surprising that there is considerable animosity between the mother and B's mother as rivals for the father's attention. For his part, the father preferred to keep his options open, gravitating towards one partner when he encountered difficulties with the other. This led to feelings of insecurity on the mother's part, which B's contact visits did nothing to help.
27. Because of the unusual pattern of family life, with the father asleep for much of the weekdays and out at work at night, many of the conversations between the parents are preserved in the form of text messages constantly passing between them. These have been examined in some detail. They give a picture of an insecure relationship, with the mother challenging the father about his commitment and the father protesting that her suspicions were unfounded.
28. Of more relevance to the cause of Evie's injuries, the text messages show two parents under pressure, tired from the demands of childcare and work against a background of a lack of mutual trust. Each parent was asked in evidence about night-time text messages that might suggest a person at the end of their tether.
29. I consider that some caution is required when reading these messages, which are in reality a domestic argument conducted in slow motion and recorded for all time. There is in my view a risk of over-interpreting a form of communication that lends itself to statements designed for maximum impact. Both parents commented, genuinely as it seemed to me, that reading the text messages made their lives seem even more stressful than they actually felt at the time. That said, I refer later to certain messages that may be relevant.

The first hospital admission

30. On 6 December 2012, the father returned from work at 06.00 as usual and took Evie downstairs.
31. The mother's account is that she was woken by hearing the father shout her name twice with urgency. She ran downstairs to find him holding Evie, who was crying and had a large swelling on the left side of her head. He said that he had already rung the maternal grandmother who had advised putting butter on the injury. The mother rang for medical assistance and they drove to hospital in a taxi. Evie cried continuously on the journey and for a long time after arrival.
32. Evie was admitted at 11.22 and examined by an Accident and Emergency consultant at 11.50. He took a history from the father, who explained that about 45 minutes earlier he had been changing Evie's nappy on a changing mat when A had fallen onto her and hit her on the left side of her head with a toy telephone. He said she had cried straight away.
33. On examination, a large boggy swelling was found to Evie's left posterior parietal region and a CT scan showed an undisplaced wide skull fracture to the left side of her head. The fracture extended from the mid-portion of the left parietal-occipital suture through most of the central part of the left parietal bone. In effect, this large bone had been almost broken in half.
34. An acting consultant paediatrician, Dr H, saw Evie and spoke to the father, who repeated his account. Evie remained overnight in hospital with the father. Dr D, consultant paediatrician, then spoke to the father on 7 December and received the same story.
35. In the course of 30 years of clinical practice, Dr D had never experienced a skull fracture in a baby arising from a mundane domestic incident involving another small child. He and Dr H accordingly considered whether the injury might be non-accidental. They noted that the fracture was not complex or accompanied by brain injury. Checks made with social services established that the family had not previously been known to social care. It was however established that the family was known to the hospital, having attended for advice about TCS. The doctors considered the father's account unusual, but decided to accept it. No skeletal survey was undertaken and Evie was discharged on the afternoon of 7 December.
36. No referral was made to social services or the police. As a result, there was no real analysis of how a major skull fracture could have been caused by a 2-year-old in a low velocity fall. For that, a home visit would have been required.
37. It is important to note that there is no indication that a skeletal survey carried out on 6 December would have detected any other injury to Evie, or that a social services or police investigation would have uncovered what was going on in this family. On the other hand, further inquiries might have achieved greater protection for E: as it was, she went home with a story of an accepted accident.

The perpetrator of a non-accidental injury will have understood that even serious abuse could go undetected and the non-perpetrator will not have been put on guard.

38. In view of this, I asked Dr D about the intercollegiate report issued in 2008 by The Royal College of Paediatrics and Child Health and The Royal College of Radiology ('Standards for Radiological Investigation of Suspected Non-Accidental Injury'), which relevantly states that:

- The pre-mobile child is less prone to accidental injury, and the younger the child the more likely is the fracture to have been inflicted. [2.5]
- It is the responsibility of all clinicians to ensure that if abuse is suspected an appropriate referral is made to Social Services as soon as possible and usually within 24 hours. [3.9]
- In children under the age of two where physical abuse is suspected, a full skeletal survey should always be performed. [6.2]

39. As a fellow of his College and the nominated child protection doctor at the hospital for many years up to October 2012, Dr D will have been aware of this guidance. However, while he ultimately and with some reluctance accepted that the decision not to initiate further investigations had been wrong, he argued that the guidance did not apply. He reasoned that abuse was not 'suspected' because he and Dr H had in the end concluded that the injury was at least as likely to be accidental as non-accidental.

40. I cannot agree with this approach. It neuters the guidance, which applies to investigations not to conclusions. The history shows that the doctors rightly considered that this might be a non-accidental injury: in other words, they suspected it. The fact that they eventually came to a different conclusion is neither here nor there. If even a doctor of Dr D's experience chooses to interpret the guidance in this way, there may be a case for amending any future edition to refer to physical abuse as being 'a real possibility' as opposed to being 'suspected'. I direct the local authority to draw the attention of the Colleges to these observations and to send a copy of this judgment to them.

Evie's injuries

41. There is no significant disagreement between the experts about the nature, timing and causation of the injuries or about their likely effect upon Evie.

42. The injuries have been investigated by means of:

- i. The CT head scan on 6 December, reported on by Dr T, consultant radiologist.
- ii. A post-mortem skeletal survey on 25 February.

- iii. A post-mortem examination on 27 February, conducted by Dr Philip Lumb, Home Office Pathologist and Dr Gauri Batra, Consultant Paediatric Pathologist, and attended by Dr Kay Metcalfe, Consultant Clinical Geneticist, who provided information about TCS, and others.
 - iv. A second post-mortem examination on 15 March, conducted by Dr Charlie Wilson, Dr Lumb and Dr Batra which reached the same conclusions as the first.
 - v. A three-dimensional reconstruction of the December CT scan, which gives a more detailed view, reviewed by Dr Lumb and Dr T on 24 June.
 - vi. Osteoarticular Pathology, reported on by Professor Tony Freemont, Professor of Osteoarticular Pathology.
 - vii. Neuropathology, reported on by Dr Daniel du Plessis, Consultant Neuropathologist.
 - viii. Ophthalmic Pathology, reported on by Dr Richard Bonshek, Consultant Ophthalmic Pathologist.
 - ix. Paediatric Radiology, reported on by Dr Alan Sprigg, Consultant Paediatric Radiologist.
 - x. Genetics, reported on by Professor Michael Dixon, Professor of Dental Genetics.
 - xi. Paediatric overview, provided by Dr Peter Morrell, Consultant Paediatrician.
43. Evie was found to have suffered the following injuries:
- i. Skull fractures caused on three different occasions
 - (a) A 1 cm fracture of the right parietal bone, sustained on or before 26 November. This was not discovered until June 2013, when the three-dimensional reconstruction of the CT scan was viewed.
 - (b) A wide fracture extending for 3 cm from the mid-portion of the left parietal-occipital suture through most of the central part of the left parietal bone, sustained on 6 December (see above).
 - (c) An indented fracture about 2 cm long to the left parietal region at the same site as (b) but shorter. This was sustained 3 to 5 days before death (so between 16 February and 18 February).

These skull fractures were caused by blunt force. Evie was either hit on the head with a hard object or dropped or thrown so that her head struck a hard surface.

ii. Approximately 14 rib fractures caused on three or four different occasions

- (a) Metaphyseal fractures of the anterior ends of the left 7th rib and the right 6th rib sustained 4 to 8 weeks before death (so between 27 December and 24 January).
- (b) A posterior end fracture of the right 8th rib sustained 4 to 6 weeks before death (between 10 and 24 January).
- (c) Metaphyseal fractures of the anterior ends of the left 5th and 6th ribs sustained 2 to 4 weeks before death (between 24 January and 7 February).
- (d) A posterior end fracture of the left 5th rib sustained 2 to 4 weeks before death (between 24 January and 7 February).
- (e) A shaft fracture of the left 6th rib sustained 2 to 4 weeks before death (between 24 January and 7 February).
- (f) Posterior end fractures of the left 7th, 8th and 9th ribs sustained 4 to 7 days before death (between 14 and 17 February).
- (g) Metaphyseal fractures in the anterior ends of the right 5th and 6th ribs sustained 4 to 5 days before death (between 15 and 16 February).
- (h) Refractures (see (c) above) of the anterior ends of the left 5th and 6th ribs sustained 3 to 5 days before death (between 16 February and 18 February).

These rib fractures were caused by forceful squeezing of the chest by an adult. Posterior fractures are virtually diagnostic of non-accidental injury. None of these injuries was caused by the attempts to resuscitate Evie on the day she died.

iii. Three brain injuries

- (a) Old bilateral cranial extradural haemorrhage [not life-threatening].
- (b) Old superior frontal parasagittal subcortical white matter based bleeds.
- (c) Old axonal [nerve fibre] injury.

These injuries were caused by trauma and could have been sustained at the same time as the rib and skull fractures. They are not birth injuries as Evie was born by caesarian section.

iv. Bruising and external injuries to the head, face and groin, seen in photographs

- (a) A recent focal bruise in the left parietal scalp under the hair line measuring 2 x 1.5cm and in the left parietal skull bone
- (b) A recent linear bruise under the hair line and behind (a) measuring 0.6cm x 0.1cm.
- (c) A faint red mark to the left of the glabella (the area between the eyebrows) measuring 0.2cm x 0.2cm.
- (d) A red mark above the medial right eyebrow measuring 0.2cm in diameter.
- (e) A bruise inside the left cheek measuring 0.5cm in diameter and less than 48 hours old.
- (f) Four very faint point red marks in the left groin area.

v. Internal bruising in the back, shoulder and hip, seen on post mortem

- (a) Bruising 2 x 1cm in the midline of the lumbar thoracic region, less than 24 hours old.
- (b) Bruising 3cm in the right upper back to the right of the midline close to the shoulder blade, less than 24 hours old.
- (c) A bruise in the mid lumbar back in the mid line measuring 0.5cm in diameter, 3-5 days old.
- (d) A faint bruise over the right hip measuring 3 x 1cm, 3-5 days old.
- (e) A 4 x 3cm bruise in the left erector spinae in the mid thorax, 3-5 days old.

Some of these bruises were of a similar age to the rib and skull fractures caused 3 to 5 days before death (between 16 February and 18 February). Evie was not mobile and the bruises were not the result of an accident.

- 44. Evie had no predisposition to fracture or to easy bruising.
- 45. Taken together, these findings point to not less than five episodes of abuse, stretching back to November at the latest.

46. In addition to the documented injuries, the evidence establishes that Evie had a bruise in and under her right eye at the age of about four weeks and a bruise inside her right knee at some point in January. The mother described to the police how the bruise to the eye was caused by a clash of heads as A went to kiss Evie, who was being held on the mother's lap. The father and the maternal grandmother saw the mark at the time. Neither parent could account for the bruise on the knee.

The effect of the injuries on Evie

47. When Evie suffered the fractures she would have cried or screamed in pain for several minutes and perhaps for up to 30 minutes until comforted. Thereafter she is likely to have become distressed and irritable on handling. The initial pain and tenderness would settle after a number of days as the fractures healed, although precise times are variable. After a skull fracture, the infant may appear dazed and there may be vomiting as a result of disturbance to the brain.
48. Evie suffered from colic from November, which only resolved around mid-January. She then became unwell with a chest infection on 4 February which did not initially respond to treatment and required the further visit to the GP on 8 February. These conditions may have had the effect of masking the effects of her injuries.
49. The evidence establishes that the perpetrator of the injuries would have been aware that s/he had seriously hurt Evie, but may not have realised that bones had been broken. The rib fractures were invisible and of the skull fractures, only that caused on 6 December will necessarily have been accompanied by visible swelling.
50. Accordingly, a non-perpetrator would not necessarily be aware that the baby had broken bones. In the light of this, considerable attention has been paid to the external injuries, and in particular to the four marks listed under (iv)(a-d) above. As to these I find that:
- (a) The larger bruise on the left scalp is obvious in the post-mortem photographs but may not have had that appearance in life. Evie was examined by several doctors and policemen on the day she died. Some noticed the injury, some did not, and one noticed it but did not consider it significant. The less obvious adjoining bruise was not recorded by any non-medical person that day.
 - (b) The two marks on the glabella and above the right eyebrow are not in my view likely to be eczema or to be the result of resuscitation attempts, and may well be the result of inflicted injury. However, the evidence about this is not sufficiently clear and I can draw no conclusions about these marks, other than that a non-perpetrator will not necessarily have associated them with inflicted injury.

51. I ignore the marks in the cheek and groin. The injury to the inner cheek could have been the result of an assault but it was not visible in life and the marks in the groin could be the result of resuscitation.

Cause of death

52. Dr Lumb identifies the following possible causes of death:
- i. Non-accidental upper airway obstruction (deliberate suffocation)
 - ii. Upper airway obstruction associated with TCS
 - iii. Lung infection / Pneumonia
 - iv. Rib fractures exacerbating bronchopneumonia
 - v. Head injury playing a role in development of pneumonia
 - vi. Post-traumatic epilepsy
53. Having considered each of these, his view is that it is not possible to identify the cause of Evie's death, which in his view may have been due to any of the above or a number of them in combination. He has therefore recorded the cause of death as unascertained.
54. However, he concludes that Evie had *"been repeatedly physically assaulted in the days weeks and months prior to her death. This must therefore raise the strong suspicion that a further episode of abuse might have led to her death or played a significant contribution to her death occurring when it did."*

The evidence of the parents

55. The mother says that she had never injured Evie nor suspected the father of doing so at the time. Now that the evidence is complete, she believes that he is responsible. On both occasions that Evie was admitted to hospital, it was after she had been in his care. On both occasions it had been she that had sought medical advice. It is difficult dealing with a child that has colic, but A had also had colic. She had coped with it and the child had come to no harm.
56. The mother described being woken up on 6 December by the father shouting her name. She ran downstairs and found Evie in the father's arms with a very large swelling to the head. At hospital, the father gave an account of A falling onto Evie. Subsequently he gave a different account, saying that he had been in the kitchen, but she did not at the time realize the significance of this.
57. The night of 20 February was an unusual night. Evie had been particularly unsettled and it was not until about 04.00 that the mother had managed to get

- to sleep for any length of time. The first that she knew that anything was wrong was when the father came running into the bedroom saying “*she’s not breathing*”. She ran downstairs and called the ambulance.
58. The mother said that she felt badly about having been upstairs asleep when Evie collapsed. She said that she blamed herself for putting pressure on the father with her arguing, leading him to harm Evie.
59. The father said that the injury on 6 December was an accident, that he had not caused any of the other injuries to Evie and that, hard though it was for him to believe it, the mother must therefore be responsible. He explained that the reason he had lied to the police about the events of 6 December was because it was a bad injury and he was scared to be made out to be a bad father for leaving a small baby unattended and that the children would be taken away.
60. The father said that he had gone to put a nappy in the kitchen bin. While his back was turned he heard a scream. He found A lying on top of Evie and the toy telephone that A had been playing with lying on the floor. He immediately realised that the injury was serious. He panicked and called the grandmother for advice. Asked why he had not straightaway called the mother, he said “*she was upstairs, the phone was downstairs*”. He called the mother at about 10.55. She called the hospital at 10.59, the taxi arrived at 11.07 and they arrived at hospital at 11.22.
61. The father said that, contrary to what appears twice in his court statement of 7 May, he had not heard a “*thud*”. He said that this was an invention on his part. He also said that his belief that the injury had been caused by the telephone had been a guess.
62. On 21 February, the father described taking Evie downstairs from the bedroom at 06.00. He did not feed her at any stage but put her into her swing after checking her nappy. He then played online games and by 07.30 he had put her into a Moses basket where she slept. He checked on her a couple of times and she was fine. At about 09.30, A woke up and started to shout from upstairs. He got up, checked on Evie and realized that she was face down and not breathing. He picked her up and went to wake the mother. She called 999.
63. The father described B as “*an odd child with a crazy imagination*”. He said that he had not kicked A or put his hand over Evie’s face and shouted. He said that he sometimes might play “*a bit too much*” or be “*heavy-handed*”, and described a game in which he would push A over with his foot in a way that she usually, but not always, enjoyed.
64. Asked about his court statement, in which he had incorrectly described attending all the scans that the mother had had during her pregnancy with A, the father could not explain this.
65. The father said that all the arguments were driving him and the mother apart and that this explained why he was simultaneously texting her and B’s mother.

It had been a mistake. The “suicide note” was written as a result of his guilt about the texts sent to the mother’s sister, not from any feeling of responsibility for Evie’s death.

The evidence of other witnesses

66. B’s mother described her relationship with the father. She said that in the early days he had been controlling but he had never been violent towards her or acted in temper and had always been a good father to B.
67. B’s mother described how B had been for contact on the weekend of 15-17 February. On her return on the Sunday evening, she had been getting her ready for bed. Out of the blue, B said that Daddy had kicked A across the floor and that A had cried and rolled over (B demonstrated). She then said that Daddy was being nasty to Evie and had put his hand over her face (B demonstrated) and shouted at her (B raised her voice). B’s mother said that she did not know why she had not contacted social services.
68. On the father’s behalf it was suggested to B’s mother that she was making this up. She firmly denied it.
69. She had asked the father if he had done anything to Evie and he had been very offended.
70. On 8 March, B was interviewed under the Achieving Best Evidence procedure. She did not repeat the account she had given to her mother, but instead described someone called Amy being smacked by the police.
71. Dr Z, a consultant paediatrician, was involved both in the December admission to hospital and on the day of Evie’s death. On that occasion he spoke to the parents at 10.50. Among the things he noted the father to say is that Evie had been awake until 09.30 and that he had put her in her Moses basket.
72. On the father’s behalf, it was suggested to Dr Z that he was mistaken in this last recording, and he accepted the possibility. However, he said that it was important for him to establish when the child was last seen to be normal.

Findings

Who caused the injuries to Evie?

73. Evie sustained multiple serious injuries from which she will have been suffering to a greater or lesser extent for almost the whole of her short life. The only people with the opportunity to have injured her were her parents and both had ample time alone with her in the other’s absence.
74. The local authority’s case is that the father caused the skull fracture on 6 December and assaulted Evie on the morning of her death. Nonetheless, it

says that the mother should not be excluded as a possible perpetrator of the other injuries.

75. As part of this assessment, I have had the opportunity to see each parent give evidence at some length. I found the mother's evidence, written and oral, to be clear and consistent in relation to all important matters. She spoke freely and without reserve. On behalf of the Guardian it is said that her evidence under cross-examination by Mr Rowley QC was defensive, hostile and petulant. It is also said that she showed more emotion when speaking of the father's infidelity than of Evie's death. I do not agree. Assuming for the moment that the mother did not injure Evie, her demeanour was in keeping with the situation of somebody who had at different stages come to the realization that she had been betrayed, both as a partner and as a parent. Why would she not be indignant and angry? The submission also overlooks the times during the mother's evidence when she showed great sadness at the thought of Evie's suffering.
76. In contrast, the father was an unimpressive witness who was unable to account for significant features of the history and who needed to calculate his answers carefully.
77. If my evaluation relied only upon which parent appeared to the telling the truth – and it does not – I would unhesitatingly prefer the evidence of the mother to that of the father.
78. As to the skull fracture on 6 December:
 - i. This injury is important as an indicator because it is clear that it occurred immediately before the child was taken to hospital. As a result, the surrounding circumstances can be considered in greater detail than is the case with the other injuries.
 - ii. I find that this major injury was not caused by A falling onto Evie, with or without the toy telephone in her hand. On the medical evidence alone, that would have been extremely improbable. As it is, the father does not even now give a credible account of such an accident occurring at all. To the extent that Dr D is still prepared to entertain the possibility of the injury being caused in this way, I unhesitatingly prefer the evidence of the other medical witnesses.
 - iii. The father's reaction in telephoning the maternal grandmother rather than calling the mother is inexplicable if this was an innocent accident. It is of course possible that Evie was injured in an accident which the father is concealing, but I reject this possibility because of the later rib injuries, which were not accidental, and because of the earlier and later skull fractures, where it would be stretching credulity to imagine a series of unreported accidents or a mixture of accidental and non-accidental events.

- iv. If the father did not cause the injury, the only reason for his lies to the police would have been to cover up his negligence. However, even when he told the police at interview in June that he had not witnessed the incident at all, he did not give this explanation at first, although he did give it later on. Instead he said that he had changed his account as a result of having his memory jogged by conversations with others. I do not accept either of the father's accounts, both of which lacked any persuasive quality.
 - v. It is in my view significant that the father twice said in his second court statement that he had heard a "*thud*", caused by A falling onto Evie. At one point he describes this as sounding "*like a hard object hitting her head*". I find that he did not invent this important detail, but was describing a sound that he heard and remembered hearing for a very good reason.
 - vi. There is in my view no possibility that the mother was responsible for this skull fracture, and nobody has suggested that she was. The fact that it occurred in the father's presence and her absence is telling.
 - vii. There are many text messages about the parents' tiredness and the difficulties between them. In general, these do not in my view suggest one or other parent as a more likely perpetrator. However, there are two messages sent by the father on the night of 13 December that may contain something more than that. In the context of an argument at work he said: "*can feel myself just flipping one of these days, I don't feel right at all*", in another: "*just got no patience anymore*". I base no conclusion on such slender foundations, but these emotional messages are consistent with a parent that had lost his temper at home a few days earlier. I get no similar sense from the mother's many messages about her tiredness and her grievances.
79. Taking account of all of these matters, I find that the father assaulted Evie on 6 December and caused the major skull fracture by striking her or by striking her against something. He immediately realized what he had done, but he did not seek medical help. Instead he concealed what had happened and blamed A. He got away with this and, in doing so, not only injured Evie but deprived her of future protection.
80. I turn to the events of 20/21 February.
- i. Evie had a difficult night, described as unusual by the mother. The local authority suggests that her account of not picking up Evie during the night is suspicious. That is not the impression I gained from her evidence. The mother did not appear to be evasive or anxious about the issue, as she might well have been had she been lying.

- ii. It is possible that the subcutaneous bruising to Evie's back was caused by the mother during the night. However, having heard her evidence I reject this as a possibility and find that these injuries are far more likely to have been caused after the father returned and in the time leading up to Evie's collapse.
 - iii. It is curious that the father did not feed Evie that morning.
 - iv. I find that Dr Z correctly recorded the father as saying that Evie had been awake until 09.30 and that he had put her in her Moses basket. This is quite different from the father's present account of putting her in the basket two hours earlier. I believe that the father had changed his story to disguise what happened during that period by suggesting that Evie was asleep when she was in fact awake.
 - v. The use by the father of the word "*smothered*" in the 999 call is alerting, but I can draw no conclusion from it
 - vi. It is noteworthy that once again the father was present at a crisis but the mother was not.
81. I find that it is more probable than not that the father assaulted Evie that morning and that in the course of the assault she suffered bruising to the back and shoulder and that this event precipitated her collapse. I accept his evidence only to the extent that he says that he took Evie from her basket in a moribund state. But because he has concealed what he did, it is impossible to say what the assault consisted of and whether it was deliberate or the result of a loss of control.
82. I turn to the other injuries, being the other skull fractures, the rib fractures and the earlier bruising.
- i. It does not follow that because the father was responsible for the two major incidents above that he was responsible for all of the injuries. It is of course possible that both parents were injuring Evie, either independently or with each other's knowledge. I have carefully considered this possibility and, having done so, I reject it.
 - ii. The first reason is that this is not a case of inherently inadequate parents. Both the mother and the father have good qualities, recognised by each other and by many others that know them. It is clear that the father, for one, began to behave in a completely and shockingly different way but I regard it as highly improbable that both parents will have changed character, or that they were acting collusively. In reaching that conclusion, I take account of the fact that the mother was responsible for looking after A as a baby without any difficulty and certainly without A suffering any injury. I further rely upon the distinction I make between the parents' credibility as witnesses.

- iii. There are other aspects of the father's behaviour that suggests that he alone is responsible for the injuries. I do not accept his explanation for the "suicide note". Difficult though his position was, alarm at the prospect of the mother being told of two text messages misdirected (on his account) to her sister does not begin to explain his behaviour on that occasion. Whether or not the father felt guilt about his assaults on Evie, the reference in the note to his deserving all this and being unable to risk being convicted of something he could never imagine doing fairly ties this episode to Evie's death and the part the father knew he had played.
- iv. It is also striking that in this message, the father refers to the mother getting A back after his death. He said to the Guardian on 21 November that ideally A should be with her mother. He could not have said these things if he genuinely believed she had injured Evie.
- v. I further note the evidence of B's mother about what B said on the weekend before Evie died. I accept that the conversation took place broadly as B's mother describes it. Her account was clear and coherent, and given without hostility to the father. There is no reason why she should have made it up, particularly as it clearly gave her pain to admit that she had done nothing about it. Taken on its own, I would regard B's statement as being of very limited weight, given that it was not repeated in a form that can be examined more closely. On its own, it falls miles short of proving anything against the father. However, it is far from being the only evidence in the case and, although I cannot be sure, I find that the probable explanation for B's otherwise bizarre account is that she had seen a glimpse of the father mistreating Evie in a way that he would not do in front of an adult.
- vi. The local authority and the Guardian submit that there are issues of significant concern in relation to both parents and they invite consideration of each of them as perpetrators. In the course of argument, they raised three reasons as showing why the mother may know more than she is saying about the injuries: (1) that she did not react more decisively to the realization that the father was telling inconsistent stories about the events of 6 December but (2) that she instead continued a relationship of a kind with the father after Evie's death, and (3) that her account of the night of 20/21 February is questionable because she said (and, it is said, emphasised) that she did not pick Evie out of her cot during the night. I have addressed the last point above and deal with the first and second points below. Altogether these arguments represent no more than a weak basis for the submission that the mother was not being frank with the court, and I reject them.
- vii. I take full account of the father's argument that the mother had the greater opportunity to assault Evie and that at times she was

undoubtedly tired and under stress. The fact however remains that it was the father, also tired and under stress and with ample opportunity, who has been shown to have caused major injuries. It is many times more likely that someone who did this twice did it repeatedly than that there were two assailants. In particular, it would be extraordinary for a baby to suffer three skull fractures, one caused by one parent and one or more of the others caused by the other parent.

- viii. The conclusion to be drawn from the fact that the father was responsible for the skull fractures demonstrates the capacity for a level of violence to a tiny baby that compellingly leads me to the conclusion that he was also responsible for repeatedly squeezing Evie and breaking her ribs.
- ix. The submission that there is at least a real possibility that the mother caused some injuries to Evie deserves serious consideration. But in the end a conclusion must be based on an assessment of the evidence and not of theoretical possibilities. Before examination of the evidence, it can clearly be said to be possible that she too injured Evie, but after careful scrutiny, I find that it is not so.

83. For these reasons, I find that sole responsibility for Evie's injuries rests with the father and that the mother is entitled to be exonerated.

Can the cause of Evie's death be established?

84. I accept the opinion of Dr Lumb as set out at paragraphs 52 to 54 above, which chimes with that of the other medical witnesses.
85. I find that Evie did not have abnormal airways and that her TCS did not cause her death, although it may have exacerbated other conditions. Likewise, while a sudden death may be caused by pneumonia alone, I find on the evidence as a whole, medical and non-medical, that this is unlikely in Evie's case.
86. In the four weeks before Evie's death, she sustained a skull fracture and nine rib fractures. I find that these recent assaults, including the assault on her last day, significantly contributed to her death, either in isolation or combination with other factors, but that it is not possible to identify the physiological process by which this occurred.
87. The cause of death is therefore unascertained.

Has there been any failure to protect?

88. The local authority accepts that if there was a sole perpetrator, there is insufficient evidence to demonstrate that the other parent failed to protect Evie. I agree. Having heard the mother give evidence, I am satisfied that she knew nothing about what the father was doing to Evie. He has been shown to

be a determined liar. There were no physical signs that should have alerted her. The mark on the forehead, seen after death, was not spotted by the grandmother (if it was there) or by several investigators after it had been caused. Nor should the mother have suspected that the father was responsible for the skull fracture in December. On the contrary, she immediately sought medical attention for Evie and several experienced doctors then accepted the father's account.

89. The Guardian argues that a non-abusing parent may have been distracted by the preoccupation with adult relationship issues. This may be true, but it does not establish that the mother should have known what the father was doing. The level of parental unhappiness in this case is not particularly unusual and it would be a step too far to conclude that the mother missed something obvious because of it.
90. I also reject the father's suggestion that he and the mother colluded in giving false information to doctors or the police, a suggestion he only made from the witness box. The mother was not quick to grasp the significance of the inconsistent accounts of the December incident, but I do not consider this to have been culpable. It must be extremely difficult to come to terms with the loss of a child and then to face the possibility that one's partner is responsible.
91. Likewise, while there is no doubt that the mother has acted unwisely in maintaining a relationship of sorts with the father since their separation, this arose in my view from weakness on her part and is not a sign of an earlier failure to protect A or Evie. She had a deep emotional investment in her relationship with the father and it is now only nine months since Evie's death. Her slowness to recognise what he has done is a very human one. By the time of this hearing, helped no doubt by good advice from within and outside her family, the scales had fallen from her eyes. She has now heard the father blame her for Evie's death, blame his daughter A for the December skull fracture, and call his daughter B a liar. It is in my view unlikely that she will renew her relationship with him.
92. I find that the only failure to protect in this case is the father's, who by concealing what he was doing to Evie left her vulnerable to his further assaults.

Does any other aspect of the parenting cross the intervention threshold?

93. No.

Conclusion

94. I will now hear submissions about the consequences for A of the above findings and about disclosure of information to the police, the medical witnesses and others.