

3PB's Family Law Group Briefing Note

Parents acquitted of child abuse – will the adoption be overturned?

by

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The acquittal of Karrissa Cox and Richard Carter on 7th October 2015 has been widely reported in the mainstream press and media following their prosecution on an indictment of child cruelty and neglect. Their case raises issues about the restriction of expert evidence in family cases, and the restrictions on legal aid for parents to oppose adoption order applications.

The facts Mrs Cox and Mr Carter presented their 6-week old baby to the Royal Surrey County Hospital on 24th April 2012 when they were concerned about bleeding in the child's mouth following a feed. It was discovered that the child had a torn frenulum, but no other associated swelling or bruising in or around the mouth. Bruising was seen on the child on the body, and a skeletal survey was undertaken. That skeletal survey was said to have found a number of healing metaphyseal fractures. These injuries are frequently seen in children who have been victims of physical abuse, and Surrey County Council instituted care proceedings.

Dr Fairhurst, consultant radiologist at University Hospital Southampton, produced a radiological report that was relied upon by the local authority in the family proceedings and by the prosecution in the criminal proceedings. The family proceedings concluded with orders placing the child in the care of Surrey County Council and giving the Council permission to place the child for adoption following findings being made that the child had suffered non-accidental injury. Mrs Cox and Mr Carter continued to have contact with the child until approximately one year ago, and the child has since been adopted.

The issues In family proceedings expert evidence is normally restricted to a single joint expert, and to circumstances where the court determines the report is 'necessary'. It is very difficult to persuade Judges in the family court to allow second opinions or to allow expert evidence from other specialisations without cogent evidence that such reports are necessary to justly determine the proceedings. This contrasts with the position in criminal proceedings where the defence are able to commission their own expert reports subject to authorisation to incur the expenditure being granted by the Legal Aid Agency.

In the criminal proceedings defence experts, including a consultant endocrinologist, were instructed, who were able to show that the child was suffering from Von Willebrands II, a blood disorder which causes a person to bruise more easily, from vitamin D deficiency, and had eight classical signs of infantile rickets. The mother's defence team have reported that Dr Fairhurst did not include infantile rickets in the

differential diagnosis. The prosecution instructed a further report from a radiologist, who on 6th October 2015 gave his opinion that he was doubtful there were any fractures at all. The prosecution offered no evidence on 7th October, and not guilty verdicts were entered.

The difficulties that arise The case is an example of the difficulties that can arise when the criminal proceedings are heard a long time after the family proceedings. Had the cases been heard closer together each case may have thrown light on the other, with the benefit of the courts having the same degree of information before reaching their individual conclusions, in the family court on the balance of probabilities and in the criminal court beyond reasonable doubt. The evidence in the criminal proceedings, had it been available to the family court appears to cast doubt on the conclusions reached by Dr Fairhurst, and may have led the court to different conclusions.

Once the care proceedings came to an end, Mrs Cox and Mr Carter would no longer have been able to access automatic legal aid to oppose the application for an adoption order with the benefit of legal representation. Any legal aid would have been based on their means and whether the Legal Aid Agency accepted their case had sufficient merit to justify the funding being granted. In practice it is very difficult for parents to secure legal aid to oppose adoption orders, and Mrs Cox and Mr Carter were unable to do so according to published comments from their criminal defence team. Cases of this type raise questions about whether it is right for parents to face applications for adoption orders without having the benefit of automatic legal aid to obtain advice and in appropriate circumstances to seek to oppose the application.

Mrs Cox and Mr Carter have expressed their determination to seek a return of their child to their care. This is likely to prove extremely difficult. Assuming the criminal proceedings produced fresh evidence, as it appears to have done from the reports in the mainstream media, procedurally that could found an application to set aside the adoption order. The difficult question for the family court, however, will be whether it is in the child's best interests to do so. In wholly exceptional circumstances an adoption order can be set aside, but this is extremely rare because by the time of those applications the child has usually been settled with the new family and the disruption to the child would be too great. The tragic outcome of this case may be that whilst being acquitted of causing the injuries to the child, Mrs Cox and Mr Carter remain separated from their child nevertheless.

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