

## **Birmingham City Council v H**

### **Summary issued with Judgment [2006] EWHC 3062 (Fam)**

1. In January 1999 P, who was then the only child of Mr and Mrs H, died at the age of 4 months in suspicious circumstances. When, in February 2000, a daughter (K) was born to the couple, the local social services authority (Birmingham CC) issued care proceedings on the basis that if, as they suspected, P had died as a result of smothering, the new baby would be at risk of harm in her parents' care.
2. In June 2000 the trial judge in the care proceedings (Mrs Justice Bracewell), having considered all the available evidence, concluded that Mrs H had deliberately obstructed P's airways by smothering him on four occasions, with the consequence on the last occasion that he suffered serious brain damage and died. Professor Sir Roy Meadow was one of the two expert witnesses at the fact finding hearing. Bracewell J relied upon his evidence in making the finding of smothering. The parents have never accepted the court's findings. In due course K was made the subject of a full care order and was adopted by strangers.
3. A third baby, another girl, S, was born to Mr and Mrs H in July 2004. Again care proceedings were commenced by Birmingham CC relying upon the earlier finding of smothering. By July 2004 concern had been expressed in the Court of Appeal Criminal Division over the role of Professor Sir Roy Meadow in the case of R v Sally Clark. In the light of that factor, and in order to take account of the development in medical knowledge during the intervening period, the High Court Family Division directed that the medical issues surrounding P's death should be reviewed.
4. In October 2006 the review process culminated in a three week hearing before Mr Justice McFarlane. The judgment being made public today is the full

judgment of the court (albeit in an anonymised form). The headline points arising from the judgment are:

- a. This was not an appeal, but a review of the medical element of the evidence in the case;
- b. For the purposes of the review Professor Y (a senior consultant paediatrician from outside the UK) and Dr Z (a consultant clinical physiologist) reinvestigated the medical issues. They concluded that the most likely possible causes of P's breathing difficulties on the four occasions (including his death) were:
  - i. A combination of reflux of feed coming up from the gastric system and landing on the area at the top of the windpipe thereby triggering one of the body's automatic defence mechanisms which prevents breathing and lowers heart rate (gastroesophageal reflux triggering a laryngeal chemico reaction);
  - ii. A type of epileptic seizure; or
  - iii. Smothering (induced upper airway obstruction).
- c. Options (i) and (ii) now put forward by the fresh medical experts had not been presented as viable explanations at the hearing before Bracewell J. The alternative explanation placed before that judge had been that P was suffering from some unidentified metabolic condition. Exhaustive tests were carried out upon retained body tissue relating to P for the purposes of the present review process. As a result of that testing, a metabolic explanation is now effectively ruled out.

- d. At the original hearing Bracewell J had made a number of adverse findings about what the mother had said and done in the period around the four occasions upon which P had breathing difficulties. Within the review process the parents claimed that the mother, who is a long-term sufferer with a muscular condition (dystonia), had been unable to give clear evidence to Bracewell J as a consequence of recognised side-effects from her medication.
  - e. Separately and in addition to the re-investigation of the medical issues, the parents criticised the role of Professor Sir Roy Meadow in the 2000 hearing and generally (based upon critical comment made by the Court of Appeal Criminal Division and (very recently) the Court of Appeal Civil Division as to his performance as an expert in other cases).
5. The judgment being made public today shows that at the conclusion of the review process Mr Justice McFarlane held:
- i. That of the three possible medical explanations, smothering remained the more likely;
  - ii. The claim that the mother's evidence before Bracewell J was affected by the effects of medication upon her memory was not substantiated;
  - iii. With regard to Professor Sir Roy Meadow, McFarlane J summarised his conclusion at paragraph 323:

Having now conducted, as a discrete exercise, a detailed assessment of Professor Meadow's evidence, the judge's use of it and the submissions that are made by Mr Peddie [the parents' QC], I am driven to the firm conclusion that no criticism of Professor Meadow's role in this case can possibly be sustained. Indeed the passage of time and the exhaustive additional investigations have proved that, on the medical issues that were before the court in 2000, he was correct.

- iv. As a result of (i) to (iii), the findings of fact made by Bracewell J that Mrs H intentionally smothered P on four separate occasions, with the fourth episode leading to his death, must stand.
6. In consequence of the findings of fact made with respect to P, the circumstances are such that the court has jurisdiction under the Children Act 1989 to make a care or supervision order with regard to S. The determination of that issue, and the question of whether or not S should be placed in the care of her parents (despite what befell P) or should be put up for adoption, are in the process of being considered by McFarlane J at subsequent hearings.

**[end of summary]**