

Judgment 40/2012

**A and The States of Guernsey
and T and K
Royal Court
14th November 2012**

Appeal to the Royal Court from the Juvenile Court against findings of fact.

Anonymised Judgment

IN THE ROYAL COURT OF GUERNSEY

BETWEEN: -

A

Appellant

and

THE STATES OF GUERNSEY (ACTING BY AND THROUGH THE HEALTH AND SOCIAL
SERVICES DEPARTMENT)

First Respondent

and

T

Second Respondent

And

K (BY HIS GUARDIAN AD LITEM)

Third Respondent

Date of Hearing: 26th October 2012

Written Judgment Handed Down: 14th November 2012

Before: Lieutenant Bailiff Pamela Scriven QC

1. In this case I am dealing with an appeal against findings of fact made by the Guernsey Juvenile Court which are contained in a judgment handed down as long ago now as 8th December 2009.
2. The judgment in question contained the decisions on the evidence reached by the Juvenile Court at the conclusion of a fact finding hearing held in the course of an application issued by the Health and Social Services Department for fit person orders under the Children and Young Persons (Guernsey) Law 1967 (as amended) [“the 1967 Law”] in relation to two children, E and K. E was born in 2006; K was born in 2007. The mother of both children is T. The father of K is the Appellant in these proceedings.

3. For an unusual combination of reasons (set out fully in the judgment of the Court under the heading Legal Chronology and which I shall not repeat here), the hearing took place over an extended period. The Court heard evidence on 27th, 28th, and 29th April 2009; 22nd, 24th, 27th, 28th and 29th July 2009; and 9th, 10th, 11th and 12th November 2009 (a total of twelve days).
4. The questions which arose at that hearing were whether E had suffered a series of non-accidental injuries resulting in bruising to her face and various parts of her body; and, if she had, whether the Court could identify the perpetrator of those injuries. The injuries were itemised. Some appeared in photographs taken by E's maternal grandparents between March and April 2009. Others were seen during a medical examination of E on 8th July 2009 and were recorded in photographs taken by the police two days later.
5. In the judgment handed down on 8th December 2009, the Court found that all the injuries were caused non-accidentally; that the mother was the perpetrator of some of those injuries; but that, in relation to other injuries, that both the mother and the Appellant were in the potential pool of perpetrators, and the Court was unable to determine on the balance of probabilities which of the two was more likely to be the perpetrator.
6. The Appellant and the mother had separated by the time of the conclusion of the fact-finding hearing. Although he had no interest in the proposed care of E, who was not his child, the Appellant wished to care for his own child K. The findings were, of course, highly relevant to any assessment of risk of future harm to K from the Appellant which a court would undertake, whether then or in the future.
7. He did not accept the findings made against him, and, immediately after the judgment was handed down on 8th December 2009, indicated that he wished to appeal against them. It was agreed by all advocates that the time for him to appeal should be after the final orders had been made in the case.
8. The Juvenile Court later went on to consider the welfare stage of the proceedings. On 24th April 2011 the Court made community parenting orders in relation to each child under section 49 of the Children Act (Guernsey and Alderney) Law 2008 ["the 2008 Law"], which followed the repeal of the 1967 Law. E by this time was living with her maternal grandmother, and K was living with his paternal grandmother, Mrs. X.

9. On 16th May 2011 (without delay after the welfare decisions had been made) the Appellant issued his Notice of Appeal. By that Notice, he sought to appeal against the findings of fact and also against the community parenting order in relation to K.
10. The progress of the appeal was hampered by a number of factors, not least by the fact that during much of that time the Appellant was in prison in England, and was moved between prisons there, which led to considerable difficulty in the process of taking instructions from him. There was also a change in his representation.
11. The appeal came before me for directions in December 2011 when I expressed concern about the delay. At that stage Advocate Grainge had only recently been instructed on his behalf. Following directions given then, Advocate Grainge filed an Amended Notice of Appeal and Case on his behalf. Those documents made it clear that he no longer sought to appeal the community parenting order, and no longer sought to disturb the current living arrangements for K. However, the appeal against the findings of facts was pursued. The findings of fact were not only relevant to the community parenting order, but were also of ongoing significance to any court which had to consider the question of risk of harm to K from the Appellant during K's childhood. Thus it was proper that the Appellant's challenge to the findings should be determined.
12. I was then asked to delay hearing the hearing of the appeal until October of this year because it was anticipated that the Appellant would be brought by the prison authorities to Guernsey to attend another court then. Highly unusually in a children's case, and only because there was to be no change of carer for K whatever the outcome of the appeal in relation to the findings of fact, I was prepared to agree to the delay until October to enable the Appellant to attend this appeal.
13. In the event, it proved impossible for him to be brought to Guernsey, but the prison authorities in England have very kindly made arrangements by which the Appellant has been able to attend this hearing through video link from prison. I must record my thanks to the Governor of the prison and to all involved in making those arrangements there, and also for the cooperation that has been afforded by them to Advocate Grainge to enable her to take instructions from the Appellant by video-conferencing links prior to this hearing.

The Law

14. By virtue of s 99(2)(a) of the 2008 Law, an appeal from any decision of the Juvenile Court under Part V11 of the 2008 Law (“children requiring care, protection, guidance or control”) (other than a decision relating to an Emergency Protection Order) shall lie to the Royal Court.

15. It was submitted by the Appellant that a decision from a fact finding hearing comes within the definition of “a decision of the Juvenile Court under part VII”. No advocate demurred from that view. I accept that it does so. Assistance is to be gained from the English case law, where the right to appeal against the findings made at a fact finding hearing within child protection proceedings was established in the leading case of *Re B (a child) (split hearing: Jurisdiction) [2000] 1 FLR 334* (see also *Re A (a child) [2010] EWCA Civ 1413*).

16. I observe that in the case of *Re B (supra)* the appeal was brought immediately after the fact-finding judgment had been given and before the case proceeded on to assessments of the parents and to the final welfare decision. Dame Elizabeth Butler Sloss P. said [*at paras 337-8*]: -

“The problem for this court was that the judge gave a careful, reasoned judgment. He did not make any actual declarations and he did not make any specific order. The question that has arisen in the court was, what was the jurisdiction of this court to deal with this matter? Having considered this problem with some care, bearing in mind that it is not the function of this court to deal with findings rather than with orders or judgments as the High Court requires, or with determinations such as s 77 of the County Court Act requires, we have considered very carefully the appropriate way in which we should deal with this case.

If, as I have come to the conclusion, it is necessary to find that the judge was wrong, for this court to sit back and say that it is not appropriate for us to intervene at this stage at the conclusion of these preliminary issues being dealt with, but to allow the case to continue for another 3 days and then for there to be an appeal by one or more of the parties (which would by then be 7½ days’ hearing), and then for the Court of Appeal to say that the judge went wrong in his judgment given on 1 September 1999, would be to fly in the face of common sense and an approach to the disposal of litigation which would be totally contrary to Lord Woolf’s proposals in the new civil procedure approach which permeates through civil litigation, and certainly within the Family Division.

.....

But such issues which are determined as a preliminary part of the case, which are crucial to the final determination, can be treated, if appropriate, as a determination for the purpose of allowing the Court of Appeal to hear it without waiting for the second part of the hearing.”

17. I make no criticism of the decision made in this case to wait until final orders in the case before the appeal was launched. The advocates for the Appellant and for the Health and Social Services Department at that hearing (who were not the advocates appearing before me) were dealing with an unfamiliar situation. Furthermore, in the event, the Appellant later decided not to appeal the final order and did not seek any change of placement for the children, so the delay had no detrimental impact on the arrangements for either of these children. But I flag up the question of whether it would not be better in many cases to proceed swiftly with any appeal against findings of fact, and to use all efforts to have that appeal expeditiously determined. If the findings of fact are going to affect the assessment of risk and potentially the orders which will be made at the welfare hearing (as in many cases they will), there is much to be said for a clear and swift determination of any appeal about the factual substratum of the case.
18. It is agreed that the proper approach for the Royal Court when sitting as an appeal court in civil cases is that adopted by the Court of Appeal, that is to say, it should not interfere with findings of fact made by a Magistrate unless it is satisfied that there was no evidence before it on which the Magistrate could reasonably have arrived at those findings, or that for any other reason the finding of fact of the Magistrate was perverse (*Domaille v Harris – Requête*s 14.1.88; *GLJ No 6 para 164*).
19. This approach is also reflected in the English case law on the approach to appeals against findings of fact. In the case of *Cook v Thomas [2010] EWCA Civ 227*, an appeal to the Court of Appeal in part based on findings of fact (in a case which concerned the right to possession of a property owned by the Claimant, in which the Defendants claimed to be entitled to live as a result of proprietary estoppel) Lloyd LJ said [*at para 48*]: -

“In a case in which the judge has had the benefit of oral evidence from the witnesses, has made findings of fact which are rationally explained, has described in detail his assessment of the respective witnesses as regards their reliability, and where his findings of fact differentiate with care as to what evidence from which witness is accepted in relation to which part of the history, no one witness being accepted as wholly reliable or rejected as wholly unreliable, an appellant who seeks to show that

the judge's findings of fact, or some of them, are unsustainable faces a seriously difficult task. The judge's findings as to what was said between the Claimant and the Defendants are primary findings of fact, and his findings as to how the Defendants reacted to what was said to them are at least partly findings of fact, even if there may be elements of inference in that process. It has been said many times, *Benmax v Austin Motor Co* [1955] AC 370, *Biogen Inc v Medeva Inc* [1997] RPC 1 and *Assicurazioni Generali SA v Arab Insurance Group* [2003] 1 WLR 577 being only three of the examples of high authority, that an appellate court can hardly ever overturn primary findings of fact by a trial judge who has seen the witnesses give evidence in a case in which credibility was in issue."

20. The same point was made in relation to proceedings relating to children in the case of *Re S (Abduction: Custody Rights)* [2002] EWCA Civ 908, [2002] 2 FLR 815 in which Ward LJ said [*at para 25*]: -

"Although it is possible to appeal against a finding of fact, it is notoriously difficult to succeed in so doing. Where findings of fact are made based on the demeanour of a witness, the appeal court will seldom interfere because the trial judge has the special advantage over the appellate judge."

21. Useful guidance as to the proper approach of an appellate court dealing with an appeal against findings of fact in cases relating to the welfare of children can also be found in the recent English case of *SB v A Local Authority & Ors* [2012] EWCA Civ 1269 (an appeal against findings of fact made in care proceedings). Sir Nicholas Wall P, giving the judgment of the court, said [*at paras 4-7*]: -

"Appeals against findings of fact

4. It is well recognised that appeals against findings of fact, and perhaps particularly against the findings of an experienced High Court Judge on the subject of sexual abuse, are extremely difficult to mount. The reason for this is not far to seek. It is the trial judge who sees and hears the witnesses. It is the trial judge who has the "feel" of the case. It is the trial judge who has immersed him or herself in the evidence over a period of many days, and who knows the case better at the end of that process than anyone else.
5. Mr. Paul Storey QC recognised this fact at the outset in his skeleton argument:

"We are fully aware that in a three week case the Court of Appeal will proceed

from the starting point that the first instance Judge saw the witnesses and their personalities, together with those of the parties. We have very clearly in the forefront of our minds in launching this Appeal the observations made by the House of Lords in *Re D (An Infant) (Adoption: Parents' consent)* [1977] AC 602 at 606 [Lord Wilberforce] and of Steyne and Hoffman LJs in *Re C (A Minor) (Adoption: Parental agreement; Contact)* [1993] 2 FLR 260 at pages 273 to 275. Similarly, the case of *Piglowska v Piglowski* [1999] 1 FLR 1360 at page 1372, and *Biogen v Medeva PLC* [1997] RPC 1 at page 45 and the observations therein about the advantages to the first instance Judge over the appellate Court. More recently in *Re A (A Child) (Fact finding speculation)* [2011] 1 FCR 141 at paragraph 38 and *Re L, R, MH & C (Children)* [2011] EWCA Civ 525 Munby LJ discussed the difficulties for a Judge in bringing the dynamics of the hearing onto the printed page in the form of a judgment. We rely on the observations of Munby LJ at paragraph 46 of the latter case as follows: "Findings of fact must, of course, be based on the evidence (including inferences that can properly be drawn from the evidence) and must, of course, be adequately explained and reasoned."

6. For G, Ms Jenni Richards QC put the same point a slightly different way; -

"The Court has jurisdiction to hear an appeal from a fact-finding hearing even if there is no order: *In the Matter of A (A Child) (No. 2)* [2011] EWCA Civ 12 at [7]. The trial judge who has seen and heard the witnesses has an "immense" advantage over an appellate court: *In the Matter of L, R, MH and C* [2011] EWCA Civ 525 at [43]. He is "uniquely placed to assess credibility, demeanour, themes in the evidence, perceived cultural imperatives, family interactions and relationships" *In the Matter of A (A Child) (No. 2)* at [39]. In *Piglowska v Piglowski* [1999] 3 All ER 632 Lord Hoffman (quoting from his own judgment in *Biogen Inc v Medeva (1996)* 38 BMLR 149) explained the need for appellate caution in these terms: "It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualifications and nuance ... of which time and language do not permit exact description, but which may play an important part in the judge's overall evaluation." Put another way, "Character and personality certainly cannot be judged as well from a transcript of evidence ... as by seeing and hearing those involved" *In the Matter of A (A Child) (No. 2)* at [36]. Provided that the judge's

decision is adequately explained and reasoned, the judge is entitled to explain his thought processes and reasoning in whatever seems to him to be an appropriate and illuminating way: *In the Matter of L, R, MH and C* at [46]. A judge should give reasons for his findings but he is not required to go on and give reasons for his reasons: *In the Matter of A (A Child) (No. 2)* at [43]. The Court of Appeal is only entitled to interfere if it considers that the trial judge was plainly wrong to reach the conclusions he did – *SW and KSW v A City Council [2009] EWCA Civ 644* at [81]"

7. There was thus no dispute as to the law, and it is clear, as Mr Storey accepted that the father had a very steep hill to climb. In my judgment it is not simply a question of demonstrating – if he can – that the judge's assessment of credibility is flawed: to enable this court to interfere he must show that in one or more than one respect, in Lord Fraser of Tullybelton's words in *G v G [1985] 1 WLR 647, 652* the judge was "plainly wrong" – in other words that there is palpable error or errors by the judge such as to make her conclusion unsustainable. It is not enough, in my judgment, to argue that the judge was wrong to prefer witness A to witness B."

22. The principles which apply to the judicial task of identification of a perpetrator, or of those who are in the pool of perpetrators, are not in dispute here and it is enough if I repeat the recent concise summary of the proper approach made by Baker J in the case of *A County Council v RH and KS [2012] ETHIC 1370 (Fam) [at para 41]*: -

"Finally, when seeking to identify the perpetrators of non-accidental injuries the test of whether a particular person is in the pool of possible perpetrators is whether there is a likelihood or a real possibility that he or she was the perpetrator (see *North Yorkshire County Council v SA [2003] 2 FLR 849*. In order to make a finding that a particular person was the perpetrator of non-accidental injury the court must be satisfied on a balance of probabilities. It is always desirable, where possible, for the perpetrator of non-accidental injury to be identified both in the public interest and in the interest of the child, although where it is impossible for a judge to find on the balance of probabilities, for example that Parent A rather than Parent B caused the injury, then neither can be excluded from the pool and the judge should not strain to do so (see *Re D (Children) [2009] 2 FLR 668, Re SB (Children) [2010] 1 FLR 1161*)."

23. The criticism on behalf of the Appellant here is not of the Juvenile Court's statement of the principles concerned in the identification of a perpetrator, but of the way the Juvenile Court approached the evidence which was before it and the factual conclusions which it reached.

The Grounds of Appeal

24. The Appellant seeks to appeal the findings of fact that were made in three main respects:
1. The Juvenile Court was wrong to find that an injury to E's eye, which was seen on medical examination on 8th July 2009, was a non-accidental injury caused by a punch. The Court should have accepted the Appellant's account that it was caused accidentally on an occasion when E ran out of a betting shop onto the street and collided with a lady there.
 2. Whilst the Appellant accepted that the majority of the other injuries were non-accidental, the Court should not have included him in the pool of perpetrators of some of those injuries, but should have made findings on the balance of probabilities that the mother had caused them all.
 3. The Court should have made specific findings sought by him that on one occasion the mother pinched or twisted E's cheek and/or ear, and on at least one occasion the mother threw E into her cot.
25. I shall deal with the elements of the appeal in that sequence. In order to do so I have read all the papers in the bundle and the transcripts of evidence made available to me. I have carefully considered the arguments skilfully made on behalf of the Appellant by Advocate Grainge, on behalf of the States of Guernsey by Crown Advocate Swards, and on behalf of the children's Guardian by Advocate Mallett. I am grateful to them all for the focused way in which they have presented their respective cases.

Injury to the right eye seen on 8th July 2009

26. The Appellant provided an explanation for bruising seen to E's eye on 8th July 2009 as having been caused by an accident. He had taken her with him to a betting shop, but as they were leaving she had ran out ahead of him. When he caught up with her, she was on the pavement. He believed she had collided with a lady walking along there. He did not see the accident itself, but saw E on the pavement in its immediate aftermath. She was not distressed when he saw her; on the contrary she was laughing. This was an account the Appellant gave consistently (although without consistency as to the date on which it occurred), and he says was the reason for the bruising seen to her eye.

27. When E was medically examined on 8th July 2009, she had bruising not just to her eye, but also to her cheek and to other parts of her body. It is accepted on behalf of the Appellant that the doctor who examined E on 8th July 2009, Dr Eckhardt, rejected the Appellant's explanation of the accidental collision as the cause of the bruising to E's eye. Dr Eckhardt was of the view that the bruising to the eye and the other injuries were inconsistent with it. In due course, Dr Adamson, a consultant community paediatrician, was jointly instructed by the parties to these proceedings to advise on the injuries, and was asked to give an opinion on causation. She provided a report dated 27th March 2009 and also gave oral evidence.
28. It is said on behalf of the Appellant that Dr Adamson accepted, both in her report (at para 4.4.4) and in her oral evidence, that bruised eyes can occur accidentally, and it is not possible to rule out the possibility that the injury to the eye could have occurred as a result of a collision with an adult carrying a number of differently shaped objects; one of which could have penetrated the eye socket. At para 4.4.4 of her report she said:

“Bruised eyes can certainly occur accidentally. The eye socket itself is generally well protected by the surrounding ring of bone and accidental injuries tend to result in an impact with the protective ring from which blood tracks down into the socket. Small round objects can penetrate into the socket itself and cause bruising around the eye directly. This can happen accidentally by an object such as a small ball or a protruding doorknob. Bruising inside the socket can also be caused by an intentional injury, usually a punch. The appearance in E's case, certainly at the time of the photograph, is more in keeping with internal socket injury as the bruising is dense over the upper eyelid, wraps around the eye and has a clear upper margin some distance from the outer rim of the socket so there is no obvious tracking down from above the eye.”

In the first part of para 4.4.5 she says: -

“It is not possible to rule out that this injury could have occurred in a collision with an adult carrying a number of differently shaped objects. Such a collision could certainly have created sufficient force and it is possible that a protruding object could have penetrated the eye socket.”

29. It is argued on behalf of the Appellant that this, together with the consistency of the Appellant's account of the accident (which he first gave soon after the event to his mother Mrs. X and his sister Y) should have persuaded the Juvenile Court to not to find that this

injury was a non-accidental injury, and that the Juvenile Court was plainly wrong to have done so.

30. However, this argument ignores a number of essential parts of the evidence.
31. It is important to take into account the totality of the evidence of Dr Adamson, which this argument fails to do. After the passage of her report cited above, she continued at para 4.4.5 to say: -

“However it is inconceivable that a child who has just received such an injury would be undistressed and even laughing immediately afterwards. It is also highly unlikely that the complex bruise on the right cheek would have been caused in the same incident. Within this context, therefore, I believe it is more likely that the bruised eye was caused non-accidentally by a punch”.
32. In her oral evidence she said that the injury to the eye was of an appearance that was a well-recognised non-accidental punch injury. She accepted that whilst it is possible to speculate that it could be caused by a direct impact by an object with a particular configuration, she was of the view that it was very difficult to envisage how the injury to the eye and to the cheek could have been caused by the same impact and that she could not imagine how a single impact could have caused both injuries, however many bags or objects the lady was carrying.
33. Thus there was a combination of factors which made the Appellant’s account unlikely to be the cause of the injury to the eye. Plainly, both the absence of any distress in the child, and the combination of the various injuries on E pointed firmly away from a finding of accidental injury. Although the Appellant reported such an incident to Mrs. X and to his sister Y, he did not say to either that E had been in any pain, or that she suffered any bruising as a result.
34. The Juvenile Court dealt with this evidence in a way which, in my view, cannot be criticised. At para 239 the judgment sets out a balanced and comprehensive quotation from Dr Adamson’s report, containing not only para 4.4.4 but also the totality of para 4.4.5 set out above. At para 240, the judgment records Dr. Adamson’s oral evidence that the child would have suffered pain when the injury to her eye occurred, that the pain would have been acute or explosive, and that if the Appellant is right in saying the child laughed after the collision, it was very difficult for the doctor to accept that was the cause of the injury.
35. The Juvenile Court did accept that an episode happened when the child ran out of the betting shop (and thus took into account the evidence of both Mrs. X and Y that the Appellant had

told them of such an event). The Court accepted the important evidence that there was a complete absence of pain thereafter in E.

36. The fact that such an accident occurred is to be distinguished from the different, and critical, question of whether (on the balance of probabilities) it was likely to have been the cause of the injury to the eye. The Juvenile Court discerned that this was the issue, and made it clear that, on the assumption there was such an accident close to the date of the medical examination on 8th July 2009, “we have to consider whether this was the likely explanation for the injuries to E’s eye or whether the collision was unrelated to the injury sustained by the child” [para 237].
37. In the following paragraphs [238-251] a careful, thorough and balanced analysis of all the relevant evidence is set out. What the Court found was that such an accident was not (on the balance of probabilities) the cause of the bruising to the eye. The Juvenile Court’s reasoning process was clear and balanced. Indeed, it is difficult to see how any court looking at this evidence could have come to a different conclusion. Certainly, it could not be said to be plainly wrong.

The Juvenile Court was wrong to include the Appellant in the pool of perpetrators of some of the non-accidental injuries, and should have found that the mother caused them all

38. This is in many ways the crux of the appeal. Whilst the Appellant is now prepared to accept that many of the injuries were caused non-accidentally, it is his case that the mother caused them all, and that the Juvenile Court was plainly wrong to include him in the pool of perpetrators.
39. The argument was developed with skill by Advocate Grainge in the course of her oral submissions. There are a number of strands to the criticisms of the Juvenile Court’s reasoning on this topic, and I shall deal with the various elements in turn.

The Juvenile Court gave insufficient weight to the evidence of Y and Mrs. X

40. Both the Appellant’s mother, Mrs. X, and his sister, Y gave evidence. It is clear that the Court accepted their evidence of fact as truthful [paras 202 and 213] (with the limitation that Y’s evidence may not have been entirely accurate only by virtue of the lapse of time between the events concerned and the date of her giving evidence).

41. Mrs. X gave evidence that on one occasion she had seen the mother holding E over the side of a bed by her forearm. She also gave evidence of what may be termed some rough handling of E by her mother, who was finding it difficult to cope. She said that on one occasion she had heard the Appellant shouting at the mother “throw that brush at her [E] and I’ll do the same to you”. (The Appellant said that the brush concerned was a hairbrush.)
42. Her concerns about rough parenting were not confined to the mother, but also applied to the Appellant. In her written evidence to the Court Mrs. X said: -

“I have seen both [the Appellant] and [the mother] frustrated with E. I have heard [the Appellant] shouting at her and getting her to move by pulling her by the arm. I told [the Appellant] very strongly not to do such things and suggested more appropriate ways.” [para 12 of her statement of 25th June 2009].
43. Y gave evidence of incidents of rough handling of the children by the mother, and also of an occasion when she had seen what she thought was a bite mark on E. She said the Appellant told her the mother had bitten E because E had bitten K. She was cross-examined on behalf of the Appellant on the basis that this had not happened and that she was lying. When the Appellant gave oral evidence about this after she had completed her evidence, he said it was a lie, that there was no bite mark and that she had made it up [para 64]. It was only months afterwards, following his separation from the mother, that the Appellant radically changed his evidence and told the Court that what his sister said was true. (From this it must be observed that he had, on his own account, deliberately chosen to deceive the Court on the earlier occasion; a matter to which I shall return.)
44. The Juvenile Court considered the evidence of Mrs. X and Y with care. Of the incidents of which they had some specific direct knowledge (albeit in the limited form of a conversation overheard in relation to the throwing of the hairbrush, and a discussion with the Appellant at the time the bite mark was seen), the court accepted their evidence and made findings against the mother [paras 268; 272].
45. However, apart from those two matters, neither gave evidence which related to any of the specific injuries suffered by E. Neither had seen any of the bruising on E recorded in the photographs taken by the maternal grandparents in April and May 2009. Neither gave any evidence which cast light on how those specific injuries were caused. Y’s oral evidence revealed that she had not seen the Appellant, the mother or the children on a regular basis. Thus the evidence of both of them was of limited compass.

46. It is submitted on behalf of the Appellant that the Juvenile Court was plainly wrong not to rely on their evidence to make a finding that the mother was the sole perpetrator of the injuries, and to exonerate the father. I do not accept that the Juvenile Court was plainly wrong not to have done so. Their evidence goes nothing like that far.
47. The Juvenile Court was obliged to look carefully at the totality of the relevant evidence in relation to the identification of the perpetrator. Their evidence was only a limited part of the picture. It did not point unequivocally to the mother being the perpetrator of all the injuries in the way that is submitted on behalf of the Appellant. The task the Juvenile Court had to, and did, conduct, was to look at all the relevant material available to it. Factors such as the Appellant's dishonesty were clearly highly important features which the Court had to place in the balance, which leads conveniently to the next point raised on behalf of the Appellant.

The Juvenile Court gave insufficient weight to the evidence of the Appellant

48. The Appellant gave evidence to the Court on three separate occasions. His oral evidence changed radically from substantial denial of non-accidental injury to, on the final occasion, substantial admissions that E had suffered non accidental injury, but alleging that they were all caused by her mother. An example of his stark change of evidence appears above in relation to his sister's evidence as set out above. His written evidence also changed markedly during the course of the proceedings.
49. The Court was faced with a wide canvas of dishonesty from the Appellant. It is not surprising that it left the Juvenile Court unable to rely on what he said. He proffered an explanation for his radical change of evidence, saying that he had been dishonest to protect the mother whilst they were living together, but was telling the truth after they had separated. The Juvenile Court was not compelled to accept that explanation. Indeed, it clearly felt unable to know whether or not he was telling the truth about that, or anything else. The credibility of a witness is a matter for the Court which sees and hears the witness, and gets a feel for them. In this case, where the hearing took place over twelve days, and the Appellant gave evidence on three occasions, the Juvenile Court was particularly well placed to evaluate whether it believed his change of story.
50. The judgment contains a careful and balanced assessment of the Appellant's evidence and cannot be said to be plainly wrong. On the contrary, in my view, it demonstrates a fair-minded approach to him. (One example can be seen in its approach to the evidence of the

maternal grandparents whom it assessed as being partisan in favour of the mother and negative towards him [paras 199-200]).

51. Due to his own dishonesty, the Court was left not knowing what, if anything, he said was true, and was unable to accept his evidence save where it was independently corroborated. It was entirely open to the Court to come to that conclusion on the evidence before it.

The Court should have inferred from the mother's failure to give evidence that she had been responsible for all the injuries

52. The mother did not attend Court to give evidence. The Appellant submits that the Court should have drawn the adverse inference from her failure to do so that she caused all the injuries suffered by E. With respect, this approach is over simplistic. What inference could safely be made? Her failure to attend could have a number of reasons, including innocent ones. Her failure to attend might have been because she was responsible for causing some of the injuries (as the Court found), not because she caused all of them.

53. The Court took the view that because she did not attend it was unable to assess her or her evidence [para 189]. It cannot be said that this approach was plainly wrong.

The Juvenile Court placed weight which it should not have done on the reports of Drs Coslett, Briggs and Tulley

54. It is suggested that the Juvenile Court placed weight on adverse comments about the Appellant's aggression and the potential risk he may pose to children made in a report by Dr Coslett, an associate specialist psychiatrist with adult services. In fact a perusal of the judgment shows that Dr Coslett's views played no part whatsoever in the Juvenile Court's analysis of the issue of who was the perpetrator. The only references to Dr Coslett's report appear in the early section of the judgment headed "Legal Chronology". The relevance of Dr Coslett's report was simply to explain the train of events which led to the instruction of Dr Tulley. The Guardian had learned of Dr Coslett's views and thought it would be appropriate for there to be an expert assessment of the Appellant in these proceedings. As a result, Dr Tulley, who is a chartered Clinical and Forensic Psychologist, was instructed jointly by the parties to the proceedings to provide an assessment of both the Appellant and the mother.

55. Dr Tulley provided a report dated 19th June 2009 and gave oral evidence. He made it clear in his report that he was unable to help to resolve the issue of which of them caused the injuries

to E [report para 17.5]. He repeated the same view in his oral evidence. The judgment properly recorded that he was unable to assist the Court as to the identification of the perpetrator [para 56]. Thus any suggestion that the Court was adversely affected against the Appellant by the views of Dr Tulley is not made out.

56. In the papers before the Court was a report on the Appellant from another chartered Clinical and Forensic Psychologist, Dr Briggs, which had not been made for the purposes of any court proceedings. He gave no evidence in the proceedings. There is nothing in the judgment suggest that any weight was placed upon it in the analysis of the issue of who was the perpetrator of injuries to E.

Criminal convictions

57. It is suggested that the Court took the Appellant's criminal convictions into account in coming to its conclusion that he was a potential perpetrator of the injuries sustained by E. However, Advocate Grainge was unable to point to a single passage which suggested it had done so. His criminal convictions were set out early in the judgment in the part which dealt with the "Historical Chronology" but appear nowhere in the reasoning of the Court as to the identification of the perpetrator. In my view there is nothing to demonstrate that the Juvenile Court took them into account when considering that issue, and there is no substance in the point made

Appellant in full time employment

58. It is submitted that the Juvenile Court should have taken into account the fact that the Appellant was in full time employment during the period when the injuries were sustained, and thus was less likely to be the perpetrator because he was with the children for considerably less time than the mother.
59. However, this argument does not have substance. He was living in the home with the mother and the children during the relevant time. As the Juvenile Court found, E was living in their joint care. The fact that the mother was at home with the children for longer periods than him does not help to identify the perpetrator. Such injuries can be caused in seconds during short bursts of temper or loss of control. Both had the opportunity to cause the injuries sustained by E.

The Juvenile Court failed to take into account his good relationship with K

60. The Juvenile Court recorded the Appellant's good relationship with K. It is submitted on his behalf that this should have assisted the Court to identify the mother as the perpetrator of all the injuries to E.
61. However, it does not assist in determining who caused the injuries to E. The fact that he related well to his own son does not help the Court in the assessment of the quality of his relationship with E, of whom he was not the father, or in the question of whether it was the Appellant, the mother, or both who caused the injuries suffered by E.

Twisted cheek and or/ear and throw into the cot

62. It is suggested that the Court was plainly wrong not to have found that the mother injured E by gripping or pinching her cheek and/or ear. However, the Court was faced with the problem that, whilst there was evidence of E's face having been injured by gripping or pinching, the only evidence that the mother had caused those injuries came from the Appellant. There was no corroboration of his evidence, and his evidence was demonstrably unreliable. The Court considered the issue carefully. It concluded that it could not be satisfied to requisite standard that the mother at a time or times unknown twisted E's cheek or ear "because whilst satisfied she had injuries to her face by being gripped or pinched, the inconsistency of his evidence combined with the fact he has lied to the court means we cannot rely on his evidence alone" [para 271]. Such an approach cannot be said to be plainly wrong. I would observe that when faced with what amounted to a web of deceit from the Appellant, it is difficult to see how the Juvenile Court could properly have come to any other conclusion.
63. Similarly, the Appellant complains that the Court should have found that the mother threw E into the cot on at least one occasion. But the Court was faced with the same problem. The evidence came primarily from the Appellant and the Court could not rely on his evidence alone [274]. Once again, this approach cannot be said to be plainly wrong.
64. Finally, I must record the fact that in the Amended Notice of Appeal, the Appellant sought to argue that the maternal grandparents should have been included in the pool of perpetrators. This was not something he had sought to suggest at first instance, and, when the case was opened before me, it was made clear by Advocate Grainge that this ground of appeal was not being pursued. Thus, the finding by the Juvenile Court that no one apart from the Appellant and the mother were responsible for causing the injuries suffered by E remains.

65. I am in no doubt for the reasons set out above, and despite the valiant efforts by Advocate Grainge to persuade me otherwise, that there is no substance in any of the grounds relied on by the Appellant. I therefore dismiss the appeal.