

Judge speaks out over parents wrongly labelled child abusers

· Couple's 'nightmare' after doctor's testimony · Private hearing publicised as cautionary tale
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Monday March 26 2007

The Guardian

A high court judge has revealed how the innocent parents of a baby boy suffered the "nightmare" of a court finding that they had deliberately harmed him, in a cautionary tale about the devastating consequences that can follow when courts and expert witnesses get it wrong.

The parents, who may not be named, were separated from their son for 12 months while they were wrongly labelled child abusers. The mother became pregnant again but had an abortion because she could not bear to have a second child taken away.

Mr Justice Ryder took the unusual step of publicising his judgment, which would normally be delivered behind closed doors, so courts, experts and local councils involved in childcare cases could learn lessons for the future.

The parents' ordeal began when their baby, K, was taken into care after they took him to hospital at the age of two and a half weeks. The judge stressed that it was now agreed by everyone that K had never been deliberately harmed and his parents' care of him "is and has always been exemplary".

But by the time the case went to the county court which made the damning finding, none of the medical experts had disagreed with the consultant neuroradiologist in the case, Wellesley Forbes, that one of K's parents had probably forcefully shaken him.

It was only when the parents were finally allowed to seek a second opinion from a paediatric neurologist that the tide turned. He thought K's brain had been briefly deprived of oxygen as a result of something that happened before or during birth. The parents, from Oldham, who are unmarried but in a permanent relationship, "bore an almost intolerable burden of being unjustly accused of inflicting serious injury on their infant son", said Mr Justice Ryder.

They "experienced the nightmare of what has transpired to be a false finding by a court" and "lived for 12 months with the opprobrium and suspicion of friends and neighbours".

The judge added: "This is not a case where there is 'no smoke without

fire'. This is a case where a family court and the expert who advised it got it wrong." The appeal court quashed the county court's finding and ordered the case to be reheard by the high court. But the parents were nearly denied the chance to clear their names in court when Oldham council proposed to withdraw the care proceedings, saying it could work with the parents to try to return their baby to them whether they had caused the injury or not.

Fortunately for them, Mr Justice Ryder ruled that the case should go ahead and a new expert be asked to look at the brain scan. A paediatric neuroradiologist from Sweden concluded that K had suffered "a period of profound asphyxia of between 10 and 20 minutes when in the womb and that inflicted injury is not a possible cause of the brain damage". The conclusion was based on a study of four children with a similar pattern in brain scans, which was "at the cutting edge of medical knowledge", said the judge.

That conclusion was later backed by a UK professor specialising in the care and study of newborn babies, and all the experts, including Dr Forbes, now accept it.

The judge said courts and experts may have become too focused on reaching agreement. Experts should use a "balance sheet" approach outlining disagreements as well as agreements. They should take the court through the possibilities, highlighting any inconsistent or contradictory features.

The language of Dr Forbes's first report was "too absolute" and the court should have been told how unusual the case was and the limited research material upon which any expert could have reached a conclusion. The other doctors in the case had initially deferred too much to Dr Forbes and the experts had deferred too much to the court in deciding whether further expert evidence was needed.

The judge said Dr Forbes and the county court judge had fallen into error when the doctor "unconsciously strayed from the role of expert into the role of decision maker and the court failed to detect that that was what had happened".

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