



Neutral Citation Number: [2024] EWFC 280

Case No: LN21C50058

IN THE FAMILY COURT
SITTING AT LINCOLN

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/08/2024

Before :

MRS JUSTICE LIEVEN

Between :

AZ (THE MOTHER)

Applicant

and

A LOCAL AUTHORITY

First Respondent

and

BY (THE FATHER)

Second Respondent

and

ZY AND YY (THE CHILDREN)
(through their Children's Guardian)

Third and Fourth Respondents

and

CY AND DY (THE PATERNAL GRANDPARENTS)

Fifth and Sixth Respondents

and

EX (THE INTERVENOR)

Intervenor

Ms Lorna Meyer KC and Ms Gina Allwood (instructed by **Sills and Betteridge Solicitors**)
for the **Applicant**

Mr Cyrus Larizadeh KC and Mr Gareth Frow (instructed by a **Local Authority** for the
First Respondent

The Second Respondent represented himself

Ms Nussrat Bashir (instructed by **Elliot Mather Solicitors LLP**) for the **Third and Fourth
Respondents**

The Fifth and Sixth Respondents represented themselves

Ms Barbara Connolly KC and Mr Patrick Bowe (instructed by **Ringrose Law**) for the
Intervenor

Hearing date: 22 July 2024

Approved Judgment

This Judgment was handed down remotely at 10:30am on 02 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LIEVEN

This Judgment was delivered in private. The Judge has given leave for this version of the Judgment to be published on condition that (irrespective of what is contained in the Judgment) in any published version of the Judgment the anonymity of the children and members of their family must be strictly preserved. 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.

Mrs Justice Lieven DBE:

1. This is an application by the Mother (“AZ”) to reopen a fact finding judgment of Recorder Zoe Henry (“the Judge”) dated 31 March 2023 (“the Judgment”). The Judgment concerned two girls, ZY (now aged 7), and YY (aged 5). AZ is their Mother (“Mother”) and BY is their Father (“BY”). There is a second set of proceedings concerning ZX (aged 6 months), who has the same Mother, but the Father is EX (“EX”). The first proceedings ended in December 2023 with a Special Guardianship Order (“SGO”) for ZY and YY in favour of the Paternal Grandparents (BY’s parents).
2. The Mother was represented by Lorna Meyer KC and Gina Allwood, the Local Authority (“LA”) was represented by Cyrus Larizadeh KC and Gareth Frow, BY represented himself, the Children’s Guardian was represented by Nussrat Bashir, EX was represented by Barbara Connolly KC and Patrick Bowe and the Paternal Grandparents represented themselves. Also in attendance were Nottingham University Hospitals Foundation Trust (“the NHS Trust”), who were represented by Ben Troke.
3. There are two separate but somewhat interrelated grounds for reopening the Judgment advanced by the Mother. Firstly, a Snapchat message dated 4 July 2021 which the Mother says supports her case that EX only met ZY and YY on 4 July 2021, rather than the earlier date in late November 2020, which the Judge had found. The Mother says that she only recovered the Snapchat message in early 2024. Secondly, that there is subsequent material which undermines the medical evidence before the Judge and her findings.

The Facts

4. The Mother and BY separated in September 2019 after a relationship in which domestic abuse was alleged. There was a dispute about the girls’ residence and private law litigation ensued. A Guardian, Ms Silk, was appointed.
5. In October 2021 concerns were raised as to whether ZY had been subject to sexual abuse. On 26 October 2021 ZY was given a child sexual abuse medical undertaken by Dr Ongosi, a paediatrician employed at Nottingham Sexual Abuse Referral Centre (“SARC”). The SARC is a unit at Nottingham University Hospital, operated by the NHS Trust. She produced a report to which I will revert below. On 2 November there was a further hearing, and the court ordered that the girls live with their Paternal Grandparents.
6. In December 2021 the LA commenced care proceedings, with the girls remaining with their parental grandparents. On 8 February 2023 the Judge commenced a 15 day fact finding hearing, which concluded with judgment being given on 31 March 2023. EX was an intervenor in those proceedings. The Judge heard evidence from Dr Ongosi, and a Single Joint Expert, Dr Rahman.
7. The court found that ZY had been sexually abused and the Mother, EX and an unknown other to be on the list of potential perpetrators. Additional findings were made in respect of BY having perpetrated domestic abuse against the Mother and medical neglect by both parents. Those proceedings concluded on 21 December 2023 following a contested final hearing, with the making of an SGO in favour of the Paternal Grandparents.

8. One of the contentious issues in the case was when EX had first met ZY and YY.
9. The Mother applied to the Court of Appeal for permission to appeal the Judge's decision. Permission to appeal was refused. The first ground of appeal was as follows:

“1. The judge erred in making the finding of sexual abuse, when Dr Rahman had stated that anal dilatation could occur in children who had not been sexually abused. The presence of genital warts influenced both treating and expert Doctors, which was on the understanding that the Mother had not had genital warts. However, based upon the medical evidence that came in after the experts had given that evidence, the judge accepted that genital warts could have been passed from the Mother.”

10. Jackson LJ in the refusal notice said:

“An appeal from this fact-finding decision would not have a real prospect of success. This court could only intervene if it found that there had been a failure to consider the whole of the evidence in a rational manner. In fact, the judgment shows that the recorder approached her task with considerable care and reached conclusions that were clearly open to her on the evidence.

The grounds of appeal, amplified in various respects in the skeleton argument, are not persuasive. The threshold was plainly crossed in this case. The finding that [ZY] has experienced sexual abuse was securely based on the medical evidence, taken in the context of the evidence as a whole. The consequential conclusion that the applicant is one of the individuals who may have perpetrated the abuse was founded on the court's assessment of the evidence, including her own evidence. The recorder adequately explained why, at the same time as making serious findings of domestic abuse against the Father, she did not include him in the pool of perpetrators of sexual abuse. That was a judgement for her to make and this court would not disturb it. Finally, the judgment contains a sufficiently balanced account of the relevant factors, including those favourable to the applicant, for it not to be susceptible to an appeal.

Permission to appeal is therefore refused.”

11. On 30 December 2023 ZX was born. The LA issued care proceedings immediately after birth and ZX was placed in foster care on 18 January 2024.
12. On 26 February 2024 the Mother applied to re-open the findings of fact made by the Judge. The Ground for reopening was that the Mother had recovered a Snapchat post from another account dated 4 July 2021, which had a photo with caption “*bit nervous but time to meet [EX] with the Princesses 1st time for everything*”. The Mother argued that this undermined the Judge's finding that EX had met the girls in November 2020.

13. On 25 April 2024 the application to reopen came before HHJ Weston KC. A number of emails circulated raising concerns that there were other cases in the East Midlands where issues had been raised about the reliability of evidence given by practitioners at the Nottingham SARC and this raised a separate and different ground for reopening the Judge's findings.
14. There was a further hearing before HHJ Weston KC on 11 June 2024 at which the Mother made an oral application for adjournment of her application for reopening and for the provision of further information as to examinations at the Nottingham SARC. In the light of the issues that had been raised, HHJ Weston KC referred the matter to me, as the Family Presiding Judge for the Midlands, for a case management hearing on 4 July and a half day hearing to consider the reopening application on 22 July 2024.
15. On 4 July I ordered that the NHS Trust serve a witness statement setting out records of the peer review process that had taken place; comments of that review; notes or minutes of the peer review meeting; documentation on relevant standard operating procedures; relevant internal audits; relevant Care Quality Commission inspection reports; information about relevant complaints; and additional communications.
16. The recitals to that order state:

“UPON the Court informing the parties that for the sake of transparency, the Court has made enquiries with all Designated Family Judges on the Midland Circuit as to whether they were aware of any Judicial concerns relating to SARC NUH, and upon being informed by HHJ Reece of a judgment, wherein criticism was made of SARC NUH on the basis of a report prepared by Dr Wendy Gray. The Court confirming that it will obtain and provide to the parties and the intervenor the relevant excerpts, suitably anonymised, of criticisms and observations, in their proper context.

AND UPON the Court informing the parties that it will obtain Dr Gray's report and provide a suitably anonymised copy to the parties.

AND UPON the Court stating that if there are any objections from the parties in the case of His Honour Judge Reece, the Court shall deal with this administratively and if necessary, requiring only written submissions from the parties.

AND UPON the Court being concerned about rumours on the Midland Circuit in respect of SARC NUH and wishing to resolve matters on a factual basis

AND UPON the Court as a consequence, inviting the advocates to make all reasonable enquiries with other Counsel, and if considered appropriate, Dr Wendy Gray, to identify any other case that may involve judicial criticism of SARC NUH

AND UPON the Court confirming that Counsel should refer details of such cases directly to Mrs Justice Lieven via email to her clerk:

AND UPON the local authority informing the Court that it was not currently aware of any other case with concerns in respect of SARC NUH, save for the matter before HHJ Weston KC in which the local authority were granted permission to withdraw proceedings and no judgment was given.”

17. I wished to ensure that whatever concerns had been raised about the SARC’s practices, which could possibly be considered relevant to the application to reopen, were considered together by the court. The NHS Trust filed a detailed witness statement from Dr James Fildes, who is the Clinical Lead for the SARC. I am very grateful to the SARC for their co-operation in this case.

The law

18. The law on whether to allow a reopening of a Family Court determination was helpfully summarised by Peter Jackson LJ in *Re CTD (A Child: Rehearing)* [2020] EWCA Civ 1316. In essence, as Jackson LJ sets out at [2]: *“When an application is made to reopen findings of fact in a family case the court proceeds in three stages...”*
19. In particular, at [3], he refers to *Re E (Children: Reopening Findings of Fact)* [2019] EWCA Civ 1447 where he noted that:

“... the court will need to be satisfied that the challenged finding has actual or potential significance: it is likely to make a significant legal or practical difference to the arrangements that are to be made for these or other children.”

20. As Peter Jackson LJ said in that case *“mere speculation and hope are not enough”*.
21. The Court was also referred to Court of Appeal (lead judgment given by Peter Jackson LJ) in *Re J (Children)* [2023] EWCA Civ 465, which essentially sets out the same tests. The Court said:

“6. In summary, the test to be applied upon an application to reopen a previous finding of fact has three stages. Firstly, the court considers whether it will permit any reconsideration of the earlier finding. If it is willing to do so, the second stage determines the extent of the investigations and evidence that will be considered, while the third stage is the hearing of the review itself.

7. In relation to the first stage: (i) the court should remind itself at the outset that the context for its decision is a balancing of important considerations of public policy favouring finality in litigation on the one hand and soundly-based welfare decisions on the other; (ii) it should weigh up all relevant matters, including the need to put scarce resources to good use, the effect of delay on the child, the importance of establishing the truth, the nature and significance of the findings themselves and the quality and relevance of the further evidence; and (iii) above all, the court is bound to want to consider whether there is any reason to think that a rehearing of the issue will result in any a

different finding from that in the earlier trial. There must be solid grounds for believing that the earlier findings require revisiting.

8. As Mr Aidan Vine KC rightly submitted, the requirement for 'solid grounds' is a part of the evaluation that the court must carry out. It is not a shorthand substitute for it.

9. In Re W (Children: Reopening: Recusal) [2020] EWCA Civ 1685, [2021] 2 FCR 793 at [28], I said this:

"It is rare for findings of fact to be varied. It should be emphasised that the process of reopening is only to be embarked upon where the application presents genuine new information. It is not a vehicle for litigants to cast doubt on findings that they do not like or a substitute for an appeal that should have been pursued at the time of the original decision. In Re E at [16] I noted that some applications will be no more than attempts to reargue lost causes or escape sound findings. The court will readily recognise applications that are said to be based on fresh evidence but are in reality old arguments dressed up in new ways, and it should deal with these applications swiftly and firmly."

The Judgment

22. The judgment is long (244 paragraphs) and extremely thorough. The Judge made a series of detailed findings in respect of sexual harm. The findings included the following:

1. [ZY] has suffered sexual harm: the following findings of sexual abuse were noted by Dr Edna Ongosi, Consultant Community Paediatrician on 26 October 2021 who concluded that:

a) there were two wart lesions on the skin at the twelve o'clock position i.e. at the joining of the labia minora. She had multiple wart lesions along the vestibule (all along the junction of the labia minora and the base of the hymen)

b) the anal margin was irregular with perianal venous congestion. There was dynamic anal dilatation on minimal traction of [ZY's] buttocks for about 30 seconds. The anal canal was visible and there was no stool in the rectum.

c) a few wart lesions were seen in the perianal region at about nine o'clock position.

d) the findings are suggestive of anal penetration or prior anal trauma.

23. The Judge also made findings about the Mother's dishonesty which went well beyond merely the date upon which EX first met the girls:

"5. The first respondent Mother has been dishonest with professionals in respect of the following:

- a) *her relationship with [EX], the date when he met the children and his involvement with the children's personal care;*
- b) *the individuals who were involved with the children, including whether the Mother had other relationships, and;*
- c) *the extent of her knowledge as to the risk posed by the children's maternal great grandfather who is a convicted sex offender, and the children's contact with him*

6. The first respondent Mother has been dishonest with professionals in respect of her sexual health status, withholding the fact that she was treated for genital warts (which the Mother knew to be genital warts) in November and December of 2020 which prevented professionals from gaining the full forensic picture in respect of the children."

24. It is neither necessary nor appropriate to set out large portions of the judgment. However, it needs to be noted that there are a number of passages in the judgment where the Judge records the Mother's dishonesty, which go well beyond the issue of when EX met the girls, and where the dishonesty was highly relevant to the issues the Judge had to decide. Examples include:

"a. "Coming now to the Mother's evidence, I am afraid to say at the outset that there were significant portions of the Mother's evidence which were largely unsatisfactory. There are numerous points of her evidence which are inconsistent both internally and when one considers her account against the documentary evidence in this case. The Mother gave evidence twice as I have already outlined. I will deal with some of her evidence in my analysis shortly. There are some key areas however which I will mention here. I do not have time in my judgment to recount how many inconsistencies there were in the Mother's evidence and her account because, put frankly, there are too many." [J121]

b. "Two appointments concern me specifically. On 1 February 2021, the Mother said she would book an appointment with Dr Gough in light of the site of the lesion, but she never did. On 24 August 2021, the Mother told Dr Rahman that [EX] was yet to meet the girls, when clearly on both of their written and oral evidence to this Court he had already met the girls in July 2021, if not earlier. I am satisfied that the Mother was lying on both occasions and that she did so because she was concerned about the girls' presentation, which (at the very least) she recognised was unusual and could raise child protection questions." [J192]"

25. The findings placed the Mother, EX and an unknown or unnamed other person on the list of perpetrators for abuse of ZY.
26. The Judge heard evidence from EX at J131-J134 and expressed considerable doubt over whether he had been honest with the Court, see J131-J132. At J133-J134 she said:

“133. [EX] was clear in his evidence that the first time he met the girls was at a local park and that he travelled there by bicycle, which he rode from [Mr Z’s] house. He gave me a very detailed description about how the park was only a ten minutes bike ride away. Later in his evidence he realised that he had already told me that he first met the girls while he was still living in XXXXX, that is, before he had moved into [Mr Z’s] home. There is an obvious inconsistency in his account about when he first met the children.

134. Even allowing for the lapse of time and for issues about whether [EX] could remember matters clearly, I remain concerned about [EX’s] evidence to the Court. [EX] was emphatic that he has not caused the children sexual harm, nor would he ever do so. He was clear about this, as were the Mother and [BY]. However, I do not accept that [EX] has been as “up front” with the Court as he could have been about his involvement with the children and about where he was living at material times. These are material facts which are in dispute in this case and he needed to tell the Court about them. I am also, for similar reasons to the Mother, concerned about why he has not been open about these matters.”

27. In respect of the medical evidence the Judge was careful in her findings, and relied not only on Dr Ongosi but also on the independent expert Dr Rahman:

“89. Dr Ongosi summarised her view as follows:

“I don’t know of any other reasons, spontaneous or organic causes, which could have created the clinical findings I identified. The signs were clear and I am not doubtful about my findings. The examination of [ZY] and the re-examination as well as the examination of [YY], which was done by Dr Shaw, were all peer reviewed. We need at least five colleagues to peer review and I recall that senior colleagues were available and there is no disagreement as to the findings.”

90. Following Dr Ongosi’s evidence I heard from Dr Rahman. He is a Consultant Paediatrician who has been appointed as an independent expert in this case. He works for Harrogate NHS Trust and he has more than 30 years’ experience in this area. It was agreed that he should be present to listen to the entirety of Dr Ongosi’s evidence. As Dr Rahman explained, Dr Ongosi as the treating clinician gathered information and he as the Court appointed independent expert commented upon the information and provided an opinion. I considered him to be an extremely balanced and helpful witness.

...

92. He carried out a careful analysis as to whether there were any organic causes or differential diagnoses and in summary he said this:

“I can’t confirm that this is sexual abuse, but the possibility of it is high in this situation. There are the anal findings which are recognised as

findings which are present in sexual abuse, plus the warts. I may not know for sure, but in terms of the possibilities the highest one I would say is of sexual abuse."

The SARC material

28. As is set out above, one of the two Grounds upon which the application is made is that there have been a number of cases where criticisms have been made of evidence produced by doctors working at the Nottingham SARC. In order to provide some clarity in this regard extensive efforts have been made to identify those cases and consider the relevance or otherwise to the application before me. Those efforts have included the Local Authority themselves making enquires; in my capacity as Family Presiding Judge for the Midlands I have asked the East Midlands Designated Family Judges to let me know of any cases; and the SARC itself have considered its material. The search for other potentially relevant cases has covered the last 5 years.
29. I have been pointed to three other cases, all of which are referred to herein anonymised form. The information the Court has been given about those cases is as follows:

"1. *A Local Authority v AZ & Ors* (children - 16, 15, 2 y/o respectively)

The above matter was heard on 31 July - 04 August 2023, before Mrs Justice Lieven. The matter was reported: [2023] EWHC 3513 (Fam).

The detail of the case is below, using the anonymised initials as per the report:

On 01 November 2022, DZ was examined by Dr Porter. Dr Porter concluded that there was a full thickness transection of the hymenal ring at 7 o'clock consistent with pre-menarchal penetration and a history of bleeding which was given. There was also some over healing between 1 and 2 o'clock, these findings were consistent with the history given.

Dr Gray was instructed as an expert and reviewed Dr Porter's evidence and in essence agreed with her views, saying; "In this case, the forensic examination (01.11.22 at 1230) took place approximately two days after the last reported vaginal rape (30.10.22 at ~0900). Over this time, minor injuries (such as superficial abrasions or lacerations) could have healed without any sign. Furthermore, consensual sexual intercourse and vaginal rape after puberty do not necessarily cause genital injury. Therefore, in this case, acute signs of injury would not necessarily have been expected."

The Court stated that in her original report and in the subsequent questions Dr Gray went somewhat outside her medical expertise, opining on the history of the allegations, the retractions and the story about the sex toy. The Judge placed no weight on these parts of Dr Gray's evidence given that the Judge was not confident that they fell within her expertise.

The Court concluded that “the medical evidence in this case is not determinative. The evidence on the older hymenal defect, and whether it is indicative of an older injury may be consistent with normal variation. I feel it would be unsafe to rely on this. In respect of the healed laceration at 7 o'clock, that does seem to indicate that something occurred. Given that I have found the story about the sex toy impossible to believe, there is some evidence of sexual penetration, which fits with the allegation of abuse. However, given the lack of clarity over the medical evidence, I put very limited weight on this evidence.”

Evidence was not heard from SARC or Dr Gray, although Dr Gray did not agree with a SARC finding of pre-menarchal penetration/abuse. However, Dr Gray did agree with a SARC finding of penetration. Sexual abuse was proven on other evidence.

2. *A Local Authority v NH and XX (the child) 03/05/2022* (“the Nottinghamshire case”)

(Anonymised Judgment provided by Court to parties on 12 July 2024)

The examination/report/analysis of the Paediatrician at SARC was criticised by Dr Gray (two reports) who did not agree with the SARC conclusion that ano-genital findings were supportive of/consistent with sexual abuse/the child's allegation, and again, her opinion was that that the findings neither supported nor refuted the allegations. The LA did not rely upon the SARC report. Sexual abuse was found on other evidence. No evidence was given by SARC, but Dr Gray was called to give evidence. The Judge described Dr Gray as an impressive witness, and that her evidence was a model of clarity. He said:

“Dr Gray has produced a clear overview of the two contemporaneous medical examinations of XX in May and June 2020 and has reached the unequivocal conclusion that Dr Porter, as the treating clinician in the latter examination, reached deductions which could not be sustained on the basis of the observed defects noted to XX’s hymen and anus, and that these potentially fell within normal limits. Having heard Dr Gray and read her reports, I am satisfied that her analysis of the examinations of XX is consistent both with the academic literature in this area and her professional experience of the dangers of overinterpreting what may very well be normal features in the development of a post-pubescent girl and cannot therefore support or undermine XX’s allegations in this case.”

3. *A Local Authority v RM 2020* (“the Derby case”)

The examination/report/analysis of the Paediatrician at SARC was criticised by Dr Gray who did not agree with the SARC conclusion that ano-genital findings were supportive of/consistent with sexual abuse, but rather that the findings were neutral i.e. did not support or refute the allegations. The LA did not seek to rely upon the SARC report for the

s31 threshold. No evidence was given by SARC or Dr Gray. There was no Judgment in relation to this issue.

Enquiries were made by the LA's Solicitor with conduct, Ms Davies, with the LA who confirmed "There is a SARC medical on file from 09/11/2020; this was not performed by any doctors you mention in the email below (this being the doctors at point 6 of the Order of 04/07/2024 who peer reviewed Dr Ongosi in the current case), it was conducted by a Dr Porter at the Nottingham Children's Hospital. The report was then looked at by a Dr Gray who prepared a report 17/05/2021 for Court. This report of Dr Gray was critical of the SARC medical and conclusions, and Dr Gray did not agree with these conclusions.

The LA did not pursue the sexual findings, there was other evidence and therefore, alterations were made to the threshold to deal with the matter in a different way. So, whilst Dr Gray was at one point on the witness template to give evidence in this case, the LA never had the information put to Court in witness format."

4. An LCC case ("the Lincolnshire case") in April 2024, where the examination was undertaken by Dr Sani-Omolori from SARC and Dr Gray, instructed as an independent expert, disagreed with her findings. The Council withdrew the application, inter alia on the basis of Dr Gray's report.

30. Dr Fildes in his witness statement sets out some of the background to the SARC and their internal processes. The team consists of two associate specialists with forensic medical background, one consultant gynaecologist and six consultant community paediatricians. They see around 400 cases per year, which equates to approximately 2000 cases over the last 5 years.
31. It is important to note, as Dr Fildes points out, that at the time of SARC examinations and their reports they will only have the factual information they are given, whereas independent expert evidence before the court may well have the benefit of further evidence the SARC had not seen.
32. In respect of peer review Dr Fildes says:

"11. We follow the practice guidance laid out in RCPCH ("Royal College of Paediatrics and Child Health") on peer review. We meet once a month and review as many cases as possible. I attach as exhibit JF1 a copy of the RCPCH guidance. As we follow this national guidance, there is no other separate standard operating procedure or Trust guidance on this.

12. Peer review is not a second opinion or ratification / authorisation of the original findings, or a part of the reporting process; the time scale in which the peer review takes place does not allow for delay in issuing the examination report pending this. Instead, the purpose of the peer review is to offer quality control and assurance that the findings and conclusions of the individual clinicians involved are shared by the wider

group, and that they are in line with the body of accepted practice. It is to sense check the original report, not to second guess it. It is to assure us that the approach to examination and interpretation of the findings is in line with common practice, and identify anything that might be considered an outlier among common practice.”

33. He describes the peer review process in some detail. Most of the clinicians in the team attend the monthly peer review meetings and the quorum is four. The review for each case is documented by each clinician and does not give an individual opinion.

34. He sets out the peer review process in the current case:

“28. The note of the peer review of the 26 October 2021 examination is signed by Dr Teh, consultant paediatrician.

29. The note of the peer review simply says:

“DVD [we hold our images in encrypted DVD’s] – prepubertal bilateral scattered groin crease spots? Cause. Multiple anogenital warts but normal hymen Anus static anal external and internal dilatation and venous congestion ring with smooth absence of anal creases. No stools seen – Highly abnormal.”

35. There was a second peer review of Dr Ongosi’s second examination:

“That examination was peer reviewed on 10 March 2022. In addition to Dr Ongosi, the attendees were myself, Dr James, Annie Richardson, Dr Sani-Omolori, Dr Straw and Dr Teh. The note makes clear that again there was no concern or doubt about Dr Ongosi’s findings, reading:

“First exam Oct 2021 – wart x 2 at top of clitoral hood and multiple vestibular and periurethral warts

With venous congestion and immediate external anal dilatation – No clear Hx of penile anal penetration

Feb 2022 second exam – all warts resolved and much reduced anal dilatation

Further actions? No.”

36. In respect of Child YY, she was examined by Dr Fiona Straw, Dr Fildes’ predecessor, on 9 November 2021 and by Dr Ongosi on 4 March 2022. No concerns were raised through the peer review process.

37. It appears from Dr Fildes’ statement that there is very limited overlap between the present case and the other cases which have been referred to.

Submissions

38. Ms Meyer on behalf of the Mother makes her application on two alternative bases. In respect of the Snapchat photo and message she submits that this is strong evidence

that EX met the girls in July 2021 rather than the earlier date that the Judge found. Although issues have been raised about the bona fides of the Snapchat image, it has not proven possible to take that aspect of the issue any further forward. Therefore the Court can only take the image and the message at face value.

39. Ms Meyer accepts that even on a revised timeline of EX first meeting the girls on 4 July 2021, that does not rule him out as the perpetrator of sexual abuse because Dr Ongosi's examination was not until October 2021. However, it would be a highly material change of evidence. This is because the Judge placed some reliance on the presence of genital warts as an indicator of sexual abuse, and these are recorded before July 2021.
40. Further, the Judge placed very great significance on the date at which EX first met the girls. This went not only to who was in the pool of perpetrators but also to the Mother's credibility. She points to 13 references in the judgment to the significance of when EX first met them. It also goes to the credibility of other witnesses who, if the date changes, must themselves not have been truthful in their evidence.
41. In respect of the clinical Ground to reopen, Ms Meyer relies on a number of the points raised or criticisms that can be seen in the other cases.
42. In the Derby case she refers to the report of Dr Gray dated 17 May 2021 in which she summarises Dr Gray's points as follows:

"From the extract of report 17/05/21 re Dr [Porter]'s examination in Derby Case

- a. *Inadequate information of examiner's training & experience*
 - b. *Whether examiner's work is routinely photo documented / peer reviewed*
 - c. *Use of inappropriate / misleading phraseology / terms*
 - d. *Absence of reference to other possible acts*
 - e. *Inadequacy of medical / developmental history*
 - f. *Reliance upon subjective and non-specific findings*
 - g. *Lack of agreement with reported findings"*
43. In the Nottinghamshire case (3 May 2022) she summarises HHJ Reece's findings of Dr Gray's criticisms of Dr Porter's report as follows:

"Concerning Dr P's report

- a. *Absence of support by photo documentation in accordance with RCPCH guidelines for best practice*
- b. *Lack of agreement with reported findings – may represent normal variations*

- c. *Observed defect and skin tag may represent nothing more than normal variations to hymen and margin*
- d. *Dr Gray reached unequivocal conclusion that Dr P reached deductions which could not be sustained on the basis of the observed defects noted to XX's hymen / anus and that these potentially fell within normal limits. Having heard Dr Gray and read her reports I am satisfied that her analysis of the examinations of XX is consistent both with the academic literature in this area and her professional experience of the dangers of overinterpreting what may very well be normal features...*"
44. In my judgment (14 August 2023) in *A Local Authority v AZ & Ors* where there had been an examination of the child by Dr Porter and a report by Dr Gray, she refers to J149:
45. "Re examination of Dr P in November 2022 & Part 25 evidence of Dr Gray
- "Para 149 – brief summary re medical evidence, unsafe to rely on older hymenal defect, reference to whether indicative of older injury or may be consistent with normal variation, also reference to healed laceration at 7 o'clock but refers to lack of clarity regarding medical evidence."*
46. In the Lincolnshire case (April 2024) Dr Gray's criticisms of Dr Sani-Omolori's report included:
- "a. Reliance on non-specific findings (redness / abrasions)*
- b. Reliance on reported abrasions which were not visible in the colposcopic recording*
- c. The non specific findings in context of history were characteristic of vulvovaginitis which is common condition in pre-pubertal girls. It is not an indicator of sexual abuse*
- d. Absence of peer review minutes / record of peer review meeting*
- e. Absence of details of examiner's experience and qualifications / training & experience*
- f. Use of inappropriate terminology*
- g. Absence of detail of publications upon which opinion was based and of page / paragraph numbers of RCPCH guidance*
- h. Dr Gray refers to fact updated version of RCPCH is expected to be published soon*
- i. Incorrect / misleading quotation of figures*
- j. Omission of stating alternative causes for erythema including medical conditions*

k. Reference to / reliance upon irrelevant comparison of findings

l. Inconsistencies re rate of healing

m. No agreement that injuries reported were present”

47. There is an overlap on the peer review, because Dr Sani-Omolori was involved in the peer review of Dr Ongosi’s report, and vice versa in the Lincolnshire case. In the light of that history Ms Meyer submits there is shown to be a flawed peer review process at SARC and there are a number of parallels between Dr Gray’s criticism of Dr Porter and Dr Sani-Omolori’s reports, and the report of Dr Ongosi in the present case.
48. Ms Meyer also submits that the lack of clarity over whether Dr Ongosi had been viewing the findings with a colposcope, and whether Dr Rahman had been provided with and reviewed colposcope recordings, casts doubt on their findings. I make clear here that this is an issue that could and should have been raised on appeal and cannot possibly be a ground for reopening the findings. It is an issue which is not related to any subsequent material from SARC.
49. EX supports the Mother’s submissions.
50. The LA, supported by the Guardian and BY, resists the application and says there are no solid grounds for believing that the previous findings require revisiting:
 - a. Findings of failure to obtain medical treatment, emotional harm and neglect remain unchallenged and it is not disputed that threshold was met in the girls’ case;
 - b. The Judge found sexual abuse of ZY, she did not ascribe a particular sexual injury to a particular individual so the Snapchat photo does not undermine that broad finding;
 - c. The timing of the anal injuries did not preclude them occurring after 4 July 2021, so at a time when EX accepts that he was spending time with ZY;
 - d. The Judge found that the Mother was dishonest on a series of grounds, not merely in relation to the date that EX first met the girls. Consequently the finding that the Mother was dishonest about the date of meeting was not decisive in the light of the other findings of dishonesty;
 - e. Similarly the Judge found that EX had not been straightforward in his evidence on a number of issues;
 - f. The Judge fully considered the evidence of the first meeting with EX, including hearing oral evidence of the Mother and EX, but also of other family members who contradicted the Mother’s and EX’s evidence. On balance the Judge’s finding on the issue remains safe.
51. In respect to the clinical evidence Ground for reopening, the LA submits:

- a. There were no concerns raised at the peer review meetings as to Dr Ongosi's findings, and no established concerns about her professionalism or diagnostic abilities;
 - b. Dr Fildes' evidence does not support any systemic failures or regulatory concerns about SARC or any of clinicians concerned;
 - c. In the Lincolnshire case, which was the subject of the Mother's skeleton argument of 19 June 2024, the clinician Dr Sani-Omolori was different;
 - d. Dr Rahman agreed independently with Dr Ongosi's findings. He was entirely independent of the SARC and not subject to any criticism in the other cases and reports now relied upon;
 - e. The Court of Appeal refused permission to appeal, finding that the Judge was entitled to accept the expert evidence.
52. The Guardian supports the LA's case. Ms Bashir raises one additional argument, which is that the family members who supported EX having met the girls well before 4 July 2021 had not, at that stage, fallen out with the Mother, and had no reason to lie about the evidence on this point. Further, at the point where they gave that evidence there was no reason for them to understand the importance of the issue which strengthens their credibility in this regard.

Conclusions

53. The grounds for reopening as set out in *Re CTD* and *Re E* are in my view not met here. This is largely for the reasons given by the LA. The Mother, and EX, face a constellation of findings by the Judge which are not affected by the Snapchat message. Although the issue of the date EX met the girls was undoubtedly important, I can see no sensible forensic reason why it would have changed a large number of the Judge's other findings. In particular she found that the Mother had been dishonest on a series of points and she did so on very clear evidence. Those findings were wholly independent of the date of meeting EX.
54. Further, the Judge had a number of other pieces of evidence that pointed to the earlier meeting date, in particular that of the other witnesses. Again, the Snapchat post does not change that evidence and does not come close to being determinative of the issue of date of meeting.
55. As the LA points out, the findings of sexual abuse are again unaltered by the Snapchat post, and quite possibly related to a time after EX accepts he had met the girls. It is correct that the genital warts are recorded before July, but those are but one indicator of sexual abuse. The Judge did not suggest that the presence or otherwise of the genital warts was itself determinative, it was merely another factor that pointed to sexual abuse having occurred.
56. I am of the clear view that the clinical issues do not themselves give any basis for reopening the findings. It is important to put the cases raised in context. There are perhaps four cases where some question has been raised over findings by SARC

clinicians over the last 5 years. In that period SARC has reported on approximately 2000 cases.

57. Those four cases cover different clinicians with only very limited overlap. Dr Ongosi was not the clinician in any of the other cases. Although she was involved in peer review in at least one of the other cases, she was but one of a number of peer reviewers.
58. It does appear that Dr Gray takes a different view of certain indicators of sexual abuse from some of the clinicians at the SARC. It is important to put these differences again in context. It is apparent from the various reports, caselaw and judicial knowledge that sexual abuse, save in the most clear cut cases, cannot be determined by medical examination alone. There are various indicators, and different clinicians put somewhat different weight on those indicators. That is ultimately a matter of clinical and professional judgement. I note that there is nothing in Dr Fildes' witness statement that suggests any regulatory concerns around the practice of any of the clinicians at the SARC.
59. Dr Ongosi's findings were supported by Dr Rahman, who is unconnected with the SARC. Dr Rahman and Dr Ongosi were extensively cross examined. Ms Meyer seeks to challenge Dr Rahman's findings, but that was a matter for appeal and Peter Jackson LJ refused permission to appeal in respect of all Grounds, including the challenge to the clinical findings.
60. It is important to look at the Snapchat post and the clinical issue together, and not put them in separate silos. But even when that is done, the two matters together do not reach the test in *Re CTD*. There are so many findings by the Judge which are unaffected that there is no real prospect that rehearing would reach any different conclusions, and thus that there would be any legal or practical effect.