



Neutral Citation Number: [2019] EWFC 70

Case No: PL16C00786

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 November 2019

Before :

LORD JUSTICE BAKER

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF Q (PUBLICATION OF JUDGMENTS)

BETWEEN:

PLYMOUTH CITY COUNCIL

Applicant

- and -

ELIZABETH WILKINS (1)
ERIK VANSELOW (2)
Q (represented by the Children's Guardian) (3)
X (4)
Y(5)

Respondent

Marie Leslie (instructed by **Local Authority Solicitor**) for the **Applicant**
Paul Storey QC and Caroline Elford (instructed by **Watkins Solicitors**) for the **First Respondent**
Philip Conrath (instructed by **Lillywhite Williams and Co**) for the **Second Respondent**
Carla Flexman (instructed by **Wolferstans**) for the **Third Respondent by his children's guardian**
Owen Lawton (solicitor, of **Owen Lawton Solicitors**) for the **Fourth and Fifth Respondents**

Hearing date: 8 November 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The judge has given permission for the names of the child's parents to be published on condition that the child's name is not published, nor any information which is likely to disclose his present address. 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.

LORD JUSTICE BAKER :

1. Under the Practice Guidance, entitled “Transparency in the Family Courts - Publication of Judgments”, issued on 16 January 2014, the family court is directed to grant permission for the publication of a judgment in defined circumstances, including:
 - (1) whenever the judge considers the publication would be in the public interest (paragraph 16), and
 - (2) unless there are compelling reasons to the contrary, when the judgment arises from a substantial contested fact-finding hearing at which serious allegations, for example of significant harm, have been determined (paragraph 17 and schedule 1).
2. Under paragraph 20(ii) of the Guidance, in cases where a judge gives permission for a judgment to be published, the child who is the subject of the proceedings, and other members of his family, should not normally be named unless the judge otherwise orders.
3. Paragraph 19 of the Guidance provides that:

“In deciding whether and if so when to publish a judgment, the judge shall have regard to all the circumstances, the rights arising under any relevant provision of the European Convention on Human Rights, including Articles 6 (right to a fair hearing), 8 (respect for private and family life) and 10 (freedom of expression), and the effect of publication upon any current or potential criminal proceedings.”
4. In these proceedings, I have given two lengthy judgments in which I have determined serious allegations of significant physical harm to a child. All parties are agreed that the judgments should be published. An issue has arisen, however, as to the extent of any anonymisation of the published versions.
5. The significance of this issue can be demonstrated by the following very brief summary of the background.

- (1) The child who is the subject of the proceedings suffered serious injuries on a number of occasions whilst in the care of his parents, as a result of which the local authority started care proceedings under Part 4 of the Children Act 1989, and the parents were arrested and charged with a number of criminal offences.
 - (2) After a fact-finding hearing in the care proceedings, conducted in private in accordance with the Family Procedure Rules, I found that each parent had been responsible for separate injuries to the child. With regard to the most serious injury, to the child's head, I found that it had been inflicted by the father.
 - (3) Subsequently, after a criminal trial at the Crown Court heard in open court, the mother was convicted of a number of offences, including an offence relating to the infliction of the head injury on the child. The father was acquitted on all charges, including a charge relating to the head injury. The mother received a sentence of eight years' imprisonment.
 - (4) Following the criminal trial, the father applied to this court to vary the findings made in the earlier judgment. The President of the Family Division directed that there should be a rehearing of the fact-finding hearing before me. At the conclusion of that rehearing (again conducted in private in accordance with the rules), I decided that my findings of fact remained unchanged.
6. The mother has now applied for publication of my judgments in an un-anonymized form, save for the name of the child. Her application was served on the other parties, and, at my direction, on the Press Association, and was considered by me at a hearing last week, at the conclusion of which I reserved judgment until today.
7. The position of the parties on the proposed publication of the judgment is as follows.
- (1) All parties are agreed that the judgments should be published.
 - (2) All parties are also agreed that the child's name should not be included in the published versions of the judgment.
 - (3) The mother proposes that both parents' names should be published.
 - (4) The father does not oppose the publication of the mother's name, but does oppose publication of his own name. It is said that the publication of his name may lead to the identification of the child.
 - (5) The local authority, the children's guardian, and his current's carers, the fourth and fifth respondents, adopt a neutral position on the mother's application.

On behalf of the Press Association, Mr Brian Farmer has also provided very helpful submissions in support of the mother's application.

8. I was referred by counsel to a number of reported authorities including *Re S (A Child) (Identification: Restriction on Publication)* [2004] UKHL 47, [2005] 1 AC 593; *BBC*

v Rochdale MBC [2005] EWHC 2862 (Fam), [2007] 1 FLR 101 (Munby J); *Re LM (Reporting Restrictions: Coroner's Inquest)* [2007] EWHC 1902 (Fam), [2008] 1 FLR 1360 (Sir Mark Potter P); *Medway Council v G and Others* [2008] EWHC 1681 (Fam), [2008] 2 FLR 1687 (Sir Mark Potter P); and *Re W (Children) (Care Proceedings: Publicity)* [2016] EWCA Civ 113, [2016] 4 WLR 39. In addition, Mr Farmer cited the well-known passage in the judgment of Lord Rodger in *Guardian News and Media Ltd and others* [2010] UKSC 1 at paragraph 63-4.

9. I am grateful to the advocates, and to Mr Farmer, for their helpful submissions, but I do not consider it necessary to refer to them in any detail in setting out my decision on this application.
10. In my judgment, my two earlier judgments should be published, excluding only the child's name and any information likely to lead to the identification of his current home, including the names of his current carers, the fourth and fifth respondents. All other information in the judgments, including the parents' names, should be published. In reaching this decision, I have considered the relevant human rights, in particular the Article 8 rights of the child and family members and the Article 10 freedom of expression of the mother and the press and broadcasting media. My reasons for reaching this conclusion are as follows.
11. First, this case involves serious and life-changing injuries sustained by a child in the care of his parents. Although the law requires care proceedings to be held in private, it is in the public interest for judgments about such cases to be published wherever possible. The first judgment in these proceedings was delivered over two years ago and would have been published much earlier save for the need to avoid any risk of prejudice to the criminal proceedings.
12. Secondly, the facts of this case have already received very substantial publicity through press and broadcast reporting of the criminal trial. Although the child's name was, very properly, not published in those reports, the names of both parents, as defendants in the criminal proceedings, were published. Save for the child's name, the facts of the case are in the public domain. Accordingly, anyone who has read the reports of the criminal trial would recognise the case when reading the family court judgments. I have considered the arguments advanced on behalf of the father for restricting publication of his name but concluded that, as his name has already received wide publicity following the criminal trial, there would be no substantial further protection for the child by withholding the father's name from the published versions of my judgments. In the circumstances of this case, I consider that further publication of the parents' names, if identified in the published version of the judgments, will not cause any significant infringement of the rights of the parents and the child to respect for private and family life.
13. There is, however, a third reason for publishing the unredacted judgments in this case. The fact that the family court and the Crown Court have reached different conclusions as to the perpetrator of the head injury sustained by the child is itself a matter of public interest. I do not propose to make any further comment about this outcome. I have, however, reached the very clear conclusion that it is not for this court to restrict public knowledge of this issue, or inhibit discussion of the wider consequences.

14. On behalf of the Press Association, Mr Farmer puts forward a number of more extensive arguments. He contends that publication would broaden public understanding of how the system works and would be in line with the drive to make the family courts more transparent. In my judgment, however, it would not be right to see the publication of these judgments as heralding any wider relaxation on the publication of information relating to family proceedings. That is a matter for the President of the Family Division and, ultimately, for Parliament. My decision on the publication of the judgments is intended to comply with the existing Practice Guidance, balancing the respective ECHR rights as they arise in the very unusual circumstances of this case.
15. Mr Storey QC and Ms Elford on behalf of the mother deployed a number of arguments focusing on their client's current circumstances, stressing in particular her intention to appeal against her convictions. I do not propose to make any comment about those arguments. It is a matter for the parties to determine how they wish to deploy the published judgments. It should be noted, however, that, save for the publication of the two judgments, the restriction on the publication of information relating to the proceedings in s.12 of the Administration of Justice Act 1960 and FPR rule 12.73 continues to apply. If any party, or any other person, wish to publish any other information concerning the proceedings, they must apply to this court for permission to do so.
16. I am grateful to counsel for helping to resolve a few further minor issues about the redactions so that the judgments can now be published.