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Case No: CF23C50154

Neutral Citation Number: [2024] EWFC 228 (B)

IN THE FAMILY COURT AT NEWPORT (SOUTH WALES)

Newport (South Wales) County Court and Family Court
5th Floor
Clarence House
Clarence Place
Newport
NP19 7AA
9th July 2024

BEFORE:

HIS [HONOUR JUDGE JONATHAN HOLMES](#)

BETWEEN:

A Local Authority in Wales

APPLICANT

- and -

Grandmother	(1) <u>RESPONDENT</u>
Grandfather	(2) <u>RESPONDENT</u>
Mother	(3) <u>RESPONDENT</u>
Father	(4) <u>RESPONDENT</u>
CHILD (VIA THE GUARDIAN)	(5) <u>RESPONDENTS</u>

Legal Representation

Miss Heyworth KC and Mr Jones on behalf of the Applicant Local Authority

Ms Reed KC and Miss Morgan on behalf of the First Respondent

Miss Hughes KC and Miss Chamberlain on behalf of the Second Respondent

No attendance by Third or Fourth Respondents

Miss Jones on behalf of the Fifth Respondent Child

Miss Herbert on behalf of A Welsh Police Force

Judgment

Introduction

1. This judgment considers the issue of whether my substantive judgment granting permission for the withdrawal of care proceedings should be published.
2. The original judgment was handed down on 7th May 2024. I heard submissions that date regarding publication. This judgment is being sent out in draft form on 12th June 2024. The delay in sending this judgment out has been the result of my own availability due to workload.

Parties Positions

3. The Local Authority and the Welsh police Force oppose the judgment being published. Their concerns focus on the risk of identification, impact on the child and potential impact upon the ongoing police investigation.
4. The Guardian also opposes publication. Miss Jones acknowledged that there may be public interest in this judgment but urged the Court to consider the child now and in the future. She said there is a real risk of jigsaw identification. She also said that the facts of this matter flow through the judgment and it would be a herculean task to anonymise.
5. Grandmother fully supports publication of the judgment. Whilst acknowledging that the main purpose of the judgment is to travel with the child as a narrative of his journey and a guide for future professionals, Ms Reed KC said that the public interest is undeniable. She said there are wide ranging and serious failings by two public bodies. She said her client had no particular view as to whether individual professionals should be named but said that the specific Local Authority and Police Force should be named as a minimum.
6. Grandfather was fully aligned with the position of Grandmother. Miss Hughes KC said that there is a clear public interest in publication. She also said that publication would assist learning in respect of section 76, Police Protection Orders and disclosure. She said that the arguments regarding public interest and confidence, learning and reform and accountability tip the balance toward publication and naming of the Local Authority.

Law

7. I am grateful to all the advocates for their written summaries of the relevant law and legal principles.
8. The test for publication is not the best interests of the child. The paramountcy principle is not engaged but the welfare of the child is a relevant consideration.
9. The Administration of Justice Act 1960, section 12 and Children Act 1989, section 97(2) establishes automatic restrictions on reporting and publication in family cases concerning children without permission of the court.

10. In considering the issue of whether the judgment should be published I have regard to the Practice Guidance (Family Courts: Transparency) issued on 16th January 2014 and the President's Guidance as to Reporting in the Family Courts dated 3rd October 2019.
11. The 2014 Practice Guidance distinguished two classes of judgment: those that must ordinarily be published (paragraphs 16 and 17); and those that may be published (paragraphs 18). Sir James Munby detailed:
 - “16. *Permission to publish a judgment should always be given whenever the judge concludes that publication would be in the public interest and whether or not a request has been made by a party or the media.*
 17. *Where a judgment relates to matters set out in schedule 1 or 2 below and a written judgment already exists in a publishable form or the judge has already ordered that the judgment be transcribed, the starting point is that permission should be given for the judgment to be published unless there are compelling reasons why the judgment should not be published.*
 19. *... 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.*
 20. *In all cases where a judge gives permission for a judgment to be published:*
 - (i) *Public authorities and expert witnesses should be named in the judgment approved for publication, unless there are compelling reasons why they should not be so named;*
 - (ii) *The children who are the subject of the proceedings in the family courts, and other members of their family, and the person who is the subject of proceedings under the inherent jurisdiction of the High Court relating to incapacitated or vulnerable adults, and other members of their family, should not normally be named in the judgment approved for publication unless the judge otherwise orders;*
 - (iii) *Anonymity in the judgment as published should not normally be extended beyond protecting the private of the children and adults who are the subject of the proceedings and other members of their families unless there are compelling reasons to do so.”*
12. In considering this matter a balancing exercise is required between ECHR Articles 6, 8 and 10. The required balancing exercise is summarised at paragraph 22 of **Re J (A Child)** [2013] EWHC 2694 (Fam).

“The court has power both to relax and to add to the 'automatic restraints.' In exercising this jurisdiction the court must conduct the 'balancing exercise' described in In re S (Identification: Restrictions on Publication) [2004] UKHL 47, [2005] 1 AC 593, [2005] 1 FLR 591, and in A Local Authority v W, L, W, T and R (by the Children's Guardian) [2005] EWHC 1564 (Fam), [2006] 1 FLR 1. This necessitates what Lord Steyn in Re S, para [17], called "an intense focus on the comparative importance of the specific rights being claimed in the individual case". There are, typically, a number of competing interests engaged, protected by Articles 6, 8 and 10 of the Convention. I incorporate in this judgment, without further elaboration or quotation, the analyses which I set out in Re B (A Child) (Disclosure) [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at para [93], and in Re Webster; Norfolk County Council v Webster and Others [2006] EWHC 2733 (Fam), [2007] 1 FLR 1146, at para [80]. As Lord Steyn pointed out in Re S, para [25], it is "necessary to measure the nature of the impact ... on the child" of what is in prospect. Indeed, the interests of the child, although not paramount, must be a primary consideration, that is, they must be considered first though they can, of course, be outweighed by the cumulative effect of other considerations: ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4, [2011] 2 AC 166, para [33].”

13. In weighing the interests between Articles 8 and 10, the judge is to have the public interest in mind. Hayden J considered these competing interests within the matter of **Re J (A minor)** [2016] EWHC 2595; he reiterated that a balance is to be drawn between Convention rights, with no presumption that Article 8 carries more weight than Article 10. At para [37] he stated:

“We are not concerned merely with a ‘policy’, to publish more judgments, rather we are applying the obligations imposed by Article 10 and Article 8 ECHR”.

14. Peter Jackson J (as he then was) in **Wigan BC v Fisher and Thomas** [2015] EWFC 34 described the purpose of the Guidance as follows:

‘to promote understanding of and confidence in the proceedings of the Family Court. But beneficial though that goal is, it is not an end in itself. Rather, it is part of a necessary process to ensure that the rights of individuals and the public...are properly balanced. That cannot happen if confidentiality in the proceedings of the Family Court, a public body, is allowed to trump all other considerations. A balance has to be struck in each case, using the guidance as a valuable aid. There will still be cases where, notwithstanding the guidance, publication is not permitted and other cases where the judge will authorise wider publication than that contemplated by the guidance.’

15. There is no presumption against publication though there is obvious justification for anonymisation to protect the child.
16. If I permit publication of the judgment, I will have regard to the Practice Guidance relating to anonymisation from December 2018.

17. There are also issues regarding who should be identified if the judgment is to be published. Both the Local Authority and the Police request that the specific authority and force should be anonymised as well as individual officers and social workers.

18. Ms Reed KC reminds me of **Tickle v Herefordshire County Council & Ors** [2022] EWHC 1017 (Fam) when Lieven J at paragraph 78 said:

“...the powers of the Court to order anonymisation in relation to professionals need to be exercised with considerable care. Social workers are employees of a public authority conducting a very important function that has enormous implications on the lives of others. As such, they necessarily carry some public accountability and the principles of open justice can only be departed from with considerable caution.”

19. She also reminded me of **Herefordshire Council v AB** [2018] EWFC 10 when Keehan J said at paragraph 50:

“...a public judgment which named the local authority was necessary for the following reasons: (a) the President has repeatedly emphasised the importance of transparency and openness in the conduct of cases in the Family Division and in the Family Court; (b) the public have a real and legitimate interest in knowing what public bodies do, or, as in these cases, do not do in their name and on their behalf; (c) the failure to plan and take action in both of these cases is extremely serious...”

Submissions

20. I have carefully considered the written and oral submission regarding this matter. There are a number of issues that have been raised by the parties.

Risk of identification

21. The Local Authority submit that the family live in a relatively small community and that there is a real risk of identification or jigsaw identification even with careful anonymisation and redaction. They say that the facts flow through the judgment; specific facts such as a life limiting condition; the child living with his Grandparents and then being removed and then returned sometime later; Grandparents having cared for other family children previously. They say the facts are such that there would be few families in the area with the same footprint. This leads to an elevated risk of identification and a risk of wider family identification. There is risk of public gossip, condemnation and misinformation in the community. The Guardian agrees with this saying it will not be difficult to identify the family even with anonymisation.

22. They both submit that if published the judgment would need to be so heavily redacted it would be rendered useless to any reader.

23. The Local Authority also submit that publication may lead to press interest which heightens the risk of identification and misinformation.

24. Miss Jones agreed with the Local Authority and added that the proceedings have laid bare intergenerational family dysfunction resulting in family members becoming estranged. The facts at the core of this judgment have torn the family apart. She said that the child is still suffering insecurity since returning to his Grandparents. She highlighted that this is the 3rd set of proceedings for the child. She said he is part of a small community and is likely to be one of very few children with a life limiting condition. He is in an even smaller pool of children with life limiting conditions who live with their Grandparents with allegations of sexual abuse surrounding the family. The Guardian is clear that the risk of identification is not one which is outweighed by public interest.
25. The Grandparents submit that it is perfectly possible to anonymise prior to publication so the family's article 8 rights can be protected, and article 10 rights can be respected at the same time.
26. **Police investigation**
27. The Local Authority submit that there remains a live investigation and publication could lead to that being undermined. The Welsh Police force agree with this submission adding that premature disclosure of sensitive information could impede endeavours and compromise the acquisition of vital evidence. They add that there is wider applicability in that publication could create heightened media scrutiny due to failings and could undermine existing investigations.
28. **Impact on the child**
29. The Local Authority say that the child is likely to gain an age and understanding that he would in later life be able to identify himself and his family from the judgment. The fact that such personal information is in the public domain is likely to cause unnecessary stress and anxiety to him.
30. The Welsh police force submits that publication runs the risk of identification and therefore impacts on welfare. Furthermore, non-publication would mean that the child's welfare remains unaffected.
31. Ms Reed KC said that no welfare benefit of publication to the child is the wrong question. She added that there is no obvious nexus between a properly anonymised judgment and impact on the child, let alone harm. The child is not of an age where he will be surfing the net and given his life limiting illness the likelihood of finding the judgment is realistically significantly reduced. Miss Jones disagreed with this approach saying it is purely speculative and not determinative and an individual's entitlement to private family life is not determined by the extent to which they are able to exercise that, right nor is it determined by whether or not they are aware it is being breached. The Guardian is extremely concerned at the potential impact of publication on the child.
32. **Public interest**
33. The Local Authority accepts that the judgment deals with failures by public bodies and that there is a need for transparency in the Family Court. However, they say that the purpose of the judgment is for this Local Authority and Police to learn lessons and for

it to sit on the child's file for him and anyone dealing with him or his family in future to know and understand what has happened. They accept it may be argued that there is public interest but say it does not fall in favour even of an anonymised judgment when balancing the competing rights.

34. The Welsh Police Force also accept the failings identified in the judgment and say that steps are being implemented to correct matters. Miss Herbert submitted that the Welsh Police force should be afforded the opportunity to rectify shortcomings and implement corrective measures and the withholding of the judgment allows them the necessary space to institute training aimed at bolstering the understanding of Family Court procedures.
35. Grandparents submit that there is a high level of public interest. These are proceedings involving the prolonged separation of a vulnerable child with a life limiting illness from carers which were ultimately withdrawn. The proceedings have had profound consequences and involve serious findings against two public bodies. The Grandparents actively support publication and such a request for publication is an expression of their respective article 10 rights.

Decision

36. This is a finely balanced decision. But I have decided that there should be publication of this judgment.
37. The circumstances of the child are such that there is a risk of identification and jigsaw identification that cannot be ignored. The Guardian in particular is concerned at the impact on the child if this happened. That said, it is clear in my judgment that, there would be a high level of public interest in publication. There is a strong public interest in issues surrounding the local authority's social work practice and children's social care being known and subject to public debate. The judgment details significant failings over a prolonged period by two public bodies. It details the impact such failings had together with concessions made and steps that will be taken to avoid such failings in the future.
38. Public trust and confidence in family justice can only be increased by openness and transparency. Ms Reed KC said this applies to transparency about failures as well as successes. Miss Jones took issue with this description and questioned how success or failure is capable of being quantified in the context of Care proceedings. I agree with Miss Jones to a certain extent, but it is important that judgments are published which highlight issues that occur within the Family Justice System, and which demonstrate that local authorities and other public bodies are held to account by the family court when such failings arise. There is a broad public interest in both the operations of children's services and of the family justice system in being transparent and open so that the public have a greater understanding of what happens in these cases, both in terms of good practice and bad. It is conceded by the Local Authority and Police in this matter that there are a number of examples of bad practice littering the chronology of this case from the point of removal right through to the manner of return.
39. The public interest in publication must be balanced against the risks that arise from publication. I agree with the submission that it is not inevitable that publication will

have an adverse impact on the child. The impact must be assessed by reference to the evidence before the court rather than any presumption of harm. The sad reality in this case is that the child has a life limiting condition. He is not able to access it himself at his age and realistically is not going to be well enough to access it in his teenage years.

40. The risks that arise relate to the prospect of identification so the key issue in this case is whether appropriate anonymisation can be put in place to safeguard against that risk. I accept that the facts of the matter flow through the judgment, but I do not accept that the required redactions or anonymisations would render the judgment unintelligible or useless to the reader. The redactions and anonymisations that are required are likely to be a challenging task but with some care and thought, in my judgement, it is possible to redact the judgement in such a way that it minimises risk.
41. The police objections are pure speculation. They have had over 20 months to progress the investigation. I was provided no detail as to ongoing lines of enquiry that would be jeopardised by publication of the judgment. Any such argument would, in any event, only be applicable to deferment of publication rather than publication itself. I have considered whether publication should be deferred until such time as the investigation has concluded and have decided it should not be. The investigation is not far off 2 years old. There is no indication a file will be submitted to the Crown Prosecution Service any time soon. When this matter started in 2022 mention was made of the investigation taking years and, sadly, that has proved to be the case. I do not consider it appropriate to defer publication to an uncertain unspecified date in the future.
42. In my judgment the submission that publication has wider implications for other non-related investigations is of limited merit. Police forces are public bodies. There is a public interest in how they discharge their duties and of them being held to account if there are failings. There is also public interest in an awareness of a recognition of failings and a commitment to implement change. It cannot be right that this judgment should not be published as it may lead to press scrutiny and jeopardise non-related investigations. If that argument were right no judgment critical of the police would ever be published.
43. Having balanced the respective rights and risks I am satisfied that the balance falls in favour of the judgment being published on public interest grounds in a redacted and anonymised form.
44. Both the Local Authority and the Welsh Police Force submit that if the judgment is to be published then the identity of the frontline social workers and police officers should be anonymised. They submit that naming individuals represents an extraordinary measure that warrants careful consideration of the potential consequences such as possible infringement on their privacy and personal safety. It is clear from my judgment that the failings were of a systemic nature. They were the result of a lack of supervision; lack of appropriate management; lack of awareness of the most basic of legal principles and lack of awareness of the family justice system and procedures. They are failings that have been recognised and assurances have been given that lessons will be learned, and changes will be implemented. The naming of individuals adds nothing to the judgment, and I agree that there should be anonymisation of the frontline workers and police officers.

45. There is also an issue as to whether the Local Authority and Police Force should be named. I recognise that Local authorities are public bodies with a statutory responsibility for the welfare and protection of children and support of families. Where that work results in proceedings the Local Authority is held accountable for its actions with families by the court. I also recognise that the need for a public body to be identified when acting in respect of citizens is recognised to be important. However, the major argument against publication of this judgment is the risk posed of identification or jigsaw identification. Careful redaction and anonymisation of the judgment is required to ameliorate against that risk. Naming the Local Authority and/or the Police Force in this case will set clear geographical boundaries to the location of this family that may serve to undermine work undertaken to redact/abridge other parts of the judgment. For that reason, the Local Authority should just be identified as a Local Authority in Wales and the Police as a Police Force in Wales.
46. It is common ground that if the judgments are to be published then all detail which could lead to identification should be anonymised. This includes names, ages, area, school and services provided.
47. In addition, there should be the following redactions:

[list redacted]
48. There are likely to be further redactions and anonymisations not covered above. When conducting the redactions regard must be had to the Anonymisation Practice Guidance from December 2018.
49. Responsibility for anonymisation of the judgments fall to the solicitor for the Local Authority in accordance with paragraph 21 of the 2014 Practice Guidance. The anonymised judgments are to be submitted for my approval within 28 days.