Neutral Citation Number: [2020] EWHC 648 (Admin)

Case No: CO/1604/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/03/2020

Before :

THE HON. MR JUSTICE LANE

- -

Between :

BM	**Appellant**
- and -	
REPUBLIC OF IRELAND (No 2)	**Respondent**

- -
- -

Ms F Iveson for the **Appellant**
Mr B Joyes for the **Respondent**

Determined without a hearing

- -

Mr Justice Lane:

ADDENDUM JUDGMENT

1. On 30 January 2020, I gave an *extempore* judgment, allowing the appellant's appeal against the decision of the District Judge that the appellant should be extradited to Ireland, pursuant to the Extradition Act 2003. I ordered the appellant's discharge.

2. At the commencement of the hearing, I granted the application made by Ms Iveson, on behalf of the appellant, that the appellant's name, and that of her family members should be anonymised. Mr Joyes, for the respondent, did not object to the application. There was no objection by the press, no member of whom appeared to have been present at the hearing.

3. On 21 February 2020, the Divisional Court (Irwin LJ and Lewis J) handed down judgment in *John Short and the Falkland Islands* [2020] [EWHC 439] (Admin) ("Short No. 2"). The Divisional Court held that:-

> "4. …. it would only be in exceptional circumstances that reporting restrictions should be imposed preventing the identification of a person accused of crimes: see *In re Press Association* [2013] 1 WLR 1979. We take a similar approach in relation to extradition proceedings. The policy restrictions which determine that criminal defendants should be identified save in very exceptional circumstances must be taken to apply with equal force to those sought for extradition to face criminal charges. We would not continue the order imposing reporting restrictions on the identity of the Appellant.
>
> 5. In relation to the Appellant's wife and child, they have been anonymised in the judgment and their identities were not referred to during the hearing of the appeal. We recognise that the Appellant may now be identified, and it may be difficult in practical terms to prevent any identification of the wife. We have not seen any material which would justify the continuation of reporting restrictions in relation to the identity of the Appellant's wife. We would not continue the order imposing reporting restrictions in relation to her. In relation to the Appellant's children, we recognise that they are young and that reference has been made to a genetic medical condition that they have relating to their eyesight. Both the appellant and the respondent support continuing the anonymity order in relation to the children. However, the material referred to in the judgment was relevant to the question of whether extradition would be a breach of Article 8 ECHR and is the kind of material routinely referred to in extradition cases where no reporting restrictions are imposed. On balance, we would not continue the order imposing reporting restrictions on the identity of the children. We would, however,

invite any member of the press to consider whether reporting of the names of the children is necessary or in the public interest."

4. In the light of Short No. 2, I requested representations from the parties on whether the appellant should be anonymised in the judgment, as published. I have received written submissions from Ms Iveson and Mr Joyes, for which I am grateful.

5. Ms Iveson points to features of the present case, not present in Short No. 2 (or the substantive judgment [2020] EWHC 438 (Admin)). In the present case, the position of T, the appellant's daughter, is of central significance. T suffers from merosin – negative congenital muscular dystrophy. As the main judgment makes plain, this condition is not only life-limiting; it has had a devastating impact on T's everyday life. The main judgment necessarily addresses in detail T's circumstances, including those of an intimate nature which, if disclosed to the general public, would be likely to cause T embarrassment and distress. T's right to private life, protected by Article 8 of the ECHR, would be likely to be seriously infringed by such disclosure.

6. Ms Iveson draws attention to the emotional harm that could be caused to T and her brother, M, if they were to discover that the appellant had been at great risk of being taken away from them, with all the instability that this would cause, as addressed in the main judgment. It was for these reasons that the social workers tasked for the purposes of the extradition proceedings with exploring the wishes of T and M, did not tell the children about this risk.

7. Ms Iveson submits that, if the name of the appellant were to be given in full in the judgment, internet searches - in particular by classmates of T or M or their parents - could lead to T suffering the harm to which I have just made reference; and to T and to M learning about the fact that their family life, as currently enjoyed, was imperilled.

8. It is important to be aware of the ambit of Ms Iveson's submissions on anonymisation. She does not seek an order prohibiting the appellant's identification. She seeks publication of the judgment in a form that withholds from the public the appellant's name. Although any order prohibiting disclosure would, necessarily, involve such anonymisation, the converse is not necessarily the case: see, for example, the position under the Contempt of Court Act 1981, as discussed in paragraph 6 of R (Press Association v Cambridge Crown Court) [2012] [EWCA] Crim 2434.

9. The practice of anonymisation, in cases involving children, has been at least implicitly recognised by the Supreme Court in the extradition context. For example, in HH v Deputy Prosecutor of the Italian Republic, Genoa and others [2012] UKSC 25, the Supreme Court anonymised the names of the appellants, who had raised issues regarding children in an effort to defeat their extradition. The circumstances of the children in HH and others were far from being as extreme as those of T.

10. As Ms Iveson's submissions indicate, there has hitherto been no known press interest in the appellant's appeal. There could, in my view, be no legitimate public interest in reporting the present case in such a way as to lead to the harm to T and M, which I consider would be likely to be caused by the identification of the appellant.

11. For the respondent, Mr Joyes submits that the name of the appellant ought to be given in the heading of the judgment. This is because the "exceptional circumstances"

identified by the Court of Appeal in the case of In Re Press Association are not present. Those exceptional circumstances are where publication would imperil a party's life or safety or that of his family; or lead to a significant threat to the administration of justice.

12. Since, however, we are here solely concerned with whether to withhold the identity of the appellant in the judgment, as opposed to an order prohibiting publication, it is not necessary for exceptions of this kind to be present.

13. Nevertheless, Short No. 2 highlights the particular importance of open justice in the area of extradition. As a general matter, a very good case indeed will need to be made, in order for a person who has (like the appellant) been convicted of a criminal offence abroad, and whose return is sought by the country of conviction, to avoid being named in an extradition judgment, given in England and Wales. As matters currently stand, and as Short No 2 makes plain, the mere existence of children is unlikely to be sufficient to justify anonymisation of such an appellant.

14. For the reasons I have given, I am fully satisfied that the present case is of such a kind and that it is appropriate to withhold the name of the appellant in the judgment.

15. There shall be liberty to apply.