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Case No: FA-2022-000165

**IN THE HIGH COURT OF JUSTICE**
**FAMILY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2nd February 2024

**Before** :

**MRS JUSTICE ARBUTHNOT**

**Between :**

**Re T (A CHILD) (No.2) (Transparency: Publication of the Party's Names)**

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**Ms Scotland** *pro bono* for the **Applicant**
**Michael D Jones KC** and **Mr Kelly** *pro bono* for the **Respondent**

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Hearing date: 7th and 8th December 2023

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# PUBLICATION JUDGMENT

**Mrs Justice Arbuthnot:**

1. This is to accompany the judgment I gave concerning T aged 15. I ordered that weekend and holiday contact continue between T and his father until he is aged 16 in August 2024.

2. In terms of publication, the parties are agreed that the judgment should be published now in an anonymised form. The question for me is whether, when T is aged 18, the judgment should be published naming the parties. A separate question is whether on publication in an unanonymised form, there would be some protection to T (and his older sister S, now aged 18) if I were to remove their names from the judgment.

3. *Pro bono* counsel Miss Scotland for the mother argues that there should be no unanonymised version of the judgment published whilst *pro bono* counsel for the father Mr Jones KC leading Mr Kelly contend that it should be published in full when T is 18 in August 2026.

4. Miss Scotland helpfully set out the law and recent developments. She argued that the balance between the Article 10 rights to freedom of expression which favoured publication with the right of T (and S) to respect for their private and family life under Article 8 came down in favour of anonymisation.

5. Miss Scotland pointed out that the recent authority of *Griffiths v Tickle & Ors* [2021] EWCA 1882 concerned a former MP and his former wife who was now an MP. In that case the Court of Appeal upheld Lieven J's order allowing publication of the parties' names but not of the child's and also gave guidance on publication of otherwise private children cases.

6. Miss Scotland pointed out that *Griffiths v Tickle* was a fact-specific decision. Part of the reason for the decision made by the Court of Appeal was that Mr Griffiths had abused and raped his wife during the marriage and told lies. It was in the public interest for the public to know what the MPs were doing in private whilst public figures. In contradistinction, neither the mother nor the father were public figures and there were no reasons why the public should know the identity of the parents or the children. The judgment should be published only in a fully anonymised version.

7. Mr Jones KC and Mr Kelly for the father argued that the public interest in publication outweighed the Article 8 rights of the mother and the children in the particular circumstances where the proceedings had been continuing off and on for years. The courts findings had never been shared with the children and it was likely that they had been given a misleading impression of these.

8. Miss Warren, the Cafcass officer, was asked to speak to T and S about the publication of the judgment. She reported in an email dated 22nd January 2023 that "both S and T have said they would not wish the judgement to be un-anonymised at any time as they feel strongly the details of their family life should be kept private. Ideally they would not wish the judgement to be published at all".

**Law**

9. The recent case of *Griffiths v Tickle & Ors* relied on by Miss Scotland on behalf of the mother set out the principles to apply. *Griffiths* was a family case involving arguments as to publication. The Court of Appeal said at paragraph 34:

"…The firmly established starting point in the domestic jurisprudence is the principle of open justice. The general rule is that proceedings are held in public and what is said, including the names of the parties and witnesses, can be observed and reported. In a case which involves the "determination" of criminal liability or civil rights and obligations, Article 6 confers on each party to litigation the right to a public hearing and a public judgment".

10. The principle of open justice applies to all courts including the Family Courts. It is emphasized by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 ("ECHR") which says that justice is administered in public.

11. The restriction on publication of decisions and information relating to cases involving children and young people is found in various places: section 12 of the Administration of Justice Act 1960 which makes publication a contempt of court; section 97(1) of the Children Act 1989 and the inherent jurisdiction. These are overlapping jurisdictions.

12. There is much case law on the various powers of the court but it all comes to the same conclusion. Whichever power is being exercised, the court must apply the ECHR and consider Articles 8 and 10 of the Convention and where the Articles are in conflict conduct a balancing exercise.

13. These particular proceedings are governed by the Children Act 1989 ("CA 1989"). Section 97(2) which prohibits publication says:

"(2) No person shall publish to the public at large or any section of the public any material which is intended, or likely, to identify—

(a) any child as being involved in any proceedings before the High Court or the family court in which any power under this Act or the Adoption and Children Act 2002 may be exercised by the court with respect to that or any other child; or

(b) an address or school as being that of a child involved in any such proceedings."

14. The Court of Appeal considered when the prohibition in section 97 comes to an end in *Clayton v Clayton* [2006] EWCA Civ 878, [2005] Fam 83. The Court held that when construed in accordance with the Human Rights Act, the prohibition in section 97(2) must be regarded as coming to an end when the proceedings concluded.

15. In *Re AI M (Publication)* [2020] EWHC 122 (Fam), The President of the Family Division, Sir Andrew McFarlane, when deciding on the publication of a judgment where the welfare of the children was being considered in wardship proceedings, said at paragraph 25:

"The case law establishes that, where a court is asked to lift or to extend reporting restrictions in a case such as this, a balancing exercise is required between ECHR, Articles 6, 8 and 10 (or, where applicable, other rights)."

16. In that case the President reviewed the case law on the balancing exercise. He said at paragraphs 26 onwards that the courts' approaches had been "most conveniently summarised" in the *Re J (A Child)* [2013] EWHC 2694 (Fam) at paragraph 22 where Sir James Munby P said:

"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]."

17. Sir Andrew McFarlane P went on to consider the detailed guidance on the approach found in the judgment of Lord Steyn in *Re S (Identification: Restrictions on publication)* [2004] UKHL 47; [2005] 1 AC 593. He quoted from paragraph 17:

"First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test."

18. In *Re Roddy (A Child) (Identification: Restriction on Publication)* [2003] EWHC 2927 (Fam), [2004] 1 FCR 481, Munby J (as he then was) recognised the interplay between Articles 8 and 10. He said at paragraph 36:

"Article 8 … embraces both the right to maintain one's privacy and, if this is what one prefers, not merely the right to waive that privacy but also the right to share what would otherwise be private with others or, indeed, with the world at large. So the right to communicate one's story to one's fellow beings is protected not merely by Art 10 but also by Art 8"

**Discussion**

19. I approach this case with the relevant legislation and the authorities in mind. I also bear in mind the increased focus on transparency. There is the practice guidance on the publication of judgments issued by Sir James Munby, then President of the Family Division on 16th January 2014 and more recently, there are the observations made by Sir Andrew McFarlane, President, in a statement of his own conclusions from meetings conducted with a wide range of 'stakeholders' dated 28th October 2021: 'Confidence and Confidentiality: Transparency in the Family Courts'.

20. The current President's statement recognises the competing interests of the public's need to know what is happening in the Family Courts which if satisfied should lead to increased trust and confidence in the family justice system versus the evidence from children and young people that they did not want their personal information and details of their own lives to be made public.

21. In this case, the parties are agreed that the judgment should be published in an anonymised form when it is handed down, it is whether it should be published in an unanonymised form at a later time with or without naming the young people or young adults, as they will be then, who have been the subject of the proceedings, which I need to consider.

22. There are arguments in favour of publication naming the parties and those against.

23. In favour of publication is the starting position that is the open-justice principle. There is significant and legitimate public interest in the publication of any judgment, this includes when there is identification of the parties. It is generally accepted that identification of parties, the use of their names, leads to an increased public interest compared to a publication when the parties are not identified by name.

24. There is a real public interest in a judgment such as this one being brought to the public's attention when it shows the workings of the Family Court spread over a number of years. It shows the limitations of the powers of the courts when faced with an intransigent approach. The judgment shows how family courts approach hostile family relationships, while noting the importance of considering each case on its facts.

25. This is a case in which on and off for ten years, the family has been in proceedings, as the father has attempted to maintain contact with his children. I am told there have been 70 hearings between 2013 and 2024. Three Judges before me have written six judgments considering the allegations made by the parents. None of these judgments have been published in an unanonymised form. The proceedings have been kept secret from the public to protect the identity of the children.

26. Publication without anonymisation would help the public understand how much of the court's valuable time these cases take. The public deserves to have an understanding of what has caused the length of the proceedings, which is primarily the dogmatic nature of the mother's attitude towards the father. Needlessly protracted litigation has potentially damaging consequences not only for parents, but on children and their best interests. If publication were to ensure that one family does not endure such potentially damaging consequences, then that is a benefit to that family and the family justice system.

27. The events, circumstances, and facts of this case, whilst not unique, raise important issues which are likely to be of interest to the public and for which there is little published authority, particularly the exercise of the Court's discretion with respect to section 9(6) Children Act 1989 where the behaviour of one parent has marginalised or removed a relationship between the children and the other parent.

28. I bear in mind too that the father should have a right to speak to anyone he wishes to about the proceedings in the Family Court. This would be interfered with significantly were I to decide that the only publication of the judgment

should be in an anonymised form. Usually the best interests of the child justifies the interference but in this case this may not be so.

29. Looking carefully at the proceedings, the father has been misrepresented by the mother and it seems to me he has a right to put the record straight. The mother is trying to control the narrative with the children of the family. Currently the father can say nothing to set out what the courts have found or not found.

30. A number of courts have found that the mother has influenced the children so that they do not wish to have contact with their father. The mother does not accept the judgments of the courts and I consider there is little, if any chance she will have told the children what the judgments say. If there is publication, the children will be able to read for themselves a summary of what the earlier judgments have said, my decisions and reasons and draw their own conclusions. They will be able to access a balanced account.

31. It is in the public interest that the parties' children are able to reach informed choices as to their contact with their parents, as they become adults. Publication with the naming of the parties will correct what I have little doubt is a false narrative given to the children by their mother.

32. There are factors to be put in the balance against publication naming the parties and the children.

33. T and S through Miss Warren the Cafcass officer have said that they do not want their parents or themselves to be named and they have rights which deserve to be protected. They feel that their family lives should be kept private. It is right that I give considerable weight to their views. I accept that publication will have

an impact on the young people, T and S, particularly if they are named as well as their parents. It is difficult to predict the impact it will have but they are the innocent victims of the proceedings. It is their parents who have taken their dispute to the courts and not the children.

34. The effect on the children will be increased depending on what their mother has told them about the courts' findings in the past. If she has told them the truth in the past then they are less likely to be upset by the publication of the judgment although I accept that like any young person they would not like to have details of their family lives in the public domain.

35. I accept too that if I order publication of the judgment when T is aged 18, this may cause him worry in the next two and a half years. S is an adult but she too may be worried about the effects on her of publication.

36. I take into account that although the father supports publication the mother does not. She too has Article 8 rights that should be respected. She does not want her behaviour exposed to the public gaze. She would prefer that the judgment remain fully anonymised as she would be protected by that decision. I give weight to and respect the views of the mother who says that neither she nor the young people should be identified in any publication.

37. Another factor against publication is that unlike in the case of *Griffiths v Tickle & Ors* the parties involved in these proceedings do not have public profiles. On the other hand high profile cases are a very small minority of cases that come to court and the public should perhaps understand how ordinary families are treated by the family courts. It seems to me that it is not only families with public profiles where there should be publication.

38. I take into account the matters set out above, particularly T and S's understandable wishes for there not to be a judgment published where they or their parents are named.

39. On balance, first, if neither T nor S are named and their parents' are not named until T is aged 18, this will protect the young people during T's childhood. I find that T's (and S's) Article 8 rights trump the public interest in reporting the case now in an unanonymised form.

40. The next issue is whether the judgment should be published in full with no anonymisation when T, the youngest child, is aged 18 in August 2026. If there is no anonymisation at all any search for T or S from August 2026 is likely to bring up the judgment. That would expose T and S to the public gaze when they have not wished for this to happen (or to be involved in the proceedings in the first place). In my view it would be wrong to publish the judgment in August 2026 naming the young people. The balance comes down against naming T and S.

41. The final issue is whether T and S have some protection if the judgment is published naming their parents but not them. They will be identified by random initials.

42. I have set out the factors for and against above. I note as well that internet research is conducted by way of searches using key words. If T is not named a key word search for T will not bring up the judgment. This gives protection to his privacy. The same applies to S. If neither of them are named in the judgment but referred to by an initial, I find that it is less likely that in five years, a search, for example, by a prospective employer, will bring up the judgment.

43. Having said that, if the judgment is published naming the father and the mother, an easy jigsaw identification could take place. An internet search using their family names will bring up the judgment and then it will be obvious to anyone who knows the family that the proceedings have concerned T and S. In terms of neighbours, family, friends and work colleagues, if they read the judgment they will know that it is referring to those two young people and indeed their older siblings.

44. I am conscious of the young people's right to respect for their private lives. Nevertheless, that is a qualified right. The more likely risk of identification is by friends and family members although some are likely to know about the court proceedings (if not the findings made by the courts). The headmaster of the young people's school was certainly aware of the poor relationship between the mother and the father. The risk of wider identification, for example, by future employers and future social contacts, is far more remote and is less likely where T and S are not named.

45. Overall, in balancing T, S and their mother's rights to respect for their private lives, their wishes and feelings and their best interests, with the public interest in publishing a version of the judgment with the parents' named, I conclude that the public interest in publication is strong and outweighs the Article 8 rights of the mother and the children.

46. This is primarily because publication is consistent with their best interests, as T and S will gain full insight into the case, with which to make informed choices in the future. The impact on their right to respect for their private lives is

relatively limited. In contrast, the public interest in publication identifying the parents is significant, for the reasons I have set out.

47. As a consequence, I will order the publication of the judgment naming the father and the mother but T and S's names will be removed. They will be identified by random initials.