



12 December 2012

PRESS SUMMARY

In the matter of A (A Child) [2012] UKSC 60

On appeal from [2012] EWCA Civ 1084; [2012] EWCA Civ 1204

JUSTICES: Lord Neuberger (President), Lady Hale, Lord Clarke, Lord Wilson, Lord Reed

BACKGROUND TO THE APPEALS

The issue in this appeal is whether a local authority ('ZCC') should be ordered to disclose social work records to the parties in proceedings concerning a child ('A'), which would reveal the identity of a young woman ('X') who has made allegations that she suffered sexual abuse from A's father ('F') when she was a child.

The parents of A separated when she was a baby. A lives with her mother ('M') and F had unsupervised contact with her. When ZCC became aware of X's allegations, which had been reported to ZCC by others, it approached M and advised her that she should take steps to protect A from the risk of sexual abuse by F. It did not tell M who had made the allegations, nor the details of what was alleged, but said they regarded them as credible. M applied to vary the contact arrangements so as to restrict F's contact with A to supervised contact. F denies that he has sexually abused anyone. The court directed that ZCC should disclose the information in its possession in relation to X's allegations against A to M and F.

ZCC applied to the court for the order to be discharged on the grounds of the severe distress and emotional harm which the removal of her anonymity would cause X to suffer. Medical evidence provided to the court from the psychiatrist treating X indicated that her physical health had deteriorated to the point of being life threatening as result of stress; that disclosure of the records would be potentially detrimental to her health and that being required to participate in the contact proceedings would be immensely stressful for her, even with measures taken to protect her as a vulnerable witness.

Peter Jackson J in the High Court held that the records should not be disclosed. In his view disclosure was unlikely to achieve anything valuable and it would be oppressive and wrong to compel X to give evidence at a subsequent hearing. The Court of Appeal reversed this decision and ordered disclosure, on the ground that the question of whether X should give evidence would arise for decision at a later stage. By the time of the appeal hearing in the Supreme Court, inadvertent disclosure of X's identity had been made by ZCC to M and to the Guardian appointed to act on A's behalf, but not to F.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lady Hale, with whom the other justices agree, gives the only judgment.

REASONS FOR THE JUDGMENT

The court was required to reconcile the irreconcilable. It was submitted on behalf of X that the impact of disclosure on her would be so severe as to violate her right not to be subjected to inhuman or degrading treatment protected by article 3 of the European Convention on Human Rights (ECHR), or at the very least interfere with her right to a private life under article 8. On the other side, A's right to be protected from abuse also potentially engaged article 3, and restricting contact interfered with the right to family life under article 8 on the part of A, M and F. In addition, all three of the parties to the contact proceedings - A, M and F - were entitled to the right to a fair trial of those proceedings protected by article 6. Both article 3 and article 6 rights are absolute.

ZCC's records enjoy public interest immunity from disclosure because of the public interest in encouraging members of the public to come forward to help the authorities to protect children, whether witnesses or the victims themselves [15]. The immunity is not absolute, and has to be balanced against the public interest in a fair trial. In children cases, the court may exceptionally take into account material which has not been disclosed to the parties, if disclosure would harm the child, but there was little or no risk of harm to A in this case [21]. But the common law principles have been affected by the Human Rights Act 1998 and the court now has to take account of the interests of third parties whose rights under the ECHR might be violated by disclosure [24].

This was not a case where X's confidence could be preserved without harming others. Her allegations have to be properly investigated and tested so that A can either be protected from any risk of harm which F may present to her or can resume her normal relationship with him. If this was an ordinary public interest immunity claim, therefore, there would be no question where the balance of public interest would lie [30]. The impact on X meant that the state's negative duty to avoid subjecting her to inhuman treatment in breach of article 3 had to be taken into account [31]. However, the context in which this treatment takes place affects the severity of its impact, and here not only was the state acting in support of some important public interests, but X was currently under specialist medical practitioners who would do their utmost to mitigate any further suffering which disclosure would cause her. Thus disclosure alone would not violate X's rights under article 3 [32].

The court still had to balance X's rights to respect for her private life with the interests in disclosure. Courts had no power in ordinary civil proceedings to adopt any form of closed material procedure, which would restrict disclosure of the material to a judge and special advocate for the parties, and even if there was a greater latitude in children cases, the arguments against making such an inroad into the normal principles of a fair trial remained very powerful. Moreover in a case such as this F could not effectively challenge the allegations without a minimum of information which would inevitably disclose X's identity [34].

The only possible conclusion was that the fair trial and family life rights of A, M and F were a sufficient justification for the interference with the privacy rights of X [35]. It did not follow, however, that X would have to give evidence in person in these proceedings. Disclosure might be enough to resolve matters either way. If a hearing was required, up to date medical evidence would be obtained for X and measures to protect her from courtroom confrontation could be considered. If she was too unwell to cope with oral questioning the court might have to do its best with the record of what she has said previously, perhaps supplemented by written questions put to her in circumstances approved by her doctor. The only concern of the court in family proceedings was to get at the truth [36].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html