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A v Times Newspapers Ltd

[2003] 1 FLR 689

27/11/2002

Barristers
Kate Branigan KC

Court
Family Division

Facts
In both cases the father was applying for a specific issue order, seeking a direction that the mother give the child the immunity appropriate to the child's age. In interim proceedings, a judge made an order stating that provisionally, subject to the overall discretion of the trial judge, the evidence of the experts, legal argument and judgment would be heard and given in open court, but the evidence of the parents and any evidence specific to either child would be heard in chambers. The hearing was the subject of considerable press interest. On the first day of the trial the press informally requested permission to come into court, which was refused by the trial judge. On the second day, counsel for certain newspapers applied formally for the hearing to be in public, opposed by all parties. The trial judge rejected the application on the basis that the welfare of the children concerned prevailed over the important principle of freedom of publication. The result of the application was that 1 day and part of the second day of the hearing were lost. The mothers, fathers and the Children and Family Court Advisory and Support Service sought the costs associated with resisting the press application.

Held
Held – declining to award costs against the press –

(1) The normal rule was that family cases involving children would be heard in chambers, in other words, in private, on the basis that it was against the welfare of children for decisions about their future to be conducted in the light of publicity; the press were well aware of that rule, and of the almost total lack of exception to it, save for the obvious one of the court itself seeking the assistance of the press and the media in tracing a child who had gone missing (see paras [34], [36], [37]).

(2) There was no duty on CAFCASS Legal or parents to engage with or give prior notice to the press in relation to any hearings involving children, whatever publicity there might be surrounding the case, although they were of course entitled to express a view about whether there should be publicity if approached by the press or the media beforehand (see para [37]).

(3) The question of whether any part of a case involving children was to be heard in open court was for the court alone to decide; prior agreement of the parties did not confer jurisdiction (see para [38]).

(4) It was for the press and media to consider before any hearing whether they wished to apply for the normal restriction on publicity to be lifted. Whilst the question of costs was always a matter for the court's discretion, the press were unlikely to incur the risk of an adverse costs order on such a prior application if they presented an arguable case, even if they were unsuccessful. If, on the other hand, they knew in advance of the hearing but left it until after the hearing had begun to make such a submission and the hearing was disrupted, different considerations arose. In such circumstances, the press and the media risked an order for costs being made against them even if the application was successful, as an application could be improperly applied for when, though arguable on the merits, it had unnecessarily caused disruption to a hearing (see paras [39], [40]). 5) In this case the press applicants knew in advance that there was to be a hearing at which the question of publicity would arise, but left it until the second day to make a formal application, so that substantially increased costs were incurred. Ordinarily the press applicants would have been ordered to pay the costs of all the other parties in respect of the application. However, in this case the interlocutory order which had indicated that some of the hearing might be in open court had given the press applicants an arguable case. It should not be assumed that such a result would follow on any future application during a trial when the application could and should have been made beforehand (see paras [41]-[43], [46]).