

Medway Council v British Broadcasting Corporation (2001)

[2002] 1 FLR 104

01/09/2001

Barristers

Stephen Lyon

Court

Family Division

Facts

An application for an injunction to prevent the broadcast of an interview of a child subject to both an anti-social behaviour and an interim care order was refused. There was a balancing exercise between freedom of expression and the welfare of the child, and the law required proof of a high measure of harm.

Application by a local authority for leave to apply for an injunction to restrain the BBC from broadcasting any part of an interview it conducted with a 13-year-old boy and his mother. By the time of the application the boy was in the care of the local authority. He was subject to an anti-social behaviour order under s.1 Crime and Disorder Act 1998. Publicity of the order was not prohibited despite the boy's age. On 4 April 2001 the BBC conducted a filmed interview of the boy and his mother. On 26 April the boy was made subject to an interim care order. The local authority indicated its opposition to the broadcast of any part of the interview. There was extensive publicity of the anti-social behaviour order in local and national newspapers and on local television. The local authority's application was supported by the boy's mother, who regretted having consented to the interview, the boy's father, and the boy himself. The BBC submitted that the court had no jurisdiction to make the injunction sought and relied on *In re R (Wardship : Restrictions on Publication)* (1994) 3 All ER 658. The local authority submitted that the court was determining a question concerning the boy's upbringing and therefore, pursuant to s.1(1) Children Act 1989, his welfare was its paramount consideration. The BBC disputed that any question of the boy's upbringing arose for determination at all and relied on *In re H-S (Minors) (Protection of Identity)* (1994) 1 WLR 1141 to argue that the freedom of the media was at issue. The father submitted that the interview was clearly concerned with the boy's upbringing. The boy submitted that the broadcast would have an effect on his upbringing.

Held

HELD: (1) The proposed injunction was to be made under the court's inherent jurisdiction. Under s.100(3) of the 1989 Act, the local authority needed leave to apply. Under s.100(4)(b) leave could not be granted unless the court was satisfied that there was reasonable cause to believe that in the absence of the injunction the boy would be likely to suffer significant harm. (2) The power to make anti-social behaviour

orders was introduced by s.1 of the 1998 Act and exercisable in civil proceedings in the magistrates' court. The youth court had no jurisdiction to entertain the application, so the automatic restrictions on reporting in s.49 Children and Young Persons Act 1933 did not apply. The magistrates' court could, under s.39 of the 1933 Act, make a direction that no identifying material relating to any child concerned in proceedings before it should be reported. In most cases it would be inappropriate for the court thus to inhibit identification of a child who was subject to an anti-social behaviour order. In this case, no order restricting publicity had been made. (3) In *Re R* (supra) was distinguished on its facts. (4) The jurisdiction to restrain the proposed broadcast was potentially available for exercise. (5) In *In re Z (A Minor) (Identification : Restrictions on Publication)* (1996) 2 WLR 88, Ward LJ concluded that the inherent jurisdiction was potentially available for exercise where the proposed publicity was directed at the child or to an aspect of the child's upbringing by his parents or others who cared for him where that publicity was inimical to his welfare. The child's welfare was paramount, but had to be balanced against the public interest in freedom of publication. In *Re Z* (supra) was clear authority for the proposition that s.1(1) of the 1989 Act could apply to an injunction against the media. (6) In s.1(1) the focus was on the question the court was determining. It did not follow that in this case the boy's upbringing was the subject of the question that the court was determining. The central issue before the court did not relate to how the boy was being reared, but to whether a filmed interview should be broadcast. (7) This application fell to be decided by reference to the balancing exercise between freedom of expression and the welfare of the child. *Re X (A Child) (Injunctions Restraining Publication)* (2001) 1 FCR 541 and *Venables & Anor v News Group Newspapers Ltd & Ors* (2001) 2 WLR 1038 applied. (8) The law required proof of a high measure of harm. The absence of evidence that the boy had suffered any adverse effect from the publicity already given remained highly significant, as did the undisputed right of the BBC to revive that publicity. (9) The proposed broadcast was intended to be a serious and responsible piece upon a matter well worth discussing. The BBC was free to transmit whatever part of the material it chose. The local authority made out no case for restriction of this freedom. There was no ground for the suggested injunction.

Application dismissed.

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