

Medway Council v G & Ors (2008)

[2008] 2 FLR 1687; [2008] EWHC 1681 (Fam)

18/07/2008

Barristers

Private: Marcus Scott-Manderson QC

Court

Family Division

Summary

Where a case in which a child had been abducted from foster care by his mother and step-father had attracted publicity and led to newspaper articles expressing sympathy with the mother and step-father, and criticism of a local authority and the secrecy of family court proceedings, the publication and disclosure of the course and content of the previous care proceedings was permitted to the limited extent set out in a summary of facts agreed between the parties.

Facts

The applicant media company (T) applied for clarification of the extent to which it was entitled to report and comment on care proceedings brought by a local authority in respect of a child (S). S's mother (G) and father had separated. Care proceedings commenced, and following a report from a psychologist about the family situation and its effects on S, an interim care order was made requiring S to be taken into foster care. A hearing then took place. The judge held that if G did not make sufficient improvements within six months, S's settlement with his foster carers should be secured. G married another man (M) and became pregnant. An assessment team then made findings and recommendations. It found, amongst other things, that there had been no significant improvement in G's insight or approach. With the final hearing due to be heard, G, assisted by M, abducted S from his foster placement and drove to France. G and S did not return. M returned and was arrested. The local authority, having been notified of the imminent appearance of an article in the local newspaper, was granted an injunction prohibiting the publishing of information relating to S which might result in his identification. M was sentenced to a term of 16 months' imprisonment for the offence of child abduction. His appeal against that sentence was dismissed. Following the appeal, a number of articles about the case appeared in the press. The articles were strongly sympathetic towards G and M and criticised the secrecy of family proceedings. T applied for an amendment to be made by way of proviso to the existing injunction. T then made an application for the release into the public domain of the judgments handed down in the proceedings to date, suitably anonymised. During the instant proceedings a solution was proposed by the parties whereby the local authority produced a summary of facts in a form which was considered sufficient by T for the purposes of publication and comment without resort to the detailed judgments in the care proceedings.

Held

HELD: The level of interest created by the imposition of M's prison sentence, the resultant publicity, and the suggestions made that the actions of M were in some way heroic and those of the local authority adverse to child protection made a very strong case for the background to be made more widely known. Such publication would enable the public to form its own view of whether the actions of the local authority or the decisions of the court had been fairly characterised. Comment on the proceedings as set out in the summary of facts would not invade S's rights under the European Convention on Human Rights 1950 art.8 to an extent substantially greater than the position which already existed as a result of the publicity to date, provided that his anonymity was protected. The agreed summary of facts was recognised by T as sufficient for its purposes under art.10 of the Convention, and the restricted content of the summary meant that the considerable and extensive references to intimate family matters and S's welfare contained in previous judgments would remain largely and sufficiently protected. The court was therefore prepared to sanction a departure from the provisions of the Administration of Justice Act 1960 s.12(1) so as to permit publication and disclosure of the course and content of previous proceedings to the limited extent set out in the summary of facts.

Judgment accordingly