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Re Stedman [2009]

[2009] EWHC 935 (Fam); [2009] 2 FLR 852

18/05/2009

Barristers
Ruth Kirby KC

Court
Family Division

Summary
In deciding whether a reporting restriction order relating to four children should be continued and extended, the fact that the material in dispute was extensively available and had been in the public domain for a significant length of time was a decisive factor in balancing the rights of the parties under the European Convention on Human Rights 1950 art.8 and art.10.

Facts
The applicant local authority applied for the continuation of a reporting restriction order relating to four children (M, C, P and T) and its extension to prohibit publication of photographs or images of the children already in the public domain. C was aged 15 and M was her two-month-old daughter. It had initially been thought that P, who had just turned 13, was M's father. There had been intense media interest owing to the ages of C and P and it had caused considerable distress to C. The local authority, which had obtained orders making all three children wards of court, had obtained a reporting restriction order prohibiting further publicity about any of them. The order contained a "public domain exception", meaning that it did not restrict information that was already in the public domain. Meanwhile, DNA testing had indicated that P was not M's father and that had been reported in an article in a national newspaper. C indicated that T, a 15-year-old boy, was the father of M and he was joined as an intervener. C and M argued, through their guardians, that their interests, and those of P, had to be paramount. The local authority argued that the publication of images of the children, even those already in the public domain, would risk damaging C's ability to care for M. It argued that a distinction should be drawn between confidentiality and privacy because a photograph was capable of intruding on a subject's privacy with every fresh publication and that the print medium would be particularly damaging to C. Finally, it submitted that reporting of the DNA test results should be prohibited or, failing that, controlled and limited.

Held
HELD: (1) The application did not concern any question of upbringing. It therefore fell within category 2 in Z (A Minor) (Freedom of Publication), Re (1997) Fam 1 CA (Civ Div) and the welfare of the children was not the paramount consideration. The court had to undertake the ultimate balancing test between the European Convention on Human Rights 1950 art.8 and art.10, Re Z and S (A Child) (Identification: Restrictions on Publication), Re (2004) UKHL 47, (2005) 1 AC 593 followed. (2) The balancing exercise set

out in Re S had to be approached on the basis that the art.8 rights of M, C and P were engaged in relation to the publication both of the results of the DNA test and of photographs and images already in the public domain, Campbell v Mirror Group Newspapers Ltd (2004) UKHL 22, (2004) 2 AC 457 followed. (3) In undertaking the balancing exercise, a number of factors had to be considered. (a) Neither article had precedence over the other. (b) The court had to focus on the comparative importance of the specific rights being claimed. There was a fundamental conflict between the desire of C and M to put behind them the consequences of the media frenzy, the desire of the relevant publisher to report on the story and the likely benefit to P of clarifying the question of M's paternity. (c) The justifications for restricting each right had to be considered. First, there was a public interest in correcting the record about M's paternity. Second, in weighing up C's welfare, it had to be borne in mind that in large measure the harm had already been done. If the reporting restrictions were removed, C would be harmed by future publicity but there was no evidence that further publicity would result in her becoming so distressed that she would be unable to care for her child, R v Central Independent Television Plc (1994) Fam 192 CA (Civ Div) followed. Finally, under the Human Rights Act 1998 s.12(4)(a)(i) the extent to which the material had become available to the public had to be considered. Millions of people had seen the articles and it was unrealistic to imagine that all proprietors of websites containing relevant material would get notice of the injunction and act on it. It was also anachronistic to assert that the internet was a less accessible medium than print. The court had not to make an order which would appear to be ludicrous, absurd and unenforceable. There was little or no difference between confidential and private material, Attorney General v Observer Ltd (1990) 1 AC 109 HL and Mosley v News Group Newspapers Ltd (2008) EWHC 687 (QB) followed. (d) The magnitude of the interference with the children's art.8 rights as a result of their parents allowing the press access to them should not be underestimated. However, preventing publication of the DNA test results or photographs and images already in the public domain would represent a disproportionate interference with the art.10 rights of the press and P's art.8 and art.10 rights to rectify erroneous information about him. Further, the availability of the material in dispute was so extensive and it had been in the public domain for so long that that had become the decisive factor. There was no longer anything that the law could protect and the granting of an injunction would be a futile gesture. Controlled release of the information, which would interfere with the manner in which the press used the public domain material, was not permissible, Roddy (A Child) (Identification: Restriction on Publication), Re (2003) EWHC 2927 (Fam), (2004) EMLR 8 applied.