

(1) Jon Venables (2) Robert Thompson v (1) News Group Newspapers Ltd (2) Associated Newspapers Ltd (3) MGN Ltd (2001)

(2001) Fam 430 : (2001) 2 WLR 1038 : (2001) 1 All ER 908 : (2001) EMLR 10 : (2001) 1 FLR 791 : (2001) HRLR 19 : (2001) UKHRR 628 : Times, January 16, 2001 : Independent, January 17, 2001 : Daily Telegraph, January 16, 2001

08/01/2001

Barristers

Private: Marcus Scott-Manderson QC

Court

Family Division

Summary

The provisions of the European Convention on Human Rights and the law of confidence, could be extended, in exceptional cases, to protect individuals who were seriously at risk of injury or death if their identity or whereabouts became public knowledge, and the court had jurisdiction to grant injunctions to ensure their protection.

Facts

Applications for indefinite injunctive relief to restrain publicity of the claimants' identities. The claimants were the convicted murderers of James Bulger who was killed in 1993. During the period of detention, injunctions were in place which restricted the information the media were permitted to publish. Those injunctions came to an end on the 18th birthday of the claimants. Restricted press and media coverage continued throughout the period of detention and increased from time to time when various proceedings were underway. The claimants sought indefinite injunctions to restrain publicity, designed to cover four areas, namely protection of: (i) information regarding changes in the claimants' physical appearance since their detention; (ii) their new identities on their release into the community; (iii) information concerning the claimants' existing placements; and (iv) all specific information relating to their time in secure units. The defendants were three large news groups opposed to the applications. The Attorney-General and the Official Solicitor supported the applications. The major issues raised by the applications were: (i) whether there was jurisdiction to grant an injunction to protect an adult's identity and whereabouts; (ii) if there was jurisdiction, whether there was a real possibility that either of the claimants were at risk of serious injury, or even death, if the injunctions were not granted; and (iii) in the exceptional circumstances of the instant case, whether the court should have exercised its equitable

jurisdiction and make the orders sought: (a) for the long-term future; (b) for the present and immediate future; or (c) for the past. The claimants argued that the court had jurisdiction to protect individuals in the exceptional position such as theirs and that such protection should last indefinitely. They submitted that there was clear evidence of specific, preventable, serious and continued threats to their lives. The newsgroups contended that the claimants had shown no cause of action and that there was a presumption in favour of freedom of expression.

Held

HELD: (1) There was a wealth of information that convinced the court that the claimants were uniquely notorious and were at serious risk of attacks from members of the public as well as friends and relatives of the murdered child (*Davis v Taylor* (1972) 3 All ER 836 followed). Threats to injure and kill the claimants were evident from recent press articles. Although there had been a balanced discussion in press articles, the sense of moral outrage had not diminished and there remained, among some members of the public, a serious desire for revenge if the claimants were living in the community. The Home Office viewed such threats as very serious and it was likely that the claimants would be given new identities on their release. Accordingly, the court was satisfied that a future risk existed and if any section of the media decided to give information that led to the identification of either claimant, such publication would put his life at risk. (2) In the exceptional circumstances of this case, and applying English domestic law and the right to life enshrined in Art.2 European Convention on Human Rights, the claimants' lives and well-being required protection. The provisions of the Convention and the law of confidence, could, in exceptional cases, be extended to protect individuals who were seriously at risk of injury or death if their identity or whereabouts became public knowledge, and the court had jurisdiction to grant injunctions to ensure their protection (see *R v Central Independent Television plc* (1994) 3 WLR 20 and *Michael Douglas, Catherine Zeta-Jones and Northern & Shell Ltd v Hello! Ltd* (2000) LTL 21/12/2000). (3) The court recognised the enormous importance of upholding freedom of expression and the right of the press to publish. However in this case it was necessary to grant indefinite injunctions restraining the media from disclosing information about the identity, appearance or addresses of the claimants when they were released from detention. In order to protect the claimants' identity and whereabouts in the future, no information could be solicited from secure units that might lead to identification for a reasonable period after release, namely nine months. In any event, it was not necessary to protect information relating to the claimants' period in the secure units as that information was already covered by confidentiality or was not information that was necessary to keep out of the public domain. The right of confidence in this case was placed above the right of the media to publish freely information about the claimants. (4) The court accordingly acceded to the applications to the extent indicated above.

Permission

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