

Sylvia Henry v News Group Newspapers Ltd (2011)

[2011] EWHC 296 (QB)

18/02/2011

Barristers

Rex Howling KC

Court

High Court

Practice Areas

Public Children Law

Summary

In the unusual circumstances of a case concerning a newspaper publisher's defence to a libel claim brought against it by an ex-social worker in respect of articles it published concerning the death of a baby, the court was satisfied that the conditions in CPR r.31.17(3)(a) and (b) were satisfied and that disclosure of documents held by the third party local authority ought to be given.

Facts

The defendant newspaper publisher (N) applied for third-party disclosure against the third-party local authority for the purposes of defending a claim in libel brought against it by the claimant ex-social worker (H). H had instigated libel proceedings against N in respect of its publication of a number of articles concerning the death of a baby (P). P's mother, her boyfriend, and his brother were convicted of causing P's unlawful death. N complained that the meaning attributed to the publications was that she was to blame for P's death by her gross incompetence as a social worker, having decided to return P to his mother in the course of providing social care to the family. H maintained that she aware that P was at risk and had expressed the view that P should be the subject of an Emergency Protection Order but that such a course had been opposed by others working for the local authority. The local authority conducted and published two "serious case reviews" which looked openly and critically at individual and organisational practice. It also disclosed a number of other relevant documents. N sought disclosure of several "individual management reviews" which were a significant constituent aspect of the serious case review process. N sought reviews which related to individuals in the local authority's care department over a specified period of time. The local authority submitted that (1) the meaning of necessity in CPR r.31.17(3)(b) might not be satisfied in respect of a relevant document if an applicant had already received disclosure of sufficient documents to enable it to advance its case; (2) in general, individual management reviews should not be made publicly available.

Held

1) Given the apparent clear contradiction between H and the other local authority employees, it was

likely that much would depend on the oral evidence at trial. For that purpose, it would be difficult to conclude that disclosure was not necessary or relevant in the sense of r.31.17(3)(a) (see para.17 of judgment). (2) Firstly, disposing fairly of a claim normally meant disposing of it fairly as between the parties. However, if third parties were potentially affected, the court was required to take their interests into account, *Flood v Times Newspapers Ltd* (2009) EWHC 411 (QB), (2009) EMLR 18 applied. Where the rights of third parties were rights under the European Convention on Human Rights 1950 then the Human Rights Act 1998 s.6 required the court to have regard to them. Secondly, whether or not a local authority should be required to produce documents of the class sought had to be answered in the light of the particular facts of any case: there was no general answer. In the instant case and of notable significance was the seriousness of the issues at stake in the underlying libel claim, in particular the art.8 rights of the local authority employees concerned. It was likely that an order in the libel action would only have limited impact on future subjects of the management reviews in any event. Having regard to all the issues, disclosure was necessary in order to dispose fairly of the claim, including what was fair to third parties whose reputations might be affected by the outcome of those proceedings. The conditions in r.31.17(3)(a) and (b) were satisfied and disclosure ought to be given (see paras 12, 29, 30, 32, 35-36).

Permission

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