

A Council v (1) M (2) F (3) A (4) B, C, & D (By Thier Children's Guardian) (Reporting Restrictions) (2012)

**[2013] 2 FLR 1270 : [2013] Fam Law 970 : [2012] EWHC 2038
(Fam)**

20/07/2012

Barristers

Sally Bradley

Court

High Court (Family Division)

Practice Areas

Public Children Law

Summary

A reporting restrictions order preventing the identification of an entire family in care proceedings and criminal proceedings concerning child cruelty and abuse was granted. Despite the importance attached to public interest considerations and freedom of expression, the instant case was an example of an exceptional scenario where an individual's rights had to prevail. The order would last until the 18th birthday of the youngest family member.

Facts

The applicants (P), who were parties to care proceedings, applied for a reporting restriction order preventing their identification in connection with the care proceedings and associated criminal proceedings. The respondent media organisations (N) opposed the application.

A fact-finding hearing had established that the mother (M) of three adopted daughters (X, B and C) had been the perpetrator of serious abuse. Care proceedings had begun in relation to all three girls and the baby son of X. X and C moved into foster care and B chose to remain at home. M faced five allegations of child cruelty: three relating to the artificial insemination of X between the ages of 13 and 16, one to leaving C in the care of X while taking a foreign holiday, and one of physical mistreatment of C. She had expressed an intention to plead guilty to three counts and was likely to receive a custodial sentence. A reporting restriction order in standard form had been made in February 2012 in relation to the care proceedings. That had been extended in May 2012 to the criminal proceedings, except that the conventional proviso exempting the reporting of proceedings held in public was omitted. N complained that the omission meant that any story arising from the criminal proceedings was effectively unreportable and that less restrictive alternatives should be considered.

Held

Arguments against restricting the reporting of M's trial were very strong: the importance of open justice in relation to serious criminal behaviour; the entitlement of the public to know who was responsible for such behaviour; the greatly reduced impact of a story with no identifying details; the genuine public interest in being informed about the possible consequences of an apparently unregulated market in donor sperm and about unregulated adoption from abroad, R. (on the application of Trinity Mirror Plc) v Croydon Crown Court [2008] EWCA Crim 50, [2008] Q.B. 770 applied and S (A Child) (Identification: Restrictions on Publication), Re [2004] UKHL 47, [2005] 1 A.C. 593 considered. A restriction could only be contemplated where there was an absolute necessity for it, and where the circumstances could properly be described as exceptional (see paras 25-27, 33-36 of judgment). The instant case was such a case. Less restrictive alternatives, namely orders under the Children and Young Persons Act 1933 s.39(1), the Contempt of Court Act 1981 s.11, and the Youth Justice and Criminal Evidence Act 1999 s.46, would provide insufficient protection. If protection was needed, it was an entitlement, not a matter to be left to editorial discretion or judgement. M's trial would attract considerable media attention because of its extraordinary facts and its public interest issues. So far, there had been no identification by other means. If M was to be identified, X, B and C would also readily be identified (paras 44-54). Rights arising under the European Convention on Human Rights 1950 art.8 and art.10 were different in quality. They did not operate in a hierarchy and, despite the importance attached to public interest considerations, there were cases where an individual's rights had to prevail. The instant case was one of those. M had no rights, being the defendant in a criminal trial. She was an articulate and determined liar. Maintaining her anonymity in the interests of the children might deprive people having future dealings with her of necessary information. Nevertheless, identifying her would be, at best, harmful for the children and, at worst, disastrous. The effects would be long-lasting and profound. X's claim to protection was powerfully strong because of the extreme intimacy of the material and the potential for vivid reporting. She was vulnerable and her situation fragile. She was open to exploitation by people who might find her past exciting. Her baby would be seriously disadvantaged if he carried any stigma resulting from the unusual circumstances of his conception and birth. B, home educated in social isolation until the age of 16, had just started a college course, which was a lifeline to the outside world. She was a highly visible student because of her manner and appearance and might be targeted in a predatory way if her connection with events ever became known. If she left college, she would be forced to remain under M's influence. C was a difficult child to care for, with strong ties to M and her sisters. Her position was unsteady because she was required to settle in a permanent placement without them. Anything which destabilised her home or contact with her sisters would be very detrimental to her. In contrast, the proposed infringement of art.10 was partial, not absolute; the trial and its wider issues could still be reported, but not at the expense of young people who had already been direct victims of behaviour outside the normal run of child cruelty cases, W (Children) (Identification: Restrictions on Publication), Re [2005] EWHC 1564 (Fam), [2006] 1 F.L.R. 1 applied. The reporting restrictions order was to run until the 18th birthday of X's baby (paras 55-91).

Permission

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