

H v A (No.2) (2015)

[2015] EWHC 2630 (Fam)

17/09/2015

Barristers

John Tughan QC

Court

Family Division

Practice Areas

Public Children Law

Summary

It was in the public interest for a Family Court judgment to be published which proscribed completely the operation of a father's parental responsibility for the remainder of his children's minority. However, the court retained a discretion not to publish such a judgment, or to make an order restricting its use, balancing the competing human rights involved.

Facts

The applicant mother applied for a judgment in family proceedings not to be published or to be published only in a redacted form and for the court to make a reporting restriction order.

The mother alleged that she had been the victim of extensive domestic violence at the hands of the respondent father during the course of their relationship and sought to revoke an order for indirect contact between the father and their three children and to limit the father's parental responsibility. The father had been convicted of offences of battery against the mother, arson with intent to endanger life, breach of a non-molestation order, and encouraging or assisting in the commission of an offence believing one would be committed. He was serving a discretionary life sentence. On the mother's applications, the parties agreed certain limitations on the father's exercise of parental responsibility, but the court was required to determine whether the father should receive an annual report from the children's school regarding their academic progress. The court upheld the mother's submission that he should not, and ordered that the father should not take any steps in the exercise of his parental responsibility in respect of the children until they reached the age of 18. The judgment was published in anonymised form. It then became apparent that it was possible to identify the family by searching the internet for the circumstances of the father's criminal convictions, and the judge requested the removal of the judgment from legal websites. The issues were whether the judgment should remain unpublished or only be republished in redacted form, and whether a reporting restriction order should be made.

Held

(1) It was accepted that the judgment fell within the first category set out in Practice Guidance (Fam Div: Transparency in the Family Courts: Publication of Judgments) [2014] 1 W.L.R. 230, since it was in the

public interest for a judgment to be published by which the court, acting as an agency of the state, proscribed completely the operation of a father's parental responsibility for the remainder of his children's minority, Practice Guidance considered. However, the court retained a discretion not to publish judgments in the first category. Further, even after publication, the court had jurisdiction to remove the judgment from the public domain or otherwise make orders restricting its use, as part of its case management powers under the Family Procedure Rules 2010, C (A Child) (Publication of Judgment), Re [2015] EWCA Civ 500, [2015] Fam. Law 781 applied. The issue of restraining publication involved balancing competing rights, chiefly those under the ECHR art.8 and art.10, S (A Child) (Identification: Restrictions on Publication), Re [2004] UKHL 47, [2005] 1 A.C. 593 followed. A departure from the principle of open justice had to be justified by cogent evidence, R. v Jolleys (Robert) Ex p. Press Association [2013] EWCA Crim 1135, [2014] 1 Cr. App. R. 15 applied. Only in exceptional circumstances would the family court make an order restricting the reporting of criminal proceedings in order to protect the private and family life of a child, Re S (A Child) considered. In the instant case the criminal proceedings were over and had been extensively reported at the time. The court could if necessary make an order preventing the further reporting of aspects of the criminal proceedings and which did not contain a proviso excepting information that was already in the public domain, X (Children), Re [2007] EWHC 1719 (Fam), [2008] 1 F.L.R. 589 considered (see paras 17-20, 26, 33, 43-48, of judgment). (2) The father remained a dangerous individual but was in prison, and publication of the judgment would not materially increase the risk of the mother and children being located. Their rights under art.2 did not have to be considered in the balancing exercise (para.64). (3) Balancing the competing rights under art.8 and art.10, and bearing in mind the children's best interests and the test of proportionality, the judgment should be published in its original form with a reporting restriction order. Withholding publication was not a proportionate response to the risk of jigsaw identification. The order would not prevent the publication of the facts of the case, including the criminal proceedings, already in the public domain from which the identity of the family could be established. It would, however, prevent the publication by anyone of the names and whereabouts of the mother and children, however ascertained. The order would also contain a public domain proviso permitting publication of information already in the public domain save for the names and whereabouts of the mother and children. The rubric on the front of the judgment should be amended accordingly (paras 94-99).

Permission

Lawtel 