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Case No: QB-2022-002502

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**MEDIA & COMMUNICATIONS LIST**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2024

**Before** :

**Deputy High Court Judge Susie Alegre**

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**Between :**

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| **DENVER DORSETRA ADAMS** | **Claimant** |
| **- and –** | |
| **AMAZON DIGITAL UK LTD** | **Defendant** |

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**Robert Sterling** (instructed by Carruthers Law) for the **Claimant**
**Richard Munden** (instructed by Lee and Thompson) for the **Defendant**

Hearing dates: 10 December 2024

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# Approved Judgment

This judgment was handed down remotely at 10.30am on 20 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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DEPUTY HIGH COURT JUDGE SUSIE ALEGRE

**Susie Alegre :**

1. This is my judgment in the defendant's application for summary judgment dated 17th June 2024 in this libel and privacy claim brought in respect of the documentary film *"Lioness: The Nicola Adams Story"* ("the documentary") published by the defendant from 12th November 2021.

**Background**

2. The documentary tells the story of Nicola Adams, a female boxer who, in 2012, became the first woman ever to win an Olympic gold medal in boxing and who won multiple national, regional and world titles during her boxing career before retiring in 2019. Her boxing career was recognised with the award of both an MBE and an OBE and she went on to star in Strictly Come Dancing in the first same sex dancing couple on the show in 2020. The documentary was made with the full involvement of Nicola Adams and includes extensive interview footage with her.

3. The claimant is Nicola Adams' mother, Denver Dorsetra Adams (Dee). She claims that parts of what Nicola says about her in the documentary in relation to their recent communications is libellous and a misuse of her personal information. Dee also claims that other parts of what Nicola says about her childhood, including experiences of domestic violence with her father and a subsequent partner of Dee's are a misuse of her personal information. It is clear that the documentary was published at a time when the relationship between Dee and Nicola had become fraught. No disrespect is intended by the use of their first names but, for clarity, I will refer to the claimant as Dee in this judgment and to her daughter as Nicola. The claimant was represented before me by Robert Sterling.

4. The defendant is Amazon Digital UK Limited, the owner of the Amazon Prime Video website and streaming platforms. The defendant was represented before me by Richard Munden.

5. The defendant seeks summary judgment in both aspects of the claim on the grounds that:
   - The allegedly libellous statements are unarguably true and/or reflect honest opinion; and
   - The allegedly private information is not private and/or the publication of the documentary is clearly not a misuse of that information in light of Nicola's right to talk about her own life, the public interest in her account of her own life, and the fact that the material was already, and will continue to be widely published.

**Summary Judgment – The Test**

*The Law*

6. A useful summary of the principles to be applied in an application for summary judgment can be found in *Easyair Ltd v Opal* [2009] EWHC 339 (Ch) at [15]:
   "i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 2 All ER 91;
   ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8];
   iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman;*

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725."

*Arguments and Analysis*

7. Mr Sterling for the claimant argued before me that the Court must be satisfied that the claims have no real prospect of success. He suggested that the appropriate test to apply before granting summary judgment was that there was "no serious question to be tried".

8. Mr Munden, for the defendant, referred back to the **Easyair** [6] principles of the test for summary judgment which is not a "triable issue" test. In particular he highlighted paragraphs (vi) and (vii). Given the time the claimant has had to put the evidence together and the extensive evidence submitted, he said there is little ground for considering that further evidence will be forthcoming at trial. And he noted that, if the respondent's case is wrong in law, they will have no real prospect of succeeding in the claim and summary judgment would therefore be appropriate.

9. I have approached the question of summary judgment in relation to both aspects of the claim with reference to the test and considerations set out in **Easyair** [6]**.** I have considered whether each claim has a "realistic" rather than a "fanciful" prospect of

success, taking note that this means the claims must carry a degree of conviction rather than simply being arguable. While it was not for me to conduct a "mini-trial", I have taken note of the extensive evidence before me and the references to parallel litigation. The evidence provided ranges from contemporaneous personal text messages and media coverage of Nicola's life to a draft divorce petition from the 1990's. Based on the range and extent of the evidence and the fairly narrow points of dispute, I am satisfied that it is unlikely that any significant further relevant evidence would come to light for a potential trial.

10. Taking account of the legal arguments and the evidence before me, I am satisfied that neither aspect of the claim has a realistic prospect of success and will explain my reasoning in relation to each claim in turn.

## The Libel Claim

*The Meaning*

11. The parties agreed meaning of the words complained of in the libel claim is:

> "Dee Adams has sent her daughter, Nicola Adams, really horrible and threatening text messages, and by sending those abusive messages to her daughter, *Dee Adams is perpetuating, in a different form, the abuse Nicola Adams suffered at the hands of her father when she was a child*, and that has ruined her relationship with her daughter."

This meaning is based on the meaning determined by Tipples J in the claimant's claim against Associated Newspapers ("the Associated Claim") in her judgment ***Adams v Associated Newspapers*** [2023] EWHC 1940 (KB) which related to an article including some of the same language complained of in the documentary. The meaning is agreed to be factual, except for the italicised words which are agreed to be a statement of opinion. Following the judgment in the Associated Claim, the meaning that forms the basis of the libel claim as set out in the Amended Particulars of Claim is significantly narrower than it was initially.

12. The scope of the dispute between the parties is similarly narrow and can be grouped into two main points:

i) On the factual meaning – whether the abusive messages were the reason the relationship between Nicola and Dee has been ruined.
ii) On the opinion meaning – whether the treatment of Nicola by her father amounted to abuse to provide the basis for her honest opinion.

## Defence of Truth

13. Section 2 of the Defamation Act 2013 provides that:

> "(1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.
>
> (2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.

> (3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation."

14. The defendant needs to show that the imputation of the statement is "substantially" true, not that it is entirely or literally true. As Nicklin J pointed out in *Bokova v Associated Newspapers Ltd* [2018] EWHC 2032 (QB), [2019] QB 861 at [28], with reference to the earlier authorities of *Turcu v News Group Newspapers Ltd* [2005] EWHC 799 (QB) at [109] (Eady J) and *Rothschild v Associated Newspapers Ltd* [2013] EWCA Civ 197, [2013] EMLR 18 at [17] (Laws LJ, approving ***Turcu*** at [109]), the court should not take too literal an approach but instead should "isolate the essential core of the libel and not be distracted by inaccuracies around the edge – however extensive" (***Turcu*** at [105]). The court "should not … insist upon proof of every detail where it is not essential to the sting of the article" (***Turcu*** at [10]).

*Arguments*

15. The defendant puts forward a defence of truth in relation to the factual element of the meaning. Mr Sterling, for the claimant, argued that, while Dee accepts that she sent abusive messages to Nicola, that was not the reason for the breakdown in their relationship. Rather, the claimant points to separate family disputes relating to Nicola's brother and seems, in essence, to blame Nicola for the deterioration in their relationship while justifying the abusive nature of the messages as a response to that. Therefore, he says, the defence of truth cannot be made out on the discrete point of the causation of the ruined relationship.

16. Mr Munden, for the defendant, argues that the defence of truth is made out because the factual meaning is substantially true in that there is no dispute about the fact that Dee sent Nicola abusive messages. The causation element is not relevant.

*Analysis*

17. In written and oral submissions, the claimant's main point in relation to the defence of truth, is that Nicola was somehow to blame for Dee sending her abusive messages and that the breakdown in their relationship was not caused by the messages themselves but rather by an underlying family dispute. It is not for this court to adjudicate on a family feud. Rather, it is for me to decide whether those arguments have a realistic prospect of success if advanced at trial to defeat the defence of truth. In my view, they do not.

18. The 'essential core' of the libel (***Turcu*** [105]) is that Dee sent abusive messages to Nicola. That is where the defamatory sting in the meaning lies and the truth of that fact is accepted. Section 2(3) of the Defamation Act 2013 [15] makes it clear that "[i]f one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation." The impact of those messages on their relationship, as opposed to the nature of those messages, is not something that would *"substantially affect in an adverse manner the attitude of other people towards a Claimant, or have a tendency to do so"* - **Triplark v Northwood Hall [2019] EWHC**

**3494 (QB)) at [11]**. Families regularly fall out. Ruining a family relationship would not *per se* seriously harm the claimant's reputation. Most people would recognise that identifying the fault in such family conflicts is extremely subjective. It is the act of sending abusive messages which holds the defamatory sting, and the reasons why she sent those abusive messages are irrelevant to the truth of the words complained of.

19. The claimant's arguments as to the underlying cause of the family relationship breakdown are completely irrelevant to the defence of truth and, as such, are destined to fail. What is more, litigating those arguments would only lead to further needless sharing of detailed private information relating to the claimant, Nicola and other family members. The narrow scope of the claimant's arguments makes it clear that the factual statement as a whole is "substantially true" and that the claimant has no real prospect of succeeding on this aspect of the claim, therefore it is appropriate for me to 'grasp the nettle' and decide the case by way of summary judgment (**Easyair** [6]) in favour of the defendant on this aspect of the case.

## Defence of honest opinion

20. Section 3 of the Defamation Act 2013 provides that:

"(1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.

(2) The first condition is that the statement complained of was a statement of opinion.

(3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.

(4) The third condition is that an honest person could have held the opinion on the basis of-

(a) any fact which existed at the time the statement complained of was published;

(b) anything asserted to be a fact in a privileged statement published before the statement complained of.

(5) The defence is defeated if the claimant shows that the defendant did not hold the opinion.

(6) Subsection (5) does not apply in a case where the statement complained of was published by the defendant but made by another person ("the author"); and in such a case the defence is defeated if the claimant shows that the defendant knew or ought to have known that the author did not hold the opinion."

*Arguments*

21. The claimant's main argument in relation to the defence of honest opinion is that the defendant must prove that Nicola suffered abuse at the hands of her father when she was a child for the defence to succeed. It is argued that this would need to be proved at trial. Before me, Mr Sterling suggested that, while it was accepted that Nicola's father slapped her on occasion during her childhood, this amounted to 'discipline' and might not be considered as 'violence' in light of prevailing attitudes in the 1980's. He argued

that this meant there was no abuse on which to base Nicola's opinion and that the defendant therefore knew, or ought to have known that Nicola did not hold the opinion.

22. The defendant argues that the sting of the opinion is that the messages were abusive, a matter accepted by the claimant. In relation to the reference to the abuse Nicola suffered from her father, the defendant points out that, while the claimant disputes the level of violence directed at Nicola, she admits that Nicola's father did get cross and slap Nicola when she was a child. Regardless of the level of violence, the defendant says, there are sufficient undisputed facts to support an honest person viewing the messages as being further abuse in a different form. Mr Munden likened the opinion comparing the messages to earlier abuse to saying "someone is as evil as Lucy Letby" - even if Lucy Letby is later proved not be evil, that does not undermine the honest opinion of the speaker making the comparison.

*Analysis*

23. The defendant need not prove the full factual basis of Nicola's honest opinion. As Mr Munden put it before me, someone might hold the honest opinion that the Earth is flat without the requirement that it be true. In addition, it is not Nicola's father who brings the claim. The sting in the opinion in relation to Dee is in the likening of her behaviour (i.e. the sending of abusive texts), to the abusive behaviour of Nicola's father during her childhood albeit in a different form.

24. To defeat the defence of honest opinion in this case, it is for the claimant to prove that the defendant knew or ought to have known that Nicola did not hold the opinion (s.3(5) Defamation Act 2013). The existence of abusive texts to Nicola from Dee is accepted. While I have not conducted a 'mini trial', there is ample evidence in the papers of some degree of violence from Nicola's father to both Nicola and Dee during Nicola's childhood. This is the case even on the claimant's own evidence. In particular, the draft divorce petition from the 1990's provided by Dee in evidence shows that there was serious cause for concern about Nicola's father's behaviour in the household and that it affected Nicola.

25. Abuse can take many forms, and the perception of abuse may differ from person to person. It seems to me preposterous to suggest that an adult recalling their childhood might not be of the opinion that they suffered abuse in these circumstances. What is more, the claimant's arguments about the level of violence experienced by Nicola as a child and the minimisation of Nicola's experience are perhaps more damning than the words complained of which do not specify any particular level of abuse or violence.

26. Based on the arguments before me, I do not think there is any realistic prospect of success for the claimant in defeating the defence of honest opinion. The more Mr Sterling developed the arguments during the hearing, the more irrelevant and inappropriate they became. It seemed to me that, rather than addressing the honest opinion defence as it related to the defendant, it was another attempt to discredit Nicola, albeit a fundamentally misjudged one. There was no serious challenge to the defence of honest opinion, rather it seemed more like a continuation of what is clearly a highly charged family conflict. It is not for this court to decide who is right or wrong in the wider family situation. But it is clear to me that the claimant has no prospect of defeating the defendant's defence of honest opinion at trial and therefore I grant summary judgment to the defendant on this aspect of the libel claim.

## The Misuse of Private Information (MOPI) Claim

27. The MOPI claim relates to six items of private information the claimant says are disclosed in the documentary. These fall into three basic categories of information:

i) information about Nicola's upbringing
ii) information about Nicola's experiences of domestic violence as a child
iii) information about the recent messages sent by the claimant.

28. The main issues in relation to the MOPI claim are:

(i) the extent to which there was a reasonable expectation of privacy in relation to the information, particularly information that was already in the public domain, and
(ii) the extent to which the Article 8 and 10 rights of Nicola and the Article 10 rights of the defendant outweigh any Article 8 rights of the claimant.

*Law*

29. The law as to misuse of private information was summarised by Warby J (as he then was) in *HRH the Duchess of Sussex* (supra ) at [30]-[31] (cited and undisturbed on appeal) by reference to *ZXC v Bloomberg LP* [2020] EWCA Civ 611; [2021] QB 28 at [40]–[48] and [103]–[109] and *Sicri v Associated Newspapers Ltd* [2020] EWHC 3541 (QB); [2021] 4 WLR 9 at [63]–[74], [111]–[119], and [120]–[122]:

> "[30] At stage one the question is whether the claimant enjoyed a reasonable expectation of privacy in respect of the information in question. One way the question has been put is to ask whether a reasonable person, placed in the same position as the claimant and faced with the same publicity, would feel substantial offence. There must be something of a private nature that is worthy of protection. In some cases, the answer will be obvious; but the methodology is to make a broad objective assessment of all the circumstances of the case.
>
> These include (1) the attributes of the claimant, (2) the nature of the activity in which the claimant was engaged, (3) the place at which it was happening, (4) the nature and purpose of the intrusion, (5) the absence of consent and whether it was known or could be inferred, (6) the effect on the claimant and (7) the circumstances in which and the purposes for which the information came into the hands of the publisher ('the Murray factors' [from *Murray v Express Newspapers plc* [2009] Ch 481 at [36]). If the information, or similar information about the claimant, is in the public domain, or is about to become available to the public, the court must have regard to that. In such a case it is a matter of fact and degree as to whether the legitimate expectation of privacy has been lost. Privacy rights can survive a degree of publicity for the information or related information.
>
> [31] At stage two, the question is whether in all the circumstances the privacy rights of the claimant must yield to the imperatives of the freedom of expression enjoyed by publishers

> and their audiences. The competing rights are both qualified, and neither has precedence as such. The conflict is not to be resolved mechanically, on the basis of rival generalities. The court must focus intensely on the comparative importance of the specific rights being claimed in the particular case; assess the justifications for interfering with each right; and balance them, applying a proportionality test. The court must have regard to the extent to which it is or would be in the public interest for the material to be published. The decisive factor at this stage is an assessment of the contribution which the publication of the relevant information would make to a debate of general interest. Other factors to be weighed in the balance are the subject-matter, how well-known the claimant is, the claimant's prior conduct, and editorial latitude. When examining the demands of free speech, the court should be slow to interfere in respect of matters of technique, form and detail; it should defer, to the extent appropriate on the facts, to the professional expertise and judgement of journalists and editors."

30. The Human Rights Act 1998 section 12 provides that:

> (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
>
> ...
>
> (3)No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
>
> (4)The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—
>
> (a)the extent to which—
>
> (i)the material has, or is about to, become available to the public; or
>
> (ii)it is, or would be, in the public interest for the material to be published;
>
> (b)any relevant privacy code.

...

31. In *ZXC v Bloomberg plc* [2022] UKSC 5 Lord Hamblen and Lord Stephens noted that:
"Information that was private may become so well known that it is no longer private.

Whether this is so is a matter of fact and degree see *K v News Group Newspapers Ltd* [2011] 1 WLR"

32. In *Ambrosiadou v Coward* [2011] EWCA Civ 409 at [30] Lord Neuberger MR explained that:

> "Just because information relates to a person's family and private life, it will not automatically be protected by the courts: for instance the information may be of slight significance, generally expressed or anodyne in nature. While respect for family and private life is of fundamental importance, it seems to me that the courts should, in the absence of special facts, generally expect people to adopt a reasonably robust and realistic approach to living in the 21st century".

33. In *Re Angela Roddy* [2003] EWHC 2927 (Fam), [2004] EMLR 8, Munby J described the various aspects of Article 8 and Article 10 rights relating to the right to tell one's own story at [35-36]:

"35. Article 8 thus protects two very different kinds of private life: both the private life lived privately and kept hidden from the outside world and also the private life lived in company with other human beings and shared with the outside world. For, as the Strasbourg jurisprudence recognises, the ability to lead one's own personal life as one chooses, the ability to develop one's personality, indeed one's very psychological and moral integrity, are dependent upon being able to interact and develop relationships with other human beings and with the world at large. And central to one's psychological and moral integrity, to one's feelings of self-worth, is the knowledge of one's childhood, development and history. So amongst the rights protected by Article 8, as it seems to me, is the right, as a human being, to share with others — and, if one so chooses, with the world at large — one's own story, the story of one's childhood, development and history. ...

36. The personal autonomy protected by Article 8 embraces the right to decide who is to be within the "inner circle", the right to decide whether that which is private should remain private or whether it should be shared with others. Article 8 thus embraces both the right to maintain one's privacy and, if this is what one prefers, not merely the right to waive that privacy but also the right to share what would otherwise be private with others or, indeed, with the world at large. So the right to communicate one's story to one's fellow beings is protected not merely by Article 10 but also by Article 8."

*Arguments*

34. The defendant argues, in essence, that the right of Nicola to speak her own story and the right of the public to hear the story outweigh any residual privacy rights the claimant may have. It says that Nicola's story is of public interest not only because of her sporting success, but also because she overcame a range of obstacles, including in her own private life and childhood, to reach her goals.

35. With regard to the information on Nicola's upbringing, the defendant says that the documentary does not stray beyond what is needed to tell Nicola's own story. The assertion that the claimant neglected Nicola has been dropped from the libel claim following the judgment of Tipples J but remains in the MOPI claim. The defendant says it does not appear in the documentary. In addition, the defendant argues that this

information is firmly in the public domain with numerous examples of media coverage where Nicola has spoken about her childhood struggles.

36. In relation to the domestic violence aimed at and witnessed by Nicola, the defendant says that this sort of wrongdoing could never be kept quiet by means of a privacy claim, in particular not against the speech of the child victim or witness herself. If the statement was alleged to be false, that should be the subject of a defamation claim, not a MOPI claim. Again, the defendant pointed to numerous occasions when Nicola had spoken publicly about this issue dating back to her autobiography published in 2017.

37. As far as the messages were concerned, the defendant says the claimant could have no reasonable expectation of privacy in the general description of them in the documentary or in the fact of the breakdown of the relationship. Nicola's right to tell her own story would plainly outweigh any residual privacy rights of the claimant.

38. The claimant argues that the information concerned regarding Nicola's upbringing including her childhood home and her mother's relationships is private information deserving of protection. As to the question of whether or not the information is already in the public domain, the claimant says that repetition of disclosure of private information can constitute further misuse of private information (The Law of Privacy and the Media Fourth Edition at paragraph 11.57). In his skeleton argument and before me, Mr Sterling argues that section 12 of the Human Rights Act 1998 should have no application as the information is not and cannot be a matter of public interest. He does not provide any real substantiation for that argument.

*Analysis*

39. In considering stage one of the test for a MOPI claim, I have borne in mind the Murray factors. The claimant is the mother of Nicola, the subject of the documentary. The mother-daughter relationship means that, in relation to the information about Nicola's upbringing and domestic abuse in the home, Dee is an essential part of the story. Taking account of Murray factors 4 and 7, it is clear in this case that the nature and purpose of the intrusion and the circumstances in which and purposes for which the information came into the hands of the publisher are inextricably linked to Nicola's desire to tell her own story through the documentary. It appears that Dee initially consented to sharing aspects of their family life and cooperated with the documentary film makers but, when the relationship with Nicola soured, she withdrew her cooperation significantly.

40. Of particular relevance in this case is the degree to which the information, or similar information, was already in the public domain. This is a question of fact and degree (*HRH the Duchess of Sussex* [30]).

41. Looking at the first two categories of information complained of, Nicola's autobiography was published in 2017 and contained references to difficulties she encountered in childhood as well as domestic violence in the home growing up. Since then, she has spoken about these aspects of her childhood repeatedly in the press. I cannot see, looking at the wide range of publications addressing these issues, that there was, at the time of publication, any reasonable expectation of privacy in relation to those aspects of the information. The documentary dealt with this information in a quite general way and there is nothing in it that I can see could be described as a

fundamentally new and specific piece of information such as to give rise to an expectation of privacy.

42. In relation to the messages and breakdown of the relationship between Dee and Nicola, I note that there is no reference to detailed content in the documentary and that Mr Munden took great care in the hearing before me not to reveal any more detail than was necessary. In the circumstances, with what were accepted to be abusive texts, I do not think that a general description of the existence of messages between mother and daughter or a reference to the breakdown in their relationship could attract a reasonable expectation of privacy. The nature and purpose of any potential intrusion, in this case, was to allow Nicola to tell her own story, a story that has now been shared widely, including in the article subject to the Associated Press claim. At this stage, in general terms, the existence of the messages and the family breakdown are well and truly in the public domain. There is nothing in the documentary that goes further into the claimant's private life than this.

43. Nicola is a well-known sporting and media personality. Her previous good relationship with her mother and the challenges of her childhood are things she has spoken about publicly on many occasions, apparently with Dee's support. It is the nature of celebrity in the 21st century that the line between private and public information is not as clear as it might previously have been. In this case, the information shared about abusive messages and family relationship breakdown was very general and I would expect Dee to have a "reasonably robust and realistic approach to living in the 21st century" *Ambrosiadou* [30] given the level of media attention that Nicola attracts.

44. While I have found that the claimant did not have a reasonable expectation of privacy and, therefore that the MOPI claim must fail at the first stage of the test, given the nature of the case, I think it is worth considering how stage two of the test would apply to any residual privacy rights the claimant might have. This requires a consideration of the Article 8 rights of the claimant balanced against the Article 10 rights of the defendant and, importantly, Nicola's right to tell her own story protected by both Article 10 and Article 8.

45. The documentary tells the story of an extraordinary sportswoman who has smashed many social and sporting barriers to achieve what she has and is now embarking on the next stage of her life in the public eye. She is an inspiration for girls and women and her story clearly contributes to general debate about societal shifts that allow women access to professions they were previously excluded from and to debates about social mobility and various forms of discrimination. The documentary, and the information shared about Nicola's childhood is clearly in the public interest for these reasons. Even without this, Mr Sterling is simply wrong to suggest that Article 12 of the Human Rights Act only applies in cases of public interest. The right to freedom of expression is not dependent on public interest in a specific expression, rather the protection of the right is itself in the public interest. How that right is balanced against other rights may take account of the public interest, among other things. The defendant and Nicola have the right to freedom of expression, and the public interest in Nicola's story of achievement over adversity simply adds weight to the defendant's Article 10 rights in providing an opportunity for Nicola to tell her story, including her account of her childhood. Any residual Article 8 rights of the claimant are far outweighed by the rights of the defendant and Nicola to tell the story of her life.

46. It seems clear that the underlying reason for the MOPI claim is the claimant's concerns about damage to her reputation and the family rift rather than a sudden desire for privacy in relation to information that had already been widely shared in the public domain. The MOPI claim appears to be, therefore, no more than an addendum to the failed defamation claim.

47. For the reasons given, summary judgment is granted in favour of the defendant for the MOPI claim.

## Conclusions

48. I hope that granting summary judgment in favour of the defendant in both the libel and MOPI claims in this case will help to avoid protracted costly and painful court proceedings in this case. It is clear that the relationship between Dee and Nicola has become extremely fraught. But airing this conflict in court is unlikely to help either of them and, ultimately, the ongoing family friction is entirely separate from the documentary, the defendant and either the defamation or MOPI claims. Continued litigation with no prospect of success would only serve to draw further attention to the publication and reveal further and more detailed private information in open court. It is clear that the hurt is real on both sides, but this claim is not the right vehicle to address it.

49. Summary judgment is granted in favour of the defendant for the libel claim because the claimant has no realistic prospect of success in challenging the defendant's defences of truth and honest opinion.

50. Summary judgment is granted in favour of the defendant in the MOPI case because the claimant has no realistic prospect of success in demonstrating a reasonable expectation of privacy in relation to the information or of demonstrating that any residual privacy rights would outweigh the defendant's Article 10 rights and Nicola's right to tell her own story under Articles 8 and 10.

## Costs

51. The claimant shall pay the costs of the defendant in the application and in the action to be assessed.