Reporting ancillary relief proceedings: an update

Since the rules for admitting the media to family proceedings were liberalised in April 2009 there have been surprisingly few judgments on the question of when the media may attend, and report upon, ancillary relief cases. Important questions therefore remain unanswered as to when exclusion of the media in such cases can properly be justified; when reporting restrictions should be imposed; and as to what information given during proceedings can be reported.

In *Spencer v Spencer* [2009] 2 FLR 1416 Munby J (as he then was) found that the criteria set out in FPR Rule 10.28 for excluding the media had not been satisfied. The judge rejected the contention, advanced by both parties, that the confidentiality of matters raised justified the closure of the doors of the court to press representatives. A similar conclusion was reached by Charles J in *X v X* [2009] 2 FLR 324.

In *Spencer* Munby J noted that the court had jurisdiction to make reporting restrictions in ancillary relief cases, although in the event the case settled before any argument could take place as to what, if any, restrictions were appropriate.

These two cases, decided shortly after the new rule was introduced, appeared to signal that parties in ancillary relief cases would struggle to justify exclusion of the media. However, a recent case in the Court of Appeal may indicate that there are, after all, good grounds for excluding the media, or imposing reporting restrictions, from ancillary relief cases, at least where those cases turn on evidence provided by the parties in their Form E disclosure statements.

Lykiardopulo v Lykiardopulo [2010] EWCA Civ 1315 concerned the question of whether judgments in ancillary relief proceedings should be anonymised when one party has been found to have given false evidence.

The wife of a member of a wealthy Greek shipping dynasty brought proceedings for ancillary relief following the breakdown of their marriage. After a ten day trial Baron J found, in February 2009, that the husband had conspired to manufacture documents for trial to hide the extent of his wealth, and ordered the husband to pay his wife some £20 million.

The husband failed to comply with the order to pay his wife. The question then arose as to whether the judgment, which had been handed down in private and before the new rules of media attendance had been implemented, should be handed down in public and/or anonymised.

The husband contended that the judgment should not be handed down in public at all. Baron J decided that the judgment should be handed down in public, but subject to appropriate anonymisation so as to protect the identity of the parties. She considered that publication of the parties' identities would cause damage to the husband's business and would adversely affect his health, rendering even more remote the prospect of the wife recovering the money due.

The wife appealed against the order for anonymisation. The Court of Appeal allowed the appeal.

The Court of Appeal held that when a litigant provides false information to the court he has no entitlement to confidentiality in respect of that information. It also ruled that Baron J had erred in finding that publication of the judgment in this case would cause commercial harm to the husband or his family business. The Court of Appeal was therefore at liberty to exercise an independent discretion. That discretion would be exercised in favour of permitting publication of the judgment in anonymised form, with redaction of any details of sensitive information which are irrelevant to the account of the family's business and the litigation conspiracy.

Whilst the judgments did not specifically address the question of media access to ancillary relief cases, the Court of Appeal made a number of statements underlining the importance of preserving the confidentiality of information disclosed under compulsion.

First, both Thorpe and Stanley Burnton LJJ emphasised that the financial affairs of any family are essentially private and not a matter of legitimate public interest. Both judges made it clear that parties to ancillary relief proceedings may generally expect the information they have provided about their finances to remain confidential – the principle established in *Clibbery v Allan* [2002] Fam 261. *Clibbery* makes it clear that information provided by parties as a result of their disclosure obligations remains protected from publication even when raised in court, although that case was decided at a time when the media were not permitted to attend hearings in family cases.

Secondly, Stanley Burnton LJ drew attention to the long established practice of family courts to release judgments in such cases in anonymised form, "out of respect for the private life of the litigants and in order to promote full and frank disclosure, and because the information in question has been provided under compulsion". Nowhere was it suggested that this practice needed to be changed as a result of the new rules on media access, not that the underlying rationale for the practice had been eroded.

The clear restatement of these principles by the Court of Appeal in *Lykiardopulo* may provide encouragement to litigants in ancillary relief proceedings who wish to exclude the media from their

hearings, or who want reporting restrictions imposed. If the matters to be litigated derive from the parties' Form E disclosure statements, should the *Clibbery* principle not require that the media be excluded from those hearings? Alternatively, if the media are to be permitted, should the court not impose reporting restrictions to restrain reporting of that information, something contemplated (but not done) by Munby J in *Spencer*?

A court grappling with these questions will have to consider how the *Clibbery* principle, and the ruling in *Lykiardopulo,* should be reconciled with Rule 10.28 of the Family Proceedings Rules, and the limited criteria for excluding the media set out in that rule. The rule does not make reference to information obtained through the disclosure process, nor to the confidentiality of the information before the court; however it does require the court to consider "the safety or protection of a party" which, as the President pointed out in *Re Child X* (2009) 2 FLR 1467, may encompass making an order to protect the Article 8 rights of the parties.

Another matter remaining unresolved by is whether reporting of ancillary relief cases is restricted by reason of the Judicial Proceedings (Regulation of Reports) Act 1926. This Act permits reporting of certain parts of proceedings, including a "concise statement of the charges, defences and counter charges in support of which evidence is given", but effectively prohibits the reporting of many of the details which add colour to such cases. *Clibbery* left open the question of whether the Act applies to ancillary relief cases. The matter was raised in *Spencer* but not decided. It did not arise for determination in *Lykiardopulo.*

The law in this area remains in a state of uncertainty. Given the sensitivity of many of the issues raised in ancillary relief cases, this is an unsatisfactory situation both for litigants and the media.

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