Case No: HQ02X00666

Neutral Citation No: [2003] EWHC QB 1101
IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21st May 2003

Before :

THE PRESIDENT

- -

Between :

X, A WOMAN FORMERLY KNOWN AS MARY BELL	**First Claimant**
-and-	
Y	**Second Claimant**
- and -	
STEPHEN O'BRIEN	**First Defendant**
-and-	
NEWS GROUP NEWSPAPERS LTD	**Second Defendant**
-and-	
MGN LTD	**Third Defendant**

- -

Mr Edward Fitzgerald QC and **Miss Phillippa Kaufmann** (instructed by Southern Stewart Walker) for the First Claimant
Mr Christopher Knox (instructed by Southern Stewart Walker) for the Second Claimant
Mr Mark Everall QC as Advocate to the Court (instructed by the Official Solicitor)
Mr Andrew Caldecott QC and **Ms Dinah Rose** (instructed by the Treasury Solicitor) for H.M. Attorney General

Hearing dates : 14/15 April 2003

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
Dame Elizabeth Butler-Sloss, P.

Dame Elizabeth Butler-Sloss, P :

1. A mother (X, formerly known as Mary Bell) and her daughter (Y) seek lifetime anonymity from the intrusions of the media and any disclosure of their identities, their addresses or any details about their lives which might identify them. Their reasons for seeking draconian protective orders from the High Court are different but the basis for seeking such orders arises from the same set of facts. In 1968 Mary Bell killed two small children. The deaths of the three and four year olds were made the more shocking by the fact that she was at the time 11 years old. Mary Bell was convicted of the manslaughter of each of the children by reason of diminished responsibility. She was sentenced to detention for life under the provisions of section 53(1) of the Children and Young Persons Act 1933.

2. X and Y are separately represented, X by Edward Fitzgerald QC and Phillippa Kaufmann, Y by Christopher Knox. The father of Y is the first defendant but has not taken any part in these proceedings. Two major newspaper groups were also made defendants. Desmond Browne QC, on their behalf, made it clear at an early stage of these proceedings that the two newspaper groups did not oppose in principle the grant of injunctions to protect the anonymity of X and Y and suggested the wording of a draft order. The two newspaper groups, although large, do not represent the media generally. In the absence of any application from any other part of the media to be represented or heard, I invited the Attorney General to intervene to advise the court on the issues of public interest. I am very grateful to the Attorney General for instructing Andrew Caldecott QC and Dinah Rose and for their most helpful written and oral submissions. Until the Children and Family Court Advisory and Support Service (CAFCASS) took over the Official Solicitor's responsibilities for representing the children in family proceedings in April 2001, the Official Solicitor has been the guardian of Y in her wardship proceedings and instructed Mark Everall QC as Advocate to the Court. I am also grateful to him for his equally helpful submissions in a difficult and worrying case.

The background facts

3. At her trial Mary Bell's name was disclosed to the public. After conviction she spent 12 years in young offender institutions and subsequently in prison. On her release in 1980 she was provided, at her request, with a new identity. There have been three major periods when X's identity and whereabouts were either discovered or at risk of discovery. The first was after she formed a settled relationship with the first defendant and gave birth to Y on the 25th May 1984. Y was made a ward of court five days later on the application of the local authority in the area where they lived, and X and the father were given joint care and control with a supervision order to the local authority. In July 1984 the News of the World became aware of the birth of Y and an injunction was granted by Balcombe J in the wardship proceedings prohibiting identification of Y and of X, see *re X (A Minor)(Wardship Injunction)* [1984] 1 WLR 1422. This injunction continued until Y's 18th birthday last year. On 17th April 2002 I made an interim injunction in the present proceedings, pending the outcome of the proceedings, in substantially the same terms as that made in the wardship proceedings.

4. The second period was in 1988 when there were two events. The identity of X and of Y was revealed in the village in which they then lived. Parents at the school attended by Y drew up a petition to exclude Y from school and there was a demonstration against her at the school. She was at the time four years old. The relationship between X and the first defendant had already failed in early 1988, X having formed a relationship with B and left the first defendant taking Y with her. She and B have remained together to this day. Later in 1988, the first defendant sought to obtain financial advantage by selling an untrue story about X which was published in October 1988. An injunction was obtained against him in November 1988. The family had to move again and X established a new identity.

5. In 1993, after the murder of Jamie Bulger and the trial of Thompson and Venables, there was a considerable amount of press publicity about Mary Bell.

6. The third major period was in 1998, after the publication of a book by Gita Sereny setting out the life of Mary Bell with the collaboration of X for which she was paid a substantial sum. The Home Office was aware of the proposed publication, which evoked considerable press publicity. X's whereabouts were discovered and she and the family had to move in a hurry at the instance of the local police on the grounds of public safety and the personal safety of the family. On this occasion they were able to return home after two weeks. During 1998 there was a bogus telephone call to the surgery of X's general practitioner. There were other incidents both initiated by the press and by members of the public. In total, X and Y have relocated under compulsion, prompted by press intrusion and harassment, on 5 separate occasions.

7. Over the years there has been consistent press reporting of Mary Bell and press articles about her. In December 2002 her co-accused, who had been acquitted, made a statement to the press and an article was published by The Sunday Sun on the 15th December 2002. As a result no doubt of the present proceedings a local Newcastle newspaper, the Evening Chronicle, displayed a headline on Friday April 11th 2003, just before the first day of the hearing of this case,

> "Time to unmask Mary Bell"

followed by a two page article headed "Still haunted" in which some members of the family of one of the two children killed expressed the wish that Mary Bell should be named and shamed.

8. It is clear that, at least from time to time, Mary Bell remains the subject of press and other media interest and, I presume, remains of interest to the reading public. She has nonetheless been able to live a largely settled life in the community despite a number of changes of identity and moves. She has now lived in the community for twenty three years. She and B have created a family life and brought up Y who has developed into a charming and well-balanced girl according to the evidence provided to me. Y intends for the foreseeable future to continue to live with her mother and B. X and her daughter seek the opportunity for each of them to continue to enjoy the protection

from press and public intrusion into their lives by the grant of the injunctions they now seek from this court.

9. The evidence before me, which I accept, from the police, the probation service, social services, a previous probation officer who has remained very close to X, and from her member of Parliament is that, if their identity and whereabouts are disclosed, X and Y are at considerable risk of press intrusion and harassment, public stigma and ostracism. X is, according to the medical evidence to which I refer later, a vulnerable personality with mental health problems and the prospect of such intrusion has already had an adverse effect upon her mental and physical health. The absence of the protection of an injunction will have a serious effect upon her health and well-being. In the absence of injunctions the press, other parts of the media and members of the public would have the right to track down X and Y and report who they are and where they live.

10. The question which I have to answer is whether X and Y's cases are so exceptional that they should be granted lifetime protection contra mundum.

Information to be protected

11. Mr Fitzgerald and Mr Knox seek to protect a limited amount of information which is not, according to their case, in the public domain, that is to say the present identity and whereabouts of X and Y. There is a great deal of information already in the public domain which the press are entitled to report and comment upon. As Lord Goff of Chieveley said in *Attorney General v Guardian Newspapers (2)("Spycatcher")* [1990] 1 AC 109 at page 282

> "…the principle of confidentiality only applies to information to the extent that it is confidential. In particular, once it has entered what is usually called the public domain (which means no more than that the information in question is so generally accessible that, in all the circumstances, it cannot be regarded as confidential) then, as a general rule, the principle of confidentiality can have no application to it."

12. The first question is, therefore, whether this limited information is already in the public domain. Although a number of people do know both the identity and whereabouts of X and Y, both those whose business it is to do so and some other people, no-one has suggested in this case that this information is generally accessible. I am satisfied that it retains the necessary degree of confidentiality that it is capable of being protected.

The law of confidence and the European Convention for the Protection of Human Rights and Fundamental Freedoms

13. The grounds upon which I am now asked to grant lifetime protective injunctions are based upon the risk, both for X and for Y, of breaches of the law of confidence as illuminated by the Human Rights Act 1998 and the European Convention. Lord Phillips of Worth Matravers MR in the judgment of the court in *Campbell v MGN Ltd* [2002] EWCA Civ 1373; [2003] 2 WLR 80 said at paragraph 70

> "The development of the law of confidentiality since the Human Rights Act 1998 came into force has seen information described as 'confidential' not where it has been confided by one person to another, but where it relates to an aspect of an individual's private life which he does not choose to make public. We consider that the unjustifiable publication of such information would better be described as breach of privacy rather than breach of confidence."

14. The applications made in this case are however based upon confidentiality and no application has been made to amend the claims. I propose therefore to continue to deal with this case as an issue of breach of confidentiality despite the suggested approach of the Court of Appeal.

15. Mr Fitzgerald raised three separate submissions in his skeleton argument based upon articles 2, 3 and 8 of the European Convention.

Article 2

16. Mr Fitzgerald submitted in his written argument that X was seriously at risk to her life if her identity were to be disclosed to the public. He did not pursue this part of his case in his oral submissions. I am satisfied that, on the evidence before me, the risk of harm to X from others does not reach the standard required to come within article 2 of the Convention. The degree of hostility to Mary Bell bears no relation to the specific and serious threats to the lives of Thompson and Venables, who are the only people so far to have received the lifetime anonymity sought by X and Y, see *Venables v News Group Newspapers Ltd and Others* [2001] 1 All ER 908; [2001] Fam 430. That is not to say that X might not be the recipient of unpleasant incidents which might well go beyond verbal harassment. There is however no cogent evidence of a threat to her life and, in my judgment, this is not a case in which there is a real risk of a breach of article 2 if the public were to become aware of the identity or whereabouts of X. Mr Fitzgerald made other submissions in support of a potential breach of article 2. On the evidence at present before me, it is not necessary to explore the points he made. Any protection required at present by X can be provided by article 8. If the situation changes in the future and there is a threat to the right to life of X, she will have the opportunity to return to court and seek protection based on the facts then available.

Article 3

17. Mr Fitzgerald does not now seek an order based on any risk of a breach of article 3 and it is not necessary for the court to explore any protection to X on that ground on the present facts.

Y: Articles 2 and 3 Rights

18. No suggestion has been made that Y's rights under articles 2 or 3 are at risk through disclosure of her identity or whereabouts.

Article 8

19. The applications for injunctions by X and Y are based upon the serious risk of breaches of the rights of each of them under article 8 which states

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, or for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

20. In numerous decisions on article 8, the European Court at Strasbourg has set out the general principles and enlarged the meaning of 'private life'. It covers the physical and psychological integrity of a person (see *X v Netherlands* (1985) 8 EHRR 235 at paragraph 22). It protects a right to personal development and to establish and develop relationships with other human beings and the outside world (see *Botta v Italy* (1998) 26 EHRR 241 and *Bensaid v United Kingdom* (2001) 33 EHRR 10).

21. In *Botta* the Court said at paragraph 31

> "Private life, in the Court's view, includes a person's physical and psychological integrity; the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings."

22. In *Bensaid* the Court said at paragraph 46

> "Not every act or measure which adversely affects moral or physical integrity will interfere with the right to respect to private life guaranteed by Article 8. However, the Court's case-law does not exclude that treatment which does not reach the severity of Article 3 treatment may nonetheless breach Article 8 in its private life aspect where there are sufficiently adverse effects on physical and moral integrity.
>
> 47. Private life is a broad term not susceptible to exhaustive definition. The Court has already held that elements such as gender identification, name and sexual orientation and sexual life are important elements of the personal sphere protected by Article 8. Mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. Article 8 protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life."

23. One important factor in X's case, to which I refer below in more detail, is the potential effect of publicity upon her mental health.

24. Article 8 has to be balanced against the rights to be found in article 10.

Article 10 Freedom of expression

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of those freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

25. The importance of article 10 has been enhanced by the provisions of section 12 of the Human Rights Act 1998.

Human Rights Act Section 12

> "(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.
>
> (2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied-
>
> (a) that the applicant has taken all practicable steps to notify the respondent; or
>
> (b) that there are compelling reasons why the respondent should not be notified.
>
> (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."

26. Neither article 8 nor article 10 is absolute in terms and each recognises the competing rights of the other article. In *A v B plc* [2002] 3 WLR 542, Lord Woolf CJ said in the judgment of the court at paragraph 4

> "These articles have provided new parameters within which the court will decide, in an action for breach of confidence, whether a person is entitled to have his privacy protected by the court or whether the restriction of freedom of expression which such protection involves cannot be justified. The court's approach to the issues which the applications raise has been modified because under section 6 of the 1998 Act, the court, as a public authority, is required not to act "in a way which is incompatible with a Convention right." The court is able to achieve this by absorbing the rights which articles 8 and 10 protect into the long-established action for breach of confidence. This involves giving a new strength and breadth to the action so that it accommodates the requirements of those articles."

27. At paragraph 6 he said

> "The manner in which the two articles operate is entirely different. Article 8 operates so as to extend the areas in which an action for breach of confidence can provide protection for privacy. It requires a generous approach to the situations in which privacy is to be protected. Article 10 operates in the opposite direction. This is because it protects freedom of expression and to achieve this it is necessary to restrict the area in which remedies are available for breaches of confidence. There is a tension between the two articles which requires the court to hold the balance between the conflicting interests they are designed to protect. This is not an easy task but it can be achieved by the courts if, when holding the balance, they attach proper weight to the important rights both articles are designed to protect. Each article is qualified expressly in a way which allows the interests under the other article to be taken into account."

28. The judgment in *A v B plc* gave guidance as to the approach to be taken by judges in applications for interim injunctions, and not final injunctions as are sought in this case. Paragraph 11(iv) of the guidelines is relevant in my view to final injunctions

> "(iv) The fact that if the injunction is granted it will interfere with the freedom of expression of others and in particular the freedom of the press is a matter of particular importance. This well-established common law principle is underlined by section 12(4). Any interference with the press has to be justified because it inevitably has some effect on the ability of the press to perform its role in society. This is the position irrespective of whether a particular publication is desirable in the public interest. The existence of a free press is in itself desirable and so any interference with it has to be justified."

29. In paragraph 11 (xii) Lord Woolf CJ said

> "……Whether you have courted publicity or not you may be a legitimate subject of public attention."

30. Neither X nor Y has courted publicity but Mary Bell clearly remains a legitimate subject of public interest.

31. Lord Phillips of Worth Matravers MR in *Campbell v MGN Ltd* (above) referred to the guidance set out in *A v B plc* (above) and said

> "41. For our part we would observe that the fact that an individual has achieved prominence on the public stage does not mean that his private life can be laid bare by the media. …..
>
> 42. The Human Rights Act 1998 has had a significant impact on the law of confidentiality. On the one hand, when considering what information is confidential the courts must have regard to the article 8 right to respect for private and family life. On the other hand, they must have regard to the importance of freedom of expression, particularly where it is the media that seeks to exercise this freedom. The European Court of Human Rights ("the Strasbourg court") has repeatedly recognised that freedom of the media is a bastion of any democratic society and section 12(4) of the Human Rights Act 1998 reflects the same appreciation."

The case for the grant of injunctions to X and to Y

32. There have only been three child killers who have been given new identities on release from custody and who have sought protection of their anonymity by way of lifetime injunctions against the world. They are Thompson, Venables and Mary Bell. A small group of other people have received new identities and protective injunctions, principally 'supergrasses', see *Nicholls v BBC* [1999] EMLR 791. Applications for protective injunctions in these circumstances have been rare. I have been reminded by counsel representing both the Attorney General and the Official Solicitor that the court has to be extremely cautious in approaching applications for lifetime anonymity under article 8. There is however no opposition by the Attorney General to the grant of such injunctions and indeed in his submissions to the court, he invites me to do so. The Official Solicitor also supports the grant of injunctions both for X and for Y.

33. I entirely agree that the granting of such injunctions should be exceptional. In my judgment in *Venables* (above) I said at paragraph 86 that I was uncertain whether it would be appropriate to restrain the Press in that case if only article 8 applied. In that case, the facts supporting articles 2 and 3 were exceptionally strong, and it had not been necessary for me to hear submissions on article 8. I certainly did not intend to

preclude a much closer examination of the competing rights under articles 8 and 10 in an appropriate case, such as the present one.

34. The grounds for granting injunctions for X and for Y are different and I shall deal with each of them separately.

The case for X

35. Children who kill have a fascination for the public. It is the negation of all we would like to believe childhood should be. We like to live with the illusion of childhood innocence and the reality is both shocking and intriguing. Each time a child killer is tried or is the subject of publicity, the press tend to refer to earlier, similar, cases. During the trial of Thompson and Venables and on some of the subsequent occasions in which they have received publicity, the case of Mary Bell again became news. Although X killed these two small children 35 years ago, the case remains of interest to the press and, apparently, to the public.

36. The exceptional circumstances set out in the various submissions to the court in support of a grant of lifetime protective injunction to X are in summary:

(1) The young age at which she committed the offences.

(2) The finding by the jury of diminished responsibility based upon solid evidence of her abusive childhood and the damage she had suffered as a child.

(3) The length of time which has expired since the offences were committed.

(4) The need to support rehabilitation into society and the redemption of the offender.

(5) Her semi-iconic status and the effect of publicity on her rehabilitation.

(6) The serious risk of potential harassment, vilification and ostracism, and the possibility of physical harm.

(7) Her present mental state.

(8) Her concerns for the welfare of her daughter.

37. It is a highly relevant factor that X was only 10/11 at the time that she killed the two small children 35 years ago, and that she had suffered in her own childhood to an extent that the jury brought in a verdict of manslaughter by reason of diminished responsibility. She was a damaged child and the effects of her abusive experiences have remained with her. X remains on lifetime licence and is liable to be recalled to prison for any offences committed. She has therefore to remain in touch with the

relevant authorities, such as the Probation Service. It can be said with some degree of certainty that she has, since her release, been rehabilitated into society and has not subsequently offended.

38. I agree with the submission of the Attorney General that no implied duty upon the state to protect the anonymity of X arises simply by virtue of the fact that she was given a new identity when she left prison. But the protection of her identity as a result of the injunction granted in 1984 for the benefit of Y has undoubtedly assisted in the rehabilitative process. There is much for X to lose from publicity at this stage. She has, helped by three changes of identity, managed to make a new life and successfully to bring up her daughter. The evidence from those who know her strongly supports all that she has achieved. The success of the rehabilitative process is also of benefit to the community and to risk it all, at this late stage, is a matter of considerable concern and a relevant factor to which I must have regard.

39. What is the need, one might ask, to know now where she is living and what is her present name? Many might say, 'Why not identify X – after her offences why should she be protected from disclosure to the public of who she is and where she lives?'. The more relevant question however is whether there is now any specific public interest in the publication of the limited degree of information sought to be protected. The lack of specific knowledge has not inhibited the media from commenting on her case which it has done over the years, as I have summarised above.

40. The likely effect on X if the injunctions are lifted is a highly relevant factor. The evidence of the probation service, the police and X's MP show the significant risk of intrusion and harassment. It only requires an individual or a journalist to put the information of identity into the public domain and other sections of the media are almost certain to follow suit. The intrusion from the press can be unrelenting in its pursuit of information. Individual members of the public may take their own steps to show disapproval in a variety of ways. Unlike paedophiles in respect of whom there is clear and understandable public concern about re-offending, there is no danger that X would re-offend but not every member of the public would necessarily accept that proposition. She has, as Mr Caldecott described it, a semi-iconic status, a special degree of notoriety, and I have no doubt from the evidence that, if she is not protected from publicity, she is at serious risk of identification and publicity.

41. Many serious offenders who are not protected by the Rehabilitation of Offenders Act 1974 are unlikely to seek, nor would they be likely to be granted, protective injunctions. In respect of X however there is a further factor which in my view is probably the most important reason why she should be granted anonymity. As I have set out above, X had a very abusive childhood and at her trial was described as a damaged child. Despite her success in leading a reasonably normal life, she has considerable mental health problems. For the purpose of these proceedings she was examined by a distinguished forensic psychiatrist, Professor Gunn CBE who is the head of the Department of Forensic Psychiatry at the Institute of Psychiatry, University of London. He examined X on the 13th May 2002 and also made inquiries from others about her including seeking medical information from her general practitioner. In his report dated the 15th May 2002, he said

> "In my opinion X is a woman who has been damaged by appalling early childhood experiences. She has been further damaged by the acting out of childhood fantasies which led to her incarceration, to intense guilt, to stigma and to public opprobrium. Later she experienced further abuse, including some damage at the hands of a prison official, physical and emotional damage from her first male partner, and the very stressful experience of a journalist researching and writing her story. This was followed by press harassment and fear for her daughter's (and to some extent her own) welfare. In turn this has precipitated a chronic affective disorder manifested by anxiety and depression. The disorder has fluctuated from time to time and is made worse by further emotional stress.
>
> If Ms X is unsuccessful in her application for a further press injunction, newspapers and other journalists will want to publish various versions of her "story" for public entertainment. This will involve stalking, public stigmatisation, and serious interference with the daily lives of her loved ones. From a medical perspective everything possible should be done to prevent her undergoing the further abusive and stressful experiences which will inevitably follow from newspaper publicity. I have no doubt that a further period of press intrusion and harassment, particularly involving her daughter, would be a severe stress to this lady, indeed it would amount to further psychological abuse."

42. In his report he made it clear that her disorder manifested itself by anxiety and depression and that additional stress would give rise to further deterioration of her psychological condition. His opinion is reinforced by X's general practitioner (Dr Z) who reported on the 14th May 2002 that X had been his patient since 1997. Dr Z said that he had suggested referral to various forms of psychiatric and psychotherapeutic help which he felt would be very beneficial to X which she had not felt able to take up due to her fearfulness that she might be recognised. He said

> "I think X suffers from significant disorder of panic and anxiety, at times this deepens into clinical depression and until now she has been unable to keep any appointments with agencies in mental health who might have been able to help her live with this fear."

43. X is also very concerned about the effect of publicity about her upon her daughter and this is adding to her state of distress.

44. Mr Fitzgerald argued that, in line with the passages from *Botta* (above) and *Bensaid* (above) the court should take very carefully into account the effect upon the mental health of X if she were to be harassed, ostracised or publicly identified, and the potential infringement of that aspect of her article 8 rights.

45. The cumulative effect of the factors I have set out above, particularly her young age at the time she committed the offences, the length of time which has elapsed since the offences were committed, the limited nature of the information to be protected and, in particular, the medical condition of X, together with the absence of any objection by the media, make a powerful case in support of X's application for continuing anonymity.

The case for the grant of an injunction to Y

46. Y is nearly 19. She was born on the 25th May 1984. She was, at birth, made a ward of court and by the order of Balcombe J has had the protection of an injunction giving her anonymity during her minority, see *re X (A Minor) (Wardship Injunction)* [1984] 1 WLR 1422. The protection afforded by the wardship injunction was continued by the interim injunction in these proceedings made on 17th April 2002. It is however accepted by all parties that the grant of an injunction during the continuance of the wardship does not of itself entitle her to a continuing injunction after she reaches adulthood: see *Re D (a minor)(adoption order: validity)* [1991] Fam 137.

47. Mr Caldecott suggested that there might in other circumstances be an argument in favour of not protecting someone in a similar position to Y but allowing her to live through and weather the transient storm of publicity and then get on with her life, which would be preferable to looking over one's shoulder all the time. For many young people who are the children of notorious or even famous people, that might be a sensible approach. For a number of reasons that approach is unrealistic and is unjust to Y.

48. Y has been brought up mainly by her mother and stepfather B. In one sense she has had a secure family background with loving parental figures. She has however had a great deal of moves during her childhood, 5 under compulsion, and on each occasion was removed from her home, her school and her friends and has been obliged to make the necessary adjustments to a new life. She also had the alarming experience of being removed from school in circumstances in which at the age of 4 she was unacceptable as a pupil, for no better reason than she was the daughter of her mother. She has had a disturbed and dislocated life. She is alienated from her natural father who has, for financial gain, been responsible for some of the publicity about her mother and the consequential unhappy upheaval in her life.

49. Y will for the foreseeable future live with her mother, with whom she remains very close and inter-dependent. At the age of 18, Y is well aware of the fragility of her mother's mental health and her vulnerability and is naturally very concerned about it and the likely impact of publicity upon her mother. She is, of course, entirely innocent and was born into a situation over which she has no control. There is undoubtedly a danger that, at least while she continues to live with her mother, inevitable publicity

about her mother will also identify her and may have the same sort of result as she experienced at her school many years ago.

50. Y's situation is so inextricably linked with that of her mother it is not, and Mr Caldecott accepts that it is not, possible to treat them separately. The identification of one will lead for certain to the identification of the other. The Attorney General supports the granting of an injunction to protect Y. I am satisfied that if I grant anonymity to X, I must also grant anonymity to Y. No-one who made submissions to me in this case, suggested otherwise.

The application of section 12 of the Human Rights Act

51. In a case where there is no opposition to the grant of injunctions in respect of X and Y, it is particularly important to be sure that there is compliance with the provisions of section 12. I shall take in turn the four relevant requirements in the section.

Section 12(2)

52. I am satisfied that the requirements of section 12(2) are met. The Press Association and other media organisations were served with the claim form and particulars of claim over a year ago. Media organisations have been served with copies of my interim orders. The applications before the court have also been widely reported, and there cannot be any newspaper proprietor or editor within the jurisdiction who is not aware of these proceedings.

Section 12(4)(a)(i)

53. There is a great deal of relevant material already available to the public and there is no intention to try to inhibit public discussion of the case of Mary Bell. The only information which it is sought to keep out of the public domain is that relating to the current identities and present whereabouts of X and Y. According to the applicants only about 20 people, other than those who need to know, have that knowledge. Mr Caldecott suggests that probably it is more widely known in the area where X and Y live than only 20 people. It is however agreed that the information is not generally known, nor generally accessible for the public at large.

Section 12(4)(a)(ii)

54. The Press have not sought to suggest that it would be in the public interest for the identities and whereabouts of X and Y to be generally known. On the contrary two large media organisations, defendants in these proceedings, have provided a draft order restricting such publicity. The Attorney General has not argued that publication

of this information would be in the public interest. Under article 8 he has submitted to the contrary and supports the draft order proposed by the Press defendants.

Section 12(4)(b) The Press Complaints Commission Code of Practice

55. In relation to Y, whose only involvement in these proceedings is because of her relationship of daughter to X, clause 10(1) of the Code of Practice would seem at first glance to apply and might be thought to cover the situation. It states

> "..the press must avoid identifying relatives or friends of persons convicted of crime without their consent."

56. The Press Code recognises the right of the family of notorious people not to be identified. No specific public interest has been shown to support the disclosure of the limited information about Y which would otherwise be contrary to the Code.

57. The question arises here whether the existence of the Code is sufficient protection. I consider it unlikely that the two newspaper groups would, at present, wish to breach the Code in respect of Y. They do not however represent all parts of the media. In the case of Y as of X, a single breach of the Code would be irreparable. The genie would be out of the bottle and, once in the public domain, it would be difficult, if not impossible, to police. Later criticism of the offending newspaper by the Press Complaints Commission would be too late. Further, Y is still only 18 and lives at home with her mother and step-father. Any identification of her mother would inevitably identify her. The position of mother and daughter is inextricably intertwined and if one is to be protected, I am quite satisfied that both have to be protected. That indeed was the advice of the Attorney General. In the extremely unusual circumstances of this case, I am satisfied that the application of the relevant privacy code would be utterly inadequate to meet the needs of both claimants so convincingly demonstrated by the evidence in this case.

The balancing exercise between Articles 8 and 10

58. I turn therefore to the necessary balancing exercise between the need to protect confidentiality and the need to pay proper respect to the right of freedom of expression. The public also has a legitimate interest in the process of rehabilitation and in the opportunity to have some details of how former serious offenders have succeeded in re-establishing themselves in society. This legitimate interest requires to be put in the balance against the potential damage to X.

59. In these two applications now before the court, I have had careful submissions on the way in which I should approach the balancing exercise. It would be wrong for the court to find that the notoriety which may follow the commission of serious offences would of itself entitle the offender upon release from prison to injunctions based upon

the interference to his private and family life caused by press intrusion. That would open the floodgates to widespread injunctions for criminals and would be contrary to the protection rightly afforded to freedom of expression in article 10(1) and in section 12 of the Human Rights Act. It would also inhibit the right of the press to publish and the public to know the identity of those who have committed serious crimes and the success or otherwise of the rehabilitative process.

60. Although there has been no opposition to the applications made by X and Y, in particular by any section of the press, and the Attorney General has not advanced any public interest argument against the grant of protective injunctions for X and Y, as Lord Woolf CJ said in *A v B plc,* any interference with the freedom of expression of others and in particular the freedom of the press has to be justified. I agree however with the Attorney General there are special features to this case which require the balancing of articles 8 and 10 to be resolved in favour of recognising the confidentiality of some information in order to protect both X and Y.

(1) There is only a limited amount of information which is in a special category requiring protection.

(2) There is sufficient information in the public domain for the press and other parts of the media to be able to comment freely on the relevant aspects of the case of Mary Bell. The only point at which the media is inhibited from comment is in the detail of the success of the rehabilitative process achieved by X. Even in that aspect of her life, there is sufficient information now available for proper reporting and commenting on that success without knowing what her present name is or exactly where she is living.

(3) There are exceptional reasons which I have listed above in support of taking this exceptional course.

(4) Among those exceptional reasons is the state of X's mental health and the important fact that she is suffering from a recognised mental health illness which would undoubtedly be seriously exacerbated if she were to be identified and pursued by the press or members of the public.

(5) The age at which X offended, and her semi-iconic status, demonstrated by continuing press and media publicity 35 years after she committed her crimes, make the risk of publicity, absent restraining orders, a very real one.

(6) The positions of the mother and the daughter are so intertwined that it is effectively impossible to look at either of them in isolation. To grant an injunction to one and refuse it to the other is in reality unworkable.

61. Balancing the restriction upon the press and others not to be able to publish details of present names and addresses of X and Y against the serious risk of public identification of X and Y if no injunctions are in place, the factors I set out above, in particular the fragile mental health of X set out in the medical reports, tip the balance firmly in favour of granting the relief sought. As Lord Woolf CJ said in *A v B plc*, both article 8 and article 10 are qualified expressly in a way which allows the interests under the other article to be taken into account. In the exceptional circumstances of this case I am entirely satisfied that the grant of these injunctions to X and to Y can be justified under article 10(2) as being in accordance with the law, necessary in a democratic society and proportionate to the need to protect the confidentiality of the limited amount of information the subject of these proceedings.

Liberty to apply

62. It is suggested by the Attorney General and the Official Solicitor that there should be liberty to apply to the court to set aside or vary the proposed injunctions. Neither Mr Fitzgerald nor Mr Knox opposes liberty to apply. On the exceptional facts of this case and the reliance upon article 8, I agree that it is appropriate for the press or other parts of the media to have the opportunity to have the lifetime injunctions reconsidered if circumstances should change. I propose therefore to insert a liberty to apply in the orders that I shall make.

Orders contra mundum

63. In the cases of Thompson and Venables I made orders contra mundum, see paragraphs 98-100 of my judgment in *Venables* (above). Mr Fitzgerald and Mr Knox ask that I should make the same orders to protect X and Y. There is no argument to the contrary and both the Attorney General and the Official Solicitor support contra mundum orders. In my judgment, it is right that I should do so for two reasons.

(1) To restrict the injunctions to the named groups of newspapers would be in the immediate future unnecessary since I have no reason not to accept their good faith in stating that for the time being there is no intention to publish the identities of X or Y. There is however a serious risk that other newspapers or other parts of the media might publish the information and once published, the knowledge is there and all are free to disseminate it and the injunctions are ineffective. If the injunctions are to be effective, they must bind the world and for the reasons I have set out in this judgment, exceptionally both X and Y require injunctions which will give them that protection.

(2) The second reason is that it would be unjust to the two newspaper groups who have behaved entirely properly in these proceedings and have not sought to oppose the granting of injunctions to X and Y that they should be bound by them but the rest of the media should be able, subject to the effectiveness of the "Spycatcher" principles, at least to argue that they may not be bound by the injunctions granted.

64. Exceptionally I shall therefore grant injunctions contra mundum to protect the anonymity of X and of Y. The grant of these injunctions to X and to her daughter is for reasons which are different from those which underlay my decision in *Venables* (above) but each of these cases is exceptional. As far as I am aware, there are at present no other child killers who have been released from prison or detention. The granting of the relief sought by the claimants in this case is not, and is not to be taken to be, a broadening of the principles of the law of confidence nor an increase in the pool of those who might in the future be granted protection against potential breaches of confidence.