Neutral Citation Number: [2014] EWHC 489 (Fam)

Case No: NZ13C00100

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/03/2014

Before :

THE HONOURABLE MR JUSTICE KEEHAN

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Between :

SURREY COUNTY COUNCIL	**Applicant**
- and -	
ME (1) **GYE (2)** **GE (3)** **JE (4)** **JT(5)** **NT (6)** **CT (7)** **Associated Newspapers Ltd, the British Broadcasting Corporation, the Press Association, Times Newspapers Ltd and Trinity Mirror Plc (8)**	**Respondents**

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Ms S Morgan QC and Ms S Stone (instructed by **Surrey County Council**) for the **Applicant**
Mr D Bedingfield (instructed by **Blackfords LLP**) for the **First Respondent**
Mr M Love (instructed by **Blavo & Co**) for the **Second Respondent**
Ms E Lecointe (instructed by **Russel-Cooke**) for the **Third, Fifth, Sixth and Seventh Respondents (through their Children's Guardian)**
Mr R Littlewood (instructed by **Creighton & Co**) for the **Fourth Respondent**
Ms C Gallagher (instructed by **Associated Newspapers Ltd, the British Broadcasting Corporation, the Press Association, Times Newspapers Ltd and Trinity Mirror Plc**) for the **Eighth Respondent**

Hearing dates: 19 February 2014

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Judgment

THE HONOURABLE MR JUSTICE KEEHAN

The judge gives leave for this judgment to be reported in this anonymised form. Pseudonyms have been used for all of the relevant names of people, places and companies.

Save to the extent identified in the judgment or the postscript below the judgment is being distributed on the strict understanding that in any report no person other than (a) ME, GYE and JE who may be named in any reporting of JE's criminal trial or (b) the advocates or the solicitors instructed by the parties (and other persons identified by name in the judgment itself) may be identified by his or her name.

Mr Justice Keehan :

Introduction

1. In this matter I am concerned with five young people or children who are the subject of care proceedings bought by Surrey County Council. They are GE, who is 16, JE, who is 14, JT, who is 10, NT, who is 5 and CT, who is 2.

2. The mother of all 5 children is the First Respondent, ME. The father of the older 2 young people is the Second Respondent GYE. The father of the 3 younger children was Neil Tulley.

3. On the night of 12-13 August 2013 Neil Tulley was killed by Joshua Ellis and his brother JE. They are both charged with his murder. Their criminal trial commenced on 13 February 2014 before HHJ Critchlow sitting in the Crown Court at Guilford.

4. On the first day of their trial both defendants indicated they would plead guilty to a charge of manslaughter. Those tendered pleas were not accepted by the Crown and the murder trial continues.

5. In the light of JE's indication of a plea of guilty to manslaughter and in light of publicity about the defendants prior to the matter arriving in the Crown Court, the trial judge lifted the order made pursuant to s39 Children and Young Persons Act 1933 prohibiting the identification of JE. This prompted the local authority to seek a reporting restrictions order in relation to all five children and ME and GYE.

6. The application for a reporting restriction order came before me for hearing in the late afternoon of 14 February 2014. The national media organisations had been given notice of the application by the CopyDirect service late the evening before, but the local press was only given notice on the morning of the 14 February. None of the media organisations were represented at that hearing. I accordingly proposed the application be adjourned over to 19 February 2014 to enable the media organisations to be represented and/or to make written representations. I made an interim reporting restrictions order to preserve the position until I had had the benefit of hearing full argument.

7. The parties agreed that was an appropriate course to follow as did Mr Farmer of the Press Association who was present in court. I am very grateful to Mr Farmer for alerting the court to the fact that at 3:55pm the papers would shortly be going to press.

He kindly offered to provide the press with a copy of the approved draft order pending the same being drawn, sealed and formally served.

8. On 14 February I had before me a letter from the British Broadcasting Corporation (BBC) setting out its observations and objections on the application for a reporting restrictions order (RRO). By a letter dated 17 February I received similar representations on behalf of Guardian News and Media Ltd.

The Position of the Parties

9. The local authority, supported by the First and Second Respondents, the Children's Guardian and JE, seek a wide ranging RRO.

10. The terms of the RRO sought are as per the draft order attached as Annex 1 to this judgment.

11. At the hearing on 19 February I had the benefit of detailed and helpful written submissions from Ms Gallagher. She was instructed on behalf of five media organisations namely, Associated Newspapers Ltd, the BBC, the Press Association, Times Newspapers Ltd and Trinity Mirror plc.

12. Those media organisations strongly opposed the granting of a RRO in favour of any of the family members, whether in the terms sought by the local authority or at all.

13. I heard helpful oral submissions on behalf of all of the parties including on behalf of the five media organisations.

The Law

14. On the facts of this case Articles 8 and 10 of the European Convention on Human Rights and Fundamental Freedoms 1950 are engaged.

Article 8

Right to respect for private and family life

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, 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.

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 these 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.

15. Section 12 (4) of the Human Rights Act 1998 provides that:

> 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 appear 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 o the public, or (ii) it is, or would be,, in the public interest for the material to be published, [and] (b) any relevant privacy code.

16. There is no dispute that, in an appropriate case, the High Court has the power to make a reporting restrictions order. The issues in this case are:

    i) Whether the court should make a RRO in respect of JE given his status as a defendant in criminal proceedings;

    ii) Whether the court should make a RRO in respect of ME and GYE given that (a) the dysfunctional nature of the family's life was an important feature of the Crown's case against Joshua Ellis and JE and (b) GYE was called as a witness for the Crown on 17 and/or 18 February;

    iii) Whether the court should make a RRO in respect of the four other children. In particular the principal issues were (a) whether there was sufficient cogent evidence to support the making of such an order and (b) what would be the purpose or benefit to them of a RRO.

17. The seminal case on the approach to be adopted when a court is invited to make a RRO is the decision of the House of Lords in *Re S (a child) (Identifications: Restriction on Publication) [2005] 1 AC 593.* It was held that an intense focus on the comparative importance of competing rights under Articles 8 and 10 was required. Neither Article has presumptive weight over the other and the proportionality test must be applied to each.

18. As Peter Jackson J observed in *A Local Authority v M and Others [2012] EWHC 2038 (Fam)* at paragraph 27:

> "a conclusion that the Article 8 rights of individuals should prevail over the Article 10 rights of the public so as to restrict the reporting of criminal proceedings will be highly exceptional, though not beyond contemplation".

19. In that case Peter Jackson J granted a RRO restricting the reporting of a criminal trial of the relevant children's mother. I have taken account of the other two reported decisions where such orders were made namely, *A Local Authority v A [2005] EWHC 1564 (Fam),* a decision of a former President Sir Mark Potter, and *City and County of Swansea v XZ and YZ v The Children, The Press, Media and Others [2014] EWHC 212 (Fam),* a decision of Moor J.

20. There is annexed to the judgment in *A Local Council v M* a very helpful extract of key passages from the principal authorities in this area. I have had regard to all of them.

21. There are particularly strong and compelling arguments against any restriction being placed on the reporting of JE's criminal trial namely that:

    i) The importance of open justice in relation to serious criminal behaviour;

    ii) The entitlement of the public to know who is responsible for such behaviour; and

    iii) The significantly reduced impact of a story without a face and name.

22. In *Re Trinity Mirror Plc (2008) 2 Cr App R 1* Lord Judge LCJ said at paragraphs 32 and 33:

> 32. This appeal succeeds on the jurisdiction argument; we must however add that we respectfully disagree with the judge's further conclusion that the proper balance between the rights of these children under Article 8 and the freedom of the media and public under Article 10 should be resolved in favour of the interests of the child. In our judgment it is impossible to over-emphasise the importance to be attached to the ability of the media to report criminal trials. In simple terms this represents the embodiment of the principle of open justice in a free country. An important aspect of the public interest in the administration of criminal justice is that the identity of those convicted and sentenced for criminal offences should not be concealed. Uncomfortable though it may frequently be for the defendant that is a normal consequence of his crime. Moreover the principle protects his interests too, by helping to secure the fair trial which, in Lord Bingham of Cornhill's memorable epithet, is the defendant's "birthright". From time to time occasions will arise where restrictions on this principle are considered appropriate, but they depend on express legislation, where restrictions on this principle are considered appropriate, and, where the Court is vested with a discretion to exercise such powers, on the absolute necessity for doing so in the individual case.
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> 33. It is sad, but true, that the criminal activities of a parent can bring misery, shame, and disadvantage to their innocent children. Innocent parents suffer from the criminal activities of their sons and daughters. Husbands and wives and partners suffer all suffer in the same way. All this represents the further consequences of crime, adding to the list of its victims. Everyone appreciates the

> risk that innocent children may suffer prejudice and damage when a parent is convicted of a serious offence. Among the consequences the parent will disappear from home when he or she is sentenced to imprisonment, and indeed depending on the crime but as happened in this case, there is always a possibility of the breakdown of the relationship between their parents. However we accept the validity of the simple but telling proposition put by the court reporter to Judge McKinnon on 2 April 2007, that there is nothing in this case to distinguish the plight of the defendant's children from that of a massive group of children of persons convicted of offences relating to child pornography. If the court were to uphold this ruling so as to protect the rights of the defendant's children under Article 8, it would be countenancing a substantial erosion of the principle of open justice, to the overwhelming disadvantage of public confidence in the convicted and sentenced in them. Such an order cannot begin to be contemplated unless the circumstances are indeed properly to be described as exceptional.

23. As Peter Jackson J observed in *A Local Authority v M* at paragraph 36:

> 'A restriction on reporting the identity of a defendant to criminal proceedings can therefore only be contemplated where there is an "absolute necessity" and where the circumstances can properly be described as "exceptional". '

24. The nature and quality of the evidence which may be presented to the court in support of a RRO may to some degree be speculative. In *Swansea v XZ and YZ* Moor J observed at paragraphs 31 and 32:

> 31. Significant evidence has been put before me as to the risk that the children will suffer significant harm. Whilst I accept that such evidence does involve a considerable element of speculation, Sir Mark Potter P in the case of *Re W (Children) (Identification: restrictions on publication) [2005] EWHC 1564 (Fam), [2006] 1 FLR 1* said at Paragraph 21 that:-
>
> > *"I accept that the evidence to which I have referred is speculative. However, in a situation where, so far, no substantial publicity has occurred, the evidence is necessarily speculative in nature. In this case, it consists of the assessment of a local authority officer and guardian, both with wide welfare experience and local knowledge as to local attitudes".*
>
> 32. The evidence that has been placed before me comes into exactly this category. It is from a very experience social worker, Carol Jones, who is well aware of local conditions. I also have evidence from the Guardian (albeit that she has only relatively recently been appointed in this case) and from the consultant psychiatrist Dr D.

25. I respectfully agree. There comes a point, however, where evidence is not merely speculative but is pure speculation, even from experienced professionals, with no sound or cogent underlying evidential basis. Given the Draconian and wide ranging nature of RROs, I am of the view that the latter evidence will not be sufficient or adequate to provide an evidential basis to establish the "absolute necessity" for the making of an order nor to establish that the facts of the case are truly "exceptional".

26. In *R v Robert Jolleys, Ex Parte Press Association [2013] EWCA Crim 1135* Leveson LJ said at paragraph 16:

> 'It was for anyone seeking to derogate from open justice to justify that derogation by clear and cogent evidence: see *R v Central Criminal Court ex parte W, B and C [2001] 1 Cr App R 2* and in civil cases, *the Practice Guidance (Interim Non-disclosure Orders) [2012] 1 WLR1033* and *Derispaska v Cherney [2012] EWCA Civ 1235* per Lewison LJ (at paragraph 14). The order was made when defence counsel asserted the likelihood of the defendant's son suffering "the most extraordinary stigma through no fault of his own" which caused the Recorder to ask the reporter what the need for identifying the son was, rather than whether it was necessary to restrict his identification.'

27. I would observe that in those three reported cases where RROs were made (*Re W, A Council v M and Swansea v XZ and YZ)*:

    a) The facts were wholly exceptional;

    b) The cases were highly fact specific; and

    c) Albeit there was reference in *Re W and Swansea v XZ and YZ* to speculative evidence – as set out above – there was a detailed evidence base concerning each restriction sought.

28. The issue of identifying individuals involved in court proceedings and the importance of the use of a name was addressed by Lord Rodger of Earlsferry in the Supreme Court case in *Re Guardian News and Media Ltd and Othrs [2010] 2 AC 6897* at paragraphs 63 and 64:

> 63. What's in a name? "A lot", the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed: *News Verlags GmbH&Co KG v Austria 31 EHRR 246, 256* paragraph 39 quoted at paragraph 35 above. More succinctly, Lord Hoffmann observed in *Campbell v MGN Ltd [2004] 2 AC 457,474* paragraph 59 "judges are not newspaper editors". See also Lord Hope of Craighead in *In re British Broadcasting Corpn [2010] 1 ac 145* paragraph 25. This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive.

64. Lord Steyn put the point succinctly in *In re S [2005] 1 AC 593,608,* paragraph 34 when he stressed the importance of bearing in mind that:

> "from a newspaper's point of view a report of a sensational trial without revealing the identity of the defendant would be a very much disembodied trial. If the newspapers choose not to contest such an injunction, they are less likely to give prominence to reports of the trial. Certainly, readers will be less interested and editors will act accordingly. Informed debate about criminal justice will suffer".

Mutatis mutandis, the same applies in the present cases. A report of the proceedings challenging the freezing orders which did not reveal the identities of the appellants would be disembodied. Certainly, readers would be less interested and, realising that, editors would tend to give the report a lower priority. In that way informed debate about freezing orders would suffer.

29. Ms Gallagher, in support of her submissions that NT, CT aged 5 and 2 respectively, were too young to be affected by any publicity of the criminal trial and of any convictions of their two half siblings, referred me to the case of *R (ota A) v Lowestoft Magistrates Court [2013] 659 (Admin).* The case concerned a judicial review of a decision not to make a s39 Children and Young Person Act 1933 order but the observations of Kenneth Parker J on the potential consequences of publicity on a 3 year old child, at paragraphs 24-26, are applicable to this matter.

30. When considering the impact on a child of there being publicity in respect of the child's mother's trial for murder Lord Steyn in *Re S (A child) (Identification: Restrictions on Publication)* said at paragraphs 24-25 and 27:

> 24. On the evidence it can readily be accepted that article 8 is engaged. Hedley J observed (para 18) "that these will be dreadfully painful times for the child". Everybody will sympathise with that observation.
>
> 25. But it is necessary to measure the nature of the impact of the trial on the child. He will not be involved in the trial as a witness or otherwise. It will not be necessary to refer to him. No photograph of him will be published. There will be no reference to his private life or upbringing. Unavoidably, his mother must be tried for murder and that must be a deeply hurtful experience for the child. The impact upon him is, however, essentially indirect.
>
> 27. The interference with article 8 rights, however distressing for the child, is not of the same order when compared with cases of juveniles, who are directly involved in criminal trials. In saying this I have not overlooked the fact that the mother, the defendant in the criminal trial, has waived her right to a completely public trial, and supports the appeal of the child. In a case such as the present her stance can only be of limited weight.

31. In *A Local Authority v PD [2005] EWHC 1832 (Fam)* Sir Mark Potter refused an application for a RRO in respect of the identity of a father of a 6 year old girl where he was alleged to have murdered the mother. He concluded at paragraph 38:

> 38. Thus, unusual and sensational as the facts of this case may be, the proposed identification of the defendant in connection with the criminal proceedings cannot be shown either to cause or create serious, let alone irremediable, damage to G in the enjoyment of her private or family life. It is certainly far from sufficient to outweigh the plain and substantial interference with the right of the press to identify the father and otherwise to report the criminal proceedings in which mother is being tried.

The Evidence Relied on in Support of the Application

32. The local authority's evidence is set out in the statement of Amanda Moore of 13.2.14. It consists of 3 pages of A4 paper. She asserts that:

> "It is likely that the criminal proceedings will attract considerable press attention both locally and nationally. The facts are dramatic and likely to have significant 'human interest'. The 3 youngest children continue to live in foster placements and all children save for JE (14), go to schools within the local area. The experience of Surrey County Council in other cases where there have been parallel proceedings in the criminal and family jurisdiction is that details which name and/or identify children in their care have been widely reported in the media and in particular the internet editions of the press almost instantaneously with the pronouncement of a sentence.
>
> The elder children in this family are of an age whereby they would be fully aware of any reporting which identified them directly or indirectly. More than one of the children were directly involved in and are therefore aware of the criminal proceedings. It is almost certainly the case that, most particularly in the case of the 3 children, they would be at risk of distress and emotional harm were they to be identified as a result of the reporting."

33. The assertion that the older three children (GE,JE and JT) would be at risk of suffering distress if they were identified as a result of reporting of the criminal case is fairly obvious. It is not, of itself, however sufficient to justify the making of a RRO.

34. It is further asserted they would be at risk of suffering 'emotional harm'. There is no further elucidation of that term in the statement nor is there any indication of the (a) nature or degree of the emotional harm or (b) the degree of the risk that any such harm will be suffered or (c) whether any emotional harm would be suffered in the short, medium or long term.

35. The statement contains no reference to any potential adverse consequences of reporting of the criminal trial in respect of NT and CT.

36. In the position statement filed on behalf of the local authority by Ms Morgan QC and Ms Stone, it is asserted at paragraph 6 that "the likely harm to them [ie <u>all</u> of the children] is significant and potentially long lasting". In ten sub-paragraphs they set out why it is submitted that a RRO is "absolutely necessary". Those matters may be summarised as follows:

    a) GE has suffered traumatic events in his life to date. He has recently become very withdrawn, has absented himself from his foster

placement and has started taking illicit drugs. "Any coverage will have an adverse effect on his behaviours and welfare. More detailed and unrestricted coverage is likely to exacerbate that adverse effect".

b) After recent press reports GE and his carers have been contacted by individuals [not identified] asking about the criminal trial which has disturbed GE. It is asserted that reporting "will provoke further enquiry".

c) So great is the need of GE especially and his younger siblings to be able to reach their majority in placements which have the least possible risk of breakdown the balance falls squarely in favour of restricting publicity.

d) GE was arrested on suspicion of murder. If this were to be made public and reported, it is hard to overstate the likely significant effect on GE's well being.

e) JE is a vulnerable child who has been traumatised by his experiences. Prior to the start of his criminal trial he made a serious suicide attempt. Whilst it is not suggested this was directly linked to press coverage, it demonstrates the extent of his vulnerability. The effects of publicity on him, it is reasonable to assume, are likely to be significant. Although he is charged with an extremely serious offence, he has not forfeited the right to protection. He remains a child.

f) JT has been exhibiting very troubled and aggressive behaviour including threatening NT with physical violence and on two occasions with a knife. She is described as very controlling and is said to be fixated with death. She has been described by a psychiatrist as "showing signs of significant underlying disturbance". She had a markedly close relationship with her father and is likely to be profoundly affected by any reports describing the circumstances of his death. It is foreseeable that if she sees or hears media reports they are likely to exacerbate her already troubled behaviour. If her behaviour deteriorates further it is likely she will have to be placed away from NT and CT which the local authority wishes to avoid if at all possible.

g) NT and CT are less likely to be aware of media coverage. Until the final hearing of the care proceedings, the local authority are concerned to maximise the prospects of a safe placement and to protect them from the harm of unrestricted publicity.

h) The psychiatrist, DR H, assessing the children in the care proceedings advises that all of the children require urgent assessment and therapy for the trauma they have endured.

i) An overreaching risk is the impact of publicity on placement for each of them. Widespread media coverage is likely to inhibit any chances the children might have to make a fresh start and may limit the pool of potential carers.

j) It is likely the local authority will have to find a suitable placement for JE before he reaches his majority; the considerations set out above therefore apply to him.

37. The guardian relies on the substantial report of the psychiatrist, Dr H, in support of the local authority's application.

38. It is submitted on behalf of the guardian that if there is any possibility that GE is brought to public attention as a result of the criminal trial, he will suffer significant harm but the degree and nature of that harm is not identified. The stability of the placements of all of the children is said to be critical and any risk to those placements, it is said, should be alleviated.

39. The guardian submits that previous publicity about Joshua Ellis and JE is not a bar to the granting of the RRO sought: *Re A (A minor) [2011] EWHC 1764 (Fam) and Re J (a Child) [2013] EWHC 2694 (fam).*

40. Mr Littlewood, on behalf of JE, relies on the report of Dr H and a statement by the children's social worker dated 29.10.13 [C82-99]. In a position statement prepared on behalf of JE it was submitted that a RRO should be made in his favour to last until the end of his criminal trial "when the matter can be reconsidered again". In oral submissions the stance taken by JE was clarified. He sought a RRO only until the end of his criminal trial.

41. I have difficulty in understanding the purpose of so short a RRO. In my judgment the assertion that a RRO in favour of JE should last until the conclusion of his criminal trial is, in all but name, an improper attempt to appeal the decision of the criminal trial judge on 13 February to lift the s39 order previously made in JE's favour.

42. ME and GYE each acknowledged the difficulties in their respective cases to be included within the terms of a RRO restricting the identification of either of them.

43. The background history of the family and the dysfunctional nature of the same is an important feature of the Crown's case in the criminal trial. The media organisations submit that neither should be included within the terms of any RRO the court might be minded to make. GYE gave evidence at the criminal trial and was named in the media on 18 February. Furthermore the Ellis name is in the public domain already. In those circumstances, it is submitted, that the naming of ME and for GYE would not lead to or increase the risk of the other children being identified.

44. There is considerable force in those submissions.

The Position of the Media Organisations

45. The position of the media organisations is robustly and comprehensively set out in the position statement of 18 February 2014. Those written submissions were supplemented by clear oral submissions made by Ms Gallagher.

46. In short order the media organisations submit that:

a) There has already been very substantial material already in the public domain naming Joshua Ellis and JE; including photographs of both of them;

b) Reference has been made to them having siblings but GE, JT, NT and CT have not thus far been identified by name, age or location;

c) The Press Complaints Commission Code of Practice prohibits the media from interviewing or photographing children under 16 on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents;

d) The five media organisations would not name GE,JT,NT or CT in any reporting of the criminal trial and its outcome;

e) The children are afforded the protection of s 97(2) Children Act 1989 during the currency of the care proceedings;

f) RROs are Draconian orders and are only to be made in exceptional cases;

g) Open justice is vital to the rule of law; and

h) The matters relied on by the local authority, the guardian, the parents and JE do not amount to exceptional, cogent and compelling evidence such as would justify the imposition of a restriction on the reporting of a criminal trial.

GE

47. GE is 16 years old. He has suffered considerable turbulence over the years which has plainly caused him harm. The killing of Neil Tulley in the family home and the arrest of his two brothers for murder or manslaughter will be an additional traumatic event which may well exacerbate his current difficult behaviour.

48. What is the evidence, however, that the reporting of the trial and sentencing will cause him such further harm that an RRO is an "absolute necessity"? I accept that he is a damaged young person and that he is vulnerable. Press and media reporting of the death of Neil Tulley will cause him further upset. I am not satisfied however that distress and upset is sufficient to justify the making of an RRO.

49. Ms Gallagher reminds me that there has already been considerable publicity about this matter. A Google search reveals details of the murder of Neil Tulley and photographs of Joshua Ellis and JE.

50. In the aftermath of his death police launched a public manhunt for Joshua Ellis and JE. There was very extensive publicity. The events befalling this family are already well known certainly in the locality of the family home. None of that publicity has yet led to the naming of GE, JT, NT or CT.

51. GE's deteriorating behaviour may lead to a breakdown in his current placement but his carer is well aware of the background to this matter and of the criminal trial. I am

not persuaded on the evidence that there is a real risk that the reporting of the trial will lead to the breakdown of his placement. I am not satisfied that there is a real risk the reporting of the trial or the absence of a RRO will lead to the identification of GE in the print or broadcast media or on the internet. The publicity to date has not done so.

52. There is no evidence that such publicity as there has been to date has caused harm to GE. The local authority's evidence, at its highest is that over the last weekend GE became distressed as a result of recent publicity but no more.

JT

53. The report of the social worker refers to JT's challenging and controlling behaviour. There is no evidence, however, that the behaviour results from past publicity about the death of her father or the trial. It appears far more likely that the same results from the care afforded to her when living in the family home and the trauma of her father being killed.

54. There is no evidence that JT has been aware of publicity about her father's death or the criminal trial. There is no mention in the social worker's statement of JT speaking about the trial of her half brothers to her foster carer or at school.

55. I do not understand, nor do I accept, the local authority's submission that reporting of the trial may adversely affect the further long term placement of JT or of any of the children. I do not accept there is a real risk that publicity about the trial may limit the pool of potential future carers. Any potential carers will need to be told of the children's background and of the events surrounding the death of her father in any event.

56. I do not accept, for the reasons I have previously given in respect of GE, that there is a real risk that the reporting of the trial and the absence of an RRO will lead to the identification of JT.

NT and CT

57. There is no evidence that NT or CT have been affected by past publicity. Further there is no evidence that there is a real risk that NT or CT would be affected by publicity concerning and reporting of the criminal trial. There is no evidence that even if they were to be affected, it would go beyond understandable distress and upset.

58. For the reasons given in respect of GE and JT, I do not accept that there is a real risk that reporting of the criminal trial or the absence of any RRO would:

    a) Adversely affect potential future placements for the children; or

    b) Lead to the identification of either NT or CT.

JE

59. JE is in a very different position to his other siblings and half siblings. He is a defendant in a murder trial. I entirely accept that the fact that he is charged with a serious offence should not lead this court to forget (a) that he is still a child or (b) that he is still entitled to respect for his family and private life under Article 8.

60. Whether as a result of the past care he has received in the family and/or of his involvement in the death of Neil Tulley and the events thereafter, JE is plainly a very troubled and vulnerable young person. His conviction, on his own admission, for manslaughter or his conviction, by the jury, for murder is likely to cause him further emotional and psychological harm. On either basis he is most likely to be sentenced to a lengthy period of detention. That detention and separation from his family is likely to cause him further emotional and psychological harm. What greater additional harm will he be caused by the reporting of his criminal trial and process?

61. It is difficult to assess that greater additional harm with any confidence. Given, however, the enormity of the consequences for him resulting from his conviction and sentence for him, I am satisfied that it would not be so great as to cause the balance to fall in favour of his Article 8 rights against the powerful and compelling Article 10 rights of media organisations to report on a criminal trial held in public.

Overview

62. I am not satisfied that the Article 8 rights of JE should prevail over the Article 10 rights of the media. I am satisfied that such an outcome would not be proportionate.

63. Notwithstanding that conclusion, are the circumstances of the other children, now and for the future, whether taken individually and/or collectively, such as to compel the court to conclude that the balance falls in the favour of their Article 8 rights against the Article 10 rights of the media?

64. Everyone will have the greatest possible sympathy for GE, JT, NT and CT. They find themselves in circumstances no child should have to endure. They have lived in a family home that is described by the Crown as dysfunctional. They have suffered the death of their father or step father as a result of a vicious attack. The local authority have and no doubt will provide carers, social workers and other specialists who will work to support, assist and protect the children.

65. I have reflected on all of the relevant authorities, the evidence and the submissions made. Having considered the individual circumstances of the parents and children I now consider the matter in the round.

66. I am satisfied that the Article 8 rights of the parents and of JE do not prevail over the Article 10 rights of media.

67. The circumstances of GE, JT, NT and CT are profoundly sad and tragic. Even so I regret to conclude that I am not satisfied on the evidence before me, nor on the conclusions that could reasonably be drawn from the same, that the balance falls in favour of their Article 8 rights.

68. I am satisfied that the balance falls clearly and decisively in favour of the Article 10 rights of the media to report the criminal trial and to identify JE, ME and GYE.

69. As Sir Mark Potter P observed in *A Local Authority v PD,* the facts of this case are "unusual and sensational" but they are not exceptional. The facts of this case are "far from sufficient to outweigh the plain and substantial interference with the right of

[media organisations]" to indentify JE and the parents and to report the current criminal proceedings.

70. Having reached those conclusions I have considered whether I should make a limited RRO in favour of GE, JT, NT and CT to prevent any of them being identified in the media.

71. I have decided I should not do so for the following seven reasons:

i) Even a limited, focussed RRO is a Draconian order which is not to be made routinely or because it might help protect the children. It must still pass the high hurdle for granting a RRO and must be shown by the applicant to be necessary.

ii) The media organisations have submitted that they do not intend to name these 4 other children.

iii) Despite the widespread coverage of the case in the media to date, none of these 4 children have been named

iv) The Editors' Code of Conduct overseen by the Press Complaints Commission prohibits interviewing or photographing these four children in the circumstances of this case without parental consent, which will not be given

v) The mere fact that some irresponsible media organisations might not take the ethical and principled approach of the five media organisations appearing before me and of other responsible press and broadcasters, does not justify the making of a RRO. A court must not restrict the right of the latter media organisations because of a risk of irresponsible reporting by the former. Lord Rodger of Earlsferry observed in *Re Guardian News and Media Ltd and Others* at paragraph 72:

> "Of course, allowing the press to identify M and the other appellants would not be risk-free. It is conceivable that some of the press coverage might be outrageously hostile to M and the other appellants – even though nothing significant appears to have been published when Mr Al-Ghabra's identity was revealed. But the possibility of some sectors of press abusing the freedom to report cannot, of itself, be a sufficient reason for curtailing that freedom for all members of the press……. The possibility of abuse is therefore simply one factor to be taken into account when considering whether an anonymity order is a proportionate restriction on press freedom in this situation"

vi) There is in my judgment a very real risk that a limited RRO in favour of the 4 other children may inhibit media organisations from reporting the criminal trial and/or from indentifying JE, ME or GYE out of an abundance of caution or for fear of inadvertently reporting matters which lead to the identification of the children.

vii) In the premises, I consider the risk, absent a RRO, of these 4 children being identified by the media to be very low.

Conclusions

72. I am not satisfied that a RRO in the terms sought or otherwise on a more limited basis is, on the facts of this case either necessary or proportionate, still less an "absolute necessity".

73. Accordingly the application for an RRO is refused.

Postscript

For the avoidance of doubt, nothing in this judgment shall prevent the identification of JE, GYE or ME in respect of reporting concerning the lifting of the Reporting Restriction Order itself.