Lifting of reporting restrictions prior to final welfare hearings (Al Maktoum v Al Hussein)

This analysis was first published on Lexis®PSL on 14 April 2020 and can be found here

Information Law analysis: In this judgment, the Court of Appeal upheld the decision to permit the reporting and publication of both a fact-finding judgment and a judgment concerning assurances and waivers prior to a welfare hearing taking place in wardship proceedings (in which the father sought the return of his children to Dubai). The decision to lift reporting restrictions was not premature as the findings were final and they were not likely to be undermined at the welfare hearing as they did not relate to the children's welfare. It was also necessary to meet the private and family life needs of the mother and children and to correct a false narrative about them. Accordingly, the father's appeal against the publication order and subsequent publication of the publication judgment was dismissed. The judgment reinforces the relevant principles which govern appeals relating to reporting restrictions. Written by Lily Walker-Parr, barrister, at 5RB.

His Highness Sheikh Mohammed Bin Rashid Al Maktoum v Her Royal Highness Haya Bint Al Hussein and others [2020] EWCA Civ 283

What are the practical implications of this case?

This case highlighted a novel application of privacy law, as the lifting of reporting restrictions operated in such a way as to support both the rights of the mother and children under Article 8 of the European Convention on Human Rights (ECHR) and the media's rights under Article 10 of the ECHR. The circumstances in which this argument could succeed are likely to be rare given that parties to family proceedings usually oppose media reporting.

Although the judgment made no reference to transparency, the court's willingness to lift restrictions (including restrictions on reporting the children's names) is probably the most open approach to child proceedings to date and, while exceptional, can only suggest further moves towards more transparency in the Family Court.

What was the background?

The judge, the President of the Family Division, had previously delivered two judgments in the course of wardship proceedings concerning the children of the Ruler of the Emirate of Dubai. The first concerned a fact-finding hearing in which he had held that the father had ordered and orchestrated the forcible return of two of his other children to Dubai and had conducted a campaign of harassment and intimidation against the mother—including by promoting a false media narrative. The second concerned assurances and waivers offered by the father in response to the mother's fear that the children would be abducted.

The proceedings were held in private. The media in attendance were subject to strict reporting restrictions, including a prohibition on reporting the judgments.

Prior to the final welfare hearing, the media wished to be released from most of the reporting restrictions. The judge conducted a balancing exercise of Articles 8 (rights of the parties) and 10 (rights of the media) of the ECHR. He held that publication was:

- inevitable
- in the public interest, and
- necessary to correct the false media narrative surrounding the mother and children

He lifted many of the reporting restrictions, ordered that the judgments be made public, and directed that those who attended the hearings be able to report on what they had observed with immediate effect.

The father appealed against the decision to make proceedings public, and (dependent on the outcome of the primary appeal) the publication of the 'publication judgment' itself.

What did the court decide?

The appeal was unanimously dismissed.

Prematurity

The judge had not been premature in concluding that publication was inevitable. He had all the information necessary to decide the issue and there was no basis to suggest that the findings would be varied or undermined at the welfare hearing. Although proceedings were part-heard, the findings of fact were final, not interim.

While the judge's finding that it was in the public interest to publish findings relating to the father's other children would not have been, of itself, enough to support his decision in favour of immediate publication, he had not erred in factoring in the public interest feature as part of the evaluation process.

Furthermore, the judge had been entitled to reach the conclusion that media publicity, with the aim of presenting the facts as found by a judge, was a necessary step in order to meet the private and family life needs of the mother and children. It was entirely reasonable to believe that publication of the judgment would carry considerable weight and go a long way to correcting the false narrative.

Adequate weight had also been given to the circumstances of the fact-finding hearing. The father had elected not to take part in the proceedings and had not appealed them. His sense of intrusion into his private and personal matters is one suffered by every litigant in such findings of fact hearings. The judge had scrupulously tested the reliability of the evidence before him and therefore the Court of Appeal held that this was 'a paradigm example of the kind of evaluative decision by a trial judge with which this court ought not to interfere'.

Permission to amend—paramountcy of the welfare of the children

The father sought permission to amend the grounds of appeal to include the argument that the judge had made an error of law in failing to treat the welfare of the children as 'the paramount and therefore determinative consideration'. Permission was refused on the basis that it would have made no difference to the judge's decision whether the welfare of the children was the paramount consideration or just a primary consideration.

Permission to appeal the Court of Appeal's judgment to the Supreme Court has since been refused.

Case details

- Court: Court of Appeal, Civil Division
- Judge: Underhill VP, Bean and King LJJ
- Date of judgment: 28 February 2020

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