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Neutral Citation Number: [2020] EWHC 832 (Fam)

Case No: FD20P00143

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/04/2020

Before :

MRS JUSTICE LIEVEN

- -

Between :

LONDON BOROUGH OF TOWER HAMLETS

Applicant

and

Mother

First Respondent

and

Father

Second Respondent

and

X
(by her children's guardian)

Third Respondent

- -

Mr Chris Barnes and Mr Harry Langford (instructed by **London Borough of Tower Hamlets**) for the **Applicant**
Ms Maureen Ngozi Obi-Ezekpazu (instructed by **Lillywhite Williams**) for the **First Respondent**
The Second Respondent was **Unrepresented**
Mr Rob Littlewood (instructed by **Freemans Solicitors**) for the **Third Respondent**

Hearing dates: **27 March 2020**

- -

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.

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MRS JUSTICE LIEVEN

Mrs Justice Lieven :

1. This is an application by the London Borough of Tower Hamlets (the Council) for a final injunction preventing the Respondents from disseminating information about prospective adopters, and to prevent the First and Second Respondents (the Mother and the Father) from approaching those adopters. I heard the application in the urgent applications list on Friday, and made the injunction sought, but given the pressures of the list I reserved my reasons which I set out here.

2. In the light of the national emergency relating to Covid 19 I heard the application over the telephone. The Council was represented by Mr Barnes and Mr Langford, the Guardian by Mr Littlewood, the Mother by Ms Obi-Ezekpazu and the Father represented himself.

3. The background to the application is the proposed adoption of X, a 3 year old girl. There is a very long and complex procedural history regarding X, and her half-siblings, which I do not need to set out in detail. X was born in 2016 and was shortly thereafter made subject to an interim care order, her older half-siblings had also been subject to care orders. X was placed with proposed adopters in early 2017 and has been living with them since. The parents (the First and Second Respondents) both strongly opposed the care orders and the proposed adoption. There were protracted proceedings and, following receipt of a pre-action protocol letter, the Council formally withdrew the decision to "place" the child with the prospective adopters (within the meaning of the Adoption and Children Act 2002). Between October 2017 and late 2019 X was therefore living with the proposed adopters as foster parents. A fresh decision to "place" the child for adoption with the proposed adopters was made in late 2019.

4. The Respondents have a history of publishing information about the various children on the internet, apparently in breach of the FPR. In those circumstances, on 17 May 2017 HHJ Atkinson, who had formerly had conduct of the care and placement proceedings and was, by then, considering the first adoption order application in respect of the child, made an order prohibiting the Respondents from publishing information which would identify the children, including X and their carers, and their addresses.

5. I have taken the history of the data breach, and therefore the need for the injunction, from the witness statement of Ms Sarah Williams, legal officer at the Local Authority. On 19th September 2017, the First Respondent's solicitor, Claire Roberts of Lillywhite Williams Solicitors, who was newly instructed in respect of the client's judicial review application, emailed the allocated lawyer on the case, Nneka Oroge, requesting a copy of the bundle. Ms Oroge was away from her desk and Ms Roberts contacted Ms Oroge's paralegal in her absence requesting the bundle. The paralegal sent the adoption bundle which contained a copy of the Rule 14.11 report containing the adopters' confidential information. Ms Oroge was not aware that the adoption bundle had been sent. The adoption report was confidential pursuant to FPR14.11(6)

6. On 10th October 2017 a letter pursuant to the pre-action protocol for judicial review was received from the First Respondent's solicitor. This was allocated to another lawyer.

7. Over the weekend of 7th-8th October 2017, the First and Second Respondents posted messages on Facebook, which alleged that they knew the adopters' names and address (though they did not give the names in the post), that they are a same sex couple, and posted homophobic comments, and threats in relation to this. The proposed adopters took a precautionary decision to move out of their home address while the matter was investigated. A safety planning meeting was arranged for 12th October 2017.

8. On 16th October 2017, the allocated social worker reviewed the pre-action letter and raised concern that the letter referred to the first names of the prospective adopters. An urgent review was conducted both by the legal department and children's social care to determine how the solicitor had obtained the adopter's name and Ms Oroge identified that the adoption bundle had been sent in error.

9. Ms Williams instructed the paralegal to immediately check her Egress account (the Council's secure email system). She confirmed that Ms Roberts had accessed the email with the bundle attached. She blocked access to the Egress link so that the bundle could no longer be accessed.

10. Ms Oroge immediately rang Ms Roberts, leaving 3 messages and when she did not receive a response, wrote at 16.27pm advising that the bundle had been sent in error and should be destroyed. She asked Ms Roberts to confirm whether the bundle had been shared with her client. Ms Roberts responded at 17.32pm, confirming that she had not sent the bundle to her client and that the email had been deleted. She said that only she and her counsel had read the bundle.

11. The Council's solicitors checked to ensure that no-one else could have accessed and sent the bundle to the First Respondent.

12. Ms Oroge wrote again at 12.17pm on 17th October 2017, asking Ms Roberts to ensure that she deleted all reference to any information obtained from the Rule 14.11 report from the pre-action letter and any other reference on her files. She reiterated that the entire adoption bundle should be deleted and not just the Rule 14.11 report.

13. The social work team visited the prospective adopters at home to inform them of the breach. The Council agreed to fund solicitors for the adopters, to provide independent advice in respect of this issue, and represent them in the increasingly complex proceedings in respect of X.

14. A court hearing was listed for 26th October 2017 to consider a stay of the extant adoption proceedings. The Local Authority notified the court that the unredacted Rule 14.11 report had been disclosed in error and that the First Respondent's solicitor had confirmed that this had not been disclosed to her client, both in its position statement and orally during the hearing.

15. In 2018 both Respondents were convicted of harassing HHJ Atkinson, who had made the care and placement orders concerning X. The conviction was following a trial before DJ Ikram on 9th July 2018 relating to harassment between 14th September 2017 and 2nd October 2017 [see https://www.bailii.org/ew/cases/EWHC/Admin/2019/1110.html]. Following an appeal against conviction to the Crown Court the convictions were upheld and the Respondents were each sentenced to 16 weeks in prison for this offence.

16. On 2nd March 2020, the First Respondent and Second Respondent told a contact supervisor during contact that they knew the prospective adopters' names and address. The contact supervisor's email to the social worker (now Patrick King) at 13:09 on 2nd March 2020 states:

> *"Just to advise, during today's session the parents disclosed the identity of [X's] carers.*
>
> *Apparently they stumbled upon this information last night, when looking for documents regarding [X's] immunisations. Parents disclosed that this information had been supplied by [Mother's] legal team, they apparently had this since 2017. When [Father] left the room, [Mother] showed workers a picture of a same sex female white couple adding they're aware they live in "Basildon" and "know details of their ages, their family members and where they live" and that one of them holds employment in the police force. [Mother] listed the website where the carers details can be found, mentioning that an "injunction" will probably be taken out on them soon due to them often visiting neighbouring areas of Basildon including "spiritual church". This disclosure occurred when [Father] made a comment to [Mother] around whether [OH] would be placed with [X], she responded saying this would bring them closer and this is when this information followed.*
>
> *The parents were advised this information would be shared with professionals with [Father] saying they were just being "transparent" with professionals and that they "did not need to investigate" as this information was given to them. The parents tried to prolong the conversation, staff managed to divert onto something else."*

17. The social worker sought additional details from the contact supervisor, but assumed that the Respondents had originally accessed the adoption bundle at the time of the breach in 2017. He raised this with the legal department on 5th March 2020 but both the allocated lawyer and Ms Williams were on leave.

18. On return from leave Ms Williams immediately contacted the First Respondent's solicitor Ms Roberts, asking for an explanation, given that she had confirmed at the time of the breach that the bundle had not been sent to her client.

19. Ms Roberts' response at 15.18pm stated that she had not been aware that her assistant 'Ali' had forwarded the bundle to their client. She said that she had first become aware of this when her client informed her of the same on Sunday 2nd March 2020. She stated that she had emailed the allocated lawyer and the child's solicitor to inform them of this on 3rd March 2020. However, the allocated lawyer was away and her out of office was on.

20. The social worker called the prospective adopters on 6th March 2020 to advise them that it was likely that the Respondents had the information from the Rule 14.11 report, and sent them the part of the report relating to them so that they could have sight of the information that the Respondents have access to. The prospective adopters' solicitor was notified of the same, initially by telephone then by email on 6th March 2020.

21. Upon further enquiry, Ms Roberts' colleague Andrew Williams confirmed by way of email at 14.02pm on 9th March 2020 that their client, the First Respondent, states that she has deleted the adoption bundle, but that she had forwarded this to the Second Respondent.

22. In the light of this history it seems improbable that neither the First or Second Respondent opened the adoption bundle when it was first sent to them late in 2017. They have repeatedly posted information they hold in respect of X on their Facebook posts and YouTube, and have been subject of injunctions to prevent them from repeatedly posting photographs of her online in an effort to locate her.

23. They have also on a number of occasions made contact with professionals, having researched their details online. They have written to Tower Hamlet's Chief Executive at his home address, and told the manager of Care2Share, the residential unit where they were placed with X's younger sibling, that they knew where her children attended school. Most seriously, they have been convicted of harassment in respect of HHJ Atkinson after her involvement in the earlier care and placement order proceedings, and were each sentenced to 16 weeks imprisonment.

24. Ms Williams' statement says that during the criminal trial into their harassment of HHJ Atkinson, a Facebook recording was shown of the Second Respondent talking about how easy it was to locate social workers or judges online.

25. An application was made to the High Court on 11 March 2020, without notice to the Respondents, for an injunction preventing the dissemination of the information and requiring them to attend court with their electronic devices so that these could be inspected and the relevant material deleted. That application was before me and I granted the injunction sought in the following terms;

> *The first and second respondents, whether acting individually, or jointly, shall not take any step to produce copies, to seek to publish, or to publish, to seek to disseminate, or to disseminate any of the disclosed material nor to publish or disseminate, or seek to do the same, any information within their knowledge pertaining to the third respondent child, her prospective adopters, or any person or organisation personally or professionally connected to her prospective adopters (whether obtained from the disclosed material, or by any other means).*
>
> *The first and second respondents, whether acting individually, or jointly, shall not undertake any research, whether on the internet or by any other means, to enable them to identify, or locate, or discover any other information in respect of the third respondent child, her prospective adopters, or any person or organisation personally or professionally connected to her prospective adopters.*
>
> *The first and second respondent, whether acting individually, or jointly, shall not take any step to contact, or to seek to contact, by any means (including but not limited to making contact directly in person, via telephone, email or any other form of written or electronic correspondence, or via any social media app or platform, or by leafleting) the third respondent child, her prospective adopters, or any*

person or organisation personally or professionally connected to the child and/or her prospective adopters.

The first and second respondents, whether acting individual, or jointly, shall not attend, or come within 50 metres, of any address, property, or location at, or in, which they believe or suspect either the child, or her prospective adopters, or any person or organisation connected to the children and/or her prospective adopters is living, visiting, or likely to be visiting for any reason.

In respect of the disclosed material the first and second respondents shall:

a) Turn over all physical copies of the disclosed material, or any part thereof, which they have created to the local authority at Court at 10.30am on 13 March 2020;

b) Provide a written list of all electronic communication devices and/or storage locations (which may include but is not limited to computers, mobile telephones, memory sticks, external hard drives, cloud storage facilities, email accounts, and applications) on which disclosed material is stored, to the local authority at Court at 10.30am on 13 March 2020;

c) Bring to Court on 13 March 2020 all portable electronic communication devices listed in (b) above, and hand these devices to the Local Authority at court.

d) Provide a list of all individuals and/or organisations to whom they disclosed material, or any part thereof, has been disclosed by any means and provide all known contact details for those individuals and/or organisations to the local authority at Court at 10.30am on 13 March 2020.

26. The matter came back before Moor J on 13 March with both Respondents in attendance. He continued that injunction with some minor amendments and ordering both Respondents to file statements.

27. The First Respondent filed a statement on 26 March, in which she said that she had not been aware of the information until 3 March 2020 when she was looking through old material as a result of an upcoming appeal from a decision of Hayden J concerning the vaccination of X's sibling. Whilst she was doing this she came across the bundle which had been wrongly forwarded to her in 2017, and the prospective adopters details. She immediately alerted her solicitor to the fact that she had this material and subsequently deleted it from her mobile device, save for a photo of X. She said she had not saved or passed on any of this material save that the Second Respondent accessed the bundle directly via the First Respondent's email account and saved two pages relevant to the immunisation issues. I note that she does not in her witness statement deny the conversation that she had with the workers at the contact centre, which is recorded by Ms Williams and referred to in the statement of the contact workers. In that conversation the First Respondent is recorded as saying that she had investigated details of the proposed adopters on an internet site.

Submissions

28. Mr Barnes, supported by Mr Littlewood for the Guardian, argues that the injunction should be made final because there is otherwise a significant risk that the Respondents will take steps to approach X and the proposed adopters. He points to the history of this matter, and in particular the conviction for harassment of HHJ Atkinson, to argue that there is a significant risk in this case to both X and the prospective adopters which justifies the making of a final order.

29. Ms Obi-Ezekpazu on behalf of the First Respondent takes a number of points, both on the law and the facts.

30. Firstly, she points out that this is an application under the inherent jurisdiction and, as such, s.100 Children Act 1989 applies. Section 100(3) and (4) state;

> *(3) No application for any exercise of the court's inherent jurisdiction with respect to children may be made by a local authority unless the authority have obtained the leave of the court.*
>
> *(4) The court may only grant leave if it is satisfied that—*
>
> *(a) the result which the authority wish to achieve could not be achieved through the making of any order of a kind to which subsection (5) applies; and*
>
> *(b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.*

31. No express application for leave for the exercise of the power under s.100 was made before me on 11 March or Moor J on 13 March. Ms Obi-Ezekpazu therefore argues that the two interim injunctions granted were invalid and of no effect because the required leave of the court was neither sought nor obtained.

32. Second, she argues that the Court today cannot grant the injunction sought because no application for leave under s.100(3) has been applied for. Ms Obi-Ezekpazu argues that a formal application has to be made and there is a requirement for a two stage process, by which an application for leave is made under s.100(3) and only then if leave is granted, can an application be made for the injunction itself.

33. Thirdly, and in any event, she argues that there are no grounds to grant an injunction here because there is already in place the orders made in 2017 by HHJ Atkinson which prevent the dissemination of any information about the proposed adopters. She says that the injunction sought would largely, if not wholly, replicate the 2017 orders and therefore is not necessary. She argues that the Council failed to tell the Court on 11 and 13 March 2020 about the 2017 order. As a matter of fact this is not correct. Ms Williams' statement prepared for the hearing on 11 March 2020 refers to HHJ Atkinson's order of 2017, and appended the same.

34. Fourthly, she argues that there is no good basis for making the injunction in any event. She says that there is no evidence of significant risk to X, and as such the terms of s.100(4) are not met.

35. Fifthly, she argues that the alleged need for the order only arose because of the Council's error and therefore she says that the Council should not "profit from its own errors". I find this argument very difficult to follow. The Council did make an error in sending the bundle and the confidential report to the First Respondent's solicitors, but the greatest error was those solicitors passing it on to the First Respondent. In any event, it is ultimately irrelevant how the material got into the hands of the Respondents, the important point is to prevent any actions being taken upon it.

Conclusions

36. I do not accept Ms Obi-Ezekpazu's arguments. Section 100(3) places no specific procedural requirements on the local authority in making an application for leave, either in terms of the form of such application or its timing. It therefore appears to me to be plain that there is no requirement for any particular formality, e.g. the application being in writing or being made separately before the application for the exercise of the inherent jurisdiction. It follows that there is no bar upon me making the order sought today, even though the application for leave was made orally to me and was not done in any separate staged process.

37. However, further than that, I do not accept that the orders made by myself on 11 March and Moor J on 13 March were invalid. The question of whether the failure to follow some procedural or regulatory step before an order or public law decision is made renders that order or decision invalid, is a complicated one. The argument was only raised in this case in Ms Obi-Ezekpazu's Position Statement received on the morning of the hearing. She had not argued before Moor J on 13 March that he had no power to grant the order sought because no application had been made under s.100(3). In those circumstances the issues about the validity of those earlier orders was not fully argued out before me. Given the complexity of the case law and the fact that the issue is ultimately unnecessary for me to decide, I think it is best if I do not seek to determine that issue in this judgment. I do note however, that given that there are no procedural requirements under s.100(3), there is a strong argument that it was implicit within the two earlier orders made that leave was being granted by both myself and Moor J, albeit that was not recorded in the orders themselves.

38. The important point for today's purposes is that, whether or not the earlier orders were validly made, there is no bar in my view on my granting leave under s.100(3) and then going on to consider whether I should grant the order sought.

39. I turn then to the issue of whether on the facts the making of the order is justified. Ms Obi-Ezekpazu and the Second Respondent argued that the order is draconian and unjustified. It is argued that it puts the First Respondent at risk of committal for breach and as such is an order which unjustifiably interferes in their rights. Ms Obi-Ezekpazu argues that the First Respondent has not breached the earlier order and there is no basis for thinking that she would disseminate the information. The First Respondent has said that she has deleted all the information, save for a photo of X, and that together with an undertaking to not publish should be sufficient.

40. I do not accept that the order is draconian albeit there is a penal notice attached to it. The order merely prevents the First and Second Respondent from disseminating information which they should not have been given in the first place, and from approaching or seeking any contact with X or the proposed adopters. These are actions that the Respondents should not be undertaking in any event, and which they say they do not intend to do. I therefore cannot see why the order should be termed draconian or interferes with their rights. There is no risk of increased penalisation, because if there was a breach of the order and that was also covered by the 2017 order, then plainly it would be considered by any future court as one matter.

41. In my view the order is justified, both because of the risk to X but also the risk to the prospective adopters. The two are in my view completely interlinked. Any action in respect of the proposed adopters may well have a significant impact on X because she is living with them. Importantly this is not a case where the risk is purely theoretical. The Respondents have already been convicted of harassing HHJ Atkinson. Further, as Ms Williams sets out, there is a history of the Respondents posting material on the internet about the children. Although the Second Respondent was adamant before me that he and the First Respondent have no desire to go back to prison and that he feels aggrieved because the conviction is held against them, the fact is that they have been prepared to break the law in the past. I also take into account what the First Respondent is reported to have said to the contact workers, and the apparent history, as recorded by Ms Williams, of the Respondents publishing information about the children. In these circumstances there has to be a real risk that they will seek to identify the proposed adopters and where they live.

42. I accept that there is some overlap between the order I am asked to make and the order HHJ Atkinson made in May 2017. However, the overlap is not complete and the proposed order serves an important purpose. Firstly, the 2017 orders only cover "publication" and not wider "dissemination" of information. The difference may be important given the Respondents history of placing material on the internet and social media. Secondly, the proposed order specifically prevents the Respondents from approaching the proposed adopters or taking any steps to locate them. This is important in the context of the protection of X and the proposed adopters.

43. Secondly, the making of the order does not imply that I consider it likely that the Respondents will breach it: the imposition of an injunction is designed to prevent, or address, a risk that might arise were an injunction not made. The test is whether, having regard to the gravity of the harm feared, and having regard to its likelihood, the balance of harm and the interests of the child falls in favour of granting the injunction, whilst also having regard to the prejudice caused to the respondents of the imposition of the injunction, that test is met. No prejudice arises to the parents in the context of the decision Mostyn J is to make as a consequence of that determination.

44. For these reasons I consider that there is a need for the proposed order, notwithstanding the existence of the 2017 order.