



Neutral Citation Number: [2024] EWHC 1345 (KB)

Case No: KB-2024-000293

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/06/2024

Before :

MASTER STEVENS

Between :

JWS

Claimant

- and -

JZX

Defendant

Iain O'Donnell (instructed by **Leigh Day**) for the Claimant

Catherine Foster (instructed by **Rainer Hughes**) for the Defendant

Approved Judgment

This judgment was handed down remotely at 4:30pm on 6 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MASTER STEVENS

Master Stevens :

1. This brief Judgment sets out a summary of the reasons for granting an Anonymity Order on the papers on 22nd April 2024, as subsequently amended under the slip rule on 9th May 2024. The Court had set out its general reasons in the recitals to the earlier Order which would normally be sufficient, but, due to the exceptional nature of the case, the Court has decided to provide a more detailed summary.

General principles and background

2. The relevant legal principles will not be set out in depth in this summary, but it is important to state at the outset that “*the principle of open justice is one of the most precious in our law*”, see R(C) v Justice Secretary [2016] UKSC 2. Any derogation from that requires justification. In this case the Court has undertaken a careful balancing exercise of the individual’s right to respect for private and family life pursuant to his Article 8 rights under the European Convention on Human Rights (ECHR) against the Article 10 right to freedom of expression and the principles of open justice. The Court has concluded that there is exceptional evidence weighing in favour of the individual’s rights as set out further below.
3. As part of the balancing exercise the Court has also considered the potential for jigsaw identification of the Claimant through not permitting anonymity of the Defendant, there being no objection raised whatsoever as to her already having been granted anonymity, by Order sealed on 9th February 2024, as an alleged victim of historic sexual abuse who asserts that she has suffered psychiatric harm (i.e. a condition more significant than an adverse emotional impact) as a consequence. The parties are known to each other publicly and professionally which elevates the jigsaw risk.
4. During the application process the Court received the Defendant’s agreement to waive any anonymity granted, should the claim be successful against him. Granting or waiving anonymity is always a matter for the Court, and not something the parties can simply consent to, it having been noted that the Claimant does not object to the Defendant’s anonymisation.
5. Following perusal of the hearing bundle, and reflection on the highly unusual and exceptional facts of the case, it was apparent that the application could be disposed of on the papers and that there was no merit in allotting more time and resource to conducting a non-contested hearing. The neutrality of the Claimant’s position was confirmed before the decision was reached to grant the Order on the papers.
6. The original Anonymity Order retained the usual wording in Practice Form 10 that there were no representations from the press or any interested party. Those words were removed under the slip rule by Order made on 9th May as the matter had been determined on the papers. For clarity, the Court was aware of one request for attendance by one freelance journalist at the time the Order was made but there was no suggestion at that time that the individual wished to attend to make representations.
7. The Court has been mindful that a decision to grant anonymity at this stage does not bind the Court from removing anonymity at any subsequent juncture should new evidence be presented which warrants further consideration of the principles as the public interest element might then outweigh the individual rights.

8. The Anonymity Order also contains provision at paragraph 6 for any interested party to apply to vary or discharge the Order.
9. The Court has not been asked for, nor would it consider it appropriate, to order an unfettered restriction on all reporting of the case. The Order made is solely as to identification of the Defendant at this very early stage in proceedings at a time when the Claim Form had not yet even been served and a robust Defence is foreshadowed by the evidence already submitted for the Court's review. That does not preclude the possibility, on occasion, if the Court had to consider exceptionally sensitive material, of the Court ordering part of a hearing at least to be conducted in private. The press would be given further opportunity at that point to raise any relevant matter.
10. The Court has been unable to identify any less restrictive measures at the current time than granting the anonymity provision sought.

The legal and evidential basis

The Defendant asserts his Article 8 rights in respect of his privacy of personal and family life.

11. The claim involves one single sensitive allegation of historic sexual abuse when the Claimant was still a minor. It is accepted by the Court that the Defendant's Article 8 rights are engaged due to the nature of the under-age assault complained of which the Court considers is likely (contrasted to many other types of wrongdoing) to cause the wider public to hold derogatory opinions of him, beyond what would generally be expected by a party to litigation. The intrusion would be more than minimal, or pure embarrassment; it would imply criminality in circumstances where the police have already investigated the alleged offence and concluded there is no realistic prospect of a conviction at Court. The Court has reviewed evidence from the Force indicating that no further action is to be taken. The closed investigation is helpful in assessing the weight to be given to the Defendant's Article 8 rights over the Article 10 right to freedom of expression but it is not by itself conclusive. It is however supplemented by further evidence which the Court finds compelling on an anonymity application at this very early stage in proceedings. Unlike many such claims there are already particular significant evidential documentary challenges to the Claimant's case, viewed by the Court, which tip the balance in favour of the individual's rights prevailing. Just by way of one example, the Defendant has produced documentary evidence raising a significant evidential hurdle for the Claimant to overcome as to his ability to have committed the single assault complained of at the material time; that will be the subject of further interrogation in due course.
12. Thus the Court cannot identify any justification for, or public interest in, interfering with the Defendant's Article 8 rights, by identifying him at this early stage in proceedings when the materials viewed by the Court raise highly significant evidential questions that will need to be addressed for the claim to be successful.
13. Whilst the claim is currently statute barred the Court has not placed any significant weight on this factor in the Defendant's favour in performing its balancing exercise.

The Defendant asserts his Article 8 rights in respect of his health and right to privacy

14. The Defendant has produced medical evidence from a consultant medical practitioner, following a recent consultation, as to the likely health impact of a loss of privacy in this claim upon him, such evidence being backed by a statement of truth. This would not necessarily be sufficient reason to prefer a party's Article 8 rights over freedom of expression, but the nature of the opinion is neither vague nor speculative. The evidence of future health risk is well-defined and does meet the applicable standard to merit interference with the usual principles of open justice. It would be disproportionate, and not in the public interest, to expose the Defendant to that risk, at this juncture in the litigation. The Court is unaware of any sufficient countervailing public interest in disclosure.

The Defendant asserts his Article 8 rights in respect of his legitimate interest to protect his reputation, for the stability and integrity of his business interests

15. The Defendant is undeniably a very well-known public figure. It is not the function of the Court to protect a party from all embarrassment or stigma caused by involvement in litigation. The threshold is high, before the Court will interfere with the principle of open justice. The attack on reputation needs to be so offensive that it will inevitably cause serious personal adverse impact. It has been asserted that this would be the case if the Defendant's identity was revealed. In seeking to evaluate the inevitability of serious harm, the Court takes general cognisance of many very recent instances where the type of allegations made in this claim (historic sexual abuse) have resulted in enormous damage of the type contemplated by the Defendant. The Court does not consider it far-fetched to suggest that the Defendant would suffer irreparable damage to reputation by identification in this claim. This is insufficient reason alone to grant anonymity, but weighed against the current challenges raised in respect of the evidence for the Claimant's case, on the basis of the disclosed materials so far, it would be highly disproportionate and unfair not to respect his right to private and family life, at this juncture in the litigation. There is insufficient countervailing public interest in disclosure.
16. The Defendant has well-publicised and wide-ranging highly lucrative financial interests. The Defendant says these would be irreparably damaged without anonymity. It is widely reported in the public domain that individuals who have faced similar allegations, in very recent times, have faced withdrawal of financial support and/or suspension or termination of business arrangements by those concerned to protect their brand by association, whilst investigations are ongoing. The Court is satisfied in this exceptional case that there is a high risk that his identification in these proceedings would cause significant losses not only to the Defendant, but also to numerous other individuals working in/associated with those enterprises with which he is concerned, and which are wholly unconnected with the alleged claim. This could not be said to be in the public interest, and it would be highly disproportionate while the claim is at such an early stage, and where the Court has been apprised of significant evidential challenges which the Defence will raise, the Claim Form not even having been served at the time of the application.

Conclusions

17. To conclude, in order to manage this claim justly and proportionately in accordance with the overriding objective and CPR 1.1, by "*ensuring that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give*

their best evidence” it is necessary at this stage to anonymise the Defendant, and the Court is unaware of any sufficient countervailing public interest to justify curtailing the Defendant’s Article 8 rights at this juncture in proceedings. Three particular rights have been identified, any one of which would have been sufficient to grant anonymity. An infringement of those rights goes beyond what would normally be expected for a party to litigation, such that it is necessary to derogate from open justice, and proportionate on the particular facts of this case to anonymise the Defendant.

18. The Court is mindful of its own duty not to act unlawfully under section 6 of the Human Rights Act. The Order made already allows a full report of proceedings to be published, whilst keeping the parties’ identities anonymised. The reporting restrictions may be revised further as the claim proceeds and any new material evidence is brought before the Court. In the final determination, in any event, the Defendant has accepted that if he is unsuccessful in his Defence, his anonymity should be waived by the Court, and at that point (if not earlier) the public will have the full benefit of the facts with which to satisfy any legitimate interest in his conduct.
19. It has also been a significant factor in the Court’s determination, to take account of the potential for jigsaw identification of the vulnerable, anonymised Claimant by waiving anonymity of the Defendant. This is a very real risk and far from illusory.
20. Pursuant to paragraph 6 of the Order, any interested party, whether or not a party to proceedings, may apply to the Court to vary or discharge the Order provided that any such application is made on 7 days’ notice.