Neutral Citation Number: [2022] EWHC 320 (Fam)

Case No: ZC20C00333

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 28.01.2022

Before :

THE HONOURABLE MRS JUSTICE JUDD DBE

- -

Between :

A London Borough **App**

- and -

B

R

G (a child)

and **Respo**

British Broadcasting Corporation

Times Newspapers Limited **Interested P**

Independent Television News Limited

Associated Newspspers Ltd

PA Media Ltd

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Nick Goodwin QC (instructed bythe local authority solicitor) for the **Applicant**

Joanne Brown (instructed by CG Family Law) for the **3rd Respondent**

Richard Jones (instructed by Hanne and Co **) for 4th Respondent**

Jack Harrison (instructed by Miles and Partners**) for the child**

for the **1st Respondent**

Jude Bunting (instructed by the 1st – 4th interested parties**)**

Brian Farmer (in person, for the 5th interested party)

Hearing dates: 28th January 2022

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Approved Judgment

I direct that 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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THE HONOURABLE MRS JUSTICE JUDD DBE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Hon Mrs Justice Judd :

1.
This is an application by the local authority, supported by the other parties to the care proceedings, for a reporting restrictions order ("RRO"). The application is opposed by several media organisations, including the BBC, Times Newspapers Limited, ITN, and Associated Newspapers Ltd.

2.
The care proceedings concern a very young child, G, whose sibling, E, died in 2020. Within those proceedings, I conducted a fact finding hearing late last year. The case is listed in front of me again within a few weeks to determine future arrangements.

3.
Several weeks ago, the parents were both charged with murder. On 14th January they appeared before the Magistrates' Court, and on 18th January at the Crown Court. They are both remanded in custody. At that stage, and by agreement the judge made an order pursuant to section 45 Youth Justice and Criminal Evidence Act 1999 prohibiting the reporting of the proceedings in a way that would result in G being identified. Following objections, the judge concluded on 21st January that he had no jurisdiction to make an order in respect of G as she was not a witness, and it was not thought she would play any role in the criminal proceedings. In those circumstances the judge considered that the matter would be best considered by the family court, and the local authority made an application to me. I heard the case briefly on Monday 24th January, and listed it for fuller submissions four days later. This is my judgment following that hearing.

4.
As a primary position, the local authority seeks an order which would prohibit the reporting of the defendants' names or the identity of the deceased child in any criminal proceedings. In the event of that submission being unsuccessful, the local authority invites the court at least to prohibit the identification of the deceased, or her relationship to her sibling. On their behalf, Mr. Goodwin QC advances five grounds in support of the application. First it is submitted that it would be contrary to G's interests to be identified in the community as a child whose parents are subject to murder charges. Second it is submitted there is a long term risk of identification given her distinctive name. Third if an adoptive care plan is pursued, the risks associated with publicity may deter prospective adopters from putting themselves forward. Fourth, life story work may be compromised if she is able to read press coverage about her sibling's death in an uncontrolled manner, and fifth as she is one of

very few twins in the area she lives in who has experienced the death of a sibling, this enhances the risk of identification.

5.
In his oral submissions, Mr Goodwin focussed on the long term harm that would be suffered by G if her parents and deceased sibling are named by the media. She is too young now to be aware of any publicity, but as she grows older she is likely to have access to the internet, and if she is able to put her surname or the name of her sibling into a search engine, stories will appear about the case which could be emotionally harmful. If she is placed outside the family she will of course have life story work, but this could be impeded or disrupted by access to information in an uncontrolled way. Mr. Goodwin accepted that G would, at some stage, be likely to access media reports even if the reporting is anonymous (as she will have to be made aware of the background history) but that this could be better controlled during her minority if she was not able to search for information or to come across it accidentally if the names of her family are not reported.

6.
Mr. Goodwin also submitted that there was a risk that, should it be necessary to place G for adoption, reporting of the names of the family might have a serious adverse effect on the pool of available adopters, which could cause delay and further emotional harm. Adopters can be very wary of taking on a child who has suffered serious emotional trauma.

7.
In considering the legal test to be met, Mr. Goodwin pointed out the protections afforded to those under 18 (including defendants) by s48 Children and Young Persons Act 1933, and submitted that this created something of an anomaly in not extending the protection to a child in G's position.

8.
The other parties to the care proceedings, including the Guardian, supported the local authority application for very much the same reasons.

9.
Mr. Bunting, on behalf of the press, submits that the facts of this case, tragic though they are, are not exceptional and to make an order in these circumstances would be contrary to established authority. There is a strong imperative to permit full, contemporaneous reporting of the criminal proceedings. Without being able to name the defendants and/or the deceased child the trial would be rendered faceless and devoid of human interest. He referred the court to a number of paragraphs within the reported judgments, particularly the guidance of the House of Lords in Re S (A Child) [2005] 1 AC 593, and the dicta of Sir Igor Judge in Trinity Mirror PLC [2008] QB 770. The fact that the provisions of the Children and Young Persons Act 1933 did not extend to protecting a child in G's position had been considered in Re S, where the decision by Parliament to limit the reach of the Act was considered to be significant.

10.
Mr. Bunting stated that the evidence in this case is limited to that of the social worker, which is confined to setting out her belief that reporting and identification would not be in G's best interests. Given her young age, the impact upon her is likely to be indirect. Further, she does not share a surname with her mother, and her father's surname is not an uncommon one.

11.

Mr. Bunting submitted that an order prohibiting the names of the defendants and/or that of the deceased would have repercussions for the significant number of other cases where, as here, a parent or parents were charged with a serious crime within the family. If the facts of this case were sufficient to justify restrictions upon reporting the names of defendants and/or the deceased, then it would apply to almost every case.

12.
Mr Farmer, on behalf of the Press Association, supported the position put forward by Mr. Bunting, and reminded the court of other cases, such as that of Ellie Butler and Elsie Scully-Hicks where there was no restriction on reporting of the names of the defendants or deceased children. The same applies to the case of Arthur Labinjo-Hughes. Mr. Farmer further submitted that it was to the benefit of all children that the public are aware that the deaths of children are taken extremely seriously, and that such will be fully investigated and any perpetrators brought to justice.

The Law

13.
The test to be applied by the courts when considering applications for orders restricting the identity of criminal defendants was set out by the House of Lords in Re S (A Child) [2005] 1 AC 593. Mr. Justice Baker (as he then was) summarised the principles in Re A (A Minor) [2011] EWHC 1764 (Fam) [2012] 1 FLR 239. These have been applied by judges in a number of cases since.

14.
At paragraph 17 of Re S, Lord Steyn set out the approach to cases such as this which concern the interplay between articles 8 and 10 of the ECHR following the decision of the House of Lords in the case of Campbell v MGN Ltd [2004] 2 AC 457;

“First, neither article, has, as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each”.

15.
At paragraph18, Lord Steyn set out the general or ordinary rule;

“that the press, as the watchdog of the public, may report everything that takes place in a criminal court. I would add that in European jurisprudence and in domestic practice, this is a strong rule. It can only be displaced by unusual or exceptional circumstances. It is, however, not a mechanical rule. The duty of the court is to examine with care each application for a departure from the rule by reason of rights under article 8”.

16.
Further, at paragraph 32, he pointed out that an inability to reveal the identity of a defendant at a criminal trial would, from a newspaper’s point of view mean the trial was disembodied, meaning they would be less likely to give prominence to reporting it, and that informed debate about criminal justice would suffer.

17.
There can be, and are, cases where the principles of open justice give way to the right to respect for private and family life under Article 8. Two examples of such cases are A Local Authority v W [2005]

EWHC 1564 (Fam); [2006] 1 FLR1 and A County Council v M (Children) [2012] EWHC 2038 (Fam); [2013] 2 FLR 1270

Discussion and conclusions

18.
This is a very sad case which has already had profound repercussions for G. Nonetheless, it is one of a number of similar cases which come before the criminal (and family) courts every year. G is still a very young child, and thankfully immediate publicity surrounding the trial itself is not likely to have a direct impact upon her for the time being. Her surname is not particularly distinctive or unusual. Further she is in the care of the local authority and with foster parents rather than members of the family. The area is a culturally diverse one, and she does not stand out in the community. Her current placement is not intended to be permanent. I will be making a decision about her long term future within the next few months.

19.
Looking at the long term effect upon G, Mr Goodwin was bound to accept that she will at some point have to find out what has happened to her sibling and how. It is not a question of if but when she reads reported details of the trial online, whether or not the names are in the public domain. I can see that there is a danger of her coming across material more easily (and therefore when she is younger) if she puts her family name (or that of her sibling) into a search engine, but it will be necessary for anyone who is caring for her to be alert to the use of the internet when she is of a tender age. The life story work that will be carried out with G (whatever her future placement) will have to prepare her for the time when she is able to look for published material by herself and it will have to be adapted to take account of this.

20.
It is simply not possible to shield G completely from the distress and harm that is likely to arise as she becomes able to understand what happened to her.

21.
The local authority did not provide any specific evidence that it would be more difficult to find prospective adopters for G if that is the order eventually made by this court. There are some children who are harder to place than others, and it must be right that prospective adopters are likely be concerned about a child who has suffered significant trauma. This is an eventuality, however for many if not most prospective adopters or foster parents who put themselves forward to care for children. Many, if not most, of these children have suffered trauma and abuse.

22.
I note the facts in the two cases brought to my attention where injunctions were made prohibiting reporting of the names of defendants. In both of them the facts were very distinctive. In A v M, the defendant was charged with cruelty, having arranged for the insemination of her eldest adopted daughter when she was 16 with a view to bringing up the resultant child as her own. The other members of the family were girls aged 17 and 7, and the eldest daughter's infant child. The judge found that there was a substantial risk of identification if the mother's name was reported, given the community that the family were living in. The girls had a distinctive appearance in an area which was not ethnically diverse. The details of the case involved extremely intimate matters for the eldest girl, and the judge had expert evidence about her fragile emotional state. He also considered the position of all the other children and came to the conclusion that the probable consequences for the younger family members would be at best harmful and at worst disastrous.

23.
In A v W, Sir Mark Potter made such an order in a case where the mother was facing trial on a charge of knowingly infecting the father of one of the children with HIV. This was in 2005, and the effect upon the mother of her HIV status becoming known had been profound, and, as the judge found, causing the family to have to leave their home. The trial was likely to attract wide publicity and at that time, there was a great fear that the children would be shunned in the local community and be driven from nursery.

24.
Balancing the competing rights under Articles 8 and 10, I have come to the clear conclusion that I must refuse the application to prohibit reporting of the names of either of the defendants or of the deceased in the criminal proceedings. The name of a child who has allegedly been killed is an important part of any report in the media, as are the names of the defendants. Without any of those names, I agree with Mr. Bunting that the trial would become 'disembodied'. An order prohibiting the identification of any of them would have a profound effect upon open justice in what is a significant trial and create a precedent for other cases like it. I do not think the situation can be compared to that if, for example, E had been the subject of an attempted murder and had lived. The provisions of s45 Youth Justice and Criminal Evidence Act 1999 would be there in those circumstances to protect her as the victim of that alleged crime.

25.
The effect, on the other hand, upon G of the reporting of the names as against the reporting of the trial without names, is not so obviously stark as to justify the proposed erosion of freedom of speech under Article 10. There is no evidence that she is likely to be affected any more than other children who very sadly have to live with the consequences of the actions of their parents. As Sir Igor Judge stated In re Trinity Mirror PLC and others (A intervening) [2008] EWCA Crim 50; [2008] QB 770, at paragraph 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 all suffer in the same way. All this represents the consequences of crime, adding to the list of its victims".

26.
In all the circumstances I refuse the application and accede to the submission that the order I made on 24th January should be discharged, and a new order made with the edits suggested by Mr. Bunting. In so doing I acknowledge that this amounts to an interference with G's article 8 rights, but for the reasons I have set out have concluded that this is necessary and proportionate for the protection of the rights of others.

27.
During the course of the hearing there was a discussion as to whether there should be an order prohibiting reporting of an additional fact regarding E. For the time being I believe that the order as amended should remain as it is, as there is not likely to be reporting of G's existence in relation to E until the criminal trial begins, and then only if it is raised as a relevant matter. If it appears at that point (or indeed any point) that this fact is likely to be relevant and therefore reported it can be raised before the judge in those proceedings, or if necessary before me at short notice. I am not in a position now to weigh up the competing factors to make a decision about it.

28.

In addition the welfare hearing is listed before me within the next few weeks. If the parties seek to argue that the outcome has a bearing upon the orders made the matter can be reconsidered then if appropriate, on notice to the media.