Neutral Citation Number [2024] EWFC 258 (B)
Case No: BS24P70393

IN THE FAMILY COURT

Date: 27 August 2024

Before :

RECORDER REED KC

- -

Between :

X (THE MOTHER)	**Applicant**
- and -	
D (THE FATHER)	**Respondent**

- -

Re Kate (Contact – history of non-return - Publication)

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The **Applicant** appeared **in person**
Kate Pearson (counsel) for the **Respondent**

Hearing dates: On the papers, following a hearing on 13 and 15 August 2024

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JUDGMENT - PUBLICATION

RECORDER REED KC:

1. At the point of hand down of my judgment on 15 August 2024 (Neutral Citation Number [2024] EWFC 259 (B)) I requested the parties' views on publication. The mother readily agreed to anonymised publication. The father sought an opportunity to consider his position and make representations on the issue of anonymised publication. I accepted that was fair and appropriate and allowed a period of one week, subsequently extended by a few days for the father to submit any representations in writing, indicating that I would likely make a decision on paper. The father's position is set out in an email from Ms Pearson. It confirms that he objects to publication. Having read those submissions and noted the parties' positions and the basis of them, I concluded that it was appropriate to proceed without a hearing.

2. The law is set out in *Re S* [2004] UKHL 47, per Lord Steyn at paragraph 17:

"The interplay between articles 8 and 10 has been illuminated by the opinions in the House of Lords in *Campbell v MGN Ltd* [2004] 2 WLR 1232. For present purposes the decision of the House on the facts of *Campbell* and the differences between the majority and the minority are not material. What does, however, emerge clearly from the opinions are four propositions. 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. For convenience I will call this the ultimate balancing test. This is how I will approach the present case."

3. Subsequent caselaw confirms that when conducting this balancing exercise, welfare is 'a primary consideration' (but not paramount) (*ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4).

4. The submissions I have received do not directly address the law, but are articulated in terms of the father's 'concerns', which I take to fall under the broad Article 8 umbrella.

5. The father objects to publication on several grounds, in part on his own account, in part on behalf of his daughter, and in part on the mother's part:

6. Firstly, he raises concern that the child will one day be able to access the judgment, and says that 'she should be protected from this at all costs, due to the risk of a detrimental psychological impact upon her if she were to become aware of the contents of the judgment' and the fact that it is in the public domain. It seems to me that there is little in this point. The child may well come to know of the *contents* of the judgment in due course (as an adult or developmentally appropriate point). The contents of it may make difficult reading for the child, but this is not something that arises from publication, rather it may arise from the child recalling or coming to know of the events in her life which the judgment records. Those are part of her life story, which in due course she may wish or need to learn more about. I do not think there is an appreciable risk that the child will be placed at a risk of psychological harm by virtue of *publication*. She is far too young in the next decade or so to be at all likely to encounter the judgment by chance, and any publication will be properly anonymised so that a *chance* self-identification will be extremely unlikely.

7. Next the father suggests there is 'anxiety for both parties of knowing that the judgment has been publicised'. The mother for her part does not suggest any such anxiety and so I disregard that element of the submission. I am told that 'the respondent is concerned that even with anonymisation, the judgment includes details of the parties' family life that could easily identify them within their family / friend networks and wider communities'. It seems to me that this concern goes to the extent of anonymisation that may be necessary and proportionate, rather than to whether or not the judgment should be withheld from publication. I agree with the father that the judgment should be anonymised so that it does not contain details that could lead to easy identification of the parties. I am not sure it is necessary or possible to prevent identification of them within their family networks: inevitably in such cases the parties close family may well be able to identify them – if they happen to read the judgment. It is likely, given what I know of

this family, that many of the facts of this case (or a version of them) is known to the family in any event.

8. Thirdly, I am told that the respondent is 'troubled by the possibility that the judgment may be shared on social media. The respondent acknowledges that the judgment has made significant criticisms of his behaviour and the respondent wishes to take the time to reflect on this without the anxiety of possible further criticisms being wagered against him in the public domain'. It is entirely possible that the judgment will be shared on social media if I permit publication. However, my judgment will be anonymised and will contain a rubric making clear that identification of the parties referenced in the judgment is a contempt of court. There must be no identification of the anonymised parties on social media or otherwise, whether by members of the public, the parents themselves (or their family members). It may be that reflection on his behaviour will be an uncomfortable process for the father, but for the sake of his daughter I would not wish to take any step which discouraged such a process. However, whilst I accept that his wish to embark on a process of personal reflection without having to contend with the knowledge of publicly expressed views on that behaviour is an aspect of his private life that I should have some regard to, the father's speculative discomfort does not in my view weigh heavily in the balancing exercise I must conduct. It seems to me that in the event that there is any such comment (which is far from certain) the father is not obliged to seek out or read such comment, and so the solution to the problem lies largely in his own hands. If the court allowed a right of veto on publication of judgments by those criticised, there would scarcely be any judgments published and the public would have a very distorted perspective on how the court operates. Indeed, it might be suggested this happens too often already.

9. The welfare of the child is an important element of her Article 8 rights, and as a 'primary consideration' is at the forefront of my thoughts. The child has been substantially disrupted and requires stability. She is young and, like the child in Griffiths v Tickle & Ors [2021] EWCA Civ 1882, will not be likely to have unrestricted access to the internet or be capable of finding or reading my judgment for many years to come. Here though, given the facts and tier of this judgment, the level of (social) media interest in my judgment is highly unlikely to be more than modest and is unlikely to be sustained, and as such the risks to the child are both remote and unlikely to eventuate.

10. In my judgment, the Article 8 rights of each of the child *and* of both her parents to private and family life can largely be met by robust anonymisation. There is nothing particularly unique about the child or her parents in terms of vulnerability, and nothing about the facts set out in the judgment that would demand such a degree of redaction as to render publication impossible or pointless.

11. That being the case, it is difficult to see how the father's Article 8 arguments can outweigh the general interest in open justice and the specific public interest in the publication of this judgment, given that it sets out a history of repeated, serious breaches of family court orders, harm to a child, and significant restrictions on the child's relationship with her father that has resulted. Having considered how I could and should anonymise this judgment to find the right balance, I have formed the clear view I can and I should publish the judgment (I set out details of anonymisation below), and that publication will cause no greater interference with the Article 8 rights of the parties than is necessary and proportionate to ensure compliance with the principles of open justice

and the court's obligations under Article 10. I am further satisfied that the anonymisation of the judgment goes no further than is necessary and proportionate to afford proper respect to those Article 8 rights.

12. I am asked by the father, in the event that I do publish, to use initials that are not the parties or child's real initials. I would ordinarily do this in any event and have done so on this occasion. I am asked to anonymise the identity of the local authority. I do not think any particular public interest lies in the identity of the particular local authority, who are not a party to these proceedings, and I will remove it. The location of the court will be known, but this court serves a number of local authority areas, and removing the name of the local authority will afford some geographical blurring. I will remove references to the specific area in which the father lives for similar reasons and provide an approximate geographical distance (as provisionally indicated in my substantive judgment).

13. I have further reviewed the judgment in light of the parties submissions and will make some further minor modifications so that the age and sex of another child mentioned is blurred, and so that the locality for contact is not specified. There are no other particular geographical markers and the child's medical condition (eczema) is so commonplace as not to be identifying.

14. The father seeks an opportunity to review the anonymised judgment before publication. Ultimately the appropriate level of anonymisation is a matter for the judge, having received submissions from the parties. I have received those submissions and accepted the father's requests as to anonymisation in their entirety. I am not satisfied this is an efficient or necessary further layer in the process.

15. For the avoidance of doubt any application for permission to appeal or a stay must be issued not later than 4pm 13 September 2024, after which date I will make arrangements for publication. This and my substantive judgment will be published in anonymised form as soon after 13 September 2024 as I am able to prepare the judgments for publication, which in the absence of any administrative support for judges wishing to comply with the spirit of the President's recent guidance on publication, will depend upon my other professional and personal commitments.

16. That is my judgment.

Recorder Reed KC
27 August 2024

Post script 21 September 2024: No application for a stay having been received I have now prepared this judgment for publication.