**IN THE FAMILY COURT** **MH13C00175**

2015 EWFC 34
21 April 2015

**Before** :

**THE HONOURABLE MR JUSTICE PETER JACKSON**

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**Between :**

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| **WIGAN BOROUGH COUNCIL** | **Applicant** |
| **-and-** | |
| **HAYLEY FISHER** | **1st Respondent** |
| **-and-** | |
| **MARTIN THOMAS** | **2nd Respondent** |
| **-and-** | |
| **A (by her Children's Guardian)** | **3rd Respondent** |

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**Frances Heaton QC and Clare Grundy** (instructed by Wigan Borough Council) for the Applicant
**Lukhvinder Kaur** (instructed by Arthur Smiths Solicitors) for the Mother
**Karl Rowley QC and John Chukwuemeka** (instructed by Widdows Mason Solicitors) for the Father
**Samantha Birtles** (instructed by Stephensons Solicitors LLP) for the Children's Guardian

Judgment date: 21 April 2015

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## JUDGMENT:

## Wigan Borough Council v Fisher & Thomas (Publication of Judgment)

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**THE JUDGE HAS GIVEN LEAVE FOR THIS JUDGMENT TO BE PUBLISHED ON CONDITION THAT THE ACTUAL NAMES OF THE CHILDREN REFERRED TO AS A AND B MUST NOT BE REVEALED. 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.**

**Mr Justice Peter Jackson:**

1. This judgment considers whether and, if so, in what form, the fact-finding judgment in these care proceedings should be published.

2. It is not normally necessary to give a formal, reasoned judgment about this kind of issue, but the question is of particular importance to these parties and may be of wider interest. I have received detailed written submissions that deserve a full consideration.

3. It has been suggested on behalf of the father that an oral hearing may be appropriate. In the light of the very full written presentations, I do not think that necessary.

4. In brief, family proceedings concerning a little girl known as A took place between February and December 2013. At the end of the proceedings, A, who had been in foster care, returned to live with her mother, and has remained with her since then.

5. The proceedings arose because of the death of A's sister Evie at the age of sixteen weeks on 21 February 2013. During her short life, she had sustained a number of serious injuries.

6. My fact-finding judgment was given on 6 December 2013 at the end of a hearing lasting eight days, during which each parent blamed the other for Evie's injuries. My conclusion was that they had been caused by the father and that the mother should be exonerated. There was no appeal and the proceedings ended.

7. Mr Thomas was then prosecuted for causing grievous bodily harm to Evie. On 29 October 2014, he was acquitted by a jury at Liverpool Crown Court. The trial was reported in the press.

8. On the day of his acquittal, Mr Thomas gave an interview to a journalist in which he said *"All I ever wanted to do ... was to prove my innocence and now I have done that."* This interview, illustrated with a photograph of Mr Thomas holding a photograph of Evie, was published in the Wigan Observer and in the Daily Mail.

9. On 9 December 2014, a Coroner's inquest reached an open conclusion, formerly known as an open verdict.

10. To avoid the risk of prejudice to the criminal proceedings, I had deferred a decision on the publication of the fact-finding judgment. In November 2014, when those proceedings had ended, the parties referred the matter back to me. They initially suggested that an anonymised version of the judgment could be published, edited in such a way as to protect A's identity.

11. I did not consider that this was realistic. The criminal trial and the Coroner's inquest had taken place in public and substantial information about the family and the surrounding events had appeared in the press. This information was to all intents and purposes the same as that considered in greater detail in the family proceedings, except that this court's conclusions were not reported. It would therefore be impossible for an anonymised fact-finding judgment to be published without it immediately being linked with this family. I therefore asked the parties for further written submissions by 13 January on the following possibilities:

    (a) That the judgment should not be published at all.

    (b) That it should be published in an un-anonymised form.

    (c) That it should be published in an un-anonymised form, accompanied by a reporting restriction order preventing the identification of A (in which case an application would have to be made and the media notified in accordance with the Practice Direction).

    (d) That it should be published in an anonymised form with workable accompanying directions that could be understood by the media.

12. In fact, it was not until 13 April that the last of the submissions (the mother's) was received. Issues around legal aid and representation were behind this delay.

13. The question of whether a judgment should be published is an integral part of the proceedings from which it arises and I consider that where a party is legally aided, any work that is necessary to contribute to the court's decision on publication should normally be covered by the party's legal aid certificate.

*Publication of judgments*

14. On 16 January 2014, the President, Sir James Munby, issued Practice Guidance entitled *Transparency in the Family Courts: Publication of Judgments* [2014] 1 FLR 733. As its title makes clear, this is guidance and not regulation, but it is guidance of high authority. It is to be found at the link below and I will do no more than set out a short summary.

    https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/transparency-in-the-family-courts-jan2014.pdf

15. The guidance notes at paragraph 9 that where, as here, a case is heard in private, the judge will normally give permission for the judgment to be published on condition that the published version protects the anonymity of the children and members of their family. However, this may be not be appropriate, for example where parents who have been exonerated in care

proceedings wish to discuss their experiences in public or where findings have been made against a person and someone else contends and/or the judge concludes that it is in the public interest for that person to be identified.

16. At paragraph 16, it is stated that permission to publish a judgment should always be given whenever the judge concludes that publication would be in the public interest, whether or not a request has been made by a party or the media.

17. At paragraph 17, it is stated that in certain cases, including where there has been a substantial contested fact-finding hearing into serious allegations, the starting point is that permission should be given for the judgment to be published unless there are compelling reasons to the contrary.

18. At paragraph 19, the court's duty to uphold the rights arising under the European Convention on Human Rights, namely Articles 6 (right to a fair hearing), 8 (respect for private and family life) and 10 (freedom of expression) is recorded. The court must also consider the effect of publication upon any current or potential criminal proceedings.

19. At paragraph 20, it is stated that public authorities and expert witnesses should be named unless there are compelling reasons to the contrary, but that children and family members should not normally be named.

20. A salient purpose of the guidance is to promote understanding of and confidence in the proceedings of the Family Court. But beneficial though that goal is, it is not an end in itself. Rather, it is part of a necessary process to ensure that the rights of individuals and the public, referred to above, are properly balanced. That cannot happen if confidentiality in the proceedings of the Family Court, a public body, is allowed to trump all other considerations. A balance has to be struck in each case, using the guidance as a valuable aid. There will still be cases where, notwithstanding the guidance, publication is not permitted, and other cases where the judge will authorise wider publication than that contemplated by the guidance.

21. The guidance has had a marked effect. In 2014, its first year, over 300 judgments at High Court level were posted on the Bailii website, together with 160 judgments by other judges. These numbers are a very substantial increase on previous levels of publication, particularly in relation to judgments in local family courts. As a result, there is a very considerable body of material available to anyone who wants to better understand the way in which our proceedings are conducted.

*Submissions in the present case*

22. <u>The local authority</u> supports the publication of the judgment in an un-anonymised form, except that the surviving children A and B should not be

named. It submits that there is good reason to publish the judgment and no compelling reason to the contrary:

- The fact that an infant has been seriously injured and has died in unusual circumstances is shocking and rightly becomes a matter of public concern. Questions are asked – Why? Who? How? Could the death have been prevented? If so, is someone to blame?

- The mass of publicly available information is noted. It includes Evie's name, details of her injuries and death, the names of both parents, their locations, ages and photographs. Any privacy and confidentiality has long since been breached. The only remaining confidentiality attaches to A, who has not been publicly identified.

- Conclusions have now been reached in the criminal court, the Coroner's court and the Family Court about the events surrounding Evie's death. The outcome of two of the three is now known, but not the third.

- Neither A nor her mother are likely to be unduly affected or destabilised by further publicity.

- Knowledge that the mother has been exonerated could assist her and A.

- A's identity is not likely to become more widely known. There is no evidence that the press has done other than respect her privacy, and a reporting restriction order is not necessary.

- Publication would show the rigour with which the Family Court investigates the death of and injuries to a child and how it arrives at its conclusions.

- Where, as here, there is criticism to be made of professionals, it is in the public interest to know of this in the hope that lessons will be learned.

- Anonymisation of the judgment would be utterly pointless, except insofar as the surviving children's names are concerned. It would lead to confusion and questions as to why the Family Court was seeking to withhold information that is already public knowledge.

23. The mother supports publication of the judgment and does not seek any other protection beyond that suggested by the local authority, namely the withholding of the children's names. She contends that there is a clear public interest in publication for these reasons:

- The information already in the public domain is very extensive, as demonstrated by a collection of press clippings from the Internet.

- She has been placed in a difficult position by the father's acquittal and the publicity he subsequently sought. Given that Evie was undoubtedly

assaulted, the result has been to cast suspicion on her. She has been approached by the media to tell her side of the story, but has refused. Following the Coroner's proceedings, the Daily Mail report posed the question in the title to its coverage: *"Father with battered baby daughter's handprint tattooed over his heart was cleared of beating her. So how did Evie die?"* The article goes on to state that the father sought to blame the mother during his criminal trial.

- The Family Court proceedings are the missing piece from a jigsaw of information. The other processes have been reported. The mother feels strongly that somewhere within the public domain there should be an accurate report of what happened to Evie. In time it will be of value to A that the truth is known. She also feels that the publication of the judgment would help to bring matters to a close for the family.

24. The father opposes publication, for these reasons:

- The guidance states that the names of family members will not normally be used. The metaphorical opening of the doors to the Family Court is aimed at exposing the family justice system, not the families who pass through it, to the light of publicity.

- Identification of the perpetrators of crime is the purpose of the criminal courts, not the Family Court.

- The reasons for care proceedings to be conducted in private continue to be sound. The care with which the courts protect the rights to privacy, even of those who are found guilty in the criminal courts, is shown in a number of authorities, to which detailed reference is made. A careful balancing exercise must always be conducted.

- Any attempt to publish the judgment in an anonymous form is doomed to fail, as the family would inevitably be identified. Since an anonymised judgment cannot be published, there should be no publication at all.

- Identification of the family would breach its right to respect for private and family life and would be fundamentally wrong. Naming the father would be an unwarranted interference with his rights. Publication may destabilise A's placement with her mother.

- Just because the father involved himself in media coverage is not a reason to stir matters up again. Republication can be as harmful as publication.

- There is no wider public interest, such as may exist in cases of failures by statutory agencies.

25. The Children's Guardian does not argue that there are compelling reasons for publication not to occur. She notes that

    - There has already been a great deal of publicity but that A has not been named, though reference has been made to "another child".

    - Her primary concern is that the mother and A may be exposed to unwelcome scrutiny and distress as a result of publication that reveals the disparity between the outcomes in the criminal and the family proceedings.

    - She supports as many safeguards as possible being implemented to reduce interest in this matter. She would oppose publication that identifies A or further identifies Ms Fisher, or refers to the inherited condition Treacher Collins syndrome. Any reference to the Wigan area and the local authority should be removed , and the names of solicitors deleted.

*Determination*

26. Having given due consideration to all of these matters, I am in no doubt that the fact-finding judgment should be published and that the only restriction that is necessary is that the actual names of the children referred to as A and B (another child associated with the family) are not to be revealed. The rubric attached to the judgment is sufficient to achieve this restriction. There is no need for a reporting restriction order. The media can be relied upon not to identify young children gratuitously in circumstances of this kind.

27. I find that the relevant considerations point very much in the same direction.

28. The first consideration is that it is generally in the public interest for accurate information to be made available in such a serious case. The need is particularly pressing when the information now in the public domain is incomplete and distorted.

29. The second consideration is that the mother supports publication and it is only fair that she should be able to rely on the judgment to show that she was not responsible for Evie's injuries. Non-publication would be an injustice to her.

30. The third consideration is that publication is unlikely to destabilise A and her mother. On the contrary, it is likely to improve their situation in the long run. It is clearly in A's interests to grow up on a true footing, knowing that her mother was not responsible for her sister's death and that her relationship with her father is as it is because of what he did. Any short-term disturbance that might possibly arise from publicity is greatly outweighed by the long-term benefits of the truth being known.

31. The final consideration is that the rights of the father carry little weight in the overall balancing exercise, given his conduct and his attempts to misrepresent the position to the mother's detriment. If his submissions were correct, the law would be a screen to hide the truth. There is instead a public interest in the findings about the father being made known. The fact that they have been reached according to the civil standard in the Family Court as opposed to the criminal standard in the Crown Court makes no difference in this case.

32. These conclusions are, as it happens, in keeping with the guidance. Paragraphs 16 (public interest) and 17 (serious fact-finding) are both engaged. Insofar as the naming of the family members departs from the normal approach, this is warranted under both limbs of paragraph 9 (party's wish to refer to exoneration and public interest in identification of a person against who findings have been made).

33. I agree with the local authority that it would be futile to seek to remove identifying information in an effort to dissociate the Family Court's conclusions from information already on the public record. The court should not stultify itself and any attempt to publish anonymously could only lead to bewilderment about what could and could not be reported. The Guardian's submissions were made before the mother's position was known, but were they to remain unchanged, I would prefer the positions of the local authority and the mother.

34. I do not agree with the father's analysis of the purpose of the guidance. As I have explained, it is not narrowly concerned with the image of the Family Court but with the wider goal of achieving a proper balancing of all the rights that arise in these cases.

35. The fact-finding judgment, and this judgment, will be placed on the Bailii website 28 days from now, to allow time for all interested parties to prepare themselves and for any rights of appeal to be exercised.

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