Neutral Citation Number: [2024] EWCA Civ 697

Case No: CA-2024-000230

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
Mrs Justice Arbuthnot
[2024] EWHC 161 (Fam)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 June 2024

Before:

LADY JUSTICE KING
LORD JUSTICE PETER JACKSON
and
LORD JUSTICE NEWEY

- -

Re T (Children: Publication of Judgment)

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- -

Maria Scotland (instructed pro bono through **Advocate**) for the **Appellant Mother**
Michael D. Jones KC and **Liam Kelly** (instructed pro bono through **Advocate**)
for the **Respondent Father**

Hearing date: 24 May 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 21 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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IMPORTANT NOTICE

In any report of the proceedings the children and the parents shall not be identified without the court's permission.

Lord Justice Peter Jackson:

Introduction

1. This appeal concerns the arrangements for the publication of a Family Division judgment. It was delivered in proceedings about T, who will soon be 16. He has a sister S, now 18, and two adult half-siblings, children of the mother who were adopted by the father. S and T's childhoods have been marred by conflict between their parents, whose marriage broke down when they were aged 7 and 4 respectively. Since then they have lived with their mother.

2. Between 2013 and 2022 there were lengthy child arrangements proceedings under the Children Act 1989 ('CA 1989') at every level of court, involving some 26 judges and over 70 hearings. Six substantial unpublished judgments were given, including three by Mrs Justice Parker. In their earlier stages the proceedings concerned all four children, but T is now the only minor child.

3. In July 2022, the matter came before Mrs Justice Arbuthnot ('the judge') on an appeal from a decision of a circuit judge, and it remained with her from that point. In December 2023 she conducted a two-day hearing about T's contact with his father. The mother wanted contact stopped, while the father wanted an order to last until T turns 18.

4. On 17 January 2024 the judge handed down her final judgment ('the welfare judgment'). She started by saying that she was writing it in the expectation that, at some point, it would be seen by S and T and that she was trying to give them an unbiased and objective account of what happened in court as they were growing up. In that spirit, she deftly drew together the threads of the children's history, summarising and quoting the findings of previous judges, making observations about the evidence supplied by the parents and the Cafcass officer, and describing the children's meeting with her in July 2023.

5. The judge made these findings:

   (1) The mother has been devious and dishonest throughout. She pretends to be a victim of domestic abuse, but she is not. She has manipulated the children from a young age into believing a false narrative that she was a victim of violent domestic abuse at the father's hands.

   (2) The father is a decent man, but he lacks insight and is at times insensitive. Nevertheless, his contact with his children is something to be encouraged for all sorts of reasons.

   (3) The mother's behaviour is characterised by vengeful pettiness. For many years, her aim has been to cut the father out of all four children's lives.

   (4) The father cannot contain his hurt and anger arising from his experiences of parental alienation. This has caused him to use inappropriate language about the mother in front of the children.

(5) Neither parent has changed. There has been no change in their relationship and never will be.

(6) The children have taken the mother's side in ignorance of what she is really like.

(7) T's wishes and feelings have been formed by the mother's manipulative behaviour since he was a young child. However, the reality is that he does not want contact with his father to continue.

6. The judge's order, in line with the advice of the Cafcass officer, was that there should be an order until T reaches the age of 16 and an order under s. 91(14) until he reaches the age of 18.

7. As to publication, the judge said this at the end of her judgment, which was handed down to the parties in un-anonymised form:

> "153. Bearing in mind the secrecy of the findings made by the courts about Ms B and Mr H, I will ask for submissions about why this judgment should not be published in an unanonymised form now or more likely when T is aged 18. It is arguable that the proceedings need to be fully exposed to the public gaze.
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> 154. As a general observation, this case is exceptional but not unique and is an example of how little the court, even the High Court, can do when a party, whether the mother or father is determined to cut the other out of their children's lives. I have no doubt this has been the mother's aim for many years and the court has been able to recognise her manipulation but has been powerless to ensure that the children have a balanced upbringing knowing both parents and both sides of the family. It is a source of frustration and regret."

8. The parties duly made short submissions about publication. They agreed that the welfare judgment should be published at that point in an anonymised form. The mother argued there should be no further publication. The father argued that the full un-anonymised judgment should be published when T turns 18 in the summer of 2026.

9. The Cafcass officer was asked to speak to T and S about the publication of the judgment. She reported that:

> "Both S and T have said they would not wish the judgement to be un-anonymised at any time as they feel strongly that the details of their family life should be kept private. Ideally they would not wish the judgement to be published at all."

10. The judge handed down a further judgment on 2 February 2024 ('the publication judgment'). She identified two issues that arose if there was to be any publication: whether the parents should be named, and whether the children should be named. Her decision was that there should be further publication in the summer of 2026 and that the parents should be given their full names; the children should not be named and should be referred to by random initials.

11. The two judgments were then published in anonymised form on the National Archive and on Bailii with these references:

- Re T (A Child) (s9(6) Children Act 1989 Orders: Exceptional Circumstances: Parental Alienation) [2024] EWHC 59 (Fam)
- Re T (A Child) (No.2) (Transparency: Publication of the Party's Names) [2024] EWHC 161 (Fam)

Unfortunately, in certain respects, neither judgment when first published was anonymised in a manner reflecting the judge's apparent intention.

12. Both parents appealed from the welfare judgment and the mother appealed from the publication judgment. The father challenged the ending of the order on T's 16th birthday, and the mother complained about a contact order being made at all. On 15 March 2024, I refused both applications arising from the welfare judgment, certifying the mother's application to be totally without merit. On the same date I granted her application for permission to appeal in relation to the publication order.

13. The parties have been very fortunate to have had the benefit of pro bono representation, arranged through Advocate, both at the hearing before the judge and at the appeal hearing. The mother is represented by Ms Maria Scotland and the father by Mr Michael Jones KC and Mr Liam Kelly. We are grateful to them all, and especially to Ms Scotland, who bore the burden of preparing the papers for the court.

The judge's decision about publication

14. The judge directed herself in law and made these preliminary remarks:

> "19. I approach this case with the relevant legislation and the authorities in mind. I also bear in mind the increased focus on transparency. There is the practice guidance on the publication of judgments issued by Sir James Munby, then President of the Family Division on 16th January 2014 and more recently, there are the observations made by Sir Andrew McFarlane, President, in a statement of his own conclusions from meetings conducted with a wide range of 'stakeholders' dated 28th October 2021: 'Confidence and Confidentiality: Transparency in the Family Courts'.
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> 20. The current President's statement recognises the competing interests of the public's need to know what is happening in the Family Courts which if satisfied should lead to increased trust and confidence in the family justice system versus the evidence from children and young people that they did not want their personal information and details of their own lives to be made public.
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> 21. In this case, the parties are agreed that the judgment should be published in an anonymised form when it is handed down, it is whether it should be published in an unanonymised form at a later time with or without naming the young people or young adults, as

> they will be then, who have been the subject of the proceedings, which I need to consider."

15. The judge then identified what she saw as the advantages and disadvantages of publication. In favour of publication, she had regard to these matters:

> "23. In favour of publication is the starting position that is the open-justice principle. There is significant and legitimate public interest in the publication of any judgment, this includes when there is identification of the parties. It is generally accepted that identification of parties, the use of their names, leads to an increased public interest compared to a publication when the parties are not identified by name.
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> 24. There is a real public interest in a judgment such as this one being brought to the public's attention when it shows the workings of the Family Court spread over a number of years. It shows the limitations of the powers of the courts when faced with an intransigent approach. The judgment shows how family courts approach hostile family relationships, while noting the importance of considering each case on its facts.
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> 25. This is a case in which on and off for ten years, the family has been in proceedings, as the father has attempted to maintain contact with his children. I am told there have been 70 hearings between 2013 and 2024. Three Judges before me have written six judgments considering the allegations made by the parents. None of these judgments have been published in an unanonymised form. The proceedings have been kept secret from the public to protect the identity of the children.
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> 26. Publication without anonymisation would help the public understand how much of the court's valuable time these cases take. The public deserves to have an understanding of what has caused the length of the proceedings, which is primarily the dogmatic nature of the mother's attitude towards the father. Needlessly protracted litigation has potentially damaging consequences not only for parents, but on children and their best interests. If publication were to ensure that one family does not endure such potentially damaging consequences, then that is a benefit to that family and the family justice system.
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> 27. The events, circumstances, and facts of this case, whilst not unique, raise important issues which are likely to be of interest to the public and for which there is little published authority, particularly the exercise of the Court's discretion with respect to section 9(6) Children Act 1989 where the behaviour of one parent has marginalised or removed a relationship between the children and the other parent.

> 28. I bear in mind too that the father should have a right to speak to anyone he wishes to about the proceedings in the Family Court. This would be interfered with significantly were I to decide that the only publication of the judgment should be in an anonymised form. Usually the best interests of the child justifies the interference but in this case this may not be so.
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> 29. Looking carefully at the proceedings, the father has been misrepresented by the mother and it seems to me he has a right to put the record straight. The mother is trying to control the narrative with the children of the family. Currently the father can say nothing to set out what the courts have found or not found.
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> 30. A number of courts have found that the mother has influenced the children so that they do not wish to have contact with their father. The mother does not accept the judgments of the courts and I consider there is little, if any chance she will have told the children what the judgments say. If there is publication, the children will be able to read for themselves a summary of what the earlier judgments have said, my decisions and reasons and draw their own conclusions. They will be able to access a balanced account.
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> 31. It is in the public interest that the parties' children are able to reach informed choices as to their contact with their parents, as they become adults. Publication with the naming of the parties will correct what I have little doubt is a false narrative given to the children by their mother."

16. Against publication, the judge had regard to these factors:

> "33. T and S through… the Cafcass officer have said that they do not want their parents or themselves to be named and they have rights which deserve to be protected. They feel that their family lives should be kept private. It is right that I give considerable weight to their views. I accept that publication will have an impact on the young people, T and S, particularly if they are named as well as their parents. It is difficult to predict the impact it will have but they are the innocent victims of the proceedings. It is their parents who have taken their dispute to the courts and not the children.
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> 34. The effect on the children will be increased depending on what their mother has told them about the courts' findings in the past. If she has told them the truth in the past then they are less likely to be upset by the publication of the judgment although I accept that like any young person they would not like to have details of their family lives in the public domain.
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> 35. I accept too that if I order publication of the judgment when T is aged 18, this may cause him worry in the next two and a half years.

> S is an adult but she too may be worried about the effects on her of publication.
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> 36. I take into account that although the father supports publication the mother does not. She too has Article 8 rights that should be respected. She does not want her behaviour exposed to the public gaze. She would prefer that the judgment remain fully anonymised as she would be protected by that decision. I give weight to and respect the views of the mother who says that neither she nor the young people should be identified in any publication.
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> 37. Another factor against publication is that unlike in the case of *Griffiths v Tickle & Ors* the parties involved in these proceedings do not have public profiles. On the other hand high profile cases are a very small minority of cases that come to court and the public should perhaps understand how ordinary families are treated by the family courts. It seems to me that it is not only families with public profiles where there should be publication."

17. The judge then came to her conclusion:

> "38. I take into account the matters set out above, particularly T and S's understandable wishes for there not to be a judgment published where they or their parents are named.
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> 39. On balance, first, if neither T nor S are named and their parents are not named until T is aged 18, this will protect the young people during T's childhood. I find that T's (and S's) Article 8 rights trump the public interest in reporting the case now in an unanonymised form.
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> 40. The next issue is whether the judgment should be published in full with no anonymisation when T, the youngest child, is aged 18 in 2026. If there is no anonymisation at all any search for T or S from August 2026 is likely to bring up the judgment. That would expose T and S to the public gaze when they have not wished for this to happen (or to be involved in the proceedings in the first place). In my view it would be wrong to publish the judgment in August 2026 naming the young people. The balance comes down against naming T and S.
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> 41. The final issue is whether T and S have some protection if the judgment is published naming their parents but not them. They will be identified by random initials.
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> 42. I have set out the factors for and against above. I note as well that internet research is conducted by way of searches using key words. If T is not named a key word search for T will not bring up the judgment. This gives protection to his privacy. The same applies to S. If neither of them are named in the judgment but referred to by

an initial, I find that it is less likely that in five years, a search, for example, by a prospective employer, will bring up the judgment.

43. Having said that, if the judgment is published naming the father and the mother, an easy jigsaw identification could take place. An internet search using their family names will bring up the judgment and then it will be obvious to anyone who knows the family that the proceedings have concerned T and S. In terms of neighbours, family, friends and work colleagues, if they read the judgment they will know that it is referring to those two young people and indeed their older siblings.

44. I am conscious of the young people's right to respect for their private lives. Nevertheless, that is a qualified right. The more likely risk of identification is by friends and family members although some are likely to know about the court proceedings (if not the findings made by the courts). The headmaster of the young people's school was certainly aware of the poor relationship between the mother and the father. The risk of wider identification, for example, by future employers and future social contacts, is far more remote and is less likely where T and S are not named.

45. Overall, in balancing T, S and their mother's rights to respect for their private lives, their wishes and feelings and their best interests, with the public interest in publishing a version of the judgment with the parents' named, I conclude that the public interest in publication is strong and outweighs the Article 8 rights of the mother and the children.

46. This is primarily because publication is consistent with their best interests, as T and S will gain full insight into the case, with which to make informed choices in the future. The impact on their right to respect for their private lives is relatively limited. In contrast, the public interest in publication identifying the parents is significant, for the reasons I have set out.

47. As a consequence, I will order the publication of the judgment naming the father and the mother but T and S's names will be removed. They will be identified by random initials."

18. The judge accordingly ordered that:

"Upon the subject child's eighteenth birthday on [date in Summer] 2026, the judgement dated 17 January 2024 published with the neutral citation [2024] EWHC 59 (Fam) shall be published in an unanonymised form naming the parents as [full name], the mother, and [full name], the father, but not naming either the subject child or his sibling, who was formerly subject to these proceedings prior to her 18th birthday, and referring to both by random initials."

The appeal

19. The mother's grounds of appeal allege a number of errors in the judge's approach that can, with Ms Scotland's permission, be distilled in this way:

    1) Publication without anonymisation is unnecessary to help the public to understand how this case and others of its kind involving 'ordinary' people are treated by the family courts: the publication of the anonymised welfare judgement sufficiently achieves that.

    2) The anonymised welfare judgment explains the court's approach to the application of s. 9(6) CA 1989.

    3) It was wrong to find that publication was consistent with the children's best interests. Their informed choices, now and as adults, will not be enhanced by placing their private lives further into the public domain.

    4) The children's wishes and feelings should have been given more respect.

    5) Having accepted that there would be an impact on S and T of future publication of the parent's names, both at the time of publication and in the period beforehand, the judge was wrong to give greater weight to the public interest in naming the parents.

20. When granting permission to appeal, I noted the unusual nature of the publication order, in that it has effect at a distant future date. That made it arguable that the impact upon the children of impending publication and of publication at that point in time could not reliably be known or evaluated.

21. In support of the appeal, Ms Scotland argues that the starting point should be the anonymisation of the parties and this case did not justify the removal of their privacy. The case is different to *Griffiths v Tickle (Rights of Women and another intervening)* [2021] EWCA Civ 1882, [2021] All ER (D) 85 (Dec) and *Re Al M (Publication)* [2020] EWHC 122 (Fam), [2020] 2 FLR 463. There, the parties were public figures and the public had been misled. In the latter case, naming the father was integral to protecting the mother and the children. Here, neither parent is in public life or has spoken in public and there is no reason for the public to know their identity. Further, the judge accepted that there is a real and unquantifiable risk that the children will be harmed by publication, particularly when it is not known whether the media will report the case.

22. For the father, Mr Jones and Mr Kelly argue that the judge considered the relevant legal principles and sufficiently balanced up the competing factors under Articles 8 and 10 for her decision to be upheld. They concede that a number of the benefits of publication can be achieved without naming the parties (in fairness to the judge, some of these benefits had been urged by the father), but the judgment is supportable when read as a whole. Mr Jones initially submitted that a critical point, referred to at [30] and [31], is that publication with the parents being named will allow the children to access the judgment for themselves, free from interference by their mother, but after exchanges with the court he conceded that there are flaws in this argument. With more justification he maintained that the father's own Article 10 rights carry

considerable weight on these grave facts. When T turns 18, the father intends to speak publicly, if he can lawfully do so, about his experience of severe parental alienation, so identification of the parents at some stage appears inevitable. As to the impending worry that the children might experience, there was no reliable evidence that knowledge of future publication would cause them significant emotional harm. The Cafcass report indicated that T is thriving despite the ongoing proceedings, which suggests that he would be resilient in the face of publication. Whilst his wishes and feelings require careful consideration, they do not necessarily correlate with his best interests and cannot be determinative, particularly as his mother's influence has been so corrosive. Moreover, the judge expressly considered the risk of jigsaw identification and was careful to ensure that any such risk would not take place during T's minority.

23. Each party made an additional legal submission about the surrounding legislation. Ms Scotland submitted that s.97 CA 1989 prohibits the court from authorising anything likely to identify a child unless it is satisfied that the welfare of the child requires it, see s.97(4). In light of T's wishes and feelings, it cannot be said that publication was required on welfare grounds. In my view this argument is doubtful. Section 97(2), which prevents the publication of any material intended or likely to identify a child as being involved in proceedings, or the child's address or school, has effect only until the end of the proceedings: *Clayton v Clayton* [2006] EWCA Civ 878. It cannot be interpreted as preventing the identification of a child in an appropriate case after the proceedings have ended. For his part, Mr Jones submitted that, even if the judge had decided not to name the parents, s.12 Administration of Justice Act 1960 would not seem to prevent the father from identifying himself in 2026 as the parent described in the 2024 welfare judgment. However, as Mr Jones accepted in argument, the effect of the 2014 Presidential Guidance is that in these circumstances the judgment is deemed to be published on the condition that the anonymity of the children and family members must be preserved. The position therefore does not depend on the interpretation of s.12 alone, and in any case I strongly doubt that it is open to a party to circumvent confidentiality in this way. However, we did not hear full argument on this point, and I say no more about it.

24. When giving judgment, the judge said that she would write to the children. We were told that she had done so, and not in anodyne terms. The Cafcass officer had also spoken to the children about the outcome, and they told her they did not want to read the welfare judgment.

The legal context

25. A decision about whether and in what form a judgment should be published is pre-eminently a matter for its author, acting within a framework of law and guidance. As a matter of law, the decision calls for the familiar balancing of the competing advantages of privacy (Article 8) and freedom of expression (Article 10) as applied to the individual circumstances. Having tried the case, the judge will usually be best placed to identify the relevant factors and to determine where the balance falls. An appeal will only succeed if the judge has erred in principle or reached a conclusion that is outside the range of conclusions which a judge could reasonably reach: *PNM v Times Newspapers Ltd* [2014] EWCA Civ 1132, [2015] 1 Cr App Rep 1 at [46].

26. The legal and procedural framework in relation to the publication of a judgment is set out in *Griffiths v Tickle* at [27-55] and it is unnecessary to rehearse it now. In *Re S (A Child)(Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 AC 593, [2005] 1 FLR 591, the House of Lords enjoined an intense focus on the comparative importance of the competing rights. In *A local authority v W* [2005] EWHC 1564 (Fam), [2014] EMLR 7, [2006] 1 FLR 1, Sir Mark Potter P observed that the analysis is not a mechanical exercise to be decided upon the basis of rival generalities. In *PJS v News Group Newspapers Ltd* [2016] UKSC 26, the Supreme Court held that the court must carefully consider the nature and extent of the likely harm to the children's interests which would result in the short, medium and longer terms from the publication of information about one of their parents.

27. Guidance has been issued in the past decade by Presidents of the Family Division with the aim of identifying a pathway to publication that will apply in most cases. The guidance acknowledges the importance of transparency as to how proceedings are conducted and decisions are made in the fundamentally important field of family life, while at the same time reflecting the essentially private nature of the subject matter by upholding the anonymity of those affected. Like any guidance it can be departed from in individual cases.

28. The Practice Guidance *Transparency in the Family Courts: Publication of Judgments,* issued in January 2014 by Sir James Munby P, provides that where a judgment is to be published after a significant private hearing the judge will normally give permission for publication on condition that the published version protects the anonymity of the children and members of their family (paragraphs 9 and 20). In every case the terms on which publication is permitted are a matter for the judge and will be set out in a rubric at the start of the judgment (paragraph 10). The normal terms described in paragraph 9 may be inappropriate, for example, where parents who have been exonerated in care proceedings wish to discuss their experiences in public, identifying themselves and making use of the judgment; equally, where findings have been made against a person and the judge concludes that it is in the public interest for that person to be identified in any published version of the judgment (paragraph 11).

29. Further steps were taken in October 2021 by Sir Andrew McFarlane P with the publication of his review: *Confidence and Confidentiality: Transparency in the Family Courts*, which in turn led in January 2023 to guidance entitled *The Transparency Reporting Pilot*. This has led to the current expansion of the Transparency Order pilot, with its standard order allowing the reporting of family proceedings while maintaining the anonymity of children and family members.

30. Since the 2014 Guidance, several thousand judgments have been published by judges of the High Court, sitting in the Family Division and in the Family Court. In cases about children, almost all of them are anonymised, as anticipated by the guidance and its successors. Where a judgment naming parties has exceptionally been published (as in *Al M* and *Griffiths*) the particular and unusual features of the case have been noted by the judges doing so.

Analysis and conclusion

31. This was a case about an ordinary family that became engulfed in extraordinary, though sadly familiar, litigation. It was an obvious case for the welfare judgment to

be published in anonymised form. The issue of identifying the parents, and thereby the children as adults, was a different matter. There are two noteworthy features of the judge's order. The first, which she recognised, is that it is unusual to name parties. The second is that an order for publication at such a distant future date is very unusual, and the ramifications of this needed to be addressed.

32. The judge regarded the following matters as favouring the naming of the parents:

[23] The principle of open justice

[19] The increased focus on transparency

[23] Increased public interest where names are given

[24, 26] Public interest in the court's limitations in intransigent and lengthy cases

[25] Previous secrecy following non-publication of earlier judgments

[27] Public interest in the application of s. 9(6) CA 1989

[28, 29] The father's right to speak of his experiences and correct the mother's misinformation

[30, 31] The benefit to the children in being able to access a balanced account and make informed choices as adults.

33. Some of these factors support the judge's decision. The general principle of open justice is always relevant, but she rightly did not treat it as decisive. Minimising the father's ability to speak openly about his experiences was undoubtedly an important matter, but the judge was right at [28] to sound a note of uncertainty about whether this warranted a departure from the norm that the interests of the child will justify interference with freedom of expression ("in this case this may not be so"). The father had not said how he proposes to express himself: compare *O (a child) v Rhodes* [2015] UKSC 32, [2016] AC 219, which concerned the publication of a book that had already been written.

34. On examination, the other factors provided little support for naming the parents. Transparency in family proceedings allows the public to have a clear understanding of decisions made in its name. It speaks for judgments to be published wherever possible, and there was no apparent good reason for why the earlier High Court judgments were not published in anonymised form. But an increased focus on transparency does not change the way in which the balancing exercise must be performed in individual cases. Further, while naming families may increase public interest ("What's in a name? 'A lot', the press would answer." per Lord Rodger in *In re Guardian News and Media Ltd* [2010] UKSC 1), that will be of most significance in a case where media interest is likely to be a factor, which is not so here. The judge was right at [37] to observe that "it is not only families with public profiles where there should be publication", but wrong to elide publication with naming the parties. As to the ability of the public to understand the difficulties faced by the family courts in alienation cases, or the workings of s.9(6) CA 1989, Ms Scotland is right to submit

and Mr Jones to concede that naming the parents could not add anything to what has already been achieved by the publication of the welfare judgment. Critically, the children's interests were a primary factor in the balancing exercise, and in my view no sound welfare reason for exposing them to publicity was given. Although the judge placed emphasis on this aspect of the matter at [46], there is no reason to believe that publication with names would enable the children to have a more balanced view as adults. The children know where to find the judgment if they want to read it. Exposing their childhoods to the random attentions of friends or potential employers cannot be said to serve that purpose, and might inadvertently cause them real harm.

35. The factors regarded by the judge as speaking against naming the parents were these:

[33]	T and S's clearly expressed views
[33, 34]	The uncertain impact on them of publication
[35]	The worry caused to T and S in the meantime
[36]	The mother's opposition
[37]	The fact that the family has no public profile

36. The judge rightly gave substantial weight to the children's views and apprehensions as innocent victims. The father himself recognised that it would be wrong for the family to be named while they were under age. Although the mother's individual privacy could scarcely count for much, the judge paid it some respect. I have already commented on the significance of the family not having a public profile.

37. However, there were two features, realistically identified by the judge, that should have given her particular pause before making an order with such delayed effect: her acceptance that jigsaw identification of T and S would be easy once the parents were named [43], and her assessment that publication would have an impact on T and S that was difficult to predict [33]. In my view, these features show that the necessary careful consideration of the extent of the likely short, medium and long term harm to their interests was simply not possible. The court was not in a position to predict the effect of its order upon them. As adults, their welfare would no longer be a primary consideration, but their Article 8 rights would remain. The judgment naming their parents would be published when T would probably be about to go to university and S would be in the middle of her degree course. However resilient they may now appear, they have surely been affected by their experience of incessant parental conflict. The judgment might attract little or no attention, in which case publication will have achieved nothing except worry for the children, but if it did attract attention, the potential impact on them could not be known so far in advance and they would not then be in a position to assert their own Article 8 rights.

38. In general, the arrangements for publishing a judgment in family proceedings are best dealt with in the immediate aftermath of a trial, as here, when matters will be fresh in the court's mind. There will be situations where a judgment cannot be published immediately, for example because of an impending criminal trial. In such cases, there will usually be no difficulty in the court deciding that the judgment will be published in anonymised form when the criminal proceedings are over. The present case does

not fall into that category, because the intention was to publish a judgment naming the parties and because the publication date was to be 2½ years away.

39. Taking all these matters into account, I have concluded that this unusual order cannot be sustained. Several of the factors relied upon provided no support for it, and the court was not in a position to predict what T and S's situation will be in 2026. In those circumstances a fair balance could not be struck between the rights and interests that are and will be engaged. I would allow the appeal and set aside the publication order.

40. It falls on this court to substitute its own decision. I would replace the existing order with an order giving liberty to the father to make a formal application to the judge after T's 18th birthday if he seeks any further publication of the judgment. This recognises his Article 10 rights, and it will be a matter for him to decide whether he chooses to assert them in the face of likely opposition from the children. Whatever the position, I would stress that liberty to apply is granted in the unusual circumstances of this case, and is not an encouragement to defer publication decisions in other cases.

Lord Justice Newey:

41. I agree.

Lady Justice King:

42. I also agree.