



Neutral Citation Number: [2025] EWCA Civ 1563

Case No: CA-2025-001859

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT
Ms Justice Henke
SD23P00094

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/12/2025

Before :

LADY JUSTICE KING
and
LORD JUSTICE WARBY

Between :

(1) The Father
(2) The Mother
(3) E, a child (by his Children's Guardian)

Respondents

-and-

Aimee Dover

Applicant/
Interested Party

Paul Hepher (instructed by direct access) for the **Applicant**
June Venters KC and Rachel Temple (instructed by **Freemans Solicitors**) for the **1st**
Respondent
Elisabeth Traugott and Joanne Gillan (instructed by **Jung & Co Solicitors**) for the **2nd**
Respondent
Janet Bazley KC and Melissa Elsworth (instructed by **Wannops Solicitors**) for the **3rd**
Respondent

Hearing date : 18 November 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 2 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LADY JUSTICE KING and LORD JUSTICE WARBY :

Introduction

1. This is the judgment of the court on applications for permission to challenge decisions made by Ms Justice Henke in these private law proceedings under the Children Act 1989. The proceedings relate to a child now aged 10, to whom we shall refer as “E”. The applications are concerned with a fact-finding judgment (the Judgment). The applicant was a witness in the Children Act proceedings.
2. The applicant makes an in-time application for permission to appeal against the judge’s decision to publish the Judgment without anonymising the applicant. She also seeks an extension of time in which to apply for permission to appeal against some of the findings in the Judgment itself, and permission to amend the appellant’s notice to the extent necessary for that purpose. The grounds of challenge, shortly stated, are that the Judgment contains findings about the applicant which were unfairly made and wrong, and that their publication would violate her Convention rights.
3. The applications were called in by Lady Justice King for an oral hearing at which we heard argument from Counsel for the applicant, for E’s mother, E’s father, and E himself (through his Guardian). We were also assisted as to the procedural history by Counsel for the relevant Local Authority. We reserved judgment and made a reporting restriction order prohibiting the identification of the applicant until after judgment. We now give our decision and reasons.
4. Our decision is that permission to appeal is refused, and that the other applications are dismissed. That being so we can discharge the reporting restriction order, and we will refer to the applicant by name. She is Aimee Dover (Ms Dover).

The background

5. The Children Act proceedings were initiated by E’s father, the respondents being E’s mother and E himself by his Guardian. Ms Dover is a psychotherapist. She was a witness for the mother and gave evidence at the fact-finding hearing. In the event she was called by the judge and cross-examined on behalf of the parties.
6. The judgment contains adverse findings of fact about Ms Dover. For present purposes it is unnecessary to set them out. It is enough to say this. The judgment names her. It finds that in February 2022 she began working with D, a sibling of E, in a therapeutic capacity. It finds that she continued working with D on a regular and frequent basis until December 2023 when D killed herself. The judgment contains a detailed account of Ms Dover’s role and sets out several significant criticisms of her professional conduct. The principal criticisms are set out in paragraphs [623]-[630].
7. On 16 April 2025, the Judgment was circulated to the parties in draft. At [631] the judge recorded that she had been asked to name Ms Dover in any judgment that was published and would “hear submissions on that issue at a case management hearing to consider the judgment and any directions or orders that may flow from it.” Paragraphs [766]-[769] laid down the preparatory steps to be taken for the purposes of the CMC. A hearing was fixed for 2 May 2025. Ms Dover was given an opportunity to attend to

make submissions and for that purpose the judge directed that she be provided with the parts of the Judgment that we have mentioned. That was done on 24 April 2025.

8. In the event, what happened on 2 May 2025 was that the Judgment was handed down in private in the absence of Ms Dover and argument about its publication was adjourned to a hearing fixed for 10 June 2025. On 1 May 2025, Ms Dover had notified the judge that it was her “wish to have her name redacted from the judgment should it be published, for both personal and professional reasons” but that she could not attend and, although she had identified solicitors to represent her, they had not had enough time to make representations on her behalf. On 15 May 2025, Ms Dover was provided with the whole of the Judgment. She instructed solicitors and Counsel who submitted a skeleton argument. The judge also received written representations from the parties. At the hearing on 10 June 2025 the judge heard oral argument.
9. By that time, the issues had narrowed down to two, both relating to Ms Dover. The first issue was whether the Judgment should be disclosed to her regulatory body and current employers. The second issue was whether she should be anonymised in the published version of the Judgment. On the first issue it was submitted by Counsel for the applicant that the decision on disclosure of the Judgment to the regulator and employer was a matter for the court’s discretion and would not be opposed. On the second issue it was submitted that the facts justified anonymisation. Three main reasons were given.
 - (1) First, Ms Dover had been operating as a private therapist which meant that she did not have the level of public accountability of those operating in a state-based professional role.
 - (2) Secondly, there was a risk that naming her would lead to the identification of the children or other family members.
 - (3) Thirdly, the court was urged to consider her rights under Article 8. It was argued that the findings about the applicant were central to the judgment. Publication of the judgment would inevitably give the applicant a permanent online profile connecting her with this case. That would be personally devastating and “likely to undermine her personal integrity” as well as having an impact on her career. It was argued that identification would be disproportionate to the requirements of open justice and transparency. Those aims could be met, and the court’s reasoning could be understood, without identification.
10. On 16 July 2025, the judge handed down her reserved judgment on the disclosure and publication issues. She concluded that the Judgment should be passed to the regulatory body and employers. On the question of anonymity the judge rejected each of the three arguments we have outlined and concluded that the published version should name Ms Dover. No formal order reflecting those conclusions was before us at the hearing. It seems that no order has yet been drawn up. That, however, is not an obstacle to an appeal against the judge’s decision, which took effect and was appealable from the time it was made.
11. On 29 July 2025, Ms Dover filed an appellant’s notice. This identified the decision under challenge as that of 16 July 2025. For that purpose the notice was in time. But the appellant’s notice also said, “I wish to appeal against the findings made against me and I wish to appeal against the decision to publish my name in the judgment”. The

appellant's notice included an application for an extension of time in which to challenge the Judgment. A witness statement was filed that sought to explain and justify the delay in that respect. At the hearing before us it was submitted by Mr Hepher that in substance, the appellant's notice and accompanying statement sought to challenge the Judgment and the decision to publish it without anonymising Ms Dover. We were invited to grant permission to amend the notice as necessary to give effect to that underlying intention. Mr Hepher confirmed that there is no challenge to the decision to disclose the Judgment to Ms Dover's regulator and employers.

The grounds of appeal

12. Four grounds of appeal are relied on.

- (1) Ground 1 is that the Judge erred in law by "making serious and professionally damaging findings against [Ms Dover] without providing prior notice that such findings were sought; granting [her] the opportunity to intervene and defend herself and failed to ensure equality of arms." The argument has two main features. The first is that on 24 July 2024 the judge gave directions, that if the father sought findings against Ms Dover he should notify all parties and set out his allegations in writing by 26 July 2024, yet he never did so. The applicant therefore reasonably believed that no findings were being sought against her and took none of the protective steps the judge had contemplated. Secondly, Mr Hepher points to a submission made in the written closing submissions on behalf of the Guardian, that the judge should consider making findings against Ms Dover, and that for that purpose Ms Dover should be given notice forthwith. Yet that was not done either. In support of this ground of appeal the applicant relies on Article 6 of the Convention and the decision of this court in *Re W (A Child)* [2016] EWCA Civ 1140, [2017] 1 WLR 2415. We will label this the Fairness Ground.
- (2) Ground 2 complains that the judge failed properly to distinguish the applicant's role as a witness of fact from that of a party or expert; made findings that "fell outside the proper parameters of the issues in dispute in the family case"; and that she "imposed a standard of assessment akin to professional disciplinary scrutiny without any basis and evidence". Some of this is further criticism of the fairness of the process. But its focus is on complaints that the judge conducted a form of disciplinary or fitness to practice enquiry when that was irrelevant and measured the applicant's conduct against an unjustifiably high standard. We will call this the Merits Challenge.
- (3) Ground 3 is that the judge "erred in principle in determining that the public interest in naming the appellant outweighed her Article 8 rights to respect for private and family life". In support of this ground the applicant relies on the decision of the ECtHR in *SW v United Kingdom* (Application no 87/18) Judgment dated 22 September 2021. The essence of her argument is that the publication of profoundly damaging findings about her which were arrived at by an unfair process would be an unjustifiable interference with her Article 8 rights, and that this fundamental point was never factored into the balancing exercise undertaken by the judge. We will call this the Article 8 Ground.
- (4) Ground 4 is that including the applicant's name in the published judgment is contrary to the public interest because it risks a chilling effect on the willingness of

therapists and other mental health professionals to engage with family court proceedings. We will label this the Chilling Ground.

13. The father and the Guardian resisted the applications. The mother's position was neutral. We received written representations from all three as well as from the relevant Local Authority, supplemented by the oral submissions to which we have referred. We are grateful for all the written and oral arguments with which we have been provided.

Assessment

14. We will begin with the Fairness and Article 8 Grounds, which are conveniently considered together. Our first observation is that we think reliance on Article 6 of the Convention is misplaced. Article 6 guarantees a fair trial where the court is determining a party's civil rights and obligations. The Judgment in this case did not determine any rights or obligations of Ms Dover. We do however accept this much, for present purposes at least. The cases show that the adverse portrayal of an individual's conduct in an authoritative judicial ruling may cause serious harm to that individual's reputation amounting to an interference with the right to respect for private life which is guaranteed by Article 8 of the Convention; and if those findings have been arrived at by an unfair process the interference may not be justified. The case of *SW* on which the applicant relies is not the first to make that point. It followed another well-known Strasbourg decision on this point, namely *Del Campo v Spain* (2019) 68 EHRR 27. *SW* related to the domestic decision in *Re W*, to which we have already referred.
15. It follows that, as section 6 of the Human Rights Act 1998 prohibits the court from acting incompatibly with the Convention rights, a person who claims to be the subject of unfair findings may object to the publication of those findings; if a timely objection is raised, then the court must consider and reach conclusions upon it; and if the court finds that the complaint of unfairness is well-founded it may go on to conclude that the findings should be quashed, or revisited, or that they should not be published, or some combination of these. That is what happened in *Re W*.
16. These issues could have been raised for consideration by the judge in this case. But Ms Dover never raised them. She never challenged the findings in the Judgment, nor did she suggest that there had been any unfairness.
17. There were opportunities to do so. Ms Dover took part in the trial as a witness and was challenged about her conduct over two days of cross-examination. On 16 April 2025 she was provided with the relevant parts of the judge's draft judgment. She had an opportunity to assess these and to make representations about their substance and their fairness. She made some brief representations when she wrote to the court on 1 May 2025. But these did not include any complaint of unfairness or any criticism of the substance of the judge's findings. From 15 May 2025, Ms Dover was in possession of the full Judgment. It seems likely that she had the benefit of legal advice and representation at that time. She certainly had that benefit before 3 June 2025 at the latest. Ms Dover had a fair opportunity to instruct her lawyers, and to complain through them, that the judge's findings against her were flawed and had been arrived at by an unfair process. No such steps were taken. Rather the contrary. The written submissions to the judge contained a section entitled "Response to Findings". This recorded that Ms Dover had read the court's judgment. It sought to highlight some points, but these were expressly characterised as "not retrospective mitigation in light of the court's criticism

but merely contextualisation”. As Ms Bazley KC submitted, this was an implicit acceptance of the findings.

18. So, the points which the applicant now seeks to raise by way of appeal are ones that could have been but were not raised below. That, in our view is a matter of significance, for two reasons.
19. The first reason is that in general this court’s function is to review decisions made by the court below. The first hurdle for the applicant on the proposed appeal would therefore be to persuade the court that she should be allowed to raise new points on appeal. The principles to be applied are stated in *Notting Hill Finance v Sheikh* [2019] EWCA Civ 1337, [2019] 4 WLR 146. In summary, the court has a discretion to allow a new point to be taken on appeal; it may do so if the point is one of law and it would not be unfair to the respondent to allow it to be taken; but the court will generally not allow a new point to be taken if that would call for a new factual investigation or would otherwise be unfair to the respondent. The points now raised are not pure questions of law. They do rely on propositions of law, but the central argument calls for a detailed investigation of the procedures adopted below, and an evaluation of their impact on the substantive fairness of the findings and the proposed publication of the judgment. None of that was raised for decision below. The debate at first instance covered entirely different territory. In our judgment, it would plainly be unfair to the respondents to allow Ms Dover to raise these matters for the first time in this court.
20. Secondly, Ms Dover’s conduct goes to the merits of her grounds of appeal. Her argument now is that she was the victim of egregious procedural unfairness at the trial and in the Judgment. If there was anything in that argument one would naturally expect her to have raised it with the judge via her legal team in June 2025, if not sooner. She did not. Instead, she implicitly accepted the findings. This calls for an explanation. We have considered in detail Ms Dover’s witness statement in support of the present applications. We can identify no adequate explanation of this point.
21. In our judgment it is appropriate to give this some weight. It is by no means decisive, but it does make a material contribution to our conclusion that an appeal on these grounds would have no real prospect of success. It may well be that the level of criticism contained in the Judgment is sufficient to meet the relevant Article 8 threshold of seriousness. We are prepared to assume that is so. But after hearing argument our clear conclusion is that the Fairness ground lacks substance.
22. It is true that in July 2024 the judge gave the directions to which we have referred and that the father did not then set out any criticisms of the applicant. But the father and the Guardian have convincingly argued that this is not a point of any weight in all the circumstances of this case. At the time those directions were given the father had suspicions but no evidential basis for advancing any specific criticisms of Ms Dover. The findings in the Judgment arose from her oral and written evidence, and documents which she filed, served or contributed to at the fact-finding hearing. All the points on which the judge found against Ms Dover were put to her in the course of her evidence. She had a fair opportunity to answer them then. She took it by way of her answers and by providing supplemental documentary disclosure. We see no merit in the complaint made by Ms Dover that she was prejudiced by being taken to documents in the court bundle with which she was unfamiliar. The issues on which the judge made findings fell within a relatively narrow compass. It is clear to us that Ms Dover was closely

acquainted with all the key documents of relevance long before the trial. To the extent that she was cross-examined about other documents we have been given no solid reason to think that she was treated unfairly.

23. The decision in *Re W* does not support the present application. That was an exceptional case which is clearly distinguishable. The core point raised by the appellant in *Re W* was identified by McFarlane P at [8]: “The individual and collective adverse findings of the type that the judge went on to make in his judgment *did not feature at all in the presentation of the case of any of the parties* and were not raised in any manner by the judge during the hearing ... these highly adverse findings ‘came out of the blue’ for the first time in the judgment.” The emphasis is ours. The critical flaw identified by the court was that the procedure adopted did not meet the “essential” requirement of procedural fairness namely “giving a witness who is to be the subject of a level of criticism that is sufficient to trigger protection under Art 8 ... proper notice of the case against them”: see [88]. Indeed, the procedure adopted fell short by “a very wide margin”: [98].
24. In that same paragraph the President was at pains to emphasise that the occasions on which such circumstances might occur would be rare, and that “This judgment should be seen by the profession and the family judiciary to be a particular bespoke response to a highly unusual combination” of factors. One of those factors was that the findings made “*have played no part in the case presented by any party during the proceedings*”. Again, the emphasis is ours. Having now subjected the material before us to careful scrutiny we are satisfied that the present case comes nowhere near that standard. Accordingly, we accept the submission of Ms Bazley KC, that the approach adopted in the closing submissions for the Guardian was unnecessarily cautious.
25. By the Chilling Ground Ms Dover seeks anonymity by reference to the (alleged) likely impact on third parties and the public interest if she is named. This is another new point. In our judgment it could and should have been raised below, if it was to be raised at all. It is an argument that turns on factual propositions about how other people would behave. It would be unfair to the respondents to let Ms Dover raise it for the first time on appeal. In any event, we do not consider the ground to have arguable merit. This argument involves what Munby P in *Re Ward (A Child)* [2010] EWHC 16 (Fam), [2010] 1 FLR 1497 at [181] called “a class claim” of a “bold and sweeping” kind, requiring “compelling evidence and arguments”. That observation has recently been endorsed by the Supreme Court in *Abbasi v Newcastle upon Tyne NHS Trust* [2025] UKSC 15, [2025] 2 WLR 815 at [159]. The applicant has provided no supporting evidence at all, and her arguments on this point fall a long way short of being compelling or convincing.
26. We turn to the Merits Challenge, taking as our starting point the conclusion we have already reached, that there is no legitimate complaint of unfairness. On that footing this ground of appeal fails for multiple reasons. First, it is a proposed appeal against findings of fact brought by a witness. We doubt that the court has jurisdiction to entertain such an appeal. *Re W* does not support the view that such jurisdiction exists absent adverse findings having been made as a result of a “a wholly unfair process and where,.....the consequences for those who are criticised in those findings are both real and significant”: [119]. Secondly, assuming there is jurisdiction, this is not an appeal against any decision or order made by the judge on 16 July 2025. The legitimacy of the Judgment was not in issue at the hearing that led to that judgment. The entire focus of

the argument on 10 June 2025 was on disclosure of the findings and whether it was appropriate to publish Ms Dover's name. As we have noted, her present stance is contrary to the position adopted before the judge, which was predicated on the judge's findings being legitimate.

27. Thirdly, as Mr Hephher recognised in his submissions to us, this is in substance and reality a challenge to findings contained in a judgment that was formally handed down on 2 May 2025. As the appellant's notice was not filed until 29 July 2025, the challenge is well out of time. This court's approach to extending time for appealing is well-established. We follow the same rigorous principles that would apply if the applicant was seeking relief from sanctions pursuant to CPR 3.9: *R (Hysaj) v SSHD* [2014] EWCA Civ 1633, [2015] 1 WLR 2472 [37]. They are known as the '*Denton*' principles (*Denton v T H White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926). The same principles apply in a case where the applicant is acting in person: *Lakatamia v SU* [2019] EWCA Civ 1626. Here, the delay is one of at least 8 weeks, which is both serious and significant. The reasons offered for the delay are thin, and unpersuasive. Time for appealing did not expire until 5 June 2025. As we have already noted, Ms Dover had legal advice before that. We can see no basis on which it would be in the interests of justice to extend time.
28. Further, and in any event, we see no arguable merit in this challenge. First, this is another change of position. The argument in this court, that Ms Dover's professional conduct was an irrelevant matter, outside the scope of the Children Act proceedings, is the direct opposite of the submission her Counsel made to the judge, that the findings about the applicant were at the heart of the Judgment. Secondly, the original submission was plainly the better one. There was a clear, direct, and sufficient connection between this question and the welfare issue which the judge had to decide. Thirdly, we can see no basis on which the court might conclude that the judge made findings about Ms Dover's professional conduct that were not open to her on the evidence. And in our judgement, it is not arguable that the judge imposed too exacting a standard in arriving at her conclusions on that matter.
29. In conclusion, we direct that this judgment may be cited. We consider it important to emphasise the exceptional nature of *Re W* and to underline the following. A witness of fact will generally have no legitimate ground of appeal in respect of adverse findings contained in a judgment, provided the criticisms have been fairly put to the witness in cross-examination for comment or response before the findings are made. A witness who is at risk of adverse findings does not, for that reason, have any right to intervene or to have legal representation.