

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Wednesday, 4th December 2012

Before:

MR. JUSTICE CHARLES

IN THE MATTER OF:

Re. P

*Transcribed by **BEVERLEY F. NUNNERY & CO**
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MR. A. VERDAN QC (instructed by the Legal Services Department of the Local Authority)
appeared on behalf of the Applicant.

MR. A. WOLANSKI appeared on behalf of an Interested Party.

J U D G M E N T

MR. JUSTICE CHARLES:

1. I have before me an application which is brought under the inherent jurisdiction for a reporting restriction order. I have heard the application in public. Notice was given, pursuant to the President's Practice Direction, to the Press Association. A representative of the Press Association is in court. There is also a representative of Associated Newspapers as they have appeared through counsel.
2. The matter relates to an issue which has received a significant amount of media coverage recently, both in Italy and in England. The child, who is the essential subject of the application, is referred to before me as "P" and is 15 months old having been born in August 2012. That child is the subject of a care order and a placement order - a placement order being an order which permits the relevant Local Authority to place the child for adoption. I have been told during the course of the hearing that the child has been placed with prospective adopters. I shall not go into any detail as to the approach that the court adopts to reporting restriction orders, save to say that, as I think it was described by Sir Mark Potter when he was President, "the court is embarked upon a process of parallel reasoning" having regard in broad terms to the right to respect for private and family life and for a person's home on the one hand, and to freedom of expression on the other. Into the mix also comes, under the first head, issues to protect damage being caused to a child, and in a parallel jurisdiction, a protected person, namely somebody who lacks capacity. However, here I am concerned with a baby.
3. I propose to look at this in stages. Firstly I record that the representative of Associated Newspapers has made clear to me, after confirming this on the telephone, that Associated Newspapers have no intention of publicising the

present whereabouts of the child, the people who are caring for the child or the identity of the child. That confirms my preliminary view that I have not been able to identify any public interest (as opposed to matters which might be of interest to the public) in identifying those matters. The reasons for that are that this child at present, pursuant to the relevant orders, is placed with a view to adoption. Stability of that placement if at the end of the day the child is adopted is of significant if not crucial importance for the short, medium and long term life of the child. Prospective adopters are going through an emotional experience and one where they are bonding to a child. If that is disrupted because of publicity with the result that the child is moved, that is likely, in my view, to cause short, medium and long term damage to the child. I have not been able, as I said during the hearing, to identify any argument which would indicate that the matters that are of significant public interest relating to the decision-making processes of both the Family Court and the Court of Protection in this matter, would be advanced one iota by identifying the present carers of the child, or the child. I therefore propose to grant an injunction as sought relating to the identification of the child or the persons caring for the child and the publication of any pictures of the child and/or those persons.

4. The applicants invite me to go further and to include within the class of people whose identity is not to be made known, the father of the child and the mother of the child limited to identifying the mother through her married surname - the logic behind that being that so far as those before me are aware and I am aware, the mother has identified herself in Italy by her maiden name. The argument goes that if either or both parents are so identified, that will lead to identification of the child and to disruption of the child both in the immediate term in placement and in the longer term because people will

get to know that this is the child who is at the centre of the debate, and thus of the media and other interest in decisions that have been made about the child.

5. In my view that was put in the social worker's statement in a very generic way. I am unconvinced of the need for this injunction, because I am not persuaded that the progression of reasoning relied on by the Local Authority has force and/or that the likelihood of harm or damage flowing from such publicity outweighs the other side of the equation concerning the public interest in a mother who, as I understand it, is seeking to make assertions in the public domain to the effect that she has been unlawfully wrongly or badly treated being able to do so. In short, I am unconvinced of the risk of harm that is being relied on by the Local Authority and when balancing it against the position adopted by the mother, I have come to the conclusion that the balance does not favour the granting of the injunction beyond the injunction I have indicated I will make.

6. I should also mention that as yet the mother has not been served with these proceedings. Her attitude to that limited nature of the injunction is not known, but it is tolerably clear from the media coverage that she is wishing to have her side of the story placed in the public domain. My understanding is that the judgment of the Family Court is now in the public domain in an anonymised form, and that the Court of Protection judgment is, or will be shortly, in the public domain in an anonymised form. I would add this. I would hope that those who are considering and reporting on the issues that are raised in this case have regard to the content of those documents. Cases of this type are at least a two-way street and there are issues which need to be considered and balanced in them. That comment is outwith the immediate matters with which I am concerned, which is the extent of the reporting restrictions I should impose.

7. I have indicated what those are. The force behind them in my view is that they are to protect the stability and well-being of this child, should the child be adopted. If the child is not adopted, there must at least be a prospect that the life of that child will be with, or one closely connected with, its natural family and therefore the child would be connected with that family in any event.

8. I invite counsel for the Local Authority to draw the injunction in the terms I have described and arrange for it to be served. So far as its period is concerned, I have discussed that with counsel and it seems to me sensible that it will run until 4 p.m. on Friday week, which is 13th December. I should also make it clear that I have changed the provisions as to the right to vary or discharge the order to one where it can be done on no less than two working hours' notice. It is the case that the President of the Family Division has reserved applications in this matter to himself. I am hearing this application today because he is not here. Applications relating to this injunction could be made to me as well as to the President, or indeed to any Family Division judge if neither of us is available. I should also indicate that I have been told that the Italian Government or State has instructed solicitors and it may be that it would wish to take advantage of that permission to apply to vary or discharge equally any media organisation or other person affected by the injunctive relief can take advantage of that, as of course can the mother and the father, they not having been served as yet with the process.
