

Re S (A Child) (2008)

[2008] EWCA Civ 951

08/07/2008

Barristers

Teertha Gupta KC

Court

Civil Division

Summary

An appeal against a disclosure order in wardship proceedings was allowed on the basis of fresh evidence to the effect that the disclosure might lead to the discovery of the whereabouts of the ward and his mother, who were in protective custody.

Facts

The appellant Commissioner of Police of the Metropolis appealed against a decision of a judge of the Family Division in wardship proceedings, ordering the disclosure to the parties of details of telephone calls made to the fourth respondent mother (M). The wardship proceedings concerned a child (C), who, following the breakdown of his parents' marriage, had been abducted and later returned by his father (F). Whilst F was in prison awaiting trial, the police received confidential information from an anonymous source that he had arranged for M to be murdered. M and C were placed in protective custody. In the course of the subsequent police investigation, M received a number of silent telephone calls. F successfully sought disclosure of the telephone numbers from which the calls originated and the names and addresses linked to those numbers. Less than a week after the order was made, the commissioner appealed on the basis of fresh evidence suggesting that the disclosure might lead to the revelation of M's whereabouts.

Held

HELD: Whether the information could have been obtained earlier with reasonable diligence was clearly an important factor; however, accepting that the police had notice of the application for disclosure only the day before it was made, the court could be more lenient in forgiving the lateness of the point taken. As to its credibility, the point was put in terms no higher than that the commissioner had a reasonable fear of the possibility of an adverse consequence arising from the disclosure. The significance of the information spoke for itself and almost governed the decision: the potential adverse consequence was obvious, and the information had a vital bearing on a crucial element in the fact-finding task undertaken by the judge, which included deciding whether there actually was a contract on M's life and, if so, the identity of the contracting parties. Had the judge been told of the commissioner's fear, he would have been bound to take it into account in reaching his decision. It was, therefore, appropriate to allow the appeal on the basis of the fresh evidence, and given the judge's familiarity with the details of the case, to

send the matter back to him for a complete rehearing, Ladd v Marshall (1954) 1 WLR 1489 CA applied.

Appeal allowed

Permission

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