

Re LM (Reporting Restrictions: Coroner's Inquest) (2007)

[2007] EWHC 1902 (Fam); (2008) 1 FLR 1360 : (2008) 99 BMLR 11 : Times, November 20, 2007

01/08/2007

Court

Family Division

Summary

It was inappropriate to grant reporting restrictions on a coroner's inquest into the death of a child, as the media's right to freedom of expression under the European Convention on Human Rights 1950 Art.10 to report the proceedings outweighed the rights of the deceased's child's sibling under Art.8 of the Convention where the court was not satisfied that there would be lasting harm to the sibling referable to the publicity created by the reporting. However, restriction on the reporting of the sibling's identity or existence and the provision of any information leading to her identification was proportionate and necessary to protect her Art.8 rights.

Facts

The applicant guardian of a child (L) applied for an injunction to prevent the media from naming the immediate family members of L or publishing any other particulars that might identify L in the course of the media's reporting of a coroner's inquest into how L's sister had died. L's sister had been found dead in suspicious circumstances and L was taken into care and ultimately placed with a foster family. A coroner's inquest into the death was commenced but adjourned pending the completion of care proceedings in the Family Division. In those care proceedings a judge found, on the civil standard, that L's mother had caused the death of L's sister. The judge made an order permitting the local authority to disclose to the coroner and the police various documents so as to enable the coroner to continue his enquires and specifically to decide whether to make a referral to the Director of Public Prosecutions. The coroner was minded to resume the inquest and sought directions from the Family Division to enable the inquest to proceed; as a consequence the instant application arose. An issue arose as to whether rights of the media under the European Convention on Human Rights 1950 Art.10 to report the proceedings in the coroner's court, which would inevitably involve naming other members of L's family leading to her identification, outweighed the rights of L under Art.8, to protection from identification. The media conceded that no reference would be made to the identity or existence of L in their reporting, or any information relating to her likely to lead to her identification. The guardian and local authority contended that the court's task in balancing the Art.10 and Art.8 rights involved was fact specific and, in the instant case, the essentially unchallenged risk of harmful disruption to L's therapeutic progress and the consequent likely effect upon her prospects of placement for adoption, placed L in an "unusual and exceptional" category that rendered a protective injunction potentially available, and justified the

restriction sought to be placed upon the right of the media to freely report proceedings as a measure proportionate to what was at stake in respect of L's Art.8 rights if no such order was made.

Held

HELD: It was clear that, so far as the reporting of the instant inquest was concerned, it would be a substantial and in principle undesirable interference with the Art.10 rights of the media to fully report the proceedings and the circumstances surrounding the inquest if they were precluded from identifying L's immediate family. Those rights were not outweighed by the Art.8 considerations relating to L's family position. In a situation where a child had suffered from a homicide within the family, there were inevitable difficulties that had to be faced in respect of the disturbance to that child's life and the issues that the child had to face and overcome. In the light of the weight generally to be attributed to the rights of a free press and the interests of open justice, the question whether the circumstances were sufficiently unusual or exceptional to justify a restriction on those rights had to be viewed in that context. In the instant case the court was not satisfied that publicizing the identity of L's mother and sister would operate as a barrier to L's future adoption, or would result in a long-term stigma to her. Further, the undoubted possibility of additional, but uncertain, difficulties with L's therapy did not establish sufficient likelihood of lasting harm referable to the publicity as distinct from the general background and the underlying circumstances that gave rise to L's troubled state. Accordingly it was not appropriate to grant an injunction in the terms sought by the guardian or local authority. However, an order protecting L's identity in the terms conceded by the media was proportionate and necessary to protect her Art.8 rights, *S (A Child) (Identification: Restrictions on Publication), Re* (2004) UKHL 47, (2005) 1 AC 593 and *W (Children) (Identification: Restrictions on Publication), Re* (2005) EWHC 1564 (Fam), (2006) 1 FLR 1 applied. Although the instant proceedings were inquest proceedings and not criminal proceedings, the relevant principles did not require modification or qualification. Further, although on occasions the fact that the coroner's task did not extend to determining questions of criminal guilt had been found to be a matter of weight where witnesses were seeking to protect their own safety, the instant proceedings involved the killing of a child where a High Court judge had already found the mother responsible as a matter of fact and the injunction application was made because harm was indirectly apprehended to a child who was a stranger to the investigative process.

Application granted in part

Permission

Lawtel 