JUDICIARY OF ENGLAND AND WALES

10 December 2021

PRESS SUMMARY

Griffiths v Tickle

[2021] EWCA Civ 1882

Dame Victoria Sharp, P, Lady Justice King and Lord Justice Warby

1. This was an appeal against a decision that a fact-finding judgment in proceedings under the Children Act 1989 should be published with the names of the father and mother included, and only relatively modest redactions aimed primarily at mitigating the impact of publication on the couple's infant child. The appellant was the father, against whom findings were made. He accepted that the judgment could be published but argued that the interests of the child made it necessary that he, the mother, and the child should all be anonymised, and that there should be additional redaction of some details. **[1]**

2. The fact-finding judgment was given by Her Honour Judge Williscroft in the Family Court at Derby **[3].** It contained findings of domestic abuse, including rape, and coercive control. It is summarised at **[16-18].** The decision to authorise its publication was made in the High Court by Mrs Justice Lieven. Her judgment is summarised at **[56-63]**.

3. The application for publication was made by two journalists, and supported by the mother, the child's Guardian, and the civil society organisation Rights of Women. It was opposed by the father, on the basis identified above **[23-26].**

4. Lieven J approached the issue on the agreed basis that her task was to strike a balance between rights that favoured publication and the rights of the child to respect for its private and family life, applying the principles set out by the House of Lords in *In re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 AC 593 ("*Re S*") **[6].**

5. The Judge identified four factors favouring publication under Article 10 of the European Convention on Human rights: (1) the open justice principle (2) the father's role as an MP and Minister (3) an inconsistency between public statements he had made in 2018 and findings in the judgment of HHJ Williscroft and (4) the public interest in showing the public the workings of the Family Court in a case where a powerful man was held to account in respect of abuse of his female partner **[58].**

6. The Judge then turned to the mother's rights. She noted that the mother had a right to speak to whomsoever she pleased about her experiences. Anonymity would represent a significant interference with those rights that would be justified in most cases by the right s of the child and the privacy requirements of the Family Courts. The level of such interference should not however be underestimated, and the court should be slow to allow itself to be used as a means of allowing one parent control over another **[59].**

7. The Judge considered the mother's rights were bolstered by the "very unusual" fact that the Guardian also supported publication and the "unusual" fact that those supporting publication wanted to use the case as an example of good handling by the Family Court. There was a "significant public interest" in the last point **[60-61].**

8. Addressing the rights of the child at **[62-63]**, Lieven J first considered the direct impact of publication and any consequent media or social media interest. The child's very young age meant the child had no access to social media and any comments at nursery were likely to pass the child by completely. Any media storm would pass fairly quickly. Explanations would have to be given in any event, at an age-appropriate time. The impact on the child's relationship with the father could be "appropriately controlled". The findings themselves would have a material impact on contact and the ongoing relationship. That was a consequence of the behaviour not any publication. It was hard to see how publication would have any greater effect than the behaviour, and the child could be protected from any short-term media storm.

9. The father appealed on what came down to two main grounds.

10. The first main point was that the Judge's approach was wrong in law, because it involved a misinterpretation and misapplication of section 97 of the Children Act. His argument was that on its true construction section 97 prohibits a court from authorising the publication of anything likely to identify a child as being the subject of proceedings under the Children Act unless it is satisfied that the welfare of the child requires such a publication. This was a complete change of position by the father. Several of those appearing before the Court of Appeal argued that he should not be allowed to rely on this new argument. The court agreed, for reasons set out at **[9-11], [44-55]** and **[72-76].**

11. The father's second main point was that, in the alternative, the Judge's *Re S* analysis was legally flawed, because it was wrongly biased or weighted in favour of publication and against the interests of the child, and for other reasons **[12].** The court rejected this ground of appeal for reasons set out in detail at **[64-71].** In summary (see **[13-14])**:

(1) This was an evaluative exercise of a kind with which the Court of Appeal will not interfere unless it is satisfied that the Judge erred in principle or reached a conclusion that was wrong. Neither criterion was satisfied here. The father's criticisms of Lieven J's approach to the balancing process were unconvincing. The Judge correctly identified the well-established principles she had been invited to apply, took account of all relevant matters, and did not take account

of anything that was immaterial. Her assessment of the weight to be given to the specific rights in play involved no error of principle and was legitimate. The father's criticisms of her decision amounted to little more than disagreement with the conclusions at which she arrived.

(2) Decisions of this kind are inevitably case-specific. The Court said:

"The critical factors in this case included (1) the father's decision not to invoke any Article 8 rights of his own but to rely exclusively on the rights of the child; (2) the very young age of the child; (3) the Guardian's professional assessment, in favour of publication; (4) the mother's support for publication; and (5) the extent and nature of the information about the father that was already in the public domain. We do not think it can fairly be argued that Lieven J's conclusion, in the unusual circumstances of this case, was wrong. On the contrary, we consider that she was clearly right."

12. The Court refused an application by the father for permission to appeal to the Supreme Court and refused a stay pending an application to the Supreme Court for permission to appeal, for reasons given at **[80-81].** The applications were late, involved a further change of position, had no real prospect of success, and would represent a misuse of the court process. The further interference with the rights of others that a stay would involve could not be justified.