

Judicial Communications Office

Thursday 31 March 2011

COURT OF APPEAL REFUSES CLAIM FOR DAMAGES FOR HARASSMENT AGAINST THE SUNDAY WORLD

Summary of Judgment

The Court of Appeal today refused a claim for damages for harassment brought by Drew King against the Sunday World newspaper

The appeal was heard by Lord Justice Higgins, Lord Justice Girvan and Lord Justice Coghlin. Lord Justice Girvan delivered the judgment of the Court.

The court heard that the editor of the Sunday World, Jim McDowell, considers that Mr King and his brother were involved in the murder of Martin O'Hagan, a journalist employed by the newspaper in 2001. Mr King claimed that twenty-nine articles published by the newspaper from 2002 onwards infringed his right to privacy and damaged his family life and relations.

The proceedings focussed on two articles published in November 2009. The first, published on 22 November, included a photograph of Mr King and his partner "all dickied up at a wedding". The second article, published on 29 November, named Mr King's partner and referred to the fact that their baby daughter was christened in a Catholic Church. The article also gave information about where Mr King's partner was living, where she was working, details of her family and the proposed wedding of the couple at Ashford Castle the following summer. The article was accompanied by a photographs of Mr King and his partner, Ashford Castle and the church where the christening was reported to have occurred (although the church had in fact been wrongly identified).

In 2009, Mr King brought proceedings in the High Court. He claimed damages for personal injuries, loss and damage sustained by reason of harassment, breach of statutory duty, misuse of private information and breach of his rights under Articles 2, 3 and 8 of the European Convention on Human Rights (ECHR) in respect of the publication of the address where Mr King was believed to be living, of the picture of him and his partner, of the wedding plans, of family details and of the religion of his child together with christening details.

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Mr Justice Weatherup dealt with the proceedings in the High Court. He was not satisfied that publication of this information exposed Mr King to a real and immediate threat to his life (“the Article 2 right”) but granted an injunction restraining the newspaper from publishing the present and future addresses of Mr King. Mr Justice Weatherup considered that publication of the wedding particulars, the identity of Mr King’s partner and the photograph of the couple was justified and proportionate. He said there was a public interest because it was inevitable that one partner would be drawn into any reporting of the other partner’s criminal lifestyle. The judge found that publication of the details of Mr King’s partner’s workplace, of members of her family and her religion were unwarranted, intrusive and unnecessary and he granted an injunction restraining further publication of these details. Mr Justice Weatherup also concluded that there was a reasonable expectation of privacy for the child’s details and granted an injunction preventing the newspaper publishing further information about the child’s identity, its religion or details about the christening. Mr Justice Weatherup said that while there were aspects of the articles which were unwarranted and there were some inaccuracies, he was satisfied they did not amount to harassment and dismissed the claim.

Mr King appealed against Mr Justice Weatherup’s decision. The Court of Appeal was asked to consider a number of issues:

- **Whether Mr King’s claim to protection of the right to respect for private and family life (“the Article 8 right”) extended to include any details of his partner and/or child and/or members of his partner’s family none of whom were claimants.** Lord Justice Girvan said that an individual normally has a reasonable expectation of privacy in respect of information relating to his private, intimate and family relationships. The fact that divulging private information about Mr King’s partner and child may have entitled them to pursue their own claim does not mean that Mr King himself does not have a claim. The Court of Appeal therefore upheld Mr Justice Weatherup’s conclusion that publication of the details of family members of a particular person may engage the Article 8 rights of that person.
- **Whether publication of the name of the partner and her religion was justified.** Lord Justice Girvan said that in dealing with such matters the court has to decide whether the information was private in the sense that it is protected by Article 8 and, if so, whether there has been an infringement of Article 8. He said the court must undertake a balancing exercise to decide whether in the circumstances the interests of the party affected by the publication of the private information must yield to the publisher’s right to freedom of expression under Article 10

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of the ECHR. Lord Justice Girvan said it was important to bear in mind that the articles cannot be read in isolation from each other. By revealing details of Mr King's partner, her name, her religion and her family the child became identifiable by the very fact that it was the child of Mr King and the identified named partner. He said that the paramount interest was to protect the child's identity. The identification of a mother was inappropriate unless there was some exceptional public interest justifying her identification which outweighs the paramount interests of protecting the child. Lord Justice Girvan said that in this case there were no factors justifying the naming of the child's mother when her identification contributed to the identification of the child. The Sunday World claimed there was public interest in identifying Mr King's partner's religion as it demonstrated hypocrisy or double standards on his part. Lord Justice Girvan said that "a person purporting to support a sectarian organisation whose adherents on occasions target individual Catholics as such while at the same time living with a Catholic, bringing up a child as a Catholic and participating in Catholic ceremonies could fairly be considered by many to be hypocritical". He concluded that if Mr King's partner's identity had not been revealed, thereby inappropriately contributing to the identification of the child, a reference to the fact that he had chosen a Catholic partner and decided to bring up a child in the Catholic Church could have been justified.

- **Whether publication of the photograph of the couple at a wedding was justified.** Lord Justice Girvan said that publication of the photograph was unjustified as it gave further emphasis to the identification of the child by reference to its mother. The Sunday World did not say where they obtained the photograph. Lord Justice Girvan said it must have been obvious to the paper that the photograph had been taken on a private occasion and represented private information.
- **Whether the claim for harassment had been made out.** Lord Justice Girvan said that Mr King had not sought to challenge the allegations made by the Sunday World in the articles. The fact that the articles caused him distress did not of itself establish harassment. For this to be established it would have to be shown that the newspaper knew or ought to have known that it was harassing Mr King. Mr King would also have had to show that the conduct of the newspaper was oppressive and unreasonable. In deciding this the court must take into account the right of the press to freedom of expression. The Court of Appeal concluded that Mr Justice Weatherup was right to decide that Mr King had not made out a case of harassment, particularly in light of the fact that he declined to institute defamation proceedings to

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challenge the correctness of the thrust of the Sunday World's allegations of serious criminality.

The Court of Appeal therefore upheld Mr Justice Weatherup's decision except in respect of publication of details of the identity of Mr King's partner and her photograph. To that limited extent the Court of Appeal allowed the appeal. Lord Justice Girvan said that while the Court of Appeal differed from Mr Justice Weatherup's reasoning in deciding to prohibit publication of the religion of Mr King's partner it did not differ from him in the result. The Court of Appeal concluded that Mr Justice Weatherup was correct in deciding that Mr King had not made out a case of harassment.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

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