

Neutral citation: [2024] EWFC 182

IN THE FAMILY COURT  
Siting at Reading

Before :

HHJ MORADIFAR  
(SITTING AS A JUDGE OF THE HIGH COURT)

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In the matter of;

Hannah Summers  
The Bureau of Investigative Journalism

1<sup>st</sup> Applicant

- and -

Suzanne Martin  
Freelance journalist

2<sup>nd</sup> Applicant

- and -

Kristopher Paul Arthur White

1<sup>st</sup> Respondent

- and -

The mother

2<sup>nd</sup> Respondent

- and -

X (the child)

(by the appointed rule 16.4 Guardian Catherine Burke)

3<sup>rd</sup> Respondent

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**Ms Hannah Summers appeared in person**

**Ms Suzanne Martin appeared in person**

**Mr Kristopher Paul Arthur White appeared in person**

**Dr Charlotte Proudman and Ms Elisabeth Traugott (instructed by Albin and Co. Solicitors) on behalf of the mother**

**Mr Oliver Wraight (instructed by Fairbrother & Darlow Solicitors) on behalf of X though the Rule 16.4 Guardian.**

Hearing dates: 4 July 2024  
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## **Judgment**

### Introduction

1. The issue before this court is whether the interest of the public outweighs the established rules of anonymity in family proceedings so as to permit the publication of the names of the first respondent father and that he was previously in the armed forces.
2. The applications are brought separately and independently by the two applicants. The applications are supported by the mother but opposed by the father and on behalf of the child. For reasons that I have set out below, I grant the applications.

### The law

3. With characteristic clarity Lieven J in *Tickle v Griffiths* [2021] EWHC 3365 (Fam) provides for a most helpful guidance which was approved by the Court of Appeal. This decision is authoritative and the broad applicable principles therein may be summarised as follows:
  - a. section 12 of the Administration of Justice Act (1960) places ‘considerable restrictions’ on the publication of information from family proceedings, and
  - b. section 97 of the Children Act (1989) places a prohibition on the identification of a child who is the subject of proceedings, but the court may ‘relax’ such prohibition, and

- c. any easing of the restrictions under section 97 must be in circumstances that is compliant with convention rights and not just demanded by welfare requirements of a child (*Norfolk County Council v Webster*[2007] 1 FLR 1146 per Munby J).
- d. In this context, the interest of the child is not paramount but the primary consideration which requires the court to assess the impact of the proposed reporting with an ‘intense focus’ on the elements of the claimed rights in each particular case. (*Re J (A Child)*[2013] EWHC 2694 (fam) per Sir James Munby P referring to *ZH (Tanzania) v Secretary of State for the Home department* [2011] UKSC 4 and *Re S (A child)* [2004] UKHL 47)
- e. When Articles 8 and 10 (ECHR 1950) are engaged:
  - i. neither takes precedent over the other,
  - ii. a conflict between the two necessitates an ‘intense focus on the comparative rights’ under each article, and
  - iii. be proportionate.  
(*Re S* above quoting from *Campbell v Mirror Group Newspapers* [2004] 2 WLR 1232).
- f. The hierarchy of different Article 10 rights include political speech as the top item that it essential to democracy, then ‘intellectual and educational speeches’ that are important to democracy and finally artistic speech, with the latter two being important to the development ‘of individual’s potential to play a full part in society’. (per Lady Hale at 148 in *Campbell* above)
- g. Rights to privacy go beyond issues of publication and include access to information by third parties. Furthermore, repetition of information or repetition of disclosure of information as well as repeated publication may constitute further and ‘unjustified’ interference of an individuals’ right to privacy and extends to those with whom he/she is involved. This requires the court to give ‘due weight to the qualitative differences’ in the intrusion and any causal distress. (King LJ in *Newman v Southampton City Council* [2021] 1 WLR 2900).
- h. Harm from publication to the subject child must not be assumed, especially where there has already been some publicity and the court must take an objective view about ‘the reasonable expectation of privacy.’

*(Clayton v Clayton* [2006] 3 WLR 599 and *Weller v Associated Newspapers Ltd* [2015] EWCA Civ 1176).

## Background

4. The parents began their relationship in the autumn of 2018 and started to cohabit the following winter. They lived together for about eleven months and their relationship ceased when X was about a month old. Mr White enjoyed seeing X although the arrangements appear to have been sporadic. In April 2020, the mother's solicitors wrote to Mr White raising a number of concerns about his behaviour and honesty. He was informed that his contact would only proceed on a supervised basis.
5. The father continued to see X, until a temporary cessation between January to April 2021. This prompted Mr White to apply to the Family Court for defined arrangements to see X. Cafcass identified safeguarding issues and the mother raised serious allegations of domestic abuse against Mr White.
6. The matter came before the allocated District Judge (the 'judge') on 14 and 15 December 2022 for a fact-finding hearing to determine the mother's allegations. The judge made a number of significant findings against Mr White that include coercive and controlling behaviour, three occasions of having sex with the mother without her consent and a further occasion of attempting to have sex with the mother without her consent.
7. Thereafter, the judge gave further directions including directions for the filing of a section 7 report by Cafcass. Following some further interim hearings, the matter came before the judge on 12 February 2024 for a final hearing. In her careful judgment, the judge considered a number of pieces of evidence and concluded that X should have unsupervised contact with the father in the community. Her decision in this regard was overturned on appeal. The matter was subsequently referred to me to consider the present applications for publication.

## Analysis

8. The application for publicity was made orally at the hearing before the appeal judge. After the matter was referred to me, in consultation with Cafcass, X was made a party to these proceedings. All of the parties have made helpful written submissions that have been supplemented by their respective oral submissions at this hearing.
9. Ms Summers and Ms Martin each argue that in the circumstances of this case, the Article 10 rights overwhelmingly outweigh the respondent's and in particular the father's Article 8 rights. They each rely on a number of factors in support of their

arguments. They submit that much of the information is in the public domain in an anonymised judgment that was published by the judge. Mr White is already identified and reported in the media for his convictions that include the rape of a teenage girl for which he served a custodial sentence. This illustrates that his behaviour is not limited to a domestic setting and public interest demands that he is identified. Furthermore, there appears to be a possibility that he has used different names which lends greater weight to the arguments for him to be publicly identified. Whilst he is no longer in the army, at the time of the rape of the teenager, he was in the armed forces and this lends further substance to the public interest arguments. Mr White is also in a relationship with another woman.

10. Turning to X's interest, they each recognise that this is the court's primary consideration and submit that X is young and will not have an awareness of the issues. They submit that X's mother, who is supportive of the applications, is best placed to address these issues in an age-appropriate fashion when this becomes more relevant to X. Such future discussions with X are likely to be unavoidable as much of the father's past behaviour is already in the public domain and he is also registered on the Sex Offenders Register that restricts his access to children. Therefore, it is inevitable that these issues will have to be addressed by the mother.
11. Applying a wider lens to the issues at hand, the applicants argue that there is now a greater recognition of the said Article 10 rights in the Family Court whose approach must be 'within the spirit' of the President of the Family Division's guidance which is set out in *Confidence and Confidentiality: Transparency in the Family Courts* (28 October 2021) where the President highlights the importance of transparency, what this means in the Family Court, the need for greater openness going forward and the framework for doing so. Ms Summers quotes the President as follows:

*"The level of legitimate media and public concern about the working of the Family Court is now such that it is necessary for the court to regard openness as the new norm. I have, therefore, reached the clear conclusion that there needs to be a major shift in the culture and process to increase the transparency of the system in a number of respects."*

They also draw to my attention the Victims and Prisoners Bill which is not yet been through Parliament and would be entirely inappropriate for me to take into consideration.

12. The mother joins the above submissions and makes additional observations about the position of Cafcass who oppose the application on behalf X. The mother submits that she has successfully appealed the judge's decision on the issue of contact as her decision was in the main informed by a woefully inadequate assessment by the allocated Family Court Adviser. She has lost trust in Cafcass' capacity to adequately represent X and the issue is exacerbated by Cafcass empowering the father to shield behind X's Article 8 rights without any proper regard for the father's behaviour and the consequences for his victims.
13. Mr White vehemently opposes the applications. In his written submissions, he properly refers to the relevant law and seeks to distinguish this case from *Griffiths* by observing that in the latter case both parents were identified and the children were easily identifiable, the public interest argument was far stronger as the parents each held a public office and there was no other information in the public domain to serve the interest of the public. Therefore he argues that transparency can be achieved by the publication of the anonymised judgment. He states that the mother should be left to discuss the necessary issues in an appropriate way as and when X's interests demand it.
14. He further states that existing articles in the public domain are not easily accessible as they are old and this points against publication. He expresses his grave concern that the media may not accurately report the proper basis of the court's findings and how this is a serious breach of his Article 8 rights. He is also profoundly concerned about the stress and anguish on the individuals that are close to him although he acknowledges that his partner is aware of all of the details of the court's findings. He raises further concern about possible jigsaw identification of X and the impact this may have on X and those close to X.
15. X's Guardian submits that the applicants have failed to comply with the court's direction to file a schedule of the information that they seek to publish. The Guardian recognises that Mr White poses an 'increased risk' to women and children but there is already information in the public domain that makes any further publication unnecessary and disproportionate. She therefore argues that the naming of the father does not add to the legitimate arguments on public interest. The impact on X in the future could be profound and may be bullied or victimised by peers. She also points to the negative impact on the mother of the prospect of being identified as the victim. Finally she states that the mother is best placed to impart the necessary information in a sensitive and age appropriate way to X as and when this becomes relevant.

16. The court's approach to the issues of publicity as guided by the President of the Family Division has seen a welcome shift towards greater publicity and a better understanding of the work of the Family Court. Although this change in approach may be considered to be seismic, there is no change to the primary legislation that is designed to protect the identification of the parties and the subject children. Furthermore, it is a long-established principle of European and domestic jurisprudence that any interference with the individual's rights is only permissible where it is necessary, proportionate and in accordance with the law. In this context there is no doubt that the legislative framework permits the identification of individuals who may otherwise have their anonymity preserved. Therefore, the main focus must turn to necessity and proportionality.
17. X's interest is the court's primary consideration. The concerns that the guardian has raised about the potential future harm are in my judgment genuine and meritorious concerns that must be weighed into the balance. X's individual needs and characteristics are also crucial factors that lend support to the guardian's views. Whilst the mother is ably represented, I also note the guardian's concerns about any negative impact upon her wellbeing. Individuals who are close to the family and Mr White may also suffer by their association with him should his name be published. Identification of Mr White is a serious intrusion in his protected rights that has a serious impact on him as an individual which must be considered in the context of his behaviour.
18. Some of the details of the case and Mr White's criminal behaviour have already been published. The anticipated risk to X cannot not be assumed. It is common ground that the mother is best placed to manage X's understanding of her father's behaviour towards her mother and others. In my judgment this is an important fact that must be weighed into the balance which is capable of addressing some the existing risk and potential future risk to X.
19. I accept that the publication of the father's name is also likely to cause distress and harm to those who are outside but close to the parameters of these proceedings, including the father's partner. This is likely to be exacerbated by the repetition of the information that is already in the public domain and that which will be when the father's names are published. This is a crucial factor that King LJ identified in *Newman*. Extending the point further, there is also a clear and strong public policy argument in preserving the identity of the victims of abuse in the Family Court. It is essential that victims are not discouraged from making relevant complaints for fear of

identification or reprisals. Thus further emphasising that each case must be decided on its own individual facts.

20. In my judgment, the facts of this case demonstrate a compelling public interest argument that prevents the abuser shielding behind his/her rights or those of a child which prevent him/her from being publicly identified. This consideration gains greater importance where there is an established course of conduct that may expose individuals outside the confines of the case to a risk of harm and to limit if not extinguish their ability to protect themselves or their loved ones.
  21. After balancing the competing factors that I have summarised above, I am satisfied that public interest demands that Mr White is fully identified by his full names. To do so, is in my judgment, in pursuance of a legitimate aim, necessary, proportionate and in accordance with the law. The second element of the application concerns Mr White's previous connection with the armed forces. Having had the benefit of reading the previous articles about his convictions, I note that this information is clearly in the public domain and at the time of his sentencing he had already left the army. In so far it is required, without hesitation I permit the publication of this fact.
  22. Unlike *Griffiths*, there is no suggestion that the mother should be publicly identified. For the avoidance of doubt the existing rules about confidentiality continue to apply to her and to X.
  23. Finally, when such applications are made, whether orally or in writing, it would be of assistance, particularly where a party is not legally represented, for the applicant to provide a schedule of the information or the type of information that is proposed to be published. In this instance this was provided in the form of a letter which has permitted the parties to focus on the relevant information.
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