Does anonymising children judgments go far enough to protect children?

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Privacy in family proceedings We are now all online — and (like it or not) we all have an online presence. Sometimes that online presence is cultivated and willingly shared. Sometimes it is as a consequence of unwanted publicity. By using key internet search terms, people are more easily identifiable and traceable than ever before. This has a direct impact on the effectiveness of anonymising family Court judgments, when certain key facts in the case can reveal by searching on 'Google' who the parties are (and perhaps, consequently, where they live). There has been a great deal written recently about privacy issues in the family law arena (see Amanda Bell's interesting blog article on posted on 25 September 2015) — about whether family hearings should be held in open Court and also about the appropriateness of imposing reporting restrictions. The case of ***H v A (No 2) [2015] EWHC 2630 (Fam)***, which I discuss below, addresses the further issue of publishing judgments, and in what circumstances should a judgment be made unavailable. **The substantive hearing — H v A (No 1)** The decision in ***H v A (No 1) [2015] EWFC 58 (Fam)*** concerned a mother's application to revoke a father's parental responsibility in respect of their three children following his conviction for repeated violent criminal acts (including setting fire to his car and driving into the family home.) The father was given a discretionary life sentence. The Court found that it did not have jurisdiction to terminate the father's parental responsibility (as he had acquired it by reason of his marriage to the mother) but the facts were sufficiently exceptional for it to be significantly curtailed. Pertinently, the reasoning behind the limitations on his parental responsibility focussed on protecting the children and the mother from the father being able to locate them — an issue that was at the core of the second hearing, as I explain in more detail below. **The second hearing — H v A (No 2)** The case came back before the Honourable Mr Justice McDonald on 17 September 2015 following a report made by a Press Association reporter alerting the Judge that there was sufficient information in the judgment, combined with the press reports of the criminal conviction, to identify the mother and children and their current whereabouts. The legal websites removed the judgment and the Judge invited further submissions from the parties. This concept — of using information that has been published (e.g. online) together with what people already know (or is already available) to identify someone — is called 'jigsaw identification'. **The issues the Judge had to consider** The publication of family law judgments is a key component of open justice. In the Practice Guidance issued by the President of the Family Division in February 2014, he said all cases which are in the public interest should be published. He did acknowledge that this did not impact the discretion of the judge to regulate or refuse to publish. Such a decision involved a careful weighing up of the relevant provisions of the European Convention on Human Rights, including Articles 2 (right to life), 6 (right to a fair trial), 8 (respect for private and family life) and 10 (freedom of expression). In this particular case, the Judge had the unenviable task of weighing up the children's and mother's physical safety and emotional wellbeing against the public interest of maintaining open justice. **The Judge's decision** The Judge ultimately held that the case should be republished in its original anonymised form and there should be a reporting restriction order prohibiting the press reporting the names of the children and their current whereabouts. **How did he reach that decision?** The key factors that lead to this decision are set out below: 1. The Judge did not agree that publishing the judgment would enable the father to identify the whereabouts of the children and their mother because: (a) The father was securely incarcerated in prison; (b) Previous attempts by him to use a third party to pursue the mother and child had been unsuccessful (and had ultimately led to his conviction) and there was no evidence to suggest that the father sought to try this again; © In any event, there was nothing to stop the father from communicating the mother and the children's identity to a third party to track them down if he really wanted to — and withholding publication would not prevent that; (d) The identity of the family was already in the public domain following the criminal proceedings because of the press coverage; and (e) The Judge thought it was improbable that a member of the public would use the facts in the judgment as search terms to establish the identity of the family and their whereabouts and then notify the father. 2. He regarded there to be strong public interest reasons for publishing the case: (a) To maintain the cardinal principle of open justice; (b) To act as a deterrent for criminals — as the public would know the consequences of criminal actions (e.g. domestic abuse) in the family courts; and © To uphold the general importance of the right to freedom of expression — which is manifestly important to *all* children. **The greater impact** While the Judge found in this case that the "jigsaw identification" was not a reason in itself to withhold the publication of a judgment, he flagged that it was a key factor that the Court should have regard to when determining whether a judgment should be published. One hopes that a consideration of the risks of "jigsaw identification" will become routine when considering all privacy issues in a family law context, and not just when there have been criminal proceedings, to ensure vulnerable children caught up in family proceedings can be protected as far as possible.

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