

Neutral Citation No. [2011] NIQB 101

Ref: WEA8302

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 16/9/2011

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (COMMERCIAL)

DREW ROBERT KING

Plaintiff;

-v-

SUNDAY NEWSPAPERS LIMITED

Defendant.

WEATHERUP I

[1] The plaintiff claims damages for misuse of private information by the defendant newspaper. The basis for the award of such damages is injury to feelings and distress. Ms Quinlivan appeared on behalf of the plaintiff and Mr Hanna QC on behalf of the defendant.

[2] On the plaintiff's claim for damages for misuse of private information I delivered judgment on the liability of the defendant on 22 September 2010, neutral citation [2010] NIQB 107. The matter went on appeal to the Court of Appeal and judgment was delivered by Girvan LJ on behalf of the Court of Appeal on 31 March 2011, neutral citation [2011] NICA 8, varying the Order made in respect of the defendant's liability for the misuse of private information. I refer to the judgments for the background to the action and the findings.

[3] The private information that is the basis of the claim for damages is as follows. First of all, the publication of an address purporting to be the current address of the plaintiff, although it was an incorrect address. Secondly, details of the plaintiff's partner. Thirdly, a photograph of the plaintiff and his partner. Fourthly,

details of the partner's family. Fifthly, information about the child of the plaintiff and his partner.

[4] I should emphasise that the plaintiff is Drew Robert King and that his partner is not a party to this action, nor is the child a party through any representative. Thus the damages to be awarded for misuse of private information concern the injury to feelings and distress suffered by the plaintiff, although this may include the impact on the plaintiff of the misuse of the private information about the plaintiff and his partner and his child, but not directly the impact on the partner or the child.

[5] As to the partner, the reason the Court of Appeal found that the information should not have been published was related to the indirect identification of the child. Otherwise the information about the partner could have been published.

[6] As to the child, who was aged about 1 year at the time of publication, there was no personal impact on the child that the plaintiff could have been concerned about. Any injury to feelings and distress would have been that of the plaintiff that the child was identified and the impact on the plaintiff of his partner's concern about the identification of the child.

[7] As to the photograph of the plaintiff and his partner, the publication was not appropriate because it served indirectly to identify the child. However there was a second reason given by the Court of Appeal on the basis of which the publication of the photograph was not justified, namely that the photograph was taken in private and represented private information, a matter which must have been known to the defendant. The plaintiff emphasises the special character of photographic intrusion.

[8] As to the plaintiff, it is noteworthy that the articles published by the defendant over a period of time alleged criminality against the plaintiff, including murder, drug dealing and a life of crime. However the articles were not the subject of challenge by the plaintiff in any defamation proceedings, although the plaintiff contests the accuracy of the allegations and claims financial reasons for the failure to institute defamation proceedings. It is in the context of the series of articles about the plaintiff's criminality that the misuse of private information arose. Whatever injury to feelings and distress there may have been in respect of the broader thrust of the articles about the plaintiff's criminality is not relevant to the issue of damages relating to the specified instances of misuse of private information referred to above.

[9] The levels of compensation that have been awarded for misuse of private information are modest and should be proportionate. There are a number of examples which may be of assistance in identifying what is meant by modest damages for misuse of private information.

In Cornelius v. de Taranto [2000] EWHC 561 there was an award of £3,000 for a publication of a medico legal report. The report contained defamatory and

confidential material that was hurtful to the claimant and the material found its way into her National Health Service records.

In McKennett v. Ash [2005] EWHC 303 an award of £5,000 was made to a folk singer after the publication of a book written by a friend and containing particulars of her personal life.

In Applause Store Productions Limited and Firsht v Raphael [2008] EWHC 1781 the sum of £2,000 was awarded for information about private life placed on a Facebook site.

In Campbell v. Mirror Group Newspapers [2004] 2 AC 457 an award of £3,500, which included £1,000 aggravated damages, was made to Naomi Campbell after the publication of details about her drug therapy.

In Lady Archer v. Williams [2003] EWHC 1670 the award was £2,500 after Mary Archer's secretary disclosed private information in a newspaper.

In Douglas v. Hello Limited [2003] EWHC 786, [2007] UKHL 21 the wedding photographs of Michael Douglas and Catherine Zeta Jones were published when not authorised and they were awarded £3,750.

[10] The plaintiff referred to two cases in the European Court of Human Rights which state general propositions in relation to the recovery of damages for the invasion of privacy, namely Von Hannover v. Germany in 2005 and Arminas v. Lithuania in 2008.

[11] The plaintiff submitted that the value of the claim was £5,000 damages, reflecting a range of awards in the cited cases of £2,000 - £5,000. The defendant submitted that the award should be nil, reflecting the overall character of the articles containing allegations of criminality and the plaintiff being the sole plaintiff when the private information was not directly about the plaintiff but about his partner, his partner's family and the child.

[12] The injury to feelings and distress of the plaintiff relate first of all to the address of the plaintiff. However the address published was not where the plaintiff was living, although the plaintiff had former associations with that address. This is a minimal matter.

Secondly, the partner's details. Publication of those details would have been warranted but for their serving to identify the child. Therefore, leaving aside for the present the effect of the identification of the child, I treat the freestanding issue of the partner's details as being a minimal matter.

Thirdly, the photograph of the plaintiff and her partner. One aspect of this matter concerns the identification of the child but that is not the only basis on which the publication was found to be unwarranted. The publication of the photograph was also found to be inappropriate as being private information, the publication of which was not justified.

Fourthly the details of the partner's family. This matter is even more indirect and minimal.

Fifthly, the details about the child. This is the most serious of all the published items to which objection has been taken. The publication was in breach of the Press Code guidelines.

[13] Weighing all these matters I have decided to award the plaintiff £1,000. In doing so I reflect the fact that certain of the matters I consider to be of minimal effect. The photograph of the plaintiff and her partner is more significant, although it did not contain anything of an embarrassing character. The significant matter is the information about the child. There will be judgment for the plaintiff for £1,000.