



Media Bulletin

RECENT MEDIA FRIENDLY PRIVACY DECISIONS

- Darryl Broderick

LK (a minor) and MK –v- Three Media Outlets

A judgment was given by the High Court in this breach of privacy claim on 3 November 2010.¹ RDJ represented one of the Defendants.

Facts

Each of the Defendants had published short reports of a guilty plea by a person, D, who pleaded guilty to the rape and sexual assault of a female and male respectively on certain dates. The victims' (Plaintiffs) names and addresses were not published. The Plaintiffs' claimed that they were entitled to damages as a result of a breach of Section 7 of the Rape Act 1981 (as amended) and for breach of their constitutional right to privacy. Section 7 provides that "...after a person is charged with a sexual assault offence no matter likely to lead members of the public to identify a person as the Complainant... shall be published...". The Plaintiffs produced witnesses from the village in which they had lived who gave evidence that they had identified the Plaintiffs from the Defendants' publications having earlier witnessed Garda visits to the houses of both the victims and the convicted person.

The Defendants argued that they could not have anticipated that the information published was likely to lead to the victims being identified.

Decision

In finding for the Defendants, the Judge made a number of important points which can be summarised as follows:-

¹ This decision is being appealed by the Plaintiffs.

- There is a public interest in identifying and naming convicted sex offenders.
- This public interest should not be at the expense of a Complainant's right to privacy and anonymity which continues after the accused person has been convicted.
- In certain circumstances the Court can lawfully restrict the publication of the identity of a convicted person in order to prevent a victim being identified.
- The test on whether a publication is "likely" to lead to a Complainant being identified is whether there is "a real risk that the Complainant would be identified in the minds of the public if the information was published".
- If it can be shown that a Court Reporter was aware or ought to have been aware that the publication was likely to lead members of the public to identify the Complainant e.g. if the convicted person was a relative or neighbour of the victim, then that could be a breach of Section 7 which could lead to an entitlement to damages arising from a breach of the Complainant's constitutional right to privacy. The Judge stated in this regard that if the report stated that the victims of the crimes also lived in the same village as the perpetrator and that the offences were committed in that village then his decision may have been different.
- It would be unreasonable and would constitute an invasion of privacy for the media to investigate whether victims of sexual offences are children and whether they might be identified by the publication of details of a name, age and address of a convicted person.

Comment

On foot of this decision, Court Reporters should be instructed that if they are aware of particular facts in

sexual offence/rape cases which might lead to the identification of the victim consideration must be given to removing detail from what would otherwise be considered as sparse court reports so as not to run the risk of identifying a victim and thus facing breach of privacy as well as contempt of Court actions.

Ruth Hickey and Jessie Isaac Agnew (a minor) –v- Sunday Newspapers Limited.

Facts

In this well publicised case, Ruth Hickey and her son sued for breach of privacy arising out of two articles in the Sunday World. Ms. Hickey’s partner and the father of her infant son, David Agnew, was the former husband of the entertainer “Twink” (Adele King). One of the articles was accompanied by a photograph of Ms. Hickey, Mr. Agnew and her son leaving the Registry of Births, Deaths and Marriages office in Dublin and the second article dealt with a well publicised expletive ridden voicemail message that had been left by Ms. King for Mr. Agnew. The infant’s features were obscured in the photograph. Ms. Hickey alleged there was a campaign of harassment against her by the Sunday World.

Decision

The Judge, in upholding the arguments made by the Sunday World, held that there was no breach of privacy for the following reasons:-

- The photographs were taken when both the photographer and the Plaintiffs were in a public place performing a routine public function.
- The photographs did not disclose anything that could not have been seen by anyone else who turned up at the Registry Office at the relevant time.
- The existence of Ms. Hickey’s son, his age and the identity of his parents were matters of public record.
- The publications did not expose the Plaintiffs to physical harm from any person with ill intent.
- There was no campaign of surveillance as alleged.
- The features of the child were not recognisable and he could not have suffered any hurt or humiliation from the publications in question.
- Ms. Hickey had the intention of publicising the very matters in respect of which she was claiming a right to privacy.

- The voicemail in question was posted on the internet and was in the public domain. The Judge said there was an inherent illogicality in asserting rights of privacy over material which is already in public circulation.

Comment

In general, it will not be a breach of privacy to publish a photograph of someone in a public place particularly when they are performing a routine public function. There may however be exceptions such as the well known “Princess Caroline case” where the European Court of Human Rights held it was a breach of privacy to publish photographs of Princess Caroline, even though she was photographed in public places, because it was part of a campaign of harassment. It will generally be a breach of privacy if a person is photographed in a private setting even where the photographer takes his photograph from a public place. This happened in the Princess Caroline case. While the Irish media have generally refrained from publishing photographs of children without their parents’ consent, in following a New Zealand decision, the Judge indicated that photographs of children could be published even where the features of the children are recognisable provided that they only disclose matters of public record and they do not disclose information which might be useful to someone with ill intent. The test is whether a person of ordinary sensibilities would find the publication of a photograph highly offensive.

RECORD DEFAMATION AWARD

- Darryl Broderick

Donal Kinsella was awarded €10,000,000 against Kenmare Resources plc in November. This was, by a considerable distance, the highest defamation award in Ireland. It is currently under appeal. Awards of this size (or anywhere near this size) are likely to become things of the past as under the new Defamation Act a High Court Judge can give directions to a jury in relation to damages. Mr. Kinsella’s claim was brought under the old Defamation Act which prevented the Judge in that case from giving such a direction.

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