



Neutral Citation Number: [2022] EWHC 3640 (Fam)

Case No: XX20C00043

**IN THE HIGH COURT OF JUSTICE FAMILY
DIVISION**

Date: Friday, 28th October 2022

Before:

MRS JUSTICE LIEVEN

-

Between:

A LOCAL AUTHORITY

Applicant

- and -

(1) THE MOTHER

Respondents

(2) THE FATHER

(3 & 4) THE CHILDREN

**(Via their Childrens
Guardian)**

MR JAMES CLEARY (instructed by **A Local Authority**) appeared for the
Applicant

MR SHAUN SPENCER (instructed by **Family Law Group**) appeared for the **First Respondent**

MR ANTHONY FINCH (instructed by **Elliot Mather LLP**) appeared for the **Second Respondent**

MS HELENA DOWNING (**Solicitor, Banner Jones Solicitors**) appeared for the **Third and
Fourth Respondents**

THE FIFTH RESPONDENT was not present or
represented

MR PARISHIL PATEL KC (instructed by **Ms Shabana Jaffar**) appeared for **CAFCASS**

MS MARY PRIOR KC and MS SALLY HOBSON (instructed by **Ms Sarah Humphries**) appeared
for the **Crown Prosecution Service**

Approved Judgment

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The Judge hereby gives leave for this judgment to be reported in this anonymised form. The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them may be identified by name or location.

(IN PRIVATE)

MRS JUSTICE LIEVEN:

1. This is an application made by a local authority and by CAFCASS for reporting restriction orders in respect of two social workers and two CAFCASS Officers. The very brief background facts are that the child, who is now subject to Family Court proceedings ("AA"), and his younger brother B were subject to Family Court care proceedings in 2020 and were returned home to their parents. B, tragically, died. Both parents have been charged with murder and the criminal trial is listed to begin on Monday for six weeks, although I understand that Monday itself is a reading day.
2. The local authority and CAFCASS apply for reporting restrictions to restrict the naming of the social workers who were involved with B and AA before B's death, and CAFCASS applies for an order to restrict the naming in the media of both the Guardian, who was involved in the case before B's death, but also the current Guardian in the current proceedings concerning AA.
3. I have heard brief submissions on behalf of all the parties and I have had skeleton arguments that set out both the statutory provisions in respect of making reporting restriction orders, but also cases concerning the Article 8/Article 10 balance that would be necessary before any such order was made. However, in my view it is not necessary for me to even get to that stage.
4. The concern I have at the preliminary stage is that this application should be made before the trial judge in the Criminal Court rather than before me. I have an inherent jurisdiction which would, in principle, allow me to make a reporting restriction order, given that there are care proceedings in respect of AA, and given that I know something about the Article 8 cases being advanced, I accept that I would have jurisdiction to make such an order. However, the trial judge would be in a far better position to consider that balance because she will know much more about the Article 10 side of the issues. Also, importantly, she will have before her the media who are reporting on the criminal case. They can then make submissions as to open justice principles and the degree to which it is or is not appropriate to name social workers and indeed the CAFCASS Officer in any reporting.
5. Further, I think it is quite inappropriate in respect of the social workers that I should make any reporting restriction order because at least one, and possibly more than one, of the social workers are listed as witnesses in the criminal trial. In my view, it would be significantly preferable for the trial judge to decide whether or not a witness in her trial should be subject to a reporting restriction than that I should consider that matter.
6. I should make it clear that the applications for reporting restrictions before me are entirely on the basis of the potential Article 8 interference in respect of those individuals and potentially adverse criticism of them. There is a concern about the impact that that may have on them personally, particularly in small communities. There is no suggestion that the naming of the social workers or the CAFCASS Guardian would lead to the identification of AA. Therefore, the issue that would be of primary interest to me as the Family Court judge in the case, namely the anonymity of the child, is not engaged in the applications before me. That makes this case wholly different from cases such as *Re S* where reporting restriction

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orders were made in order to protect the identity of a child rather than protecting the identity of adult professionals.

7. All parties agree (in particular Mr Cleary on behalf of the local authority and Mr Patel on behalf of CAFCASS) that the criminal Judge would have the power to make a reporting restriction order in the terms sought, if that is what she (Mrs Justice Tipples) considers to be appropriate. She might have that power under section 46 of the Youth Justice and Criminal Evidence Act 1999, but, in any event, if the application was for a reporting restriction against the world not on grounds that fell within section 46, all parties agree she could constitute herself as sitting within the High Court and an application could then be made to her in that capacity.
8. Finally, I note two things. First of all, in respect of the CAFCASS Officer, it is not clear that she would be named in the proceedings in any event. However, I accept what Mr Patel says, which is that the reason she may not be named at the moment is simply because her name has been redacted. So I am not going to suggest in this judgment that there is no risk of her name going into the public domain.
9. Secondly, Mr Patel raises the argument that the applications do not just concern the criminal proceedings, but also potential subsequent matters such as the coroner's inquest, safeguarding reviews and so forth into the future. However, the trigger for this application is undoubtedly the criminal proceedings and, if Mrs Justice Tipples decides to grant an injunction in respect of the criminal proceedings, there may then subsequently have to be consideration as to whether that continues for any other proceedings.
10. In those circumstances, I do not consider it appropriate to make the orders sought.

(This judgment has been approved by the Judge.)