



20 May 2015

## PRESS SUMMARY

**James Rhodes (Appellant) v OPO (by his litigation friend BHM) and another (Respondents)**  
[2015] UKSC 32

*On appeal from [2014] EWCA Civ 1277*

**JUSTICES:** Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Wilson and Lord Toulson

### BACKGROUND TO THE APPEAL

The Appellant (the “Father”), James Rhodes, is a concert pianist, author and television film maker. He has written a book titled *Instrumental*, which he is hoping to publish, and it is aimed at providing a sound track to the story of his life. It includes searing accounts of the physical and sexual abuse and rape inflicted on him from the age of six by the boxing coach at his school. It goes on to chart his subsequent resorting to drink, drugs, self-harm, attempts at suicide as well as his time in psychiatric hospital culminating in his redemption through learning, listening to and playing music.

The book also refers to his first marriage, to an American novelist then living in London (the “Mother”), and the child they had together (the “Son”) to whom the book is dedicated. The Mother and Father divorced some years ago. During the divorce, they made a residence and contact order in London on 15 June 2009. This included a recital by which the Mother and Father agreed to use their best endeavours to protect the Son “*from any information concerning the past previous history of either parent which would have a detrimental effect upon the child’s well-being*”. The Mother and Son now live overseas. The Son has been diagnosed with Asperger’s syndrome, attention deficit hyperactivity order, dyspraxia and dysgraphia.

A first draft of the book, sent to the publishers in December 2013, was leaked to the Mother in February 2014. Some changes were made, such as the use of pseudonyms. However, the Mother wanted more significant changes as she was concerned that the book would cause psychological harm to the Son, now aged 11, if he came to read it. In June 2014, she brought proceedings (later taken over by the Son’s godfather), on behalf of the Son, on various grounds seeking an injunction prohibiting publication or the deletion of a large number of passages. She adduced evidence from a consultant child psychologist whose opinion was that the Son was likely to suffer severe emotional distress and psychological harm if exposed to the material in the book because of his difficulties in processing information.

In July 2014, Bean J in the High Court dismissed the application for an interim injunction. In October 2014, the Court of Appeal reversed the High Court, finding that only the claim for intentionally causing harm under the tort in *Wilkinson v Downton* should go to trial. It also granted an interim injunction restraining the Father from publishing certain information such as, for example, “*graphic accounts of...sexual abuse he suffered as a child*”. The Father appealed to the Supreme Court.

### JUDGMENT

The Supreme Court unanimously allows the appeal. Lady Hale and Lord Toulson (with whom Lord Clarke and Lord Wilson agree) deliver the judgment of the Court. Lord Neuberger (with whom Lord Wilson agrees) gives a concurring judgment.

## REASONS FOR THE JUDGMENT

Lady Hale and Lord Toulson consider the domestic case law [31-67] and other common law authorities [68-71] in relation to the tort in *Wilkinson v Downton*. It consists of three elements: (1) a conduct element; (2) a mental element; and, (3) a consequence element. Only (1) and (2) are issues in this case [73].

The conduct element requires words or conduct directed towards the claimant for which there was no justification or reasonable excuse, and the burden of proof is on the claimant [74]. In this case, there is every justification for the publication. The Father has the right to tell the world about his story. The law places a very high value on freedom of speech. The right to disclosure is not absolute because a person may, for example, owe a duty to treat information as confidential, but there is no general law prohibiting the publication of facts which will distress another person. It is hard to envisage any case where words which are not deceptive, threatening or (possibly) abusive could be actionable under the tort recognised in *Wilkinson v Downton* [75-77].

In addition, the injunction – prohibiting graphic language – was wrong in principle and in form; it is insufficiently clear what “graphic” means and, in any event, a right to convey information to the public includes a right to choose the language in which it is expressed in order to convey the information most effectively [78-79].

The required mental element is an intention to cause physical harm or severe mental or emotional distress. Recklessness is not enough [87]. In this case, there is no evidence that the Father intends to cause psychiatric harm or severe mental or emotional distress to his Son [89], and there is no justification for imputing an intention to cause harm on the basis of harm being foreseeable. Intention is a matter of fact. It may be inferred in an appropriate case from the evidence, but is not to be imputed as a matter of law [81-82].

There is no real prospect of establishing either the conduct element or the mental element of the tort [90].

Lord Neuberger allows the appeal for the same reasons. It would be an inappropriate restriction on freedom of expression to restrain publication of a book simply because another, to whom the book is not directed, might suffer psychological harm from reading it [97]. He adds some further remarks as to the scope of the tort in *Wilkinson v Downton* [101-121].

*References in square brackets are to paragraphs in the judgment*

### **NOTE**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

[www.supremecourt.uk/decided-cases/index.html](http://www.supremecourt.uk/decided-cases/index.html)