



19 May 2016

PRESS SUMMARY

PJS (Appellant) v News Group Newspapers Ltd (Respondent) [2016] UKSC 26 *On appeal from [2016] EWCA Civ 393*

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Reed, Lord Toulson

BACKGROUND TO THE APPEAL

PJS is married to YMA. Both are well-known individuals in the entertainment business. They have two young children. Between 2009 and 2011 PJS had a sexual relationship with AB and, on one occasion, with AB and CD. In January 2016 the editor of the Sun on Sunday newspaper, published by News Group Newspapers (“NGN”), notified PJS that he proposed to publish AB’s account of the relationship. PJS issued proceedings claiming that the publication would breach his rights to privacy and confidentiality, protected by article 8 of the European Convention on Human Rights (‘ECHR’). He applied for an interim injunction, to restrain publication pending the trial of his claim. This application required the court to balance PJS’s article 8 rights with NGN’s right to freedom of expression under article 10 ECHR, and was subject to s 12 of the Human Rights Act 1998 (‘HRA’). Section 12(3) provides that an interim injunction can only be granted if a claimant is likely to establish at trial that publication should not be allowed. Section 12(4) provides that the court must have particular regard to the importance of freedom of expression and, in relation to journalistic material, to the extent to which the material has or is about to become available to the public, to the public interest in the material being published, as well as to any relevant privacy code.

The High Court refused the application but the Court of Appeal allowed PJS’s appeal on 22 January 2016 and granted an interim injunction which restrained publication of information which would disclose the identity of PJS and details of the sexual relationship.

On 6 April 2016 AB’s account was published in print in the United States, and thereafter in Canada and in Scotland, identifying PJS. As a result of representations by the appellant’s solicitors, publication was restricted to hardcopy editions and online publication was “geo-blocked” such that internet users in England and Wales could not readily access those sites. However, details have been published on a number of other websites and social media, although the appellant’s solicitors have been doing their best to remove offending URLs and web pages.

On 12 April 2016 NGN applied to the Court of Appeal to set aside the interim injunction on the ground that, as the information was now in the public domain, PJS was unlikely to obtain a permanent injunction at trial and the interim injunction could therefore no longer be justified. On 18 April 2016 the Court of Appeal held that the injunction should be discharged. The Supreme Court restored it pending determination of PJS’s application for permission to appeal, which it ordered to be heard with the appeal, should permission be granted.

JUDGMENT

The Supreme Court unanimously grants permission to appeal; and allows PJS’s appeal by a majority of 4 to 1. Lord Mance gives the leading judgment, with which Lord Neuberger and Lady Hale (each of whom give supporting judgments) and Lord Reed agree. Lord Toulson gives a dissenting judgment.

REASONS FOR THE JUDGMENT

As the Court of Appeal erred in law, the Supreme Court grants permission to appeal and must decide for itself whether the interim injunction should be discharged or maintained [19].

- The principal error is that the Court of Appeal wrongly directed itself that s 12 HRA enhanced the weight to be given to article 10 rights in the balancing exercise, when the case law establishes that neither article 8 nor article 10 has preference over the other and what is necessary is an intense focus on the comparative rights being claimed in the individual case [20][51].
- The Court of Appeal also referred to a ‘limited public interest’ in the story when it had rightly held that there was none in its earlier judgment [21]. There is not, on its own, any public interest in the legal sense in the disclosure of private sexual encounters even if they involve infidelity or more than one person at the same time, however famous the individual(s) involved [24][32].
- It is essential to distinguish between the claims for breach of privacy and for breach of confidence. The widespread availability of the information in the public domain may well mean that PJS would face difficulties in obtaining a permanent injunction in so far as his claim is based on confidentiality [57], but different considerations apply to privacy claims, where the impact of any additional disclosure on the likely distress to PJS and his family, and the degree of intrusion or harassment, continues to be highly relevant. The question is whether the injunction can still serve a useful purpose. It is important to consider the medium and form of the previous publication: there is a qualitative difference in intrusiveness and distress between the disclosures on the internet which have occurred and the media storm which would follow from publication by the English media in hard copy, together with unrestricted internet coverage of the story [35][63].
- Publication in this form is contrary to the interests of PJS’s children and in breach of the requirement to show an exceptional public interest for the intrusion set out in the *Editors’ Code of Practice* to which NGN has subscribed [36]. Lady Hale’s judgment discusses this consideration further, partly in redacted form to prevent identification [72-78]
- Rights must be practical and effective. The grant of an injunction is the only remedy of any value to PJS and his family, for whom the invasion of privacy occasioned by further disclosure in the English media, rather than any award of damages, is likely to be the real concern [43].
- The central issue is whether the trial judge is likely to grant a permanent injunction. Balancing all these factors, the majority concludes that PJS is likely to establish at trial that the proposed publication by NGN constitutes a serious breach of his and his family’s privacy rights, with no countervailing public interest on the present evidence, and that he is likely to be granted a permanent injunction notwithstanding the internet and social media publication. Accordingly, the interim injunction is maintained [44-45][68].

Lord Toulson, dissenting, would have upheld the discharge of the injunction. He considers that where the information is widely available, the form of the publication should not make a significant difference: the purpose of s 12(3) is to discourage the granting of an injunction to prevent publication of information which is already widely known [89].

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:

<http://supremecourt.uk/decided-cases/index.html>