Neutral Citation Number: [2022] EWFC 49

Case No: LV20D03547

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/05/2022

Before :

MR JUSTICE MOSTYN

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Between :

XZ	**Applicant**
- and -	
YZ	**Respondent**

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- -

Simon Webster QC and Phillip Blatchly (instructed by Hall Brown) for the applicant
Jonathan Southgate QC and Petra Teacher (instructed by Rayden Solicitors) for the respondent

Hearing date: 20 May 2022

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APPROVED JUDGMENT

Mr Justice Mostyn:

1. As I sought to make clear most recently in my judgment in *Xanthopoulos v Rakshina* [2022] EWFC 30 at [125]:

> "the law, when properly understood, permits information about financial remedy proceedings and judgments (in cases which are not mainly about child maintenance) to be published unless the court has made a specific order preventing publication".

2. No doubt mindful of this statement, which follows similar statements in my judgments in *BT v CU* [2022] 1 WLR 1349, [2021] EWFC 87, *A v M* [2021] EWFC 89 and *Aylward-Davies v Chesterman* [2022] EWFC 4, the husband ("H") applied in Form D11 for a Reporting Restriction Order ("RRO") in advance of the final hearing concerning the application of the wife ("W") for financial remedies. The RRO application was fixed to be heard on the first day in court of the final hearing which itself is listed for seven days.

3. I note at the outset that W is said by those representing H neither to oppose nor support the application.

Scope of the application

4. The scope of the application (which I note in passing does not seek to exclude any individual from the final hearing) is put differently between (i) the Form D11, (ii) written submissions entitled "legal basis to H's application for a reporting restriction order or anonymity", and (iii) the draft order.

5. The D11 seeks either: (i) an RRO preventing the disclosure of any private and commercially sensitive material; or (ii) an anonymity order to prevent the identification of the parties to these proceedings, their children and H's business interests.

6. H's submissions, on the other hand, seek anonymisation of the judgment, or publication of the parties' names but restriction of reporting of their "private information". While "private information" is not expressly defined in the written submissions, the term appears to be intended to cover information relating to the value to be ascribed to a business in respect of which H is a joint and equal shareholder.

7. The draft order itself is produced in terms which require anonymisation throughout the proceedings to the parties and prohibits reporting of any part of these proceedings which would: (a) identify the parties, the children, the children's school, the property where the children are living, or the companies in which H is a director; or (b) that would "disclose the facts and matters raised in court in these proceedings during the hearing before Mostyn J". A caveat is added that the reporting restrictions shall apply "save to the extent that the information is already in the public domain".

Legal framework for the application

8. As I concluded in *Xanthopoulos (supra),* in a financial remedy case:

> "121. … anonymisation can only be imposed by the court making a specific anonymity order in the individual case. Such

> an order can only lawfully be made following the carrying out of the ultimate balancing test referred to by Lord Steyn in *Re S*. It cannot be made casually or off-the-cuff, and it certainly cannot be made systematically by a rubric. On the contrary, the default condition or starting point should be open justice, and open justice means that litigants should be named in any judgment, even if it is painful and humiliating for them, as Lord Atkinson recognised in *Scott v Scott*."

9. The "ultimate balancing test" referred to by Lord Steyn in *Re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593, HL, in turn, refers to the balance to be struck between various rights in the ECHR, namely the privacy right in Article 8 on one hand, and the principle of open justice in Article 6 and the general Article 10 rights of the public at large (see also my judgment in *Aylward-Davies v Chesterman* [2022] EWFC 4 at [28]).

Decision

10. In conducting the balancing exercise envisaged in *Re S*, I must first understand the elements on both sides of the scales. H advances the application by reference to, *inter alia*, the following considerations:

    i) Article 8 ECHR is engaged by the reporting of information disclosed in financial remedy proceedings, in turn obtained under compulsion (this not being H's application for financial relief);

    ii) A significant proportion of the final hearing will focus on the valuation of a business in which H is a joint and equal shareholder. Dissemination of information regarding that business "could sour existing relationships and enable his competitors, all of whom bid and compete for the same work, to obtain a significant advantage";

    iii) Reporting of that business information would also affect the commercial interests of third parties including, principally, H's business partner;

    iv) Aspects of H's evidence as to his approach to a prospective liability arising from his involvement in an overseas company could be exploited and used for collateral purposes and prejudice his position in those proceedings. The nature of the allegations could expose H to criminal sanction, including imprisonment; and

    v) Most of the evidence filed by the parties was done so with a reasonable expectation that their anonymity would be preserved, with steps including the reply phase being completed in January/February 2021, prior to the court's analysis in *BT v CU* on 1 November 2021.

11. I am of the view that there is at least some merit in the submissions made on behalf of H, but I consider that there are, at present, two unknowns in respect of the balancing exercise. The first is to what extent, if at all, the oral evidence and/or submissions will actually disclose matters which could adversely prejudice H and related third parties in the overseas company proceedings or otherwise. This can only be answered having

heard the evidence itself. Second, and noting that the RRO application was to be served on Brian Farmer of the Press Association, to what extent, if at all, do the press oppose the RRO in the name of open justice and the Article 10 rights of the public at large. This can only be answered once any journalists attending the hearing have had the opportunity to hear the evidence and submissions, and consider whether they wish to address me on this application.

12. In such circumstances, I have decided that I should make an interim blanket RRO to endure until H's application is considered substantively during final submissions. I do so to hold the ring and to preserve the tenability of H's arguments so that, the unknowns having become known, I can decide what weight is to be attributed to the Article 8 ECHR arguments and can conduct the full balancing exercise required by *Re S*. In my judgment it is impossible to say at this stage whether the outcome of the *Re S* balancing exercise will be anonymity or redaction or both.

13. Having revisited the decision in *Re S*, I am of the view that it is implicit in Lord Steyn's speech that the court can make a temporary or interim RRO without full evidence and without performing the complete balancing exercise to endure only until the parties and the court are ready to deal with the matter substantively, justly and fairly.

14. In making this order, I am acutely aware that the press will be denied the opportunity to 'live' report the proceedings as they happen, but this prejudice is minor compared to the prejudice that might be suffered by H and by the media if I were to make an incorrect RRO at this stage. The balance, at least on an interim basis, therefore favours the making of the order. I would point out that were I to make the substantive decision now, and run the risk of foreclosing future possibilities, the media may be left with less to report at end of the day. I stress that the order I now make is a short-term and strictly time-limited restraint.

15. When the application is addressed during closing submissions, counsel should be prepared to address me on the precise scope of the RRO sought and the reasons for the same, noting the differences between the D11, the written submissions, and the draft order as highlighted earlier in this judgment.

16. I therefore ask counsel for H to prepare an amended version of the order which:

    i) Expressly states, on page 1, that this is an "interim" RRO;

    ii) Expressly states, also on page 1, that "this order shall take effect forthwith notwithstanding that the seal of the court may not be impressed on it until a later date"; and

    iii) Recites that the issue of whether a final or substantive RRO is to be made, and if so its scope shall be addressed by the parties in closing submissions.

17. It seems to me that the steps I have taken, namely to impose a short-term reporting restriction order at the beginning of the case to endure only until the implementation of the full *Re S* balancing exercise in the light of all of the evidence at the end of the case, would be a useful procedure in many cases. It would avoid a wastage of time at the beginning of the case and would ensure that the balancing exercise is done on the best available evidence.

18. That is my judgment.