**Neutral Citation No: [2010] NIQB 106** | *Ref:* **GIL7954**

*Judgment: approved by the Court for handing down* | *Delivered:* **1/10/10**
*(subject to editorial corrections)**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION**

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**BETWEEN:**

**GIGI LEE**

**First Plaintiff;**

**GEORGE IVAN MORRISON**

**Second Plaintiff;**

**X (A MINOR) BY HIS MOTHER AND NEXT FRIEND GIGI LEE**

**Third Plaintiff;**

**-and-**

**NEWS GROUP NEWSPAPERS LIMITED**

**First Defendant;**

**SUNDAY WORLD**

**Second Defendant;**

**TONY MAGUIRE**

**Third Defendant;**

**PERSON OR PERSONS UNKNOWN WHO HAVE OBTAINED INFORMATION CONCERNING THE PRIVATE LIVES OR RELATIONSHIP OF THE PLAINTIFFS OR ANY OF THEM AS SET OUT BELOW**

**Fourth Defendant.**

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**GILLEN J**

## Application

[1] In this matter the three plaintiffs have issued a writ against the defendants seeking the following relief:

(a) An injunction prohibiting the defendants from publishing information concerning the private lives or relationships of the plaintiffs including any photographs or other information revealing or tending to reveal the place of residence of the first and third plaintiffs or identifying the first and third plaintiffs.

(b) Damages for loss and damage, injury to feeling, stress and inconvenience by reason of the misuse of private information by the defendants and alternatively by reason by breach of the defendants of their rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (as set out in Schedule 1 to the Human Rights Act 1998) ("the Convention").

(c) Damages for loss and damage, injury to feelings, distress and inconvenience caused by breach of confidence and misuse of private information arising out of the contract of employment between the third named defendant and the plaintiffs.

[2] The application now before me has been brought by the plaintiffs seeking an interlocutory injunction against the defendants to prevent publication of information contained in a proposed newspaper article of the first defendant("the impugned article") together with photographs which the plaintiffs claim provide information about their private lives.

[3] On 11 September 2010 Treacy J granted an emergency interim injunction on the following terms:

(i) That the proceedings insofar as they relate to the third named plaintiff shall be anonymised and the third named plaintiff should be referred to as X (A Minor).

(ii) That the defendant must not whether by themselves or by any other person publish to any third party (other than to legal advisers instructed in relation to the proceedings for the purpose of obtaining legal advice in relation to these proceedings) information concerning the private lives and relationships of the plaintiffs or any of them including any photographs or other information revealing or tending to reveal the place of residence of the first and third named plaintiffs or identifying the first and third plaintiffs.

**The background events**

[4] The first named plaintiff (hereinafter called P1) has described herself as a business lady and the mother of the third named plaintiff (hereinafter called P3). The second named plaintiff (hereinafter called P2) has described himself

as a musician, song writer and performing artist. They were represented in this application by Mr Fee QC who appeared with Mr Boyle.

[5] The first named defendant (hereinafter called D1) is a company that publishes the News of the World newspaper. It was represented in this matter by Mr Lockhart QC who appeared with Mr Gibson.

[6] The second named defendant, Sunday World Newspapers, was not represented before me. Mr Fee informed me that the newspaper had been joined to the action because of information received by P1 and P2 that it proposed to publish a similar article to that intended by D1. No evidence of that has emerged before me and I see no reason to retain that newspaper in this action. I therefore dismiss the application in respect of D2.

[7] The third named defendant (hereinafter called D3) was not represented before me. He had confirmed in an affidavit dated 15 September 2010 that he was the source of the story to be published in the News of the World but now wished that the information be not published.

[8] At the hearing I was furnished with a copy of the impugned article together with approximately 12 photographs variously depicting images of the residence of P2, P2 in his car at the residence, P1 and of P2 with his wife and child.

[9] That article and those photographs form part of a confidential annex to this judgment and are not be published as part of that judgment,

[10] The impugned article refers to a number of personal details of and concerning the plaintiffs including inter alia:

- P2's residence (the residence) and considerable detail as to value, layout and furnishings together with the input into its management by P1.
- Staff residing at the residence.
- Detailed physical descriptions of P3.
- The relationship between P1 and P2.
- Visitations to the residence by P1 and P2 together with daily activities and deliveries thereat.
- Visits by P2 to his wife and child (contained in the photographs).

[11] I pause to observe that I was informed that at the hearing convened before Treacy J, the judge was provided with only one of the photographs now before me. Mr Lockhart asserted that this had been the result of a breakdown in communications between client and counsel (who had not been Mr Lockhart). Whilst in this instance I am prepared to accept the explanation put before me, nonetheless I find it disquieting that a full and candid

presentation of all the facts and photographs were not before the judge when the matter was first determined.

**Affidavit evidence**

[12] At this hearing I had a number of affidavits before me. P1 had filed an affidavit to the effect that she understood that D1 intended to publish a story in relation to an alleged intimate relationship between P2, herself and P3 revealing where she lived with P3. She averred that this information was a private matter and she did not wish that information or any information concerning their place of residence or photographs to be in the public domain.

[13] P2 had filed an affidavit recording the intention of the D1 to publish the story. He deposed that whilst he did perform music in public he regarded his private life, including his personal intimate relationships as an area to be kept private and away from public scrutiny or comment. At paragraph 2 he said:

> "I have made considerable efforts to protect my private life and I have refused to be interviewed about it, to comment on it publicly or to authorise others to do so save in very limited circumstances when a bare minimum of information is required to prevent or minimise harm from the repeated attempts of others to publish allegations about my private life."

He averred that he had not given any authority to anyone to publish the information or the photographs contained in this case. Dealing with D3, a tradesman employed by P2, he asserted that he had not given him any authority to publish any information concerning his private life.

[14] P2 further deposed that in late 2009 his official website was the subject of successful intrusion by unauthorised hackers and on one occasion an entry was posted to the effect that P1 and P2 had announced the birth of a new son. P1 believed that when one of his public relations officers John Saunders saw this entry he mistakenly assisted in publication of the message. P2 accepted that John Saunders had stated that P1 did not even know P2 "which was clearly incorrect as she had been employed in relation to my business". P2 claimed that his solicitors had promptly corrected this error by releasing a statement to the press to the effect that Mr Saunders incorrectly stated that P2 did not know P1 whilst at the same time asserting the strength of his marriage.

[15] On behalf of D1, Niall Marshall, photographer, had filed an affidavit recording that he had taken photographs of the residence of P2 from a public highway. He specifically denied trespassing over property owned or

controlled by P1 or P2. For the purposes of completeness, a counter affidavit from Esler Crawford, photographer, on behalf of P2 had been filed declaring that in his opinion the photographs could not have been taken outside the property of the plaintiffs. I observe at this stage that it has not been necessary for me to make a determination on this issue.

[16] A further affidavit from Ciaran McGuigan, reporter employed by D1 averred that the impugned article touched upon several topics including the relationship between P1 and P2, the existence of a baby born to P1, P2's marital status and the existence of the property purchased by P2 in which it was alleged P1 and P3 now reside. He contended that the article did not detail the private or intimate particulars of any relationship between them and constituted a very "low level of intrusiveness".

[17] Mr McGuigan went on to depose that the existence of a relationship between P1 and P2 is information which at all material times has been in the public domain and is generally known to numerous persons in the entertainment industry and the public at large. Specifically he referred to an article in the Mail on Sunday of 3 January 2010 in which Mr John Saunders, speaking on RTE Radio's News at One programme on 31 December 2009, asserted that P2 had never heard the name of P1 at any stage in the past and did not know who she was. A further article of 10 January 2010 was published in the Mail on Sunday repeating the allegation that P1 and P2 knew of and were aware of each of other and had a relationship. At paragraph 8 of that affidavit, Mr McGuigan avers that on a search carried out on Factiva, which is a database available to journalists, there was a list of all articles concerning the topic being searched. A total of 133 (hits) (70 relating to publications in Great Britain) were found upon inputting the words ["P1"] and ["P2"] and "baby". The deponent further asserts that the allegation that P1 has a baby boy has been widely reported, P2's marital status has been publicly released by him, and his place of residence can be "readily gleaned and ascertained through the public domain".

[18] D3 swore an affidavit on 15 September 2010 indicating that he had agreed to provide information to Ciaran McGuigan on the basis it would not be disclosed or published without a financial agreement between D3 and the News of the World newspaper. No such financial arrangement was entered into in the event and no financial payment has been received by D3 according to him. He further avers that he spoke on 10 September 2010 to Ciaran McGuigan who allegedly informed him that a photographer had entered the private grounds of P2 to take photographs of the plaintiffs without their permission or consent. He concludes his affidavit by asserting that he wishes to restrain the News of the World from publishing, in breach of agreement, any information which he provided.

**The plaintiffs' case**

[19] Mr Fee relied on a roster of grievances against the defendants and advanced the following points on behalf of the plaintiffs.

(a) They had a reasonable expectation of privacy arising out of the contents of the impugned article and photographs.

(b) Those privacy interests under Article 8 of the convention were not being protected in a proportional manner.

(c) Weighing their privacy interests against the countervailing public interest of the defendants under Article 10 of the convention, the court should come down in favour of the plaintiffs.

(d) The proposed article/photographs did not contribute to a debate of general interest.

(e) Insofar as details of the private lives of P1 and P2 had been in the public domain in the past, this was a considerable time ago and had occurred as a result of an unauthorised entry on P2's official website posted by hackers after the birth of P3. In any event the impugned article and photographs added considerably more intimate and personal detail than had hitherto been the case

(f) Whilst John Saunders, a PR consultant of P2, had spoken on RTE radio in the terms earlier indicated in this judgment he had not been authorised by P1 or P2 and had been contradicted through the solicitors then acting for P2 within three days.

**The first defendant's case**

[20] Mr Lockhart advanced the following propositions on behalf of D1:

(a) The impugned article was confined to the existence of a relationship between P1 and P2 and did not detail private or intimate particulars of that relationship. The nature of the relationship and the birth P3 were well within the public domain from the previous December/January 2009.

(b) If P2 did not authorise the information voiced by Mr Saunders, then it would have been expected that he would have furnished a detailed explanation as to how this erroneous information had come into the public domain.

(c) There is a strong public interest argument in favour of the publication of the article and photographs in that there is reasonable evidence to suppose

that P2 misled the public about his knowledge of P1. Accordingly there is an obvious public interest in a false and misleading statement being countered or corrected.

**Principles governing the application**

[21] The relief sought in this matter is by way of interim injunction and is governed by the Human Rights Act 1998 (HRA), s. 12 which includes the following:

> "(i) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
>
> (iii) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
>
> (iv) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to –
>
> (a) The extent to which –
>
> (i) the material has, or is about to, become available to the public; or
>
> (ii) it is, or would be, in the public interest for the material to be published;
>
> (b) Any relevant privacy code."

[22] The proceedings in the instant case relate to journalistic material and if I grant the relief sought that will affect the exercise of the Convention right to freedom of expression.

[23] Articles 8 and 10 of the Convention provide, so far as material, as follows:

"**Article 8 – Right to Respect for Private and Family Life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of … public safety or …, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

**Article 10 – Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by a public authority and regardless of frontiers …

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of … public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

[24] It follows that I must decide whether or not I am satisfied that the plaintiffs are likely to establish at trial that publication should not be allowed. I must have regard to both the extent to which the material has and is about to become available to the public ("public domain"), and the extent to which it is or would be in the public interest for the material to be published.

[25] I must also have regard to the Press Complaints Commission ("PCC") Code. The relevant provisions of the Code are as follows:

"**3* Privacy**

(i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.

(ii) Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.

(iii) It is unacceptable to photograph individuals in private places without their consent.

Note – Private places are public or private property where there is a reasonable expectation of privacy.

**The public interest**

There may be exceptions to the clauses marked* where they can be demonstrated to be in the public interest.

(1) The public interest includes, but is not confined to –

(i) Detecting or exposing crime or a serious impropriety;

(ii) Protecting public health and safety;

(iii) Preventing the public from being misled by some statement or an action of an individual or organisation.

(2) There is a public interest in the freedom of expression itself.

(3) Whenever the public interest is invoked, the PCC will require editors to demonstrate fully how the public interest was served.

(4) The PCC will consider the extent to which material is already in the public domain, or will become so.

(5) In cases involving children under 16, editors must demonstrate an exceptional public interest to

override the normally paramount interests of the child."

[26] The meaning to be given to the word "likely" in s. 12 of the HRA has been explained in Cream Holdings Ltd v Banerjee (2005) 1 AC 253 as follows:

> "22. … Section 12(3) makes the likelihood of success at the trial an essential element in the court's consideration of whether to make an interim order. But in order to achieve the necessary flexibility the degree of likelihood of success at the trial needed to satisfy 12(3) must depend on the circumstances. There can be no single, rigid standard governing all applications for interim restraint orders. Rather, on its proper construction the effect of section 12(3) is that the court is not to make an interim restraint order unless satisfied the applicant's prospect of success at the trial are sufficiently favourable to justify such an order being made in the particular circumstances of the case. As to what degree of likelihood makes the prospects of success 'sufficiently favourable', the general approach should be that the courts will be exceedingly slow to make interim restraint orders where the applicant has not satisfied the court he will probably ('more likely than not') succeed at the trial. In general, that should be the threshold an applicant must cross before the court embarks on exercising its discretion, duly taking into account the relevant jurisprudence on Article 10 and any countervailing Convention rights. But there will be cases where it is necessary for a court to depart from this general approach and a lesser degree of likelihood will suffice as a pre-requisite. Circumstances where this may be so include those mentioned above: where the potential adverse consequences of disclosure are particularly grave, or where a short-lived injunction is needed to enable the court to hear and give proper consideration to an application for interim relief pending the trial or any relevant appeal.
>
> 23. This interpretation achieves the purpose underlying section 12(3). Despite its apparent circulatory, this interpretation emphasises the importance of the applicant's prospects of success as a factor to be taken into account when the court is deciding whether to make an interim restraint order.

> It provides, as is only sensible, that the weight to be given to this factor will depend on the circumstances. By this means the general approach outlined above does not accord inappropriate weight to the Convention right of freedom of expression as compared with the right to respect for private life or other Convention rights. This approach gives effect to the Parliamentary intention that courts should have particular regard to the importance of the right to freedom of expression and at the same time it is sufficiently flexible in its application to give effect to countervailing Convention rights."

[27] I am satisfied that this is a case in which both Articles 8 and 10 of the Convention are engaged and the court has to weigh the competing claims of the plaintiffs under Article 8 and the defendants under Article 10. More particularly the court is being asked, on the one hand, to give effect to the right of the press to freedom of expression and, on the other, to ensure that the press respect the private and family life of the plaintiffs.

[28] Where, as in this instance, the court finds that the values under these two articles are in conflict, guidance is found in the House of Lords in S (A Child) (Identification: Restrictions on Publication) (2004) 3 WLR 1129 where at para 17 Lord Steyn identified the approach to be adopted as follows:

> "17. The interplay between Arts. 8 and 10 has been illuminated by the opinions in the House of Lords in Campbell v MGN Ltd (2004) 2 WLR 1232 … What does, however, emerge clearly from the opinions are four propositions. First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual cases is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test."

**Legitimate expectation of protection of and respect for private life**

[29] In carrying out this ultimate balancing test, the first hurdle to be surmounted by these plaintiffs is to establish that they have a reasonable legitimate expectation of privacy. In Campbell v MGN (2004) 2 AC 457 at paragraph 50 Lord Nicholls summarised the test thus:

> "The touchstone of private life is whether in respect of the disclosed facts, the person in question has a reasonable expectation of privacy."

[30] That particular concept of legitimate expectation finds an echo in Murray v Express Newspapers Plc and Big Picture (UK) (2008) EWCA Civ. 446 at paragraph 36(Murray's case) where Clarke MR said:

> "As we see it, the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher."

See also McKennit and Others v Ash and Anor (2006) EWCA Civ. 714 (McKennit's case) and LNS v Persons Unknown (2010) EHWC 119.

[31] It goes without saying that the expectation must be based on an intrusion of some seriousness and not merely useless information or trivia.

[32] I pause to observe in this context that the home address of an individual is information the disclosure and use of which that individual has a right to control in accordance with Article 8 of the Convention (see Green Corns Ltd v Claverley Group Ltd (2005) EWHC 958 (QB) at paragraphs 53 and 56).

[33] I consider that the protection of private life extends beyond the family circle and includes a social dimension. Individuals, even if they are known to the general public, must be able to enjoy a "legitimate expectation" of and respect for their private life. Thus celebrities are entitled to such protection from unwarranted intrusion.

[34] Unsurprisingly, Mr Lockhart on behalf of D1 did not seriously contend that in this instance the plaintiffs had crossed the first hurdle and that they did enjoy a reasonable expectation of privacy in these circumstances. Taking into account the following -

- the activities being related in the impugned article were of a private and personal nature and included physical descriptions of one child and photographs of another child albeit her face was concealed.
- the home residence of P2 was to the fore and the centre of much of the information being imparted
- the nature of the intrusion was to deal with personal relationships and the birth of a child and was for the purpose of revealing this to the public through a newspaper article and photographs
- there had been no consent obtained from the parties -

I had no doubt that the first hurdle had been crossed by the plaintiffs.

**A debate of general interest**

[35] If, as in this instance, the first hurdle has been overcome by demonstrating a reasonable expectation of privacy, the court is then required to carry out the next step of weighing the relevant competing Convention right under Article 10 with an intense focus on the individual facts in the case. In short the question is whether there is a justification for the disclosure e.g. whether it is of public interest and/or is already in the public domain. Is a permanent injunction a necessary and proportionate remedy having regard to Article 10? Some caution should temper the deployment of the doctrine and it is important in this context that courts are wary of parties invoking Article 8 as a fig leaf to protect them from the disclosure of matters that are genuinely of public interest. The press have a vital role as a watchdog contributing to the imparting of information and ideas on matters of public interest. It is a right that must be zealously protected by the courts in appropriate cases. The test, as set out paragraph 76 in Von Hannover v Germany (2005) 40 EHRR 1(Van Hannover's case) at paragraph 76 is as follows:

> "As the court has stated above, it considers that the decisive factor in balancing the protection of private life against freedom of expression should lie in the contribution that the published photos and articles make to a debate of general interest."

[36] As the law stands, it seems clear that it is for the court to decide whether a particular publication is in the public interest. However what may be of interest to the public is not necessarily in the public interest. This view was most cogently expressed by Baroness Hale in Jameel (Mohammed) v Wall Street Journal Europe Sprl (2007) 1 AC 359 at para. 147 as follows:

> "The public only have a right to be told if two conditions are fulfilled. First, there must be a real public interest in communicating and receiving the

> information. This is, as we all know, very different from saying that it is information which interests the public – the most vapid tittle-tattle about the activities of footballers wives and girlfriends interests large sections of the public but no one could claim any real public interest in our being told all about it."

**The public domain**

[37] The general principle is that information that is already known cannot claim the protection of private life. Thus there will be cases where personal information about persons (usually a celebrity) has been so widely publicised that a restraint upon repetition would be pointless.(see for example Max Mosley v News Group Newspapers Limited[2008] EWHC 1117 ) However the invocation of that principle has to be carefully considered in the circumstances of the case. As Buxton LJ said in McKennit's case at paragraph 55:

> "If information is my private property, it is for me to decide how much of it should be published."

[38] Thus the test is not simply whether the information is generally accessible. The court must ask whether the information sought to be restrained is already in the public domain to the extent, or in the sense, that the publication could have no significant effect. There are numerous cases to illustrate this. In AVM (Family Proceedings: Publicity) (2000) 1 FLR 562, Charles J held that children would be likely to suffer harm if allegations already made public were repeated. In Venables and Thompson v News Group International (2001) Fam. 430 at (105) in relation to information in the public domain, Butler Sloss P added a proviso to the public domain exception which would protect the special quality of the new identity, appearance and addresses of the claimants or information leading to that identification, even after that information had entered the public domain to the extent that it had been published on the internet or elsewhere such as outside the UK.

**Putting the record straight**

[39] Where a public figure chooses to present a false image and makes untrue pronouncements about his or her life, the press may well be entitled to put the record straight. In Campbell v MGN Ltd (2004) 2 AC 457 the plaintiff, a celebrated model, had objected to newspaper articles and photographs revealing that she was a drug addict and attended "Narcotics Anonymous". Details of the treatment she obtained included photographs, secretly taken, showing her leaving an N.A. meeting. Whilst the photographs were unwarranted ,the Court asserted that the fact that Ms Campbell had not merely said that she did not take drugs but had gone out of her way to

emphasise that she was in that respect unlike other fashion models deprived otherwise private material of protection. Hence Lord Nicholls of Birkenhead said in paragraph 24:

> "As the Court of Appeal noted, where a public figure chooses to present a false image and make untrue pronouncements about his or her life, the press will normally be entitled to put the record straight."

**Conclusions**

[40] Having considered the impugned article and the photographs as a whole and taking account of all the circumstances when carrying out the ultimate test of balancing all the factors relating to the plaintiffs' rights under Article 8 and the Article 10 rights of the defendants, I have come to the conclusion that there is no general public interest in publishing the contents of the impugned article or the photographs. In short I consider that the plaintiffs are likely to establish at trial that publication should not be allowed.

[41] Whilst there is no doubt that the public does have a right to be informed and that in certain special circumstances that right can extend to aspects of the private life of public figures I see no basis for such a finding in the present instance.

[42] I do not believe that the public have a legitimate interest in knowing the private affairs of P1, P2 and P3 as outlined in the impugned article and the photographs. The public does not have a legitimate interest to know where the plaintiffs are, where they live or how they behave generally in their private lives however well known P2 or for that matter P1 may be. Such details as are contained in this article and photographs make no contribution to a debate of genuine general or public interest. Whilst it may well be that a particular readership may have an interest – prurient or otherwise – in certain aspects of the lives of celebrities such as P2, this is not the same as saying that these are matters of public interest. This article and these photographs go beyond the margin of appreciation allowed to a free press. They constitute an unacceptable intrusion into the private lives of these plaintiffs. Their rights to privacy under Article 8 to a respect for life outweigh the newspaper's right pursuant to Article 10 to freedom of expression in this instance.

[43] Matters such as the value of P2's house, its location, the work he has carried out to the house at the behest of P1, detailed descriptions of the furnishings and decoration contained therein and the input of P1 into their choice , the guests he has invited to his house, the state of his marriage, the relationship between P1 and P2, the delivery of food to his house, the length of time P2 has spent there, details of P3's physical appearance etc are in my view classic illustrations of intrusions into his and her private life which

Article 8 is designed to protect. They are instances of vapid tittle tattle about their activities to which Baroness Hale referred in Jameel's case. P2 and for that matter P1 may well live their lives partly in public but that does not mean the public have a right to intrude to this degree into their private lives .

[44] I find an analogous situation between the plaintiffs' case and that of Princess Caroline in Von Hannover's case. In that instance photographs of Princess Caroline of Monaco engaged in activities such as shopping with her boyfriend and son, eating at a restaurant with her boyfriend, kissing him, horse riding, canoeing, leaving her apartment etc. were all protected by the European Court of Human Rights on the basis that these were private acts outside of official duties. The acts of the plaintiffs in this case, including that of P3 who after all is only a child, fall within that category.

[45] Whilst it may well be that in December 2009/January 2010 references to the relationship of P1 and P2 in the context of the birth of P3 had surfaced, I find no evidence to refute the plaintiffs' case that this had not been of their choosing and had emanated from an unauthorised hacker. In any event, I am not satisfied that the information now contained in the impugned articles and photographs had been in the public domain to the extent now proposed or in the sense that publication could have had no significant effect on the lives of these plaintiffs . The passage of time may well have dimmed any public recollection of what had emerged from the website and the plaintiffs are in my view entitled to protection under Article 8 to ensure that further life is not breathed into this intrusion into their private lives with the additional fresh material. As Eady J indicated in McKennitt's case at paragraph 81, it does not necessarily follow that because personal information has been revealed impermissibly to one set of newspapers or to readers within one jurisdiction, that there can be no further intrusion of a person's privacy by further revelations. Fresh revelations to differing groups of people can still cause distress and damage to an individual's emotional or mental well-being.

[46] In the course of the intense focus which I have placed on the comparative importance of the specific rights of each party in this matter, I have considered whether this is one of those instances where a public figure such as P2 has chosen to make untrue pronouncements about his or her private life thus entitling the press to publish corrective facts. I am not satisfied that this is such a case. Unlike the plaintiff in Campbell's case, it has not been established as yet before me that P2 has wilfully engaged in any misleading information. I do not accept the assertion by Mr Lockhart that P2 is required to give an explanation of how Mr Saunders came to give the account which he did in circumstances where there already is evidence before me that P2 denied his assertion within a short time. P1 and P2 have strongly asserted that they refused to give the information to the media about their private lives save that P2 has denied paternity and insisted on the strength of his married relationship. As the evidence stands at present, the defendants

have produced insufficient material to justify me overriding the rights of privacy under Article 8. Whilst at trial other evidence may emerge D1 has fallen short at this juncture.

[47] So far as P3 is concerned whilst it may well be that the mere taking of a photograph in a public place when out with his or her parents, whether they are famous or not, might not engage Article 8 of the Convention, it all depends upon the circumstances. In this instance the clandestine taking and proposed publication of photographs of P1 and P2 accompanied by mention and physical descriptions in the impugned article of the child render this an intrusion into the private life P3. In this context I note that there are specific photographs of the child of P2 taken with his wife which while secreting her face betray details of her school uniform and her hair all of which could serve to reveal her identity . These are particularly unacceptable instances of intrusion into the private life of a child. The descriptions of P3 in my opinion fit into a similar category. The birth of P3 is not in itself a matter of public interest which renders publication of this detail proportionate.

[48] Accordingly I consider that the interference with the Article 10 rights of the first defendant, and for that matter the third defendant (albeit he does not wish to publish the material) is necessary in a democratic society and proportionate to the legitimate aim of protecting the Article 8 rights of the plaintiffs. An application of the proportionality test comes down heavily in favour of the plaintiffs at this juncture.

[49] These matters have persuaded me that I should grant an injunction preventing publication of the impugned article together with the photographs before me on the ground that they constitute private information under Article 8 of the Convention and that the plaintiffs' rights under Article 8 outweigh the defendants' right to freedom of expression under Article 10 of the Convention.

[50] I do not consider it necessary to grant such relief against the second defendant as I have no evidence before me that it ever intended to publish such material.

[51] Whilst I am prepared to listen to further submissions on the matter, I am not presently minded to grant a "super injunction" against persons unnamed in the terms sought by the plaintiffs concerning the private lives or relationships of the plaintiffs in general. This is too wide an ambit. Article 10 rights of the press must be jealously guarded and looked at in each individual case. Context is everything and such matters must not be approached with adamantine rigidity .It is impossible to formulate with any precision what the future may hold. It seems to me that conceivably there may arise more compelling circumstances, although clearly not in the instant case, where depending upon the strength of the evidence produced the circumstances

prevailing at the time and the focus on the issues of public interest, a court might determine that the rights of P1 and P2 under art 8 in particular did not outweigh the art 10 rights of any of the defendants. I therefore intend to confine the injunction in this case to the information concerning the private lives or relationships of the plaintiffs contained in the impugned article and the photographs *vis-à-vis* D1 and D3.

[52] There may be issues of drafting the order in this case which will require further attention. A confidentiality schedule to the injunction will be appended containing the impugned article and the photographs. These will not be part of the judgment which is handed down. I will invite counsel to agree a form of order or to make submissions to me after the judgment has been handed down.

[53] I will also invite submissions from counsel as to the extent to which publication of this judgment should take place.

[54] I shall invite counsel to address me on costs albeit my present inclination is to reserve the costs to the trial judge.