

Neutral Citation: [2016] NIQB 60

Ref: STE10008

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 15/06/2016

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Between

MM

Plaintiff:

-and-

**BC, RS and FACEBOOK
IRELAND LIMITED**

Defendants:

STEPHENS J

[1] This is an ex tempore judgment in relation to an application by the plaintiff, brought at very short notice, without any articulation of the proposed order, but in effect seeking an order of this court that BC and RS, the first and second defendants are prohibited by themselves, their servants or agents or otherwise howsoever from accessing or altering in any way their present Facebook accounts. It is also an application by the plaintiff that the defendants and each of them file an affidavit to set out what access they have had to their Facebook accounts since the original orders of the court.

[2] The context is that the plaintiff alleges that she has been the victim of revenge porn. She states that she sent, either one or more, highly sexualised photographs of herself to one of the defendants, at a time when they were in a relationship. That subsequently, after the relationship came to an end, one of those photographs was published by the defendants. She asserts that this undermined her independence, her dignity, her right to privacy and was in breach of the Data Protection Act 1998.

[3] I have anonymised the name of the plaintiff, (see *KL and NN v Sunday Newspapers Limited* [2015] NIQB 88) and given that the names of the first and second defendants would identify the plaintiff, I have also anonymised their names.

[4] Revenge porn is a matter of considerable concern. The difficulty that has arisen in this case relates to the preservation of the first and second defendants Facebook accounts and therefore the preservation of evidence. The information contained on those accounts will be vitally important in analysing whether their explanations as to the publication of the photograph are correct. The third defendant, Facebook Ireland Limited, state that they can suspend the accounts of the first and second defendants but taking that action will remove every record of what has taken place on those accounts. So once Facebook suspend the accounts all the evidence contained in those accounts is completely lost. Facebook suggested that before the accounts were suspended that the information on the accounts should be downloaded. They provided a method of downloading that information so that a record could be kept of it. However it has transpired to be an inadequate method of creating a complete record of what appears on the Facebook accounts. A crucial part of the analysis will involve determining what images were connected to which messages. After the accounts have been downloaded it is not possible to carry out that analysis. The messages can be downloaded, as can the images, but one cannot see what images were attached to what messages. The vital connection in this case is lost.

[5] Both the plaintiffs and the first and second defendants do not wish to lose important evidence and so they all seek to set aside the earlier order requiring Facebook to suspend the accounts. At present if the accounts are suspended, even if they have been downloaded, evidence would be removed. That evidence could either vindicate the first and second defendants or assist the plaintiff. In either case it would be completely lost if the accounts were suspended. It has been suggested that the parties use the services of an expert so that the data can be properly preserved prior to the accounts being suspended. In the meantime the first and second defendants have access to their Facebook accounts and either unwittingly or potentially deliberately they might alter the contents of those accounts and at present there is no way of knowing whether they have done so to date. There is an obvious need to preserve the Facebook accounts by making an order in the terms sought by the plaintiff at least until an expert can advise as to the most appropriate method of recording the evidence on those accounts.

[6] The first and second defendants have Article 8 ECHR rights. They have a right to communicate with their friends and they have a right to have access to the information on their Facebook account. It is an interference with their rights to prevent them from gaining access to their Facebook accounts. Any interference has to be proportionate and it has to fall within Article 8(2). The second defendant is in a particularly difficult situation as he does not have a mobile telephone but communicates with his friends through the messaging service on Facebook. I have asked the representatives of both the first and second defendants as to whether a

new Facebook account could be opened and the response is that that would be in breach of Facebook's own policy. If new Facebook accounts were opened then the first and second defendants could continue any conversations on the new accounts without having to have access to their old accounts. There would be difficulties about having to set up a new email address in order to open a new Facebook account. Facebook, if they discovered that this was a new Facebook account being opened by somebody who already has an account, may take action against the first and second defendants. I consider that the only method of dealing with this is for the first and second defendants to inform Facebook that they wish to open a further account. No other course could be contemplated by this court. I direct that a letter be sent by the solicitors for the first and second defendants to the solicitor for Facebook (Ireland) Limited saying that I am proceeding on the basis that a new Facebook account can be opened, that it should be facilitated by Facebook, the purpose of doing that is to preserve the present Facebook accounts and that if they have any objections to that they should inform the court before taking any action.

[7] I consider that the balance presently comes down firmly in favour of preserving evidence. I will make an order in the terms sought, that is until further order of this court the first and second defendants are prohibited by themselves, their servants or agents or otherwise howsoever from accessing or altering in any way their present Facebook accounts except that experts retained by or on behalf of their solicitors are permitted to do so. The defendants and each of them are within a period of time, which I will discuss in a moment, required to set out on affidavit the ways in which or what they have been doing on their Facebook accounts since the original order of this court. In making these orders I emphasise that they are interlocutory and an application can be made at any stage to set them aside or to alter them as we learn more about how to preserve this type of vital evidence.

[8] I would also make this comment. I would have thought that Facebook has or should have a method of recording and preserving information that is put onto their accounts so as to assist courts in preventing Facebook being used as a tool to abuse individuals. The court looks to Facebook to assist. That is to provide technical assistance in order to achieve what everyone seeks to achieve, namely that individuals can live their lives free from harassment, abuse and instances of revenge porn.

[10] I will ask for a transcript of this ruling.