[GB] BBC Wins Freedom of Speech Wardship Case

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In a case turning substantially on the issue of freedom of expression, the British Broadcasting Corporation has successfully applied to have an injunction against it broadcasting an interview lifted. This would have prevented the BBC from broadcasting an interview with a "ward of court". The ward is a 16 year-old boy, who suddenly left the home of his grandparents, with whom he had been living. He went off, quite suddenly, to join a religious group. The boy's grandmother sought and won a court order to have the boy made a ward of court. In order to trace him, permission was granted to publicise the fact of his disappearance and to publish photographs of him, and an extract of an e-mail, allegedly sent by B, stating that he was happy. The BBC contacted the group in question. This resulted in the boy phoning a BBC programme; he was interviewed. The BBC informed the grandmother of this fact and she sought, and won, an injunction preventing the BBC from broadcasting the interview.

The main grounds of the BBC's challenge were that (a) this was not a case that was covered by either Article 8, para. 2 or Article 10 para 2 (European Convention) and (b) that a broadcast could only be stopped by an injunction and not, as was argued, because this broadcast would amount to a contempt of court, the boy being a ward of court.

As regards to freedom of speech, the court stated that, despite the fact that the Human Rights Act does not enter into force until October 2000, Article 10 reflects the common law of England. It held that the "interests identified in para.2 of Art.8 and Art.10 of the Convention were not trump cards which automatically rode over the principles of open justice and freedom of expression." Furthermore, the court's task was not to undertake a "balancing exercise". The court should only restrain speech when it was "necessary" to do so. So, the key question for the court is: do those who seek to bring themselves within the ambit of the interests set out in paras. 2 of Articles 8 and 10 "demonstrate convincingly" that they are so? Mere assertions will not do, nor will inviting the court to make assumptions. Strong evidential proof is required. Further, the court held that the BBC was under no duty to obtain the court's permission to broadcast the interview with B.

British Broadcasting Corporation v. Kelly, Times Law Reports 9 August 2000

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