[GB] BBC Loses Court Battle over Programme's Exposure of Woman's Identity

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The English High Court recently ruled against the BBC in a case in which it undertook the "ultimate balancing exercise": weighing the claimant's Article 8 right not to have her privacy invaded against the Corporation's Article 10 right to freedom to broadcast.

The BBC planned to broadcast one of a series of programmes on the topic of adoption. The programme in question dealt with the issue of a woman (T) whose two-year old daughter was being handed over to a couple for adoption, the authorities believing this to be in the best interests of the child. It was planned that footage would be broadcast of the mother's final meeting with her daughter before being transferred to her adoptive parents.

The Court heard that T, the mother, has an IQ of 63. She was represented by the Official Solicitor because she suffers from a mental disorder under the Mental Capacity Act.

The judge stated that "without the capacity to consent, and without the capacity to understand what the programme is about, let alone its potential consequences, T has apparently permitted herself to be portrayed in the most intimate circumstances and, in one instance, in circumstances which can only be described as harrowing (primarily for her but also for ordinary viewers)...[T]here are few things more intimate, or engaging of Article 8 rights, than portraying a mother's last meeting with a much loved daughter, whom she will not be permitted ever to see again - at least until she grows up."

The Court was in no doubt that "the value of the broadcaster's expression in terms of Article 10 simply cannot be proportionate to the exposure of T's raw feelings and of her treatment of, or relationship with, her small daughter..."

The programme was permitted to go ahead as the Court's sole interest was "to prevent the further infringement of T's Article 8 rights by her being identified in the context of this programme". However, it was not the role of the Court to prescribe how the BBC would ensure the anonymity of T's identity: "It is for the BBC to decide whether, and in what form, the programme should be broadcast. It is not for the court to direct that any particular technique should be used, such as pixilation of features, the use of an actor's voice, or the deleting of names."

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T (by her litigation friend the Official Solicitor) v The British Broadcasting Corporation, Case No: IHJ/07/0551, 11 July 2007

http://www.bailii.org/ew/cases/EWHC/QB/2007/1683.html

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