[GB] Children’s right to privacy regarding published photographs upheld

IRIS 2016-1:1/13

David Goldberg
deeJgee Research/Consultancy

On 21 October 2012, the Mail Online (owned by Associated Newspapers Ltd) published an online article which bore the headline "A family day out". It showed photographs, taken by an unnamed photographer, of musician Paul Weller and some of his children, out shopping in the street, and relaxing at a café on the edge of the street in California, United States. On 16 April 2014, there was a finding at first instance of liability for misuse of private information.

In that judgment, Dingemans J awarded Paul Weller’s three children a total of GBP 10,000 damages in respect of seven photographs published. The judge held that the claimants had a reasonable expectation of privacy “because the photographs showed their faces, one of the chief attributes of their respective personalities, as they were on a family trip out with their father”. Applying the criteria for balancing Articles 8 and 10 of the European Convention on Human Rights (ECHR) laid down by the Grand Chamber of the European Court of Human Rights (ECtHR) in Von Hannover v. Germany (No.2) (see IRIS 2012-3/1), he held that the balance came down in favour of the claimants.

Associated Newspapers Ltd appealed. On 20 November 2015, the Master of the Rolls, Tomlinson and Bean LJJ upheld Dingemans J’s judgment in Weller & Ors v Associated Newspapers Ltd [2015] EWCA Civ 1176, upholding the finding of liability for misuse of private information (and breach of the Data Protection Act).

The Master of the Rolls outlined the “correct general approach to the question whether a publication is in breach of a person’s privacy rights”. It is a two-stage test, both stages being questions of fact. The first stage asks whether the claimants had a reasonable expectation of privacy. If they did, the second stage is to conduct a balancing exercise as between the individual’s right to privacy under Article 8 ECHR and the publisher’s right to freedom of expression under Article 10 ECHR. Where the claimant is a child, the Court set out the approach to be followed regarding the reasonable expectation of privacy: (a) a child does not have a separate right to privacy merely by virtue of being a child; (b) there are several considerations which are relevant to children, but not to adults; thus, in a particular case, a child may have a reasonable expectation to privacy whereas an adult does not; and (c) common to both is that all the circumstances of the case should be taken into account in deciding whether there is a reasonable

© European Audiovisual Observatory (Council of Europe) 2026

expectation of privacy (relying on paragraph 36 of the Murray case).

The Master of the Rolls then set out how the Murray factors should be applied to children claimants. First, although the photographs were taken in a public place, which was an ordinary incident of living in a free community, the activity was a private family outing and so was protected by the broader right of personal autonomy. Second, the parents had not consented to the taking or publishing of the photographs. Third, the claimants were children and had been identified by name, thus exposing them to a special vulnerability. Fourth, the twins, who were both less than one year old, did not knowingly or accidentally lay themselves open to the possibility of having their photographs taken in the context of an activity that was likely to be recorded in a public manner. Nor did their parents court publicity for them. The fact that a child's parents are celebrities may not, without more, be relied on to argue for a lower reasonable expectation of privacy. Fifth, the identification of the claimants by surname created a risk of embarrassment and potentially more serious threats to their safety, against which they ought to be protected.

Finally, in relation to the balancing exercise, the Court emphasised the following points: the fact that a child's Article 8 rights are engaged as a result of the application of the first stage of the test does not automatically mean that any Article 10 rights will be trumped by the need to consider the best interests of a child. However, the primacy of the best interests of a child means that, where a child's interests would be adversely affected, they must be given considerable weight. While the photographs had only impacted one of the three claimants, the absence of harm could not be determinative as the best interests of the child had to be taken into account.

Associated Newspapers was denied leave to appeal to the Supreme Court.

Weller & Ors v Associated Newspapers Ltd [2015] EWCA Civ 1176

http://www.bailii.org/ew/cases/EWCA/Civ/2015/1176.html

Weller & Ors v Associated Newspapers Ltd [2014] EWHC 1163 (QB)

http://www.bailii.org/ew/cases/EWHC/QB/2014/1163.html

Murray v Big Pictures (UK) Ltd [2008] EWCA Civ 446

http://www.bailii.org/ew/cases/EWCA/Civ/2008/446.html

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026