[NL] Professional online influencer mother must not feature children in content

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Jurriaan van Mil
Institute for Information Law (IViR), University of Amsterdam

On 1 October 2018, the District Court of The Hague resolved a case concerning the question of whether two children - aged four and two - could be included in the video logs and messages (together: content) that their mother, a professional online influencer, had uploaded to and posted on her social media accounts. After considering the children's best interests (Article 1:253a Dutch Civil Code (Burgerlijk Wetboek; DCC)), the Court ruled in the negative. Consequently, the Court ordered the mother to permanently delete all previously uploaded and posted content concerning the children. Moreover, the Court prohibited the mother from uploading and posting similar content in the future.

The underlying dispute was between the father and mother of the children - now divorcees. The father argued that his ex-wife had violated their children's right to privacy and their best interests. In particular, he feared that the content would, eventually, have adverse consequences for the children. For example, he expressed his fear that the children would become the objects of bullying or paedophilia. Consequently, he petitioned to have the mother permanently delete the previously uploaded and posted content, and to prohibit her from uploading and posting similar content in the future. The father added that he consented to his ex-wife uploading and posting content concerning their children on private social media accounts that have no more than 250 "friends". Lastly, the father petitioned to have the Court impose a coercive fine on the mother to make sure that she complies with the aforementioned obligations.

The mother contested her ex-husband's arguments; most notably, she argued that the children had yet to experience any adverse consequences. Furthermore, the mother claimed that she had started her online influencer career with the full consent, knowledge and cooperation of her ex-husband. Lastly, she attached much importance to social media's integration in society.

Before considering the parents' arguments, the Court noted that the instant case concerned a matter which parents should, in principle, decide together. As the parents showed themselves incapable of doing so, the Court subsequently determined what was in the best interests of the children (Article 1:253a DCC). In its assessment, the Court considered the children's ages - four and two - and, with that, their sense of understanding and immediate surroundings, and held that the

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children could not have been consciously exposed to the potential adverse consequences of the content. However, it was deemed possible - even likely - that this would be different in the future. Ultimately, the Court concluded that the mother's practices did indeed pose a threat to the children's right to privacy and, consequently, were not in the best interests of the children.

Consequently, the Court granted the father his petition. The Court did specify that the mother was only allowed to upload to and post content on private social media accounts that have no more than 250 friends - the Court speaks of "visitors" - who are known and authorised by the mother. Regarding the coercive fine, the Court specified that the mother had to pay EUR 500 for each day that she was in non-compliance with the Court's order, up to a maximum of EUR 25 000.

Rechtbank Den Haag 1 oktober 2018, ECLI:NL:RBDHA:2018:13015

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2018:13105

District Court of The Hague 1 October 2018, ECLI:NL:RBDHA:2018:13105

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