

DOCKET NO. H14-CP14-011149-A : SUPERIOR COURT FOR JUVENILE
IN RE E. F.¹ MATTERS

DOCKET NO. H14-CP14-011150-A : FOURTEENTH DISTRICT
IN RE L. F. AT NEW BRITAIN

DOCKET NO. H14-CP14-011151-A : DECEMBER 3, 2014
IN RE O. F.

MEMORANDUM OF DECISION

The court has reconsidered its earlier order that the Connecticut Law Tribune not publish information it obtained about these juvenile matters in light of the dissemination of the father's habeas corpus petition, after the original order, on the websites of at least two news organizations and, in addition, by other accounts in the online media discussing the contents of the petition and other facts about these juvenile matters. For the reasons discussed below, that order is vacated and the respondent mother's motion for a stay of execution is denied.

These disclosures by other members of the press affect the balancing of interests that the court must consider in determining whether an order of prior restraint on the press is necessary to protect an interest of the "highest order." As stated by the

¹ Pursuant to General Statutes § 46b-142 (b) and Practice Book §§ 32a-7 and 79-3, the names of the parties and children in these matters are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the court.

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Supreme Court in *Nebraska Press Association v. Stuart*, 427 U.S. 539, 562 (1976), such an assessment must “determine whether . . . the gravity of the evil, discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.” (Citation omitted.) As that court further stated, one of the factors in that determination is “how effectively a restraining order would operate to prevent the threatened danger.” *Id.* In that case, a state trial judge had ordered the press not to publish certain information about a pending murder case until a jury had been empaneled. In overturning that order, the court assessed whether “the probable efficacy of prior restraint on publication” was “a workable method of protecting [the defendant’s] right to a fair trial.” “*Nebraska Press Association v. Stuart*, *supra*, 427 U.S. at 565. The court then concluded that “it is far from clear that prior restraint on publication would have protected [the defendant’s] rights.” *Id.*, 567.

This court has come to the same conclusion here. The information that the Law Tribune was ordered not to publish has already been published since that order by other news organizations, except for any additional information that the respondent father may have provided to the Law Tribune. The names of the parents and the number of their children are already public, as are some of the allegations, judicial findings and orders in these proceedings, and much of this information has already been discussed in the news reports of other press organizations. However important the interests of state and these children in the confidentiality of juvenile records and proceedings, continuing to order the Law Tribune not to publish this information, much of which has already been published elsewhere, will no longer have any effect in protecting those interests. Employing the words of the Supreme Court in *Nebraska*

Press Association v. Stuart, an order restraining the Law Tribune from publishing this information can no longer "effectively . . . operate to prevent the threatened danger."

In objecting to vacatur of the prior order, the mother's memorandum of law cites the case of *U.S. v. Three Juveniles*, 61 F.3d 86 (1st Cir. 1995), in which the federal district court had granted the Boston Globe access to certain redacted documents pertaining to three juveniles accused of hate crimes, but denied public access to court proceedings. The newspaper claimed that the order violated a First amendment right of access to juvenile proceedings. Acknowledging no binding authority from the Supreme Court on that issue, the court noted that the primary purpose of the federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031-5042, "is to facilitate the rehabilitation of juvenile delinquents. . . . Protection of the juvenile from the stigma of a criminal record by preserving the confidentiality of proceedings is an essential element of the Act's statutory scheme." *U.S. v. Three Juveniles*, supra, 61 F.3d at 98. The court found no first amendment right to attend juvenile proceedings. The newspaper argued that since the juveniles' names and much information about the case were already known to the public, the closure order could not possibly preserve the juveniles' anonymity and was therefore ineffective. The court rejected that argument, stating that "the fact that the juveniles have already suffered stigma does not justify removing or denying them all further protections created by the Act." *Id.*, 93.

The mother's memorandum of law and the oral argument of her attorney rely on this case for the proposition, with which this court agrees, that the existence of some public information about the case does not justify full public disclosure about all aspects of this case. In the presently pending child protection matters, as in *U.S. v.*

Three Juveniles and in *In re Juvenile Appeal (85-B)*, cited by both parties for different propositions in their arguments, the parties are prohibited by operation of law and court order from any further public disclosures about the proceedings, and the proceedings are closed to the public unless opened by the court. As the First Circuit of Appeals concluded in the *Globe* case, "the district court's closure order sufficiently serves its stated purpose of preserving what confidentiality remains of the proceedings." 61 F.3d at 93. Our Supreme Court made a similar observation in *In re Juvenile Appeal (85-B)*: "These statutes, therefore, do not completely prevent or abolish publicity in juvenile cases, but by restricting accessibility to juvenile records and proceedings may reduce the amount of publicity generated." 195 Conn. at 310 n. 4.

The mother also cites the *Globe* case for another proposition - that vacating the order against the *Law Tribune* because other newspapers have already published the habeas petition is "a flawed, circular argument with disturbing ramifications." 61 F.3d at 93. But the issues are different. The *Globe* was trying to leverage the existence of some public information about the case into a right of unlimited public access to all information about the case. That proposition is not before this court. The first amendment issues before the court do not concern whether anyone has acted improperly in disclosures about confidential juvenile matters or sought to gain advantage from any such disclosures. Nor are the first amendment issues concerned with whether, as asserted by the mother in her memorandum of law, "[t]o vacate the injunction on the basis of futility would be to reward the father and his counsel for their blatant disregard of the confidentiality provisions of Conn. Gen. Stat. § 46b-124."

Mother's Memorandum of Law in Opposition to Vacatur of Injunction, at p. 7. The first amendment issues are whether a "narrowly tailored" order can adequately protect "an interest of the highest order" against a "great and certain evil." With the public and press disclosures already made, the court concludes that the only narrow tailoring that the court can now employ to protect the children from any more "embarrassment, stigmatization and emotional harm" resulting from the disclosures already made is to prohibit the parties from any further disclosures, rather than barring the Law Tribune from printing information that is already in the public domain.

A motion by the mother on another issue in the child protection proceedings alleges that certain internet websites assert facts about the underlying child protection matters that were not contained in the allegations of the habeas corpus petition. The Law Tribune's original written objection acknowledged that one of its reporters had spoken with the father before the court's order at issue here. Such a conversation, if it happened (an assertion to which the father did not stipulate in the proceedings) might have been the source of any information not alleged in the petition. The Law Tribune may thus have some additional information about these matters, or at least one person's representations about the events of the juvenile proceedings, than what was alleged in the habeas petition. An order preventing the Law Tribune from publishing any such information, however, would provide only marginal additional protection of the children's interests in confidentiality. Other websites already contain such assertions.

The court thus finds that restricting the Law Tribune from publishing information it has already acquired no longer serves any effective purpose, and the order to that effect is hereby to be vacated.

At oral argument, counsel for the mother requested that the court stay any order vacating the prior order, and counsel for the Law Tribune consented to a stay. But the agreement of parties for a court order is rarely, by itself, a valid basis for an order, as a court must make the order and have a legitimate basis for doing so. Under the rules of practice, orders in juvenile matters are not automatically stayed,² and any stay must be considered under Practice Book § 61-12 governing discretionary stays.³ Our Supreme Court set forth in *Griffin Hospital v. Commission on Hospitals & Health Care*, 196 Conn. 451 (1985), the factors a court must consider under § 61-12: the

² Practice Book Section 61-11, captioned, "Stay of Execution in Noncriminal Cases, provides, in pertinent part, as follows:" (b) Matters in which no automatic stay is available under this rule[.] Under this section, there shall be no automatic stay . . . in juvenile matters brought pursuant to chapters 26 through 35a,"

³ Practice Book Section 61-12, captioned "Discretionary Stays," provides as follows:

"In noncriminal matters in which the automatic stay provisions of Section 61-11 are not applicable and in which there are no statutory stay provisions, any motion for a stay of the judgment or order of the superior court pending appeal shall be made to the judge who tried the case unless that judge is unavailable, in which case the motion may be made to any judge of the superior court. Such a motion may also be filed before judgment and may be ruled upon at the time judgment is rendered unless the court concludes that a further hearing or consideration of such motion is necessary. A temporary stay may be ordered sua sponte or on written or oral motion, ex parte or otherwise, pending the filing or consideration of a motion for stay pending appeal. The motion shall be considered on an expedited basis and the granting of a stay of an order for the payment of money may be conditional on the posting of suitable security.

"In the absence of a motion filed under this section, the trial court may order, sua sponte, that proceedings to enforce or carry out the judgment or order be stayed until the time to take an appeal has expired or, if an appeal has been filed, until the final determination of the cause. A party may file a motion to terminate such a stay pursuant to Section 61-11."

likely outcome of the appeal, the irreparability of the prospective harm to the applicant for the stay, and the effect of delay in implementation of the order upon other parties as well as upon the public interest

With regard to the likelihood of success by the respondent mother on appeal of the vacatur order, the court believes that her chances of prevailing are slim. There has been so much public discussion about the habeas petition that the prior order of restraint, even if constitutionally permissible under the circumstances then existing, is no longer capable of protecting against the harm that the original order sought to protect. The only narrowly tailored order that can protect those interests now is an order of non-disclosure directed to the parties; at least such an order can prevent further disclosures and additional humiliation, embarrassment, stigmatization or emotional harm to the children resulting from more information becoming public.

The second factor is irreparability of the prospective harm to the applicant. There has been some information made public about the mother, but for the most part the prospective harm she has sought to prevent is to her children. Information about the mother is likely to be of the type of information that our state has already concluded publically available by making family proceedings public. Any harm to her or the children that would occur from publishing about the habeas petition and what the father told the Law Tribune has probably already occurred. The court finds there to be little additional prospective harm to either than has already put into motion.

The third factor is the effect of delay in implementation of the order upon other parties. This factor is hard to assess, unless one includes the children among the "other parties affected," in which case the court has concluded that no additional harm

is likely to result to them from publication by the Law Tribune. Other press disclosures have already made some of their situation public and have become a source of possible harm to them. Other parties affected by delay of the order include the Law Tribune itself, which apparently did not believe that any delay in the order would prejudice its interests. That may be true, since other newspapers have already published about the habeas petition that the Law Tribune was ordered not to discuss.

The final factor is the effect of delay on the public interest. On this factor, there are interests weighing in both directions. Counsel for the parties alluded to this factor when one of them told the court that they wanted an appellate ruling on the court's order in case any other parent in child protection proceedings wants to disclose confidential documents or information to the press. Although hundreds of child protection cases are filed each year, and thousands have been filed over the years, this court is aware of only one other habeas corpus action in juvenile matters, and it was filed as a confidential juvenile matter. There is a possibility, the court acknowledges, that publicity about the father's petition may motivate other unhappy child protection litigants to act similarly, but a change in court practice might also prevent such disclosures - for example, by a judicial order of non-disclosure in all child protection cases, similar to the automatic orders under Practice Book § 25-5,⁴ that

⁴ Practice Book Section 25-5 provides, in pertinent part, as follows: "The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a complaint for dissolution of marriage or civil union, legal separation, or annulment, or of an application for custody or visitation. An automatic order shall not apply if there is a prior, contradictory order of a judicial authority. The automatic orders shall be effective with regard to the plaintiff or the applicant upon the signing of the complaint or the application and with regard to the defendant or the respondent upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties: . . ."

would be operative as soon as a child protection petition has been filed in juvenile court and the order served on a party. A ruling by our Supreme Court, which has taken jurisdiction of the Law Tribune's appeal of the original order, may thus not be necessary to prevent future similar occurrences. It might also be argued that delay would have only marginal effect on the public interest, since others have already published much of what the Law Tribune was ordered not to publish. The harm in delay, however, is the inchoate harm to the public's interests in its first amendment rights, which are not trivial matters.

On balancing the equities and the *Griffin* factors, this court concludes that a discretionary stay is not warranted, and respondent mother's oral motion for such is denied. The dissemination of the habeas petition and other news accounts about this case have rendered the original order incapable of and ineffective at achieving the goal of that order, which was to protect the children from the harms attendant to disclosure of their status. Whether ever permissible under Supreme Court first amendment jurisprudence, the order is no longer so, and a stay merely perpetuates an order that no longer complies with the strict requirements for prior restraint. After considering the four *Griffin* factors and balancing the equities, this court concludes that a stay should be denied.

BY THE COURT


STEPHEN F. FRAZZINI
JUDGE OF THE SUPERIOR COURT