

**THE HIGH COURT**

**[2005 No. 1855 P]**

**BETWEEN**

**THE ATTORNEY GENERAL**

**PLAINTIFF**

**AND**

**JOSEPH N. DOWSE AND LALA DOWSE**

**DEFENDANTS**

**AND**

**THE HIGH COURT**

**[2005 No. 64 M]**

**IN THE MATTER OF TRISTAN DOWSE AN INFANT**

**AND IN THE MATTER OF DIRECTIONS IN RELATION TO ENTRIES IN THE REGISTER OF FOREIGN ADOPTIONS**

**AND IN THE MATTER OF SECTION 7 OF THE ADOPTION ACT 1991 AS AMENDED BY SECTION 15 OF THE ADOPTION ACT 1998**

**BETWEEN**

**JOSEPH N. DOWSE AND LALA DOWSE**

**APPLICANTS**

**AND**

**THE ADOPTION BOARD AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**Judgment of Mr. Justice John MacMenamin dated 31st January, 2006.**

1. Having already delivered judgment herein on the substantive issue it is necessary now to deliver judgment in relation to the question as to the discrete question as to the extent to which such judgment should be put in the public domain.
2. The starting point in relation to this question is that the specific power to hear proceedings under s. 7 of the Adoption Act 1991 other than in public is discretionary rather than mandatory. In this connection it does not appear to me that the provisions of the Civil Liability Act 2004 cited to me by counsel for the respondent are apposite, in the present context, by reason of the jurisdiction invoked in these proceedings. The specific legislation to which I must direct my attention is s. 7 of the Adoption Act 1991. The discretion which is vested in the court is set out in that section and in particular by the usage of the words "if the court so determines" in subs. (4) of that section.
3. It is a fundamental principle of Irish law that justice should be administered in public and that the administration of justice in public is an essential feature of a truly democratic society.
4. As a constitutional and legal principle, even if cases are heard in private there may be issues which are of public concern and where the interest of justice requires that after the hearing in private the judgment made therein should so far as possible be made public.
5. This is clear from the judgment of Walsh J. in the case of *Re: R Limited* [1989] I.R. 126. At p. 134 of the judgment Walsh J. observed:  
  
"If part or whole of the proceedings were to be heard other than in public I am of the opinion that so much of the judgment as does not disclose the particular information which had been held from publication to be pronounced in public".
6. Thus it seems to me that this court must concern itself with those portions of the judgment which deal with the relevant facts and general legal principles on the one hand; and on the to other specific areas, which for a number of reasons should remain private. It is also necessary in carrying out this balancing exercise to have regard to particular issues to which reference will be made, and also, I am satisfied to the doctrine of proportionality.
7. The court must also have regard to the provisions of Article 6(1) of the European Convention on Human Rights which deals with this issue. As a general principle of Convention rights, as well as rights under the Constitution, courts must make their judgments public unless such a course of action would constitute a denial of justice. Even if a court concludes that the publication of certain matters in the judgment would constitute such a denial, then it must nonetheless publish as much of the judgment as is possible without bringing about such a denial of justice. These issues have been dealt with by English authority *Pelling v. Bruce-Williams* [2004] 2 F.L.R. 823.
18. should also have regard to the precedent in relation to the decision in *Re A Ward of Court cases* [1996] Vol 2 I.R. at p. 73 where the judgments of both the High Court and Supreme Court were delivered in public because the importance of the principles involved, although the evidence at first instance was heard in private.
19. How then should these principles be applied on the facts of this case?
20. First, the factual context. The court must have regard to the fact that the position in regard to Tristan Dowse is already very much in the public domain. His circumstances have already been the subject of extensive public discussion and comment. This renders the position herein quite distinct from the ordinary realm of family law cases which are heard in private and where judgments are issued protecting the anonymity of the parties.
21. Thus on these unusual facts, a persuasive precedent which is of assistance is that of *Blunkett v. Quinn* [2005] 1 F.L.R. 648 which concerned an application by a senior politician in the United Kingdom to establish that a child the subject of these proceedings was his son and wherein he also sought a Parental Responsibility Order and Contact Order in regard to his child.
22. In the course of judgment in that regard the following statement of law was set out by the trial judge therein  
  
"In considering the competing rights, (of privacy as against publication) I have come to the clear conclusion, that having regard for the quantity of the material that is in the public domain some of it even in the most responsible commentaries wholly inaccurate, it is right to give this judgment in public. The ability to correct false impressions and misconceived

facts will go further to help secure the Article 6 and Article 8 rights of all involved then would be the courts' silence which in this case will only promote further speculation and adverse comment that will damage both the interests of those involved and the family justice system itself. I have guarded against arbitrary interference in the private and family lives of all concerned by hearing the appeal in private and by excluding from this judgment unnecessary personal material such as that concerning the details of the health of Mrs. Quinn. To give this judgment in public is, I believe, the most proportionate of the options available to me. For the record, although it will not be a matter for me I expressly refute the proposition that this means that all future hearings in these or any related proceedings must either be in the public domain or give rise to a public judgment. That does not follow.

23. I accept that these statements by Ryder J. in *Blunkett* are of assistance and that *to a degree*, they are applicable here. But they must be subject to these caveats:

24. The first is that this court cannot countenance a situation where the acts of some third party or persons, have the effect of putting the issue of publicity regarding a case "into play". Matters do not simply come into the public domain. They are put there by the acts of persons and these persons may be related to the proceedings, or was plainly recently the case here, persons *not* related to these proceedings.

25. The second principle is that the welfare of the minor must at all times remain paramount. In the application of this principle the orders made by the court must have regard to the welfare principle of *Tristan* both directly – and indirectly. This will include the preservation and protection of *Tristan's* rights to maintenance, and refraining from the publication of material which might prejudice that right. It also includes purely factual evidence adduced, relating solely to matters personal to the parties, and not relevant to the constitutional and legal principles considered herein.

26. I must also have regard to another issue; that is the respect due to the courts and law of the Republic of Indonesia and that the selective publication of some part of this judgment might conceivably have the effect of affecting legal rights and issues relating to *Tristan Dowse* himself in Indonesia. The court must also weigh the issue of publication in the light of the rights and interests of others not parties to these proceedings and who are not represented herein.

27. Having regard to these principles it seems to me that the interests of justice and of law will be met by the following.

28. There will be publication of the judgment but having regard to the following considerations.

29. First, I do not think there is any reality to the exclusion or redaction of the names of the parties in these proceedings. The matter has also received a very considerable amount of publicity here and elsewhere.

30. Second, I will redact the names of a number of other persons who are mentioned in the course of these proceedings and who were unrepresented and whose rights or interests may be affected here or elsewhere.

31. Third, having regard to the principles outlined, there will be certain other redactions made in both the direct and indirect interests of *Tristan Dowse* and his rights as identified herein both in Ireland and Indonesia.

32. I wish to make it perfectly clear that all redactions herein are made only having regard to the preservation and protection of *Tristan's* rights now and in the future, and for no other reason.

33. The judgment also contains specific matters appertaining to the personal financial affairs of Mr and Mrs Dowse, as distinct from the legal principles which are outlined in the judgment. In the circumstances I think it proper that these should be excluded also with certain necessary adaptations.

34. The full provisions of the order herein should be published, if only for the purely practical reasons: (a) to correct any false impression created in this jurisdiction and (b) having regard to the possibility that the matter might come into the public domain in a manner which might actually be prejudicial to *Tristan's* interest. Some recent media coverage might have created an incorrect impression as to the nature of the award and the means of the applicants as established by discovery and in evidence.