SUPREME COURT OF QUEENSLAND

CITATION:	*A v R & Anor* [2015] QSC 159
PARTIES:	**A** (applicant) **v** **R** **(**first respondent) **M** **(**second respondent)
FILE NO/S:	SC No 4778 of 2015
DIVISION:	Trial Division
PROCEEDING:	Hearing
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	5 June 2015
DELIVERED AT:	Brisbane
HEARING DATE:	5 June 2015
JUDGE:	Philip McMurdo J
ORDER:	**Delivered ex tempore on 5 June 2015:** **The application be adjourned to 9 June 2015.**
COUNSEL:	R J Anderson for the applicant No appearance for the respondent
SOLICITORS:	Minter Ellison for the applicant No appearance for the respondent

HIS HONOUR: This is an application made ex parte in proceedings which were commenced by an originating application filed by the present applicant on 14 May 2015. The hearing date of the originating application is next Friday. The nature of the jurisdiction to be exercised in that application is the court's parens patriae jurisdiction. At least usually, the exercise of that jurisdiction is done privately, particularly where there are matters of sensitivity in relation to the medical care of a child.

The circumstances which give rise to this afternoon's application are as follows. Last Sunday in the Sunday Mail there was a publication about the principal proceeding. It was obviously made with the benefit of access to the Court file and the affidavits filed in support of the application. At that stage the Court file had not been withheld from public access – as it now is – under practice direction number 15 of 2013. The facts which gave rise to the principal proceeding were referred to in the

publication and the doctors who were particularly involved in the care of the child were named. The child, however, was not named.

During the course of this week, there has been a number of incidents of concern as likely to affect the fair and expeditious conduct of the principal application. They have involved approaches to the parents of the child by some sections of the media, which, on the evidence I have this afternoon, has caused them – unsurprisingly – particular distress. There is also evidence of approaches to the two doctors, asking for their comments and in ways which would be distressing even to an independent professional.

The Court's concern here is with conduct in relation to parties and witnesses which might well affect, as I've said, the fair and expeditious conduct and determination of the principal application. But the orders which are sought by this afternoon's application are directed towards the risk of certain publications. Paragraph 2 of the draft order handed up by counsel for the applicant asks for an order to prevent, until 4 pm next Friday or earlier order, the publication by any person of the identity of the child or a matter which is likely to lead to the identification of the child and the facts upon which the application – that is, the principal application – is based.

One concern about an order in those terms is that it would an order in the nature of an injunction at large. It is not so much a matter of the Court's power in relation to such an order but the other difficulties which come from such an order and it is obvious to say that such an order is not to be made except in exceptional circumstances.

The proposed restraint on publication of the facts on which the principal application is based has the difficulty that there has already been, in the Sunday Mail, a publication of those facts. Accepting that a publication by other persons might reach a wider audience or readership than that enjoyed by the Sunday Mail, nevertheless, once the Sunday Mail publication had been made, there was, I think, and is little utility from an order now being made preventing others from publishing what is already in the public domain.

As to the publication of the identity of the child or any matter which is likely to lead to the identification of the child, the likelihood of such a publication is affected by section 189 subsection (2) of the Child Protection Act (1999). It may be noted that the Sunday Mail publication deliberately anonymised the child rather than naming him. Section 189 subsection (2) prohibits the publication of any information that identifies or would be likely to lead to the identification of a child who is the subject of that provision.

Plainly, information might be likely to lead to the identification of a child although it does not itself name the child. But as I've said, the existence of this prohibition in section 189 is a matter which goes to the likelihood of a publication of the identity of the child or something which would lead to the identification of the child.

A further practical restraint upon that publication ought to be the realisation by those who might consider the potential for that publication to itself affect the fair and expeditious conduct and determination of the principal proceedings and therefore the

potential for such a publication to constitute a contempt of Court. The evidence indicates the interest of some particular media outlets in this case; however, although some of the events have occurred only this morning, if an order was to have been sought against a particular media outlet it is my view that it should have been done with notice, albeit a few hours' notice, to that party. As I have said, the injunction which is sought is sought at large.

For these reasons, I'm not persuaded to make the orders which are sought the application this afternoon. However, I recognise that there is, unfortunately, a potential for further interest in this case to result in acts and circumstances which would give the applicant cause to return to Court next week, perhaps to seek relief against particular respondents. It's to be hoped that that would be unnecessary and that the media, in particular, would be conscious of the risks of interfering with the litigation by conduct which might be considered to be harassment of litigants and witnesses. But with that potential in mind I will adjourn this afternoon's application to the applications list on Tuesday 9 June 2015.

As requested by counsel for the application, I will place the affidavit and exhibits upon which the application is based in a sealed envelope and mark it not to be opened except by order of the Court. It is my intention, however, that these reasons be publically available as soon as practicable and they be read with the draft order so that that would not be sealed up. The formal order will be that the application is adjourned to 9 June.