



In a landmark case, JK Rowling, author of the phenomenally successful Harry Potter series, has lost a privacy battle against one of the world's biggest celebrity agencies, writes Katie Scott. JK Rowling has lost her bid to win a High Court injunction banning the further publication of an image of her infant son.

The photograph showed the author and her husband, Dr Neil Murray, pushing their then 20-month-old son in a buggy down a street in Edinburgh. It was published by the Sunday Express on 3 April 2005 with a piece about Rowling's approach to motherhood. The image was taken covertly using a long lens by a photographer working for the international agency, Big Pictures. The author claimed the image violated her son's right to privacy and applied for compensation under the Data Protection Act 1998.

Rowling loses privacy action

Written by Incisive Media Investments

The newspaper settled with the author but Big Pictures opted to defend itself against the claim. And the verdict, on 7 August, from Mr Justice Patten, went its way.

While the judge recognised the author's efforts to keep her children out of the limelight, he ruled that 'the law does not in my judgement allow them to carve out a press-free zone for their children in respect of absolutely everything they choose to do... there remains an area of routine activity which when conducted in a public place carries no guarantee of privacy'.

Test case

The judge also recognised that this was a test case 'designed to establish the right of persons in the public eye to protection from intrusion into parts of their private life even when they consist of activities conducted in a public place'. He went on to draw a distinction between a child or adult 'engaged in family and sporting activities and something as simple as a walk down the street or a visit to the grocers to buy milk'. He said: 'The first type of activity is clearly something of a person's private recreation time intended to be enjoyed in the company of family and friends. But if the law is such as to give every adult or child a legitimate expectation of not being photographed without the consent on any occasion on which they are not on public business, then it will have created a right for most people to the protection of their image. If a simple walk down the street qualifies for protection then it is difficult to see what would not.'

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But the Judge admitted that rulings in cases of this sort could not be reached by considering simply if the claimant was in a public or private place. He said: 'In my opinion, the widespread publication of a photograph of someone which reveals him to be in a situation of humiliation or severe embarrassment, even if taken in a public place, may be an infringement of the privacy of his personal information. Likewise, the publication of a photograph taken by intrusion into a private place (for example by a long distance lens) may in itself be such an infringement, even if there is nothing embarrassing about the picture itself.'

Appeal likely

Mr Justice Patten also granted Rowling leave to appeal, and Charles Swan of media law specialists Swan Turton added his certainty that the author will use this right. 'This judgment is likely to be appealed from the High Court to the Court of Appeal, and may then be appealed again to the House of Lords. Both the High Court and the Court of Appeal are bound by the decision of the House of Lords in the Naomi Campbell case (BJP, 12 May 2004). If this case is appealed all the way to the House of Lords then it may review its decision in the Campbell case in the light of the subsequent European Court of Human Rights (ECHR) decision in the case of Princess Caroline of Monaco (who won a case at the European Court of Human Rights (ECHR) citing that images published of herself and her children on holiday breached her right to have her private and family life respected under Article 8 of the Human Rights Convention, BJP, 14 July 2004). Swan added: 'If JK Rowling loses in the House of Lords she can then take her case to the ECHR. So this is only round one in a potentially long-running legal battle and I wouldn't be surprised if the author emerges triumphant at the end of it all. This could have significant implications for photographers and agencies as it would broaden the scope of privacy law in the UK'.

Agency victory

However, for the time being, Big Pictures remains victorious. Chief executive Darryn Lyons said in a statement that he is delighted at the verdict. 'We were surprised to be served with Court proceedings in relation to a photograph, which in my view is totally unremarkable. We made every reasonable effort to reach an out of court settlement of this matter but unfortunately this could not be achieved. We were therefore left with no option but to defend ourselves and are delighted that the Judge recognised that David Murray had no cause for complaint.'

The Murrays, however, expressed their disappointment at the ruling and stated that their claim seemed to 'have been misunderstood'. 'We see no legitimate reason why David should have his photograph taken and then published in the press.'

Big Pictures was awarded £40,000 interim costs pending the outcome of any appeal and a final costs assessment. A temporary ban has been placed on the publication of the image also pending any appeal.

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