Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

23 April 2024

MEDIA RELEASE

M (SC 13/2023) v THE KING
(SC 13/2023)

LF (SC14/2023) v THE KING
(SC 14/2023)

[2024] NZSC 29

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

INTERIM SUPPRESSION ORDERS

Publication of the media release; of the minutes; of the judgment or any information therein is prohibited until after the judgment is delivered at 4.00 pm on 23 April 2024.

Publication of LF's name, address, occupation or identifying particulars is prohibited until 5.00 pm on 14 June 2024 or on earlier order of the Court quashing or varying this order.

PERMANENT SUPPRESSION ORDERS

Publication of any reference to mental health issues beyond those made in the judgment which is made publicly available is prohibited.

Part of the excerpt set out at [74] of the judgment is redacted and will be omitted from the version of the judgment which is made publicly available on 23 April 2024. Publication of the section redacted in the publicly available version is prohibited.

The Court of Appeal order made in [2022] NZCA 656 prohibiting publication of the name, address, occupation or identifying particulars of M made pursuant to s 202 of the Criminal Procedural Act 2011 remains in force.

Publication of the names, addresses, occupations or identifying particulars of the second, third and fourth victims is prohibited pursuant to s 203 of the Criminal Procedure Act 2011.

Publication of the names, addresses, occupations or identifying particulars of the second, third and fourth victims is prohibited pursuant to s 204 of the Criminal Procedure Act 2011.

The files for these appeals are not to be searched without the leave of a Judge of this Court.

BACKGROUND

These appeals raise issues about the way in which youth justice principles interact with the principle of open justice in decisions about name suppression under ss 200 and 202 of the Criminal Procedure Act 2011 (the Act). The issues arise because of the age of the appellants at the time of LF's offending.

LF pleaded guilty to a total of 10 charges for sexual offending in relation to six victims and was sentenced to a term of 12 months' home detention. LF is an autistic person and was aged between 14 and 17 when the offending took place. The charges were laid in the Youth Court, where LF's name was automatically suppressed. But some of the charges had to be transferred to the District Court because LF was 17 years old at the time of the incidents giving rise to these charges, and the charges included sexual violation. Further, the Crown successfully applied to have LF brought before the District Court for sentencing, by which point he was 18 years old.

LF applied for name suppression on the basis that publication of his name would be likely to cause him extreme hardship and/or endanger his safety under subss 200(2)(a) and (e) of the Act.

Name suppression was also sought for M under s 202(1)(c) of the Act as a person connected with the offender. It was argued that publication of M's name would be likely to cause them undue hardship, and if M's name was to be suppressed, LF argued that his name should be suppressed on the basis that it would be likely to lead to the identification of M as a person whose name was suppressed (s 200(2)(f)).

PROCEDURAL HISTORY

LF's application for name suppression was declined by the District Court, and by the High Court on first appeal. Regarding s 200(2)(a), both Courts found that the extreme hardship threshold was not met. While both Courts held that LF met the endangering safety threshold due to risks relating to mental health issues, taking into account the principle of open justice, the seriousness of the offending and the high public interest, both Courts concluded that the balancing exercise required by s 200(1) did not favour name suppression. The Court of Appeal declined to grant LF leave to bring a second appeal.

In the High Court both M's application for name suppression and LF's additional basis for suppression under s 200(2)(f) were declined. On appeal, the Court of Appeal found that M reached the threshold for suppression under s 202(2)(a) and accordingly made an order for permanent name suppression of M's name in connection with LF's offending. However, the Court of Appeal agreed with the High Court that suppression of LF's name was unnecessary to prevent identification of M.

THE PRESENT APPEAL

The Supreme Court granted LF leave to appeal on the question of whether the High Court was correct in declining to grant LF permanent name suppression. The Supreme Court said that these were exceptional circumstances permitting an appeal directly from the High Court essentially because of the need to address youth justice principles as they arise in the context of name suppression decisions.

The Supreme Court granted M leave to appeal on the question of whether the Court of Appeal was correct to dismiss the part of M's appeal relating to suppression of LF's name.

Submissions

The submissions on appeal focused on three main issues. First, the correct approach to youth justice principles as they affect name suppression and, particularly, whether there should be a presumption of name suppression for youth under the Act. Second, whether the High Court was correct in determining that the combination of circumstances relied on by LF met the extreme hardship threshold. Finally, whether LF should have been granted permanent name suppression.

SUPREME COURT DECISION

The Supreme Court has unanimously dismissed both appeals. As a result, LF is not granted permanent name suppression. M retains suppression of their name in connection with LF's offending under s 202(2)(a) of the Criminal Procedure Act.

This is the first time this Court has specifically addressed the importance of youth justice principles and how they interact with the principle of open justice. The Court said those principles are a primary consideration to be given powerful weight in the assessment of name suppression under s 200. Courts must therefore carefully assess what those principles require in terms of name suppression where youth are involved. Given the statutory framework, under which open justice remains the starting point of the inquiry, the Court held that to go further, as the appellants had submitted, and impose a presumption of name suppression would be inconsistent with the scheme of the Act. Accordingly, such a presumption would require specific statutory provision by Parliament.

The Supreme Court considered the appeals in the context of this conclusion.

In terms of LF's appeal, the Supreme Court upheld the High Court's finding that the threshold of extreme hardship under s 200(2)(a) was not met. The extreme hardship inquiry is a contextual exercise, involving comparison between the hardship contended and the usual consequences of publication. While the High Court had taken an unduly narrow approach to the impact of youth justice principles, the Supreme Court determined that even when the principles were given the appropriate weight and considered in the context of the other relevant factors, the inevitable difficulties which will be experienced by LF by virtue of his name being public did not extend beyond the usual consequences of publication.

The Supreme Court also upheld the High Court's finding that, although the s 200(2)(e) threshold had been met, the balance did not favour name suppression. In reaching this conclusion, the Court considered the risks of harm to LF and the protective measures in place;

the desirability of LF's rehabilitation and reintegration into society; the public interest; the seriousness of the offending; and the views of the victims.

While the Court had considered the possibility of a limited suppression order relating only to social media commentary, there was no support for such an order from either party, or NZME as interested party, and the Court concluded such an order would have created definitional and practical issues.

As a result, LF is not granted permanent name suppression under subss 200(2)(a) or (e) of the Criminal Procedure Act.

Regarding M's appeal, the Supreme Court observed that whether suppression is granted under s 200(2)(f) ultimately still requires a court to undertake a careful balancing exercise in relation to all the relevant factors. The Court accepted that publication of LF's name would cause M undue hardship, but the balance still did not favour suppression of LF's name. While the Supreme Court acknowledged that suppression of M's name alone may not protect them from hardship, a court will not lightly assume that a suppression order will be ineffective. Accordingly, LF is not granted permanent name suppression under s 200(2)(f) of the Criminal Procedure Act.

The Court noted that commentary on the case should be responsible, taking into account the youth and vulnerabilities of both appellants. The Court expresses the hope that there is no repetition of the inappropriate commentary which has featured, albeit infrequently, on social media to date.

For reasons that will be provided at a later date, and of which the parties and NZME are aware, the Court made an interim order prohibiting publication of LF's name, address, occupation or identifying particulars until 5.00 pm on 14 June 2024 or on earlier order of the Court.

Contact person:
Sue Leaupepe, Supreme Court Registrar (04) 914 3613