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Unintended Consequences of the Law

The need for urgent reform of court reporting in child fatality prosecutions

The recent decision of the Court of Appeal in *DPP and E.C. and Media Outlets [2020] IECA 292* highlights a section of the Children Act, 2001 which urgently needs legislative amendment to cure an anomaly which has lain dormant until now.

Children Act, 2001

The essence of the application before the Court of Appeal was whether a person charged with the death of a child could be identified, given the provisions of Section 252 (1) of the Children Act, 2001, the purpose of which is to protect the identity of a child who has allegedly been the victim of a crime. The need to protect the identity of a living child victim is apparent and uncontroversial. However, in the case of a deceased child, the question is whether the accused should benefit from the provision which is intended to protect the child, not the accused.

Central Criminal Court

The trial judge in the Central Criminal Court, at the urging of the DPP and on the basis of the clear wording of S.252, had made an order prohibiting the media from publishing or broadcasting details likely to lead to the identification of the deceased child. It naturally followed that the accused could not be identified. A number of media outlets appealed that ruling to the Court of Appeal.

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Court of Appeal

The Court of Appeal found that the interpretation by the Central Criminal Court of S.252 was correct and dismissed the appeal, stating:

“...the language of the statute is clear and unequivocal and, enjoying a presumption of constitutionality as it does, must be given effect to. If change is required and if it is desired to return to previous practice where it was possible to report cases involving the deaths of children, then it is a matter requiring intervention by the Oireachtas”

Commentary

There can be little, if any, dispute as to the correctness of the Court of Appeal’s decision given the express wording of the section. However, the serious consequence of restricting media reporting in this way surely cannot have been intended by the legislature. The fact that this section does not appear to have been invoked by the DPP or an accused to date supports the contention of widespread acceptance of the fact that such an accused should not be entitled to anonymity.

We all know that when tragic incidents occur resulting in the death of a child, the entire local and wider community becomes aware within hours as to the identities of the people concerned. For it to remain the case that ‘the dogs in the street’ would know the identities of the people and yet the media would be prohibited from reporting in such a way as to identify either the deceased child or the accused person, flies in the face of reality and represents a serious interference with the media’s ability to report on proceedings which take place in open court.

It is submitted that this Section requires urgent legislative attention to remove this anomaly so that the media can do their important work, in the public interest, without fear of finding themselves facing contempt proceedings should details be published which, when pieced together, could be said to identify the unfortunate deceased child.

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