

## ***Bull v Desporte* – no public interest in a “kiss and tell”**

Donna Desporte wrote a book about her relationship with a lottery winner, Gareth Bull, and the High Court found that further publication would be a misuse of private information.<sup>1</sup> The book revealed private information, including details of their sexual relationship, his relationship with his former wife, his children and his physical health.

The judge considered that this was little more than a “kiss and tell” for which there was no legitimate public interest in publishing. So further publication would contravene Mr Bull’s right to respect for private and family life under Article 8 of the European Convention on Human Rights, and that outweighed Ms Desporte’s right to freedom of expression under Article 10 of the ECHR. In the circumstances, the judge granted a permanent injunction preventing further publication of the private information.

Additionally, following the initial publication of the book, an interim non-disclosure order had been granted preventing publication of the private information. Ms Desporte subsequently published redacted versions of the book that still contained private information. Since Ms Desporte had knowingly breached the order, the judge awarded aggravated damages.

### **Background**

Mr Bull was a joint winner of approximately £41 million in the “Euromillions” lottery in January 2012. After a romantic relationship between Ms Desporte and Mr Bull that occurred between November/December 2016 and June 2017, Ms Desporte wrote a book called “Google Me No Lies”.

The book bore a photograph of Ms Desporte and Mr Bull and contained information that Mr Bull claimed was private information about him and/or his family, which was characterised as consisting of details of Mr Bull’s:

- sexual relationship with Ms Desporte;
- relationship with, and divorce from, his former wife, Catherine Bull;
- children; and
- physical health.

An interim non-disclosure order was made restraining the publication of the private information. Ms Desporte had then released a redacted version of the book in which she changed the name “Gareth Bull” to “Gary Ball”, as well as the names of Mr Bull’s wife and sons. Mr Bull’s photographs were also removed. Still, the book otherwise remained unchanged, and Mr Bull was identifiable because “Gary Ball” was still described as having won over £40 million on the European Lottery and because Ms Desporte had already been widely identified as having had a relationship with Mr Bull in the public press.

Subsequently, in reaction to complaints on Mr Bull’s behalf, Ms Desporte published a further amended version. The only change from the original redacted version was calling Mr Bull “John Smith”. As with the original redacted version, Mr Bull remained identifiable. Additionally, the webpage advertising this version showed a photograph of Mr Bull with Ms Desporte.

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<sup>1</sup> *Gareth Bull v Donna Desporte* [2019] EWHC 1650 (QB) (<https://www.bailii.org/ew/cases/EWHC/QB/2019/1650.html>).

Mr Bull subsequently sought a permanent injunction on the grounds that publication of the information would contravene his right to respect for private and family life under Article 8 of the ECHR.

Ms Desporte defended the claims on the grounds that Mr Bull had consented to publication and/or it was in the public interest to publish the information. She also argued her right to freedom of expression under Article 10 ECHR outweighed Mr Bull's Article 8 rights, and that it was necessary for the information to be published in order for her to "put the record straight" about her relationship with Mr Bull, which she believed he had misrepresented.

## **Issues**

### Was there a reasonable expectation of privacy?

Mr Justice Knowles determined that it was clear from the case law that each of the categories of information identified in this case were matters protected by Article 8, and that each carried a reasonable expectation of privacy.

### Was the expectation of privacy lost on consent or public-domain grounds?

On 14 June 2017 Ms Desporte sent Mr Bull a Facebook message in which she informed him that she intended to write a book "about ME not you, but there will be a little bit about you" and invited Mr Bull to have his legal team review it. Ms Desporte subsequently posted a public notice on Facebook on 30 August 2017 inviting requests for edits by no later than 6 September 2017. Mr Bull's lawyers first wrote to Ms Desporte on 28 September 2017.

Ms Desporte argued that Mr Bull's failure to engage in response to the Facebook message and notice by the 6 September deadline amounted to consent to publish. The High Court was not persuaded: Mr Bull did not know what Ms Desporte intended to publish and so could not have provided her with his informed consent.

During correspondence with Mr Bull's lawyers, Ms Desporte made repeated assertions along the lines that the book did not contain any information that was not already in the public domain. Knowles J found those assertions to be misleading, and considered that the private information in the book had not been included in the press reporting about the relationship that occurred before the publication of the book.

Accordingly, the private information had not lost its private character by consent or through being in the public domain.

### Balancing exercise

Knowles J then weighed Mr Bull's Article 8 rights against Ms Desporte's rights under Article 10 and considered the argument that publication was in the public interest.

The private information in question (i.e. sexual behaviour, health and family) ranked highly in the hierarchy of protection afforded by Article 8. Knowles J also placed considerable weight on the impact that publication of the information would have on Mr Bull's children, concluding that it would be "inevitable that the children would be harmed by disclosure because it would undermine the family as a whole and expose them to playground ridicule".

Knowles J was not persuaded that there was any public interest in the publication of intimate details of Ms Desporte's sexual relationship with Mr Bull, relying on various judgments in support of his

conclusion, including the finding in *PJS v News Group Newspapers*<sup>2</sup> that “kiss and tell” stories “which do no more than satisfy readers' curiosity about the private lives of other persons, however well known to the public, do not serve any legally recognised public interest”.

Ms Desporte also relied on a need to “set the record” straight about what happened between her and Mr Bull and to rebut defamatory allegations made against her. Yet the portrayal of the relationship to which Ms Desporte objected was made in Mr Bull's claim and not before publication of the book. Also, while Ms Desporte had claimed that Mr Bull had told numerous people that she “was an escort or a whore”, Knowles J was satisfied that Mr Bull had not made false statements of that nature about Ms Desporte.

Ms Desporte's argument was also flawed because Mr Bull had not sought to prevent Ms Desporte from publishing the book that indicated that there had been a sexual relationship at all. Instead he was only seeking to prevent the publication of intimate, private and personal information that violated the Article 8 rights of Mr Bull and his ex-wife and children. So, as Knowles J pointed out, Ms Desporte could have satisfied the public interest by focussing on the romantic aspects of her relationship with Mr Bull and omitting the intimate and private information.

## Decision

Knowles J was clear that, in the circumstances, the balance lay in favour of Mr Bull. Knowles J was satisfied that he should grant a permanent injunction to restrain future publication of the private information. Knowles J found that damages would not be an adequate remedy for the violation of Mr Bull's Article 8 rights, and that it was plain from Ms Desporte's evidence that she would seek the widespread publication of the private information in the absence of an injunction.

Knowles J awarded £10,000 in damages for misuse of private information. Although publication at this point was quite limited, the nature of the private information involved was “at or towards the top end of the scale in terms of the protection to be afforded to it under Article 8”. Knowles J also awarded aggravated damages against Ms Desporte in the sum of £2,500. Since Ms Desporte knew what she was doing with the various post-interim-order redacted publications of the book and knew that they would breach the interim order, and since she had had done so to continue selling the book so as to benefit financially, Knowles J was satisfied that this justified an award of aggravated damages.

We understand that the decision is the subject of an appeal by Ms. Desporte.

## Comment

This decision follows a series of similar judgments, including *McKennitt v Ash*,<sup>3</sup> *Murray v Express Newspapers Limited*,<sup>4</sup> *PJS v News Group Newspapers*<sup>5</sup> and *Contostavlos v Mendahun*,<sup>6</sup> suggesting, in particular, that there is very little prospect of succeeding with a freedom-of-expression argument for a publication of information that would amount to a mere “kiss and tell”. Knowles J was firm in his judgment on those points and was clear that, in the circumstances, there was no justification on any public-interest grounds for the publication any of the four categories of private information identified.

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<sup>2</sup> [2016] AC 1081 (<https://www.bailii.org/uk/cases/UKSC/2016/26.html>).

<sup>3</sup> [2008] QB 73 (<https://www.bailii.org/ew/cases/EWCA/Civ/2006/1714.html>).

<sup>4</sup> [2009] Ch 481 (<https://www.bailii.org/ew/cases/EWCA/Civ/2008/446.html>).

<sup>5</sup> [2016] AC 1081 (<https://www.bailii.org/uk/cases/UKSC/2016/26.html>).

<sup>6</sup> [2012] EWHC 850 (<https://www.bailii.org/ew/cases/EWHC/QB/2012/850.html>).

The judge was equally robust in awarding damages – which serves as a pointed reminder that if an interim order is knowingly breached, a court may well award aggravated damages.

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