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ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESSES OR OCCUPATIONS OF VICTIMS PURSUANT TO S 202 CRIMINAL PROCEDURE ACT 2011. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360349.html

IN THE HIGH COURT OF NEW ZEALAND
NELSON REGISTRY

I TE KŌTI MATUA O AOTEAROA
WHAKATŪ ROHE

CRI-2018-442-000008
[2018] NZHC 1778

BETWEEN	SAMUEL JOHN SIMPSON WILSON Appellant
AND	THE QUEEN Respondent

Hearing: 17 July 2018 (via AVL at Wellington)

Counsel: A J D Bamford for Appellant
J M Webber for Respondent

Judgment: 18 July 2018

JUDGMENT OF COLLINS J

Introduction

[1] This judgment explains why I am dismissing Dr Wilson's appeal from a decision in which Judge Ruth denied Dr Wilson's application for name suppression.

[2] I am dismissing Dr Wilson's appeal because:

(1) he has failed to satisfy any of the threshold criteria for name suppression set out in s 200(2) of the Criminal Procedure Act 2011 (the Act)[1]; and

(2) he has not demonstrated that Judge Ruth erred when exercising his discretion to decline the application.

Background

[3] On 8 April 2015, Dr Wilson appeared for the first time in the District Court at Nelson in relation to eight charges of making an intimate visual recording (the charges).[2] The charges state the offending took place between 1 June 2012 and 14 August 2014. On 19 January 2018, Dr Wilson pleaded guilty to the charges. He was sentenced to seven months' home detention by Judge Ruth in the District Court at Nelson on 24 May 2018.[3] Prior to sentencing, Dr Wilson had the benefit of interim name suppression, however, Judge Ruth declined Dr Wilson's application for continued name suppression.

[4] Dr Wilson's offending involved him obtaining a miniature recording device and placing it in the bathroom of his home and in a women's changing room/toilet at Nelson Hospital. Using that device, Dr Wilson covertly recorded two female visitors using a toilet at his home where the recording device had been hidden. He also recorded nine women using the changing room and toilet at the hospital. On another occasion, Dr Wilson used the recording device to film up a colleague's skirt when he was sitting next to her.

[5] The victim impact statements explain how many of the women have suffered stress and anxiety over Dr Wilson's behaviour. The victims have said how they felt dehumanised and angry over the breach of trust inherent in Dr Wilson's offending.

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1 I explain the relevant provisions of the Act at [10]-[12].
2 Crimes Act 1961, s 216H; maximum penalty three years' imprisonment.
3 *R v Wilson* [2018] NZDC 10372.

[6] Eight of Dr Wilson's victims oppose his continued name suppression. They cite amongst other reasons the inappropriateness of him obtaining permanent name suppression when he violated their dignity and privacy. Two of Dr Wilson's victims do not oppose his continued name suppression.

[7] Orders were made in the District Court prohibiting the publication of the names and anything that could identify the victims or the place where Dr Wilson worked. As a consequence, publicity to date about this case has referred in general terms to the defendant being a "Nelson health professional".[4]

Dr Wilson and his family

[8] Dr Wilson trained as a cardiologist in the United Kingdom. He and his young family immigrated to New Zealand in 2012. Dr Wilson's wife is also a registered medical practitioner and shares her husband's surname.

[9] Dr Wilson's offending appears to have occurred during a period when he struggled to cope with stress in his life. His arrest and numerous court appearances have also contributed to Dr Wilson suffering depression. Dr Barry-Walsh, a forensic psychiatrist, has explained there is good evidence that Dr Wilson "was depressed following his arrest, and [that] his symptoms have been perpetuated by the ongoing court process". Dr Barry-Walsh found "evidence of persisting depressive symptoms of a moderate degree including low mood, rumination, anxiety and suicidal ideation, despite treatment". Dr Wilson is no longer working as a medical practitioner. He is currently the subject of an investigation by the Medical Council of New Zealand. It is likely he will face disciplinary action before the Health Practitioners Disciplinary Tribunal.

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4 See, for example, Hannah Bartlett "Convicted toilet cam health professional appeals the release of his name" *Stuff* (online ed, 28 May 2018).

Legal principles

[10] Section 200 of the Act provides:

> **200 Court may suppress identity of defendant**
>
> (1) A court may make an order forbidding publication of the name, address, or occupation of a person who is … convicted … of, an offence.
>
> (2) The court may make an order under subsection (1) only if the court is satisfied that publication would be likely to—
>
> (a) cause extreme hardship to the person … convicted of, … the offence, or any person connected with that person; or
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> …
>
> (c) cause undue hardship to any victim of the offence; or
>
> …
>
> (e) endanger the safety of any person; or
>
> (f) lead to the identification of another person whose name is suppressed by order or by law; or
>
> …
>
> (3) The fact that a defendant is well known does not, of itself, mean that publication of his or her name will result in extreme hardship for the purposes of subsection (2)(a).
>
> …
>
> (6) When determining whether to make an order or further order under subsection (1) that is to have effect permanently, a court must take into account any views of a victim of the offence conveyed in accordance with section 28 of the Victims' Rights Act 2002.

[11] Section 202(1) and (2) of the Act authorises the Court to prohibit publication of the name, address, or occupation of any person who is a victim of an offence if the Court is satisfied that publication of the victim's name would cause them undue hardship.

[12] Although Judge Ruth did not refer to s 202 of the Act, it appears he had that section in mind when ordering the suppression of the names and occupations of the victims. It is doubtful that s 202 of the Act permitted suppression of the name of the hospital where the offending occurred. An order to that effect may have been possible

under s 205 of the Act, which confers jurisdiction on a Court to suppress evidence and submissions in circumstances that mirror the criteria in s 200(2) of the Act.

[13] The term "hardship" in s 200(2)(a) of the Act means "severe suffering or privation".[5] The Court of Appeal has explained:[6]

> As regards the level of hardship required by the phrase "extreme hardship", we consider it clear beyond argument that it connotes a very high level of hardship … The addition of the qualifier "undue" in s 200(2)(c) indicates that something more than hardship simple is required, while the word "extreme" in s 200(2)[a] indicates something more again.
>
> (Footnotes omitted).

[14] In determining an application under s 200 of the Act, the Court must first determine whether or not any of the threshold criteria in s 200(2) have been established. As this involves the application of law to facts, a court on appeal is entitled to reach its own view on whether or not any of the threshold criteria have been established by applying the usual appeal principles.[7] The second step, however, requires the first instance Judge to undertake an exercise of judicial discretion.[8] Accordingly, an appellate court will only interfere with the lower court's decision in relation to the second stage of the analysis if:[9]

(1) the lower court erred in principle; or

(2) failed to take into account a relevant matter, or took into account an irrelevant matter; or

(3) was plainly wrong.

District Court decision

[15] In concluding that Dr Wilson and his family would not suffer extreme hardship if his name were to be published, Judge Ruth identified the following factors:

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5 *Robertson v Police* [2015] NZCA 7 at [48], citing Tony Deverson and Graeme Kennedy (eds) *The New Zealand Oxford Dictionary* (Oxford University Press, Melbourne, 2005) at 491.
6 At [48].
7 *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141.
8 *Robertson v Police*, above n 5, at [39].
9 *Kacem v Bashir* [2010] NZSC 112, [2011] 2 NZLR 1 at [31]-[33].

(1) Three years had passed since the events in question, so there had been ample opportunity for Dr Wilson and his family to come to terms with the consequences of publication.

(2) Most of the victims did not wish Dr Wilson to continue to have name suppression.

(3) If Dr Wilson were to continue his career in New Zealand, potential patients should be entitled to know who they were dealing with and to make an informed decision about whether or not they wished him to be their doctor.

(4) The impact on Dr Wilson's family, whilst undesirable from their perspective, was a "sequelae" of the offending, and not out of the ordinary.

Grounds of appeal

[16] Five grounds of appeal have been advanced on behalf of Dr Wilson. It is contended that Judge Ruth:

(1) failed to consider whether publication would be likely to lead to the identification of the victims, whose names have been suppressed;

(2) failed to properly evaluate the evidence that publication would be likely to endanger Dr Wilson;

(3) was wrong to conclude that publication was not likely to cause extreme hardship to Dr Wilson;

(4) was wrong to conclude that publication was not likely to cause extreme hardship to Dr Wilson's children;

(5) was wrong to conclude that publication was not likely to cause extreme hardship to Dr Wilson's wife.

First ground of appeal – identification of the victims

[17] The first and primary ground of appeal is based on the argument that publishing Dr Wilson's name risks identifying the victims, thereby breaching the suppression orders made in their favour. This ground of appeal engages s 200(2)(f) of the Act.

[18] The first ground of appeal needs to be examined from two perspectives, namely the victims who were filmed in a changing room/toilet at Nelson Hospital and the two women who were filmed at Dr Wilson's home.

[19] There are three factors that fatally undermine the first ground of appeal in relation to the victims from Nelson Hospital:

(1) Nelson Hospital is a medium-sized hospital with hundreds of female staff members and, no doubt, a vast number of female visitors to the hospital. There is nothing identifying the victims from the hundreds of women who may have been in the hospital at the time of the offending.[10]

(2) There are likely to be dozens of changing rooms and toilets in the hospital. There is no evidence as to which changing room/toilet was the scene of Dr Wilson's offending at Nelson Hospital.

(3) The offending took place between four to six years ago. The passage of time significantly reduces the likelihood of identifying any victim.

[20] These three factors, when viewed singularly or collectively mean that there is little realistic prospect that publishing Dr Wilson's name will lead to the identification of the victims. It is telling that almost all of Dr Wilson's victims from the hospital oppose continuation of his name suppression. Those victims have adopted that stance

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[10] As at 31 March 2017, there were 798 medical and nursing staff employed by the Nelson Marlborough DHB, the majority of whom work at Nelson Hospital, and many of whom are female – Ministry of Health "Nelson Marlborough staff numbers" (10 May 2017) <www.health.govt.nz/new-zealand-health-system/my-dhb/nelson-marlborough-dhb/nelson-marlborough-staff-numbers<dhb<nelsonmarlboroughstaffnumbers>.

knowing that it is highly unlikely that publishing his name will lead to their identities being disclosed.

[21] The situation concerning the two victims who were filmed at Dr Wilson's home would be more problematic if their occupations were able to be published. That, however, cannot be done as orders have been made under s 202 of the Act suppressing publication of the names and occupations of all victims.

[22] I am aware there is a publication from three years ago that refers to the occupations of the victims who were filmed at Dr Wilson's home. While that is a source of concern I take solace from the following facts:

(1) The victims were covertly filmed between 2012 and 2014. Again, the passage of time greatly reduces the chances of the victims being identified.

(2) Dr Wilson and his family no longer live at the address where that offending occurred.

[23] In these circumstances, while it is possible someone may be able to work out the identity of those two victims, in all likelihood that is a remote possibility.

[24] I am accordingly satisfied that there is no merit to the argument that publishing Dr Wilson's name risks identifying the victims and therefore Dr Wilson has not satisfied the threshold set out in s 200(2)(f) of the Act.

Second ground of appeal – risks to Dr Wilson

[25] The second ground of appeal is based on the contention that allowing publication of Dr Wilson's name is likely to endanger his life by causing him to commit suicide or otherwise harm himself. This ground of appeal engages s 200(2)(e) of the Act.

[26] The strongest evidence in support of this ground of appeal is a report from Dr King dated 21 May 2015. Dr King is a psychiatrist, who saw Dr Wilson on 9 April

2015 when he was suffering from a "major depressive episode". Dr King said that publishing Dr Wilson's name at that time would place him and his family under significantly increased stress and would have disastrous effects on his fragile mental state.

[27] Dr King last saw Dr Wilson on 4 April 2018, prior to his sentencing in the District Court. Dr King was concerned about an increase in Dr Wilson's feelings of intense anxiety and hopelessness but did not believe that he was contemplating suicide.

[28] In his report dated 19 May 2018, Dr Barry-Walsh has explained that:

> Dr Wilson continues to experience significant symptoms of depression and anxiety with concomitant suicidal ideation. His mental state is fragile and at risk of deterioration contingent on the outcome of sentencing and further losses. It is likely if he were to lose name suppression this would have a negative impact on his mental state.

[29] While there are reasons for concern about Dr Wilson's fragile mental health, the evidence before me falls well short of establishing that Dr Wilson is likely to endanger himself if his appeal is dismissed. The most up-to-date medical reports from Dr King and Dr Barry-Walsh do not support this ground of appeal. Thus, Dr Wilson has not met the threshold set out in s 200(2)(e) of the Act.

Third ground of appeal – extreme hardship to Dr Wilson

[30] The third ground of appeal reiterates the arguments made in the District Court that publishing Dr Wilson's name will cause him extreme hardship. This ground of appeal focuses upon s 200(2)(a) of the Act.

[31] I am in no doubt that publishing Dr Wilson's name will cause him stress, anxiety and significant humiliation. These outcomes, however, fall well short of the very high threshold set by s 200(2)(a) of the Act. The concerns put before the Court on behalf of Dr Wilson fall well short of demonstrating that publishing his name would be likely to cause him extreme hardship.

Fourth ground of appeal – extreme hardship to Dr Wilson's children

[32] The fourth ground of appeal also engages s 200(2)(a) of the Act but it is based on the contention that naming Dr Wilson would be likely to cause extreme hardship to his children.

[33] Sadly, it is likely that Dr Wilson's children will be victimised in some way because of their father's offending and that they will suffer distress and anxiety. It is most unfortunate that Dr Wilson's children will be victims of his offending. The distress and concerns that Dr Wilson's children are likely to suffer, however, fall well short of the threshold of extreme hardship set out in s 200(2)(a) of the Act.

[34] For this reason, Dr Wilson has not met the threshold required in relation to the fourth ground of appeal.

Fifth ground of appeal – extreme hardship to Dr Wilson's wife

[35] Dr Wilson's wife is also an innocent victim of his offending. It is particularly humiliating for her to be associated with her husband's offending, given her professional status and the fact that she shares the same surname as her husband. Dr Juliet Wilson has said in an affidavit that she is concerned about her professional standing and future employment prospects if she is associated in any way with publicity about her husband's offending.

[36] It is difficult to see how any objective and responsible employer or future employer of Dr Juliet Wilson would think ill of her because of her husband's offending. It is plain that she has done nothing wrong and should not suffer any prejudice in her professional life over the unfortunate events that have beset her and her family.

[37] Dr Juliet Wilson will undoubtedly suffer humiliation and significant distress if her husband's name is published in connection with his offending. Those consequences, however, fall well short of the threshold of extreme hardship set out in s 200(2)(a) of the Act.

[38] For these reasons, Dr Wilson has not met the threshold required in relation to the fifth ground of appeal.

Discretion

[39] I have summarised at [15] the reasons why Judge Ruth exercised his discretion against granting Dr Wilson's application. Even if any of the threshold criteria in s 200(2) of the Act had been satisfied, there is no basis for concluding that Judge Ruth erred when exercising his discretion against continued name suppression.

[40] One further discretionary factor, not referred to in the submissions or in the decision of Judge Ruth that weighs heavily against the continued suppression of Dr Wilson's name is that doing so unfairly casts a cloud of suspicion over many "Nelson health professionals".

Other matters

[41] In order to provide Dr Wilson's wife and his children with an opportunity to prepare for likely publicity, this decision will take effect from 2.00 pm on 19 July 2018.

[42] As I have noted at [7], Judge Ruth ordered suppression of the identity of Nelson Hospital. It is very doubtful if s 202 of the Act permits an order suppressing the name of an entity, such as Nelson Hospital as the relevant provisions of that section only concern the suppression of the name, address and occupation of various persons, including the victims. There may be jurisdiction under s 205 of the Act to prohibit publication of the name of a place where offending has occurred but, in this case, publishing the name of Nelson Hospital is not likely to lead to the identification of the victims. Accordingly, I amend the orders made by Judge Ruth by permitting publication of the name of the hospital where most of the offending took place.

[43] The two victims filmed at Dr Wilson's home should be referred to by the media as "visitors to Dr Wilson's home".

Conclusion

[44] Judge Ruth made no error when concluding that Dr Wilson's application for permanent name suppression failed to satisfy the threshold criteria set out in s 200(2) of the Act. There is also no basis upon which an appeal can be successfully brought against the manner in which Judge Ruth exercised his discretion when declining Dr Wilson's application for permanent name suppression.

[45] The appeal is dismissed.

D B Collins J

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