

Protecting child victims of crime, and others, from further harm

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What is the main issue at stake in this case?

The law currently protects the identity of child witnesses and child offenders who are involved in criminal cases. In recent years, the media has begun to interpret the protections offered by this law as ending when the child turns 18 years old. The media threatened to reveal the identity of kidnap victim Zephany Nurse, and an urgent application had to be brought to prevent that from happening.

That led to a bigger case brought by Centre for Child Law (CCL), Childline, NICRO and Medio Monitoring Africa as well as Zephany who is referred to as KL in the court papers. The respondents are 12 media houses. The case will be heard in the North Gauteng High Court on Thursday this week.

The applicants are arguing that the law should also protect child victims from identification, and not only child victims and offenders. Secondly, the protection for all three categories should continue beyond the age of 18 years, and that only a court should be able to decide on whether information that reveals identity may be published.

The media houses opposing the matter (Media 24, Independent Media and Times Media) argue that freedom of expression outweighs the rights of children, and that victims should not be included under the protective clause (unless they are called as witnesses). They also argue that the anonymity protection for all categories should end at 18 years of age.

What is the background to this case?

This court case is the second half of the Zephany Nurse matter that was heard in 2015. When Zephany was a baby, she was taken by a woman who was not her biological mother and raised as if she were the woman's child, until she was 17 years old, when she was discovered by her biological parents. This woman was later found guilty of kidnapping in August 2016 and sentenced to an effective 10 years in prison.

Zephany Nurse is the name she is called in the media, although this is not her real name. When she was 17 years old, the news of her kidnapping and discovery by her biological parents broke. It was in all the local newspapers and in international news too. Certain newspapers threatened to publish her identity as soon as she turned 18 years of age. This was due to their interpretation of the relevant legal provision, section 154(3) of the Criminal Procedure Act 51 of 1977 (CPA).

What legal provision is under scrutiny?

The law, section 154(3) of the Criminal Procedure Act prohibits the publication of anything leading to the identification of witnesses and offenders under 18 years of age. The newspapers took that to mean that the protection of such children expired upon them turning 18 years of age.

In the first part of the case, heard in April 2015, the Centre for Child Law (acting for Zephany) successfully obtained an order that prohibited media from publishing Zephany's true identity. This would remain in place until there had been a final order with regards to the interpretation of section 154(3) of the CPA. The details of what this section means will be debated in court on Thursday and Friday.

What child rights are the applicants aiming to protect?

The applicants are aiming to protect the privacy, dignity and best interests of children who may be victims, witnesses or offenders in crimes. Children who are victims and witnesses of crime undergo significant trauma following the crime. It is in their best interests of recovery, and in some cases rehabilitation, that their constitutional rights

to privacy and dignity are respected and protected. While the details of the crime could be a matter of public interest – such as the nature of the crime, when and where it occurred for example – it is the actual identity of children involved that is questioned.

What exactly does the evidence show?

The impact of identification on children has been demonstrated in court papers through evidence provided by a team of four experts and the affidavits of child victims and/or offenders of crime. The CCL's experts provided evidence regarding two categories of children who were child witnesses, victims and/or offenders. The first set of children were those who had their identity revealed in the media, while the second set of children had their identity withheld from the media, although those stories still made national news.

The first group was shown to suffer extensive psychological trauma. Experts indicate that revealing the child's identity in the media is significantly detrimental to a child's recovery from the trauma and their reintegration into society. In a psychological report by one of the applicants' experts, Dr Giada Del Fabbro, identification in the media adds to the child's existing trauma, it shames them, it stigmatizes them in society. It also adds to their feelings of powerlessness and loss of control. It can also lead to regression, which is the child 're-experiencing' the incident. Regression can increase the severity and increase the risk of post-traumatic stress disorder. Children also feel trauma more intensely than adults as they are more impressionable and less resilient than adults.

The second group of children show greater promise. Such children have been able to rehabilitate themselves and lead full and functioning lives – they have jobs, live as part of a community, have families, raise children. They have been rehabilitated from crimes they committed when they were children – as they were given the chance at recovering and reintegrating themselves into society, without being exposed.

What will the applicants be asking the court to do?

In light of the harm that can be caused, the applicants will be asking the court to find that the current law infringes the relevant constitutional rights. One option is for the

court interpret the provision constitutionally – to uphold children’s right to have their best interests considered paramount and to have their dignity and privacy protected and respected. If the provision is not flexible enough to be interpreted in line with the constitution, then the court will be asked to strike the provision down and to send the matter back to the legislature to consider the matter afresh.

The case will be argued on Thursday 9 February 2017 and Friday 10 February 2017 in the North Gauteng High Court, Pretoria.

Ends.

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