ORDER ANONYMISING NAMES AND IDENTIFYING DETAILS OF THE PARTIES

IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2024] NZEmpC 153
EMPC 131/2023

IN THE MATTER OF	an application for a non-publication or anonymising order
BETWEEN	M Applicant
AND	Q Respondent

Hearing: On the papers

Appearances: Applicant in person
P Skelton KC, counsel for respondent

Judgment: 13 August 2024

JUDGMENT OF JUDGE B A CORKILL

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[1] Some seven years ago, judgments of this Court were issued, resolving employment relationship problems between the above parties, an employee and an employer respectively.

[2] The Court has been advised that the publication of those judgments led to significant adverse consequences.

[3] It is necessary to describe the background. After a period of some months following the publication of the subject judgments, the parties attended mediation and were able to resolve their differences. That brought the litigation to an end.

[4] M says that from time to time thereafter, they encountered difficulties in obtaining work because some content of the subject judgments criticised their conduct. The second of the decisions is a substantive judgment.

[5] M therefore brought an application for permanent non-publication, or anonymisation, of the names of both parties. Later, M sought a takedown order in relation to the subject judgments.

[6] Counsel for Q filed a memorandum stating that the respondent neither consented to nor opposed M's application and would abide the decision of the Court.

[7] Evidence was filed in support of the application, tracing the history of relevant events. M stated that in the course of the litigation, significant anxiety and stress had been suffered as a direct result of the stressors involved with the employment relationship problem. Medical records were produced. It is evident that at one stage during the process, M was admitted to an emergency department with significant symptoms. Medication on an ongoing basis was prescribed. Then mediation took place between the parties. The terms of the agreement are confidential to the parties. But as noted, it is clear this event brought the problems associated with the previous employment relationship between the parties to an end.

[8] By this time, M had been successful in obtaining employment. However, some months on, they were advised that their position was to become redundant. According to correspondence from the employer as filed by M, "significant endeavours and exhaustive attempts" were undertaken to find an alternative role within the enterprise, and associated entities, but those efforts were unsuccessful. M says they understood a contributory factor was the adverse comments made about them in the judgments.

[9] Notwithstanding these difficulties, in due course M was able to obtain alternative employment which continued until this year when again they were made redundant.

[10] These circumstances precipitated the current application. Ms says that despite making some 20 applications for work, no offers – and fewer interviews – were

forthcoming. M stated that in the two instances where they were interviewed, human resources managers referred to the adverse statements made in the judgments. Similar responses were received from other prospective employers in relation to roles M applied for. M understood that this was the reason the expressions of interest were taken no further.

[11] M produced documents relating to a university degree course they have been undertaking over the last two years. One of the study units relates to "Exploring your online identity – understanding who you are (or are perceived to be) online". Material provided to students suggested that it is likely future employers would google candidates' names. M says if this were to occur when attempting to advance a new career, yet further harm would potentially be caused.

[12] A problem arose because of listings on a third-party platform that linked one of the subject judgments to websites of the Waitangi Tribunal and the Disputes Tribunal. It is apparent that this was an issue at the time M filed affidavit evidence in May 2024. It is not known how long this problem subsisted.

[13] It appeared this technological anomaly was of the same type as was discussed recently in *C v P*.[1] The same administrative process for dealing with the irregularity was undertaken at my instruction. The subject judgments were removed from the Court's website by the Ministry of Justice (the Ministry). That resulted in erroneous third-party links ceasing to operate, with a message appearing stating "Page not found". The Ministry then requested that the third party remove the listing. The Court understands that the subject judgments could be reinstated subsequently on the Employment Court website if considered appropriate. It is also understood that a modification has now been introduced to the Ministry website to address the apparent web crawling problem, by use of a robots.txt entry.

[14] The Court does not know whether the third-party references on the websites of other judicial bodies caused prejudice. Those listings took the searcher to the Employment Court judgments which were in fact properly published. Although the erroneous links are irregular, I place this issue to one side since the focus of M's

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1 *C v P* [2024] NZEmpC 102.

application relates to the content of the subject judgments. It is this material which M says has led to adverse consequences.

[15] I record that M's application related only to the publication of the subject judgments online, and not to the publication of the substantive judgment in law reports. Information before the Court also confirms that the substantive judgment has been placed on private subscriber platforms such as LexisNexis and Westlaw, as well as on the public platform operated by the New Zealand Legal Information Institute.

[16] M's application for a non-publication order was brought well after the date when initial publication occurred. This means the Court has no way of knowing who may now have copies of the subject judgments, and who would potentially be in breach of non-publication orders were these to be made. It has long been the case that where information as to the identity of someone appearing before the Court is already in the public domain, it is not generally considered appropriate to grant name suppression.[2]

[17] In *C v P*, I reviewed the jurisdiction of the Court to deal with a problem of this kind by way of anonymisation. As the Supreme Court noted in *D (SC31/2019) v New Zealand Police*, anonymisation of a judgment, unlike suppression or non-publication, does not require the Court to make a formal order.[3] I am satisfied that the Court has the ability to take such a step, but it must be established that appropriate grounds exist. A case-by-case analysis is required.[4]

[18] In this instance, I am satisfied there are grounds for anonymisation:

(a) Online publication has occurred up until the date when the subject judgments were taken down recently on my instructions. From this point on, I am satisfied that the interests of open justice will be adequately served by other means. For instance, publication of the substantive judgment in law reports will remain effective and, as outlined below, copies of the judgments may be requested from the Court.

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2 *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546 (CA) at [94].
3 *D (SC 31/2019) v New Zealand Police* [2021] NZSC 2, [2021] 1 NZLR 213 at [139].
4 *C v P*, above n 1, at [20].

(b) A relevant consideration is the fact that the parties attended mediation and resolved their differences. The terms of their settlement are confidential. In these circumstances, the employer has no continuing interest in the matter and has been content to abide the decision of the Court.

(c) The employee placed evidence before the Court as to difficulties encountered in obtaining work because of ongoing publication of judgments containing adverse statements about them. This is a significant consideration. Similar concerns have existed in other cases.[5] In my view, this evidence is credible.

(d) There is evidence that third parties have said they wish to take M's applications no further after referring to the adverse content of the online judgments. The practice of online searches by prospective employers is referred to in university study material that was provided by M, which tends to lend weight to M's concerns that publication has caused undue prejudice, although I note the basis for the study material's claims was not detailed.[6]

(e) Finally, there is reliable evidence that, at times, M's health has been adversely affected by publication.

[19] In these circumstances, I make directions/orders similar to those made in *C v P*. I direct that the previous judgments of the Court, which identify the parties, are not to be republished online by the Court. If, however, any person reasonably requests a copy of the previously published judgments, they are to be made available in anonymised form.

[20] For the avoidance of doubt, I direct that M may provide copies of the previously published judgments to any person if they wish to do so.

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5 At [21]; and *Ioan v Scott Technology NZ Ltd (t/a Rocklabs)* [2018] NZEmpC 4, [2018] ERNZ 1 at [30].

6 See, however, *MW v Spiga Ltd* [2024] NZEmpC 147 at [71]–[74] and fn 105.

[21] I do not make any orders with regard to any other copies of the documents on other platforms. It is for M to take such steps if considered appropriate.

[22] I anonymise the names and identifying details of the employee and employer in this judgment. A copy of this judgment is to be placed on the Court's website. For the avoidance of doubt, the employee may provide a copy of this judgment to any third party and, in doing so, confirm they are the subject of the judgment.

[23] I make a non-publication order in respect of the personal medical information contained in the employee's evidence. I also direct that the file not be searched without the permission of a Judge; any application in that regard is to be notified to M to enable them to give a response.

[24] There is no issue as to costs.

B A Corkill
Judge

Judgment signed at 2 pm on 13 August 2024