

Media: Privacy Rights - Publishing

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The case of Douglas and others v Hello! Ltd and others (2005), concerns the long running battle over the publication of Michael Douglas and Catherine Zeta Jones' wedding photographs by Hello! magazine.

Ok! had a £1m deal with the couple to publish exclusive pictures of the ceremony and the reception, however, Hello! Magazine used paparazzi images of the events to lessen the impact of the exclusive (known as a 'spoiler').

On 18 May 2005, the Court of Appeal handed down a judgment on the various appeals before it. The case is significant because it permitted the court to lay down guidance on a number of principles in the sphere of privacy.

In the original judgement, the court found in favour of Michael and Catherine Douglas and OK! Magazine and awarded:

OK! approximately £1m in damages for its commercial loss;

Michael and Catherine Douglas £14,750 for distress and inconvenience; and Hello! to pay approximately £1m in costs.

Hello! appealed against this decision and the Court of Appeal held that:

There is in effect a law of privacy now in the UK prohibiting the unwarranted publication of private details of celebrities and other individuals;

At the time the photographs were published by Hello! they had not yet emerged into the public domain but they plainly portrayed aspects of the Douglas's private life, and fell within the protection of the law of confidentiality, as extended to cover private or personal information; The appeal against the award of damages to the Douglas's was therefore dismissed;

Privacy rights are personal and cannot be transferred as if they were commercial rights;

OK! magazine did not therefore enjoy any rights against Hello! in relation to the spoiler, even though they had exclusive rights to photographs of the event;

The damages awarded to OK would be disallowed; and The right to privacy would be enforced by means of a pre-publication injunction.

This case is an important decision in the law of privacy:-

Firstly, the court found that its own earlier decision to lift the interim injunction granted to Michael and Catherine Douglas was wrongly decided, and that it should have remained in place as damages would not have been an adequate remedy at the trial; and

Secondly, the court found that following the decision of the European Court of Human Rights in the Von Hannover v Germany (2004), the UK courts have a duty to protect the privacy rights given to individuals by virtue of Article 8 of the European Convention on Human Rights.

This means that the prospects of individuals succeeding in bringing injunctions to protect their privacy have improved. This decision is likely to affect all publishers with exclusive rights in these circumstances as rivals may be free to run 'spoilers' without fear of legal challenge. Hello! is appealing to the House of Lords.

If you require further information contact us.

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