



Neutral Citation Number: [2021] EWHC 63 (Fam)

Case No: BV20D05031

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/07/2021

Before :

MR JUSTICE MOSTYN

Between :

E
- and -
L

Applicant

Respondent

Michael Glaser QC and Ewan Murray (instructed by W Legal Limited) for the Applicant
Simon Webster QC (instructed by Katz Partners) for the Respondent

Hearing dates: 28 June – 1 July 2021

Approved Supplemental Judgment

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MR JUSTICE MOSTYN

This judgment was handed down in private. The judge gives leave for this anonymised version to be published. The identities of the parties may not be revealed in any publication. Breach of this restriction will amount to a contempt of court. In any publication this decision shall be referred to as *E v L (No. 2: Costs)*

Mr Justice Mostyn:

1. In paragraph 107 of my principal judgment dated 13 July 2021 ([2021] EWFC 60 (Fam)) I explained that I would deal separately with costs if the parties were not able to agree that matter.
2. It is clear to me that the essential reason why settlement of this case was stymied at all times was that the husband was not prepared to accept that the fair disposition would be an equal sharing of the marital acquest. Notwithstanding that a large sum of money was made during the marriage he doggedly clung to the notion that the only fair way of resolving the case would be to confine the wife to her needs, very conservatively assessed: see my principal judgment at paragraph 17.
3. His open offers were all made on this footing.
4. This intransigent stance rendered the case unsettleable. As a result, nearly £900,000 of costs were incurred.
5. It was a position that was completely fruitless. It was clear to me from the start that this was a case which cried out for the application of the yardstick of equality to the money made during the marriage. And that is how the case was determined by me.
6. In order to fortify his position the husband ran a disguised conduct case. At every turn he took the opportunity to rubbish the quality of the marriage: see paragraph 107 of my principal judgment.
7. In my judgment, the husband has not negotiated reasonably and responsibly within the terms of paragraph 4.4 of FPR PD 28A. As I have said before, and will no doubt have cause to say again, if you do not negotiate openly, reasonably and responsibly you will suffer a penalty in costs.
8. Nor has the husband conducted the litigation reasonably by seeking to insinuate conduct into the proceedings. Such behaviour should be reflected in a costs award: see FPR 28.3(6) and (7)(d).
9. Mr Glaser QC argues that 25% of the wife's costs should be met by the husband to reflect his unreasonable litigation conduct and his refusal to negotiate openly, reasonably and responsibly. This equates to £109,000.
10. I agree that this is a fair and just figure to be awarded against the husband to reflect these considerations.
11. I turn to the litigation conduct of the wife.
12. In my principal judgment at paragraph 107 I prefigured an award of costs against the wife to reflect her misconduct in snooping on the husband's computer and copying his private correspondence, including privileged material.
13. In my judgment such conduct is completely unacceptable and the wife must pay all of the husband's costs referable to that issue. The husband has filed a statement of costs referable to that issue in the sum of £23,428.20, which I round to £23,400. I have no reason to doubt the accuracy of the calculation.

14. In my judgment, the wife should pay that full amount so that the message goes out that if you behave in such a way you are going to suffer a heavy penalty in costs.
 15. That sum will be set off against the figure of £109,000 leading to an award of costs in favour of the wife of £85,600.
 16. That is my judgment.
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