

IN THE FAMILY COURT AT WEST LONDON

West London Family Court,
Gloucester House, 4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 11 June 2024

Before :

HIS HONOUR JUDGE WILLANS

Between :

SP

Applicant

- and -

(1) WR

Respondents

(2) J (by her Children's Guardian, Ms Melissa Ganser)

**The applicant appeared a litigant in person
Ramanjit Kang (instructed by Sella Solicitors LLP) for the 1st respondent
The 2nd respondent was not involved in the cost's consideration**

JUDGMENT No.2 (COSTS)

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

His Honour Judge Willans:**Introduction**

1. I have provided a final judgment in this matter reported as SP v WR & Anor [2024] EWFC 93 (B). I am asked to resolve a costs dispute. I have considered the respective skeleton arguments together with the supporting documents and the papers contained within the hearing bundle. This consideration was subject to focused case management directions made on the handing down of the substantive judgment. The parties agreed I should resolve this dispute on the papers without a hearing. The child's guardian played no part in the costs process.

Costs order sought

2. The respondent mother ("WR") seeks a costs order and has provided various costs schedules as follows:
 - a. A schedule said to cover the complete proceedings: £121,179.31
 - b. A schedule said to cover the final hearing only: £61,088.40.

In addition to 2(b) WR previously (during the final hearing itself) provided a costs schedule for the final hearing setting out the costs she would be claiming. This totaled £34,600. The respondent father, SP has noted the difference between this schedule and 2(b). In an email dated 2 May 2024 the solicitor for WR notes the difference, agrees its existence but then explains why it is that the end figure totals the figure in 2(b).

3. Although there is some ambiguity in this regard, I have also received a costs schedule from SP which totals £49,750. Separate to this I have noted, within email correspondence, observations by SP to the effect that his global costs of the proceedings have in fact totalled close to £211,000 (see email 2 May 2024 at 09.05). I do not read his skeleton to seek a positive costs order against WR although he sets out that if no order is made, he will not pursue against WR various sums he raised previously within correspondence.

Legal Provisions

4. I am directed to FPR Part 28 and PD28A. The general rule that costs follow the event ("the loser pays") is disapplied in children proceedings. The starting point is that the process is quasi-inquisitorial and focused on achieving the best outcome for the child. The Court accepts each parent may take a different approach as to what is best without being subject to criticism. As a result, neither parent should be viewed as either 'winner' or 'loser.'¹ The Court does have a power to make a cost order. The circumstances in which it may do so is governed by the principles in CPR r.44 which applies and which identifies the following matters as being ones to which the Court must have regard (in addition to all the circumstances of the case):
 - (a) *the conduct of the parties;*
 - (b) *whether a party has succeeded on part of its case, even if that party has not been wholly successful; and*

¹ See recent summary of law in Re O (Appeal: Costs) [2024] EWHC 1163 (Fam) per Henke J.

- (c) *any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences of Part 36 apply.*
5. In considering the conduct of the parties one has regard, among other matters, to:
- (a) *conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction - Pre-Action Conduct or any relevant pre-action protocol;*
 - (b) *whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;*
 - (c) *the manner in which a party has pursued or defended its case or a particular allegation or issue; and*
 - (d) *whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.*
6. The Court must have regard to the overriding objective and ensure cases are dealt with justly. I should also reflect on the fact that orders of this sort will diminish the funds available to meet the needs of the family and may exacerbate feelings between the parties to the ultimate disadvantage of the child. I should consider the extent to which costs have been incurred due to unreasonable behaviour or where conduct has been reprehensible or beyond the band of what is reasonable.² I bear in mind a finding of such behaviour is a gateway to the consideration of a costs order rather than a determiner of whether the same should be made.³ In considering unreasonable conduct each case will turn on its facts. Such behaviour should relate to the litigation but may arise before as well as during proceedings.

Basis for Costs Order

7. WR makes the following points in favour of the costs order sought:
- a. SP's conduct both pre-proceedings and during proceedings has been unreasonable.
 - b. The court has not found any of the 22 findings (spanning from 2015 to 2024) sought by SP against WR, save for breach of the order on 13 January 2024 on the basis that: "This was not done in isolation and out of simple hostility but out of the father's ongoing behaviour. Whether it was his approach to contact; his approach to her or his uploading of information onto the internet it seems to me this mother has faced an almost relentless battery over this history of litigation."... " I do not find her to be obstructive for her own sake but out of her concern for the child." [para 79]
 - c. The court has considered concerns raised by WR about SP and states "When I look back at the history of the case, I can see it interspersed with complaints of the father acting in the manner I have now found him to be acting on occasion. On the information I have I am satisfied these complaints had foundation." [para 79]
 - d. SP's conduct was abusive in that he used professionals (including the police [66][69]) and the Court to further his agenda, and undermine and belittle WR;
 - e. SP has prioritised litigation over his daughter's wellbeing through evidence gathering [para 53] and constructed evidence in an attempt to support his case [62], he has even gone to the extent of alleging WR having a knife [72]
 - f. SP sought to blame WR at every chance for his poor relationship with J and is unable to accept any wrongdoing [59][65][75]: "I have reached the conclusion this is a case

² Re T (Children) [2012] UKSC 36

³ The Mother v The Father [2023] EWHC 2078 (Fam)

in which he has been largely responsible for the situation he finds himself in. He has demonstrated a wholesale disregard for his daughter's needs and allowed his own feelings to get in the way of making the right decisions. It is concerning this has been a consistent failure" [79].

- g. SP's evasive and long-winded answers increased the length of his cross-examination, as counsel needed to repeat the questions to try to get SP to answer the question;
- h. SP's conduct was unreasonable and reprehensible in accusing WR of lying, having mental health problems, accusing WR of instigating/encouraging everything negative J has said about SP, which meant WR had to be cross-examined causing her further stress;
- i. SP accused J of lying when he was the one lying to her [59];
- j. SP sought to weaponise WR's ill health [68]
- k. SP has sought to use litigation and WR not be able to travel with J abroad as a level of control [85 (vii)]
- l. WR is a single parent thus has significant financial burdens placed on her and the court noted "...the father has a high opinion of himself and he appears to look down on the mother. In the course of the hearing, he made a number of gratuitous references to his personal wealth. When listening to him my sense was that he was aiming this at the mother who lives under more financially strained circumstances. These various observations and actions bore a somewhat narcissistic quality" [para 54]
- m. WR has spent significant sums of money on litigation which could otherwise have been used for the welfare of J. SP "...was only willing to offer support with some modest works on the mother's home with respect to damp (which would allow the child her own room) if he obtained the outcome he sought. This suggests the case is about him not the child as far as he is concerned." [Para 76]

Based on the above WR seeks an order for her costs of the proceedings or in the alternative the costs associated with the final hearing.

- 8. SP opposes any costs order. As noted, he references this on the basis of dropping any claims he has for costs or losses as identified previously. On the question of costs, he makes the following points:
 - a. WR's non-compliance with the procedural rules around costs applications:
 - i. as related to the filing/serving of Forms N260; and
 - ii. costs not being reserved / in the application for hearings in respect of which costs appear to be being sought by WR
 - iii. SP's lack of unreasonableness / reprehensible conduct in his approach to these proceedings; and
 - iv. There being no other reason to depart from the position with which the court starts, i.e., 'no order as costs.'
- 9. I note and consider the developed argument found within the skeleton arguments. I also note both the observations SP makes as to the bill of costs (quantum not principle) and the

various observations and documents filed by SP or referred to by SP relating to his capacity to meet a costs order.

Decision

10. I consider this is a case which justifies the making of a costs order as far as it relates to the final hearing. I do not consider the costs should touch upon the broad proceedings more generally. I bear in mind that the full proceedings included a range of different applications, some made by WR herself and that in the course of the same determinations were made without positive cost order. To an extent a significant aspect of the full costs reflect proceedings to which my findings as to behaviour do not apply. As noted on occasion decisions have been made and neither party sanctioned at that time in costs and the same not held over for further consideration.
11. I do take a different view with respect to the final hearing. There are a series of features (caught in paragraph 7 above which open the door to an order and make the same justified). SP's litigation conduct raised disputed issues which should not have been raised and which have both extended to proceedings and increased the cost of the same. He engaged in a drip feed approach to disclosure (including the video and other recordings) which also exacerbated the costs of the process. I consider his interviewing of the child to be litigation misconduct (although it had a separate welfare impact) as I consider his willingness to attempt to deploy the police and others to evidentially advance his case. This was all thoroughly inappropriate and is reprehensible conduct. I am well placed to reach this conclusion having conducted the final hearing and with a good sense of this conduct. My judgment encapsulates the issues which lead to this conclusion.
12. Yet the final hearing would have been required to some extent and there would have been issues for resolution absent such conduct. I have in mind the request to travel overseas as a prime example. I am not so critical of the SP with respect to his broad position in this regard, although I found against him. I also bear in mind there would have been a need to consider the application to vary the existing child arrangements order. It is difficult to be precise in this regard but I consider SP's conduct had a significant impact on the process and led to both an extension of the time required to resolve the issues and the expense required to engage with the issues. In my assessment I consider this should be assessed as amounting to 50% of the costs of the final hearing.
13. In my assessment the appropriate outcome is to make a costs order. I have reflected on the features noted above but having regard to the conduct and all the circumstances of the case I judge the fair outcome must be for a costs award to be made. I take account of the final schedule provided. I accept documents were not supplied in as timely a fashion as they might have been but appropriate notification of the intention to seek a costs order was given (I bear in mind the SP later sent a schedule to WR seeking costs) and my case management directions have ensured this process has been undertaken in a fair manner.

14. I have reflected on the points made by SP as to the bill. These points have been reflected in my final assessment. I take the figure of £61,000 (rounded) and applying a 50% fraction reduce this to £30,500. I next reduce the sum to reflect the likely reduction were a detailed assessment to be undertaken. The deduction I apply is 20% reducing the sum payable in principle to £24,400.
15. I have reflected on points made by the SP as to his financial position. There are some challenges with this argument as follows:
 - a. In the course of the hearing (see for instance §88 of judgment) SP made a number of gratuitous references to his wealth. These sit uncomfortably with his argument that this was all bluster to meet any suggestion he was a failure. I bear in mind elsewhere SP suggests that this was said because WR was challenging his self-proclaimed success. Yet at no point during the hearing was such a point made by WR;
 - b. In the course of the hearing SP's witness volunteered SP was a multi-millionaire and claimed he had information to support this suggestion. Elsewhere SP relied on video evidence supporting this suggestion and told me about a number of properties held in various jurisdictions;
 - c. It is also difficult to reconcile SP's case with his argument, put to WR, that he was better able to care for J due to the stability of his own living arrangements. At no point did he mention what he now claims to be instability in such regard.
 - d. Finally, whilst I have reflected on the range of financial information deployed by SP, I note these are entirely cash flow rather than capital in form. SP has pointed to the impact on him of increases in interest rates in recent times and the net impact on his monthly expenses. This may be correct yet at no point does he provide any evaluation of the capital equity he holds in any of the numerous properties either referred to at hearing or evidenced in his documents. On my reading he appears to have mortgages totalling some £1.68m with arrears of £15,275. He provides no account of the equity associated with some 8 properties which appear to be in this jurisdiction let alone the number of properties located elsewhere.
16. The information does not come close to persuading me that a costs order should not be made. I do not consider the 'offer' to drop other claims against WR to have any obvious value. On my interpretation these appear to be in the nature of losses subject to an enforcement of contact application. I remind myself I dismissed the application for enforcement placed before me and it strikes me as highly unlikely SP would have a maintainable claim in such regard in any event.
17. I therefore order SP to pay WR costs summarily assessed in the sum of £24,400. I will give SP until 4pm on 6 September 2024 to pay the sum. Thereafter interest will be applied at the simple rate of 4% per annum on any outstanding sum until the sum is settled.
18. I attach an order to this judgment. This judgment will be published. If there any proposed redactions or corrections then they should be sent to me by 4pm on 14 June 2024.

His Honour Judge Willans