



Case No: LE16P01408

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Nottingham Combined Court Centre

Date: 05/02/2020

Before :

MR JUSTICE KEEHAN

Re H (Costs)

Between :

PA

Applicant

- and -

TT

1st Respondent

-and-

H(A Child by way of 16.4 Children’s Guardian)

2nd Respondent

Mr R Jones (instructed by **Helen Fitzsimons Family Law**) for the **Applicant**

The 1st Respondent appeared in person

Ms A Musgrave (instructed by **NYAS**) for the **2nd Respondent**

Hearing dates: on the papers

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE KEEHAN

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.

The Hon. Mr Justice Keehan :

1. This decision on the issue of the apportionment of the costs of the expert witnesses instructed in this case should be read with my judgment given on 3rd October 2019. I decided that the care of the child should be transferred from the mother to the father. Accordingly, I made a child arrangements order that H should live with his father and an order that he should spend time with his mother after a three month moratorium in the immediate aftermath of his move to live with his father.
2. The mother has to date declined to engage with the professionals to undertake therapy which I had accepted was a prerequisite to the commencement of contact with H. Therefore, H, who has settled extremely well in the care of his father, has not yet had any form of contact with his mother.
3. I accepted the instruction of Dr. Braier, a well-known and respected expert in the field of parental alienation, was necessary for the court to determine the issues in this case and I accepted that the instruction of a number of professionals to advise on and support the transition of H from his mother's care to his father's care was necessary. I, therefore, gave permission for the instruction of Dr. Braier, the Family Separation Clinic, Alison Bushell and Elizabeth Archer.
4. In order to avoid unnecessary delay the father agreed to pay the costs of this expert and of these professionals but without prejudice to seek an order for the mother to pay a one half share of the same at the conclusion of these proceedings. The father has now made this application. The mother opposed the application essentially on the ground that she cannot afford to pay these costs. I gave directions for the mother and the father to file brief statements on the issue of the costs of Dr. Braier and the professionals and that I would determine the father's application on paper.
5. The mother and the father have both filed and served statements.
6. The mother's opposition to an order for a one-half share of these costs is based on two key submissions:
 - i) she does not have the means to afford to pay the same; and
 - ii) she did not appoint the expert nor agree to her instruction and she did not appoint the professionals nor agree to their instruction.
7. The latter submission is totally misconceived and completely misses the point that it was the court which considered their instruction in this case to be necessary and it was the court that gave permission for this expert and these professionals to be instructed.
8. The mother was previously in employment. In her statement she asserted she is now unemployed. The father asserted that the mother left her employment shortly after the final hearing of this case. In her statement the mother does not give any details about:
 - i) how and why she left her employment or, as the case may be, lost her job;
 - ii) what steps she is taking or will take to find new employment; or
 - iii) what her prospects are of securing future employment.

9. In the premises, I attach little weight to the fact that the mother is currently unemployed.
10. She has savings of £9,956.20 with liabilities of £2,479.63 leaving net savings of £7,476.57.
11. She has alleged monthly expenses of £1,697.70.
12. She is the joint owner of a property on which there is an outstanding mortgage £107,538.31 in respect of which she asserted she has forthcoming costs for repairs and maintenance: the quantum is not specified.
13. The costs claimed by the father, namely one half of the costs of each expert and professional are:
 - i) Dr. Braier - £7,458.00
 - ii) the Family Separation Clinic - £570;
 - iii) Alison Bushell - £112.50; and
 - iv) Elizabeth Archer - £2,643.10

A total of £10,783.60
14. Save for the issue of having the means to pay, I see no reason at all why I should depart from the general principle that parties to the joint instruction of approved experts should equally bear the costs of the same.
15. I am not persuaded the mother does not have the means to pay the costs sought by the father. I am not told the circumstances in which she became unemployed or what her prospects of are securing future employment. She has capital savings and is the owner of a one half share in a property.
16. In the premises I will order the mother to pay to the father one half of the costs of the expert and professionals instructed in this case in the sum of £10,783.60. She will pay the sum of £2,783.60 forthwith and in any event by no later than 19 February 2020. Thereafter she will repay the remaining balance of £8,000 in 16 instalments of £500 per month commencing on 01.03.20.