



Neutral Citation Number: [2022] EWHC 2604 (Fam)

Case No: FD21P00961

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26/9/22

**Before:**

**SIR ANDREW McFARLANE (President of the Family Division)**

-----

**RE S (A Child) (Costs)**

-----  
-----

**Mr Edward Bennett** (instructed by **International Family Law Group LLP**) for the  
**Applicant Mother**  
**Mr Ben Boucher-Giles** (instructed by **Gregorian Emerson**) for the **Respondent Father**

Hearing dates: On Paper

-----

**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.

.....

**Sir Andrew McFarlane**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. 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.

**Sir Andrew McFarlane P:**

1. By a judgment handed down on 4 July 2022 ([2022] EWHC 1720 (Fam)) I granted an application made by the mother of S, an 18 month old Antiguan child, whose only connection with this jurisdiction is that she was covertly removed here by her father in December 2021 and kept here for 10 days. The mother's application was for the proceedings relating to S in England and Wales to be concluded, with all existing orders and undertakings discharged. The application was, as I described in my judgment, 'contested vigorously by the father'. The mother has now applied for an order for costs against the father in the sum of £6,055. That figure represents the full costs of legal representation subsequent to a hearing before Newton J in January 2022. The costs application is contested in full.
2. By agreement, the issue is to be determined on paper and I am most grateful to both counsel who have distilled the arguments on each side in succinct and clear terms.
3. For the mother, Mr Bennett submits that the father's litigation conduct, particularly during the period in question, has been unreasonable. The likelihood of the English court concluding that it lacked jurisdiction was clear and the case that any such jurisdiction that might exist should not be exercised was, he submits, overwhelming. In the circumstances it was wholly unreasonable to contest jurisdiction or to prolong the English proceedings. Mr Bennett further submits, quoting my judgment, that the father's arguments were 'the very opposite of clear and substantial' and, if the court had got to the point of considering S' welfare, 'wholly devoid of any merit'. Prior to the hearing the mother had submitted her costs schedule to the father and offered to settle without payment of costs, yet he proceeded. Mr Bennett therefore argues that a costs order is both proportionate and justified.
4. In response, Mr Boucher-Giles, after correctly drawing attention to the relevant rule [FPR 2010, r 28.3] which permits a costs order where the court considers it appropriate to so order because of litigation conduct, cautions that the application does not relate to the original proceedings, but to this final lap concerning any future jurisdiction. It is argued that, to the father, his stance was justified by his primary concerns that:

'(a) he would not be afforded a fair trial in Antigua and/or (b) for the purposes of mirroring orders and enforcement. The father considered that this jurisdiction represented his best chance of seeing his daughter in the future.'
5. Pausing there, whilst the description of the father's primary concerns may well be accurate, these were not the stated reasons for his opposition to the mother's application, which were, of necessity, couched in legal terms which, as I held, were without foundation or merit.
6. The father's submissions go further and claim that the mother's assertion that S had never been habitually resident here and that all welfare decisions were to be considered in Antigua 'misses the point' of the father's desire to keep proceedings alive in this jurisdiction. It is said that 'he was not actively pursuing welfare proceedings in this jurisdiction'. Again, this submission would seem to seek to recast history as the father's case was entirely based on asserting that this court had a

welfare jurisdiction to make a child arrangements order under CA 1989, s 8 and/or the inherent jurisdiction.

7. As the substantive judgment demonstrates, and as the father's present submissions go to confirm, the father's case before the court was, in legal terms, hopeless. The present arguments only go to underline that there was, in reality, no proper basis for submitting that this court should retain jurisdiction. The case put forward with vigour on the father's behalf was mounted for the reasons now described at paragraph 4 above, which were not proper grounds, in law, for this court to hold to any continuing jurisdiction. Insofar as the father's case related to the welfare of S, his submissions were, as I held, wholly devoid of merit.
8. Mr Boucher-Giles makes a number of further submissions about the level of quantum. In particular he points to the fact that the mother was attended throughout by Mr Netto, who is a partner in the instructed firm, whose charge-out rate is £400 per hour. It is said that the father is of limited means, without any detail being given, and that any costs order will have an adverse impact upon his finances and, in particular, reduce his ability to engage in proceedings in Antigua.

#### Discussion and conclusion

9. The mother's application for costs is fully justified in this case. From the hearing before Newton J and end of his intended appeal, the father's refusal to accept that the English proceedings should be closed down had no foundation in law. The arguments raised by counsel on his behalf, as recorded in the substantive judgment, whilst inventive, lacked any foundation and were plainly untenable. This is a case that comes squarely within the court's jurisdiction to make a costs order because of the unreasonable litigation conduct of a party. The father's position, as he now accepts, was adopted for reasons that were unconnected with the arguments that he raised in claiming that this court should retain jurisdiction to make orders regarding his daughter's welfare. In those circumstances the mother was required to mount a contested application and meet the father's legal submissions at a full hearing. In the circumstances, she is entitled to an order for costs in her favour.
10. On the issue of quantum, it is clear that the amount claimed represents the full client costs. No dates or other details of the work done have been provided. Whilst the work, other than attendance at court, was all undertaken by Mr Netto, rather than a more junior lawyer, the amount of such work was limited and it was, in my view, justifiable for the solicitor who was familiar with the case to deal with these matters. I do however, consider that the need for Mr Netto to attend the hearing, and charge the full rate, in circumstances where very experienced counsel had been instructed at a substantial brief fee, is questionable.
11. In the circumstances, I am persuaded that the costs bill should be reduced by £800, being 50% of the solicitor's costs for attending the hearing. I therefore summarily assess the costs payable to be £5,255 and an order will be made in these terms.