



25 March 2015

PRESS SUMMARY

In the matter of S (a Child) [2015] UKSC 20
On appeal from [2014] EWCA Civ 135

JUSTICES: Lady Hale (Deputy President), Lord Kerr, Lord Wilson, Lord Hughes and Lord Toulson

BACKGROUND TO THE APPEAL

The father of a young girl (called Amelia in the judgment) successfully appealed against a placement order obtained by a local authority for Amelia's adoption without her father's consent. The Court of Appeal ordered the local authority to pay the father's costs of the appeal. The issue arising on this appeal is whether it was right to do so, given the principle confirmed by the Supreme Court in *In re T (Care Proceedings: costs)* [2012] UKSC 36 that in general local authorities should not be ordered to pay costs in care proceedings.

Amelia's father married her mother in 2002 but they separated in 2007 before she was born. Amelia lived with her mother. Care proceedings were commenced as a result of concerns on the part of the local authority that Amelia and her other sibling and half siblings had suffered or were likely to suffer significant harm owing to a lack of proper parental care from their mother. The father had had only limited contact with the children. The local authority considered that he did not have the capacity to meet Amelia's high level of need and, with the support of the children's guardian allocated in the care proceedings, sought a closed adoption for her (ie without contact with her birth family). The judge at first instance accepted the local authority's opinion and made the placement order.

The placement order was overturned by the Court of Appeal on the basis that the judge had been wrong to make the order without further assessment of the situation of the father and child, and had not adequately articulated her reasons. Since then further assessment has taken place and Amelia has now been placed with her father under a child arrangements order.

In bringing the appeal the father incurred legal costs assessed in the sum of £13,787. The Court of Appeal ordered that the local authority should pay those costs because it had resisted the appeal, and in order not to deter a parent from challenging decisions which impact on the most crucial of human relationships. It held that the principle in *In re T* was not applicable to appeals.

The local authority appealed to the Supreme Court in relation to the costs order only, and on the basis that whatever the outcome, it would not seek to recover the costs awarded and paid to the father.

JUDGMENT

The Supreme Court unanimously allows the appeal by the local authority and sets aside the costs order made in the Court of Appeal. Lady Hale gives the only judgment.

REASONS FOR THE JUDGMENT

In re T upheld the general practice of not awarding costs against a party, including a local authority, in children's proceedings, in the absence of reprehensible behaviour or an unreasonable stance. It held that local authorities should not be deterred from their statutory duty to protect children by bringing proceedings. *In re T* was different from this case, in that it involved a first instance fact-finding hearing rather than an appeal; and the costs of interveners who merely wished to clear their names of abuse allegations, rather than of parents who wished to care for the child themselves [13]. The question was whether these distinctions were material.

The general rule that in civil proceedings the unsuccessful party will be ordered to pay the costs of the unsuccessful party does not apply to first instance or appellate proceedings about children [15]. For many years the practice in such proceedings has been to make no order in the absence of exceptional circumstances. The only winner should be the child and no one should be deterred by the risk of having to pay the other side's costs from playing their part in helping the court achieve the right solution [21]. It is important for the parties to be able to work together in the interests of the children during and after the proceedings, which stigmatising one party as the loser does not assist [23]. An order to pay costs may reduce the resources available to look after the child or, for a local authority, reduce the budget for the protection of other children [24]. It is irrelevant whether a party is publicly funded or not [25].

Parents are always entitled to resist the claim of the state to remove their children from them, but it does not follow that the local authority is unreasonable in seeking to protect the child if it loses [28]. On an appeal different considerations will apply when assessing whether a party has acted unreasonably but the principle is the same [29]. *In re T* did not rule out the possibility of other circumstances in which an award of costs in care proceedings might be appropriate [31] provided that a local authority was not put into a worse position than private parties [32]. Nor should it be put in a better position. The object of the exercise is to achieve the best outcome for the child and there may be cases where the welfare of the child would be put at risk if a costs order is not made [33].

In this case it is not suggested that the local authority has behaved in any way reprehensibly towards Amelia or her father [35]. The suggestion that it should not have opposed the appeal because of the deficiencies in the first instance judgment is unwarranted and the Court of Appeal would have been surprised had the local authority failed to respond to the appeal [36]. None of the exceptions to the general approach to awards of costs in children cases applies in this case and the appeal (with the assurance that the local authority has given as regards the father's costs in this case) is therefore allowed [39].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.shtml>