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Neutral Citation Number: [2020] EWHC 1930 (Fam)

Case No: FD20P00191

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/07/2020

Before :

MRS JUSTICE LIEVEN

Between :

FATHER

and

MOTHER

Applicant

Respondent

Mr Edward Devereux QC (instructed by **Vardags**) for the **Applicant**
Mr Teertha Gupta QC (instructed by **JMW Solicitors**) for the **Respondent**

AFTER WRITTEN SUBMISSIONS

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.

.....
MRS JUSTICE LIEVEN

Mrs Justice Lieven DBE :

1. This is an application for costs made by the Mother in these proceedings. The background is set out in the substantive judgment and I will not repeat it.
2. Mr Gupta on behalf of the Mother argues that the Father acted unreasonably in only conceding the application for summary return at lunchtime on the first day of a 3 day hearing. He says that the Father's explanation that he changed his position after hearing Ms Doyle the Cafcass officer's evidence cannot be correct because Ms Doyle said nothing that was not in her written report. It would have saved a large amount of cost, money and emotional turmoil if the Father had conceded the summary return earlier or had not brought the application in the first place. What became the main issue, and is the subject of the judgment, namely international contact, could have been dealt with at a far lower emotional and financial cost.
3. Mr Devereux on behalf of the Father points to the provisions in the FPR that mean that in a matter such as this, costs do not automatically follow the event and the court has a broad discretion. He refers me to Re T (Costs) [2012] UKSC 36 and Mr Gupta also refers me to Re S (Costs) [2015] UKSC 20.
4. The crux of these cases is that the Court can order costs if it considers the parties have engaged in reprehensible or unreasonable conduct and that there may be other circumstances where it is appropriate and just to order costs, see Lady Hale at [31] in Re S.
5. Mr Devereux argues that the Father was perfectly entitled to require summary return given the Mother's clear retention of the children without the Father's consent.
6. In my view this is not an appropriate case to depart from the general approach explained in the caselaw that in family proceedings involving children no order for costs is generally made. It is a great pity that the parties did not reach an agreement without coming to court at all and that the Father did not focus his application on contact rather than return at a much earlier stage. There is a lack of realism, as well as what is in the best interests of the children, in very many applications for summary return of children and this is but one example.
7. However, the Mother did unlawfully retain the children in England in circumstances where she knew the Father had not agreed. Importantly, she did not agree to international contact even though there was a mechanism in Dubai by which her ability to have the children returned to England could largely be protected. She was adamantly opposed through the hearing to international contact and, in those circumstances, it seems to me inevitable that there would have been a hearing and it would have been largely along the lines of the hearing that took place.
8. If either party had been prepared to act more reasonably in this case and take a more consensual approach, costs and court time could have been saved. I do not think this is an appropriate case to make a costs order.