



Neutral Citation Number: [2024] EWHC 642 (Fam)

Case No: ZZ20D65691

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21/03/2024

**Before :**

**MRS JUSTICE KNOWLES**

-----

**Between:**

	<b>ALVINA COLLARDEAU</b>	<b><u>Applicant</u></b>
	<b>- and -</b>	
	<b>MICHAEL FUCHS and WILLIAM HARRISON</b>	<b><u>First and Second Respondents</u></b>

-----  
-----

**Mr Stephen Trowell KC** (instructed by Sears Tooth) for the Applicant  
**Mr Daniel Bentham** (instructed by Harbottle and Lewis) for the First Respondent  
**Mr Ian Mill KC and Mr Stephen Jarman** (instructed by Hickman and Rose) for the Second Respondent

This matter was determined on the papers  
Judgment Handed Down 21<sup>st</sup> March 2024

-----

**Approved Judgment**

This judgment was handed down remotely at 10.30am on 21<sup>st</sup> March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MRS JUSTICE KNOWLES

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.

**Mrs Justice Knowles:**

1. On 8 February 2024, I handed down a judgment in which I dismissed the Applicant's application to bring contempt proceedings against the First and Second Respondents. This ruling is concerned with the costs arising from and incidental to that application. The Applicant is the former wife of the First Respondent and I will refer to her as "the wife" and to the First Respondent as "the husband". The Second Respondent owns a company which provides management services for the husband and he previously worked for both the wife and the husband. I will refer to him as Mr Harrison.
2. There are two costs decisions which I need to take. The first relates to the reserved costs of a debarring application on 5 September 2023 brought by the husband against the wife and the second relates to the costs of the application for permission to bring a committal application brought by the wife against the husband and Mr Harrison. These applications form part of extensive litigation about financial and children matters following the wife and husband's separation and divorce. That litigation is ongoing as I write.
3. I have seen statements of costs for a summary assessment by each party together with written submissions which I limited to 2 sides of A4 paper.
4. I have decided to assess both costs applications summarily as this minimises the costs in these already extravagantly litigated proceedings and provides certainty to the parties about the sums owing. This approach is also in accordance with CPR PD 44, paragraph 9.2(b) in circumstances where the case has lasted not more than one day.

Legal Principles

5. The relevant costs rules are contained in the Civil Procedure Rules 1998 ["CPR"], Part 44 together with Practice Direction ["PD"] 44A. The family costs rules, which incorporate with modifications the CPR, are found in the Family Procedure Rules 2010 ["the FPR"], Part 28 and PD28A. The basic rule in financial remedy proceedings is that the court may at any time make such order for costs as it considers just (FPR 28.1). The general rule in CPR 44.2(2)(a), that the unsuccessful party will be ordered to pay the costs of the successful party, does not apply to any family proceedings for it is omitted by FPR 28.2(1). However, in financial remedy proceedings, swathes of the CPR costs regime are applied to family proceedings by FPR Part 28 save that some of the relevant provisions are omitted or amended.
6. The general rule as to costs contained in CPR 44.2(2)(a) does apply to committal proceedings (including applications to bring committal proceedings) which are civil proceedings even though they take place – as here - within financial remedy proceedings. Where costs are ordered against the unsuccessful party, these will generally be on an indemnity basis (see paragraph 56 of the judgment of Rose J in JSC v Pugachev [2016] EWHC 258 (Ch)). When assessing costs in committal proceedings (including applications to bring committal proceedings), the contents of Without Prejudice Save as to Costs letters may be taken into account though such correspondence is normally withheld from scrutiny by the court.

7. This short ruling is no place for a detailed exposition of the costs regime applicable to either application but it will be clear from my analysis which rules I have applied in reaching my decision.

#### Reserved Costs of the Debarring Application

8. On 5 September 2023, before Arbuthnot J, the husband withdrew his application to debar the wife's solicitor from acting for her. The husband's costs were £26,545 from 24 August 2023 and the wife's were £37,830 (this sum having had deducted £3,525 for affidavits relating to the permission application). At court, the husband accepted that he should pay the wife's "*reasonable costs*" but only up to 26 August 2023 and that the wife should pay his costs thereafter.
9. The wife submits that the husband's offer was inadequate as he only offered "*reasonable*" costs, suggesting an argument about whether these were either standard or indemnity costs. She also stated that her costs of the hearing had already been incurred on 26 August 2023, this being just 6 working days before the hearing on 5 September 2023. The husband submitted that the hearing on 5 September 2023 was also the first hearing of the wife's application for permission to bring contempt proceedings. He submitted that the wife's bill should be assessed on a standard basis, allowing her two thirds of what she claimed, but with deductions both for costs incurred after 23 August 2023 when he agreed to pay her reasonable costs and for costs referable to the contempt application. He suggested that the figure of £9,000 was appropriate.
10. Generally speaking, if a party decides to discontinue an action or part of an action, then they should be expected to pay the costs wasted by the other side. This principle is given substance by CPR 38.6. Though that provision has not been incorporated into FPR Part 28.2, it is one which I have borne in mind in the same way that Lieven J did in paragraph 49 of Crowther v Crowther & Ors [2020] EWHC 3555 (Fam). The costs of this application fall to be assessed on the standard basis and by reference to the factors set out in CPR 44.4(3).
11. The husband discontinued his application on 5 September 2023 because he refused to accept the third condition set out in the wife's letter dated 18 August 2023, namely a recital on any order withdrawing the application that the husband should never have made the debarring application. I described that recital as "*more of a weapon with which to beat the husband in any future litigation*" and "*unnecessary*" (paragraph 44 of my earlier judgment). The wife also made clear that she would initiate committal proceedings if the husband did not agree all her conditions set out in the 18 August 2023 letter. Indeed she did just that shortly after the husband refused to do so. Had the wife not required the contentious recital, the debarring application would have settled without the need for a court hearing. I regard her insistence on this issue as relevant conduct which I should take into account when assessing whether the husband should pay all her costs of the hearing on 5 September 2023. Accordingly, I have decided to reduce the costs payable by the husband to the wife by 60% so that he should pay her the sum of £15,132.
12. I reject the husband's submission that all his costs up to 5 September were referable to the application for permission to bring committal proceedings. It is impossible to gauge from the N260 whether this is the case. The hearing on 5 September made no

orders on the wife's committal application and, given the less than encouraging remarks made by Arbuthnot J, it was not beyond the bounds of possibility that, on sensible reflection, the matter would not be pursued by the wife. The husband will bear his own costs up to and including the hearing on 5 September 2023.

#### The Costs of the Permission to bring Committal Proceedings

13. The wife's costs were £69,750 and those of the husband were £174,244.50. Astonishingly, the costs of Mr Harrison were £336,632.40, some £92,637 more than the costs of the husband and the wife combined.
14. In his statement dated 10 November 2023 which was prepared for the hearing of the wife's application, Mr Harrison stated that the husband had agreed to fund the costs of his legal representation in the first instance until his costs could be reclaimed from the wife. He said he did not have the funds to pay for suitable legal representation without the husband's assistance and said he would ask the court to order the wife to pay all his legal costs so that his debt to the husband could be repaid. However, in written submissions, I was informed that the husband had loaned Mr Harrison £130,000 and that Mr Harrison had funded the remainder of his own legal costs from his own resources without any assistance from the husband. Those submissions were somewhat at variance with Mr Harrison's sworn evidence though I was told Mr Harrison was prepared to make a witness statement confirming the position on his legal costs. I have concluded that, at present, I simply do not know the true extent of Mr Harrison's indebtedness to the husband and I have attached little, if any, weight to it when coming to my conclusions.
15. Indemnity costs are usually imposed in contempt proceedings and I see no justification for departing from that principle. My judgment (see above) made plain that the wife's application constituted proceedings of the utmost seriousness with allegations of great gravity which were pursued in a wholly inappropriate manner. The wife's case was weak and evidentially flawed; and was improperly motivated and disproportionate. The wife involved Mr Harrison in her ongoing dispute with the husband in a way which was wholly unnecessary. I note that both Mr Trowell KC and Mr Bentham referred to the content of some of the Without Prejudice correspondence in their written submissions. Though the wife made a number of Without Prejudice Save as to Costs proposals, she was willing only to abandon her application on the basis that she would not incur any liability for the costs of the husband and Mr Harrison. Mr Trowell KC suggested that these letters were an attempt to negotiate which were unreasonably rejected. I disagree. None of the wife's letters offered anything attractive on the issue of costs to either the husband or Mr Harrison.
16. On assessment on an indemnity basis, costs may be disallowed where they have been unreasonably incurred or are unreasonable in amount (see CPR 44.4(1)(b), applied by FPR 28(2)). The wife's conduct and the importance of the proceedings are also of particular importance. This was not, in my view, an especially complex matter, either legally or factually.
17. However, the costs incurred and the amounts incurred by both the husband and Mr Harrison were, on any analysis, manifestly excessive and unreasonable. Though I accept that they had to provide an evidenced defence to the wife's allegations, both were effectively running the same case and were mutually reliant on the same

evidence to rebut the wife's allegations. That both spent a total of £510,876.90 was staggering. I reject the submission made by Mr Harrison that he was entitled to have regard to the wife's profligate approach to litigation costs when instructing his own legal team. That strikes me as a wholly unreasonable approach which encourages exorbitance, if not profiteering.

18. Turning to the husband's costs, I fail to see how it was justifiable for the husband to have 2 grade A solicitors, 2 grade C solicitors, and 2 grade D solicitors involved in preparing this case, each charging an extravagant rate. I have disallowed one of each, taking the first of the two listed and removing their costs. This reduces the bill by some £35,141. I have reduced by 50% counsel's fees for the hearing vacated on 10 October 2023, bringing a total reduction of £57,641. The total payable of the husband's costs will be £116,603.50. This is a reasonable sum.
19. Turning to Mr Harrison's costs, any costs associated with expert evidence will not be permitted as no permission was granted by the court to adduce expert evidence and the court did not consider this material. This removes £25,347 from the costs bill. There was further no requirement for junior counsel given that leading counsel was instructed at very significant cost. A further £59,275 is removed from the costs bill. Once more, three grade A solicitors were instructed together with one grade D solicitor. I have disallowed the costs of the highest paid grade A solicitor, reducing the bill by another £20,150. Thus, £104,772 can be deducted from the bill, giving a total of £175,755 before VAT. However, I regard even this sum as manifestly excessive and unreasonable given that Mr Harrison was pursuing essentially the same legal case as the husband and so I have reduced the overall total by a further 10%, giving a total of £158,179.50. Once VAT is added, the total becomes £189,815.40. The sums incurred by the husband and Mr Harrison remain – even after this exercise – extremely high given all the features of this case but are justifiable on an indemnity basis given the decision I made about the wife's misconceived application for permission to bring committal proceedings.
20. The total sum payable by the wife in respect of the costs of 29 January 2024 will be £306,418.90, less £15,132 costs owed to her by the husband for the hearing on 5 September 2023, thus making a grand total of £291,286.90 net, of which £189,815.40 is owed to Mr Harrison and £101,471.50 owed to the husband.
21. At this moment, the husband owes the wife some £18 million as a lump sum and about £800,000 in interest because that lump sum has not been paid. The wife has very limited means of paying the costs award until the husband pays her what he has been already ordered to pay her. I have therefore decided that the net amount of costs owed by the wife to the husband - £101,471.50 - will be offset forthwith from the amount of interest the husband owes to the wife for the late payment of the lump sum.
22. As to the costs owed to Mr Harrison, through no fault of her own, the wife has very limited means of paying this amount until she receives the money which the husband owes to her. Further, the sum owed to Mr Harrison will attract interest if the wife cannot pay it swiftly. Doing the best I can on summary assessment, I have decided that the wife should pay Mr Harrison's costs but that sum will not become payable and thus attract interest until 30 April 2024. This represents a small delay for Mr Harrison in recovering the costs owed to him which is, in my view, both just and proportionate. There is a hearing before me on 10 April 2024 at which the wife seeks

enforcement relief against the husband which may result in an improvement in her overall financial circumstances.

23. In coming to my conclusions, I have stood back and considered all the features of this case in the round in order to reach a just decision as FPR rule 28.1 requires.
24. That is my decision.