

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.

Neutral Citation Number: [2023] EWFC 300 (B)

CASE NO: TA21P00348 & BH22F00199

**IN THE FAMILY COURT SITTING AT BOURNEMOUTH
IN THE MATTER OF THE CHILDREN ACT 1989**

Date: 25/10/23

Before:

HIS HONOUR JUDGE DAVID WILLIAMS

BETWEEN:

K

Appellant

-and-

W

Respondent

K v W (Respondent's costs on application for permission to appeal)

**The Appellant appeared in person
Gemma Bower (instructed by Nantes) for the Respondent**

Hearing date: 25 October 2023

APPROVED JUDGMENT

1. I have today handed down my judgment in the application for permission to appeal [[K v W \(fact-finding hearing: permission to appeal and adducing new evidence\)](#)]. Consequential upon that judgment the father invites me to make a costs order against the mother.
2. At today's hearing the mother appears in person (Dr Proudman having only been instructed to appear at the substantive permission to appeal hearing) and Ms Bower continues to appear on behalf of the father.
3. In this judgment I shall continue to refer to the parties as the mother and the father.

Father's position

4. The father seeks a costs order against the mother in the sum of £6,021 as set out in his schedule of costs which has been filed in advance of this hearing.

5. The father contends that the normal rule should apply, namely that the court should make an order for costs where the court has requested the respondent to attend a permission to appeal application and the application has been refused.
6. As to quantum, Ms Bower has confirmed to the court that the father's schedule of costs does not include any costs which were incurred by the father and which have been recovered as a result of Dr Proudman compromising the application for wasted costs which was made against her. Specifically, the father's schedule of costs does not include any costs which relate to the hearing on 4 October 2023 to which the application for wasted costs related.
7. The father's schedule does include a figure of £2,000 for counsel's brief fee (excluding the hearing on 4 October) and £1,000 for drafting the father's skeleton argument.

Mother's position

8. The mother says that she absolutely refuses to pay the father anything in costs. In her submissions to me today the mother stated that she currently has £100 in her bank account and has already had to pay the sum of £20,000 to Dr Proudman for drafting the skeleton argument and a further £8,000 to Dr Proudman as a brief fee to attend the hearing. I am uncertain as to whether those figures are inclusive of VAT.
9. In addition, the mother states she is currently in between jobs, has no way of paying the father's costs, and her own costs of the appeal total far in excess of the father's costs.
10. The mother accepts that she understood the father's argument on costs and has been aware of the risk, i.e. the risk that the father would seek a costs order against her if the application for permission to appeal was unsuccessful.
11. The mother also seeks to remind the court that she acted as a litigant in person throughout the children act proceedings and two sets of family law act proceedings, because she could not afford to pay for legal representation, only instructing Dr Proudman for the permission to appeal application.

Legal Principles

12. Rule 30 and Practice Direction 30A of the Family Procedure Rules 2010 deal with appeals.
13. In respect of Respondents' costs of permission applications, paragraphs 4.22 – 4.24 of Practice Direction 30A state that:

4.22 In most cases, applications for permission to appeal will be determined without the court requesting –

(a) submissions from; or

(b) if there is an oral hearing, attendance by,

the respondent.

4.23 Where the court does not request submissions from or attendance by the respondent, costs will not normally be allowed to a respondent who volunteers submissions or attendance.

4.24 Where the court does request –

(a) submissions from; or

(b) attendance by the respondent,

the court will normally allow the costs of the respondent if permission is refused.

14. Accordingly, the normal position is that a respondent's costs will not be allowed if the court did not request them to provide submissions or attend the permission hearing. Conversely, where the court does request a respondent to provide submissions or attend the permission hearing, the court will normally allow the respondent's costs if permission is refused.

Decision

15. The mother first sought leave to appeal the decision of the District Judge by way of an oral application at the handing down of his judgment on 31 May 2023. That application was refused.
16. On 21 June 2023 the mother renewed her application for leave to appeal by filing an appellant's notice.
17. By order dated 7 July 2023 the father was required to file a skeleton argument in response to that of the mother by 19 July 2023 and was required to attend the hearing of the application for permission to appeal.
18. Accordingly, paragraph 4.24 of Practice Direction 30A applies, as the court requested the father to file a skeleton argument and to attend the hearing.
19. For the reasons set out in my earlier judgment, permission to appeal was refused on all grounds.
20. The mother's alleged impecuniosity is not a reason to depart from the normal position on costs, although it may be relevant to how or when any costs order is to be satisfied.
21. Further, it is clear from the mother's own case that she either had, or has been able to access funds of circa £30,000 in order to pay the fees of her counsel, Dr Proudman. If the payment of those fees has brought about the mother's impecuniosity, as alleged, that cannot be a reason not to make a costs order in favour of the father.
22. Pursuant to paragraph 4.24 of Practice Direction 30A the starting point, or normal order, would be to allow the father's costs. If the mother is to resist such an order, she would need to evidence a good reason for there to be a departure from the norm.
23. On the facts of this case, no such good reason exists.
24. The mother chose to pursue this application, despite it having previously been refused by the District Judge. As confirmed today, the mother was well aware of the risk of her having to pay the father's costs if her application was unsuccessful. Unfortunately for the mother, that risk has now materialised.
25. There is no reason why the father should be left out of pocket, or having to fund his own costs, in circumstances where he has successfully opposed the mother's application.
26. As to quantum, I bear in mind the number of grounds of appeal, the length of the skeleton argument filed on behalf of the mother to which the father had to respond, and the length of the hearing.
27. I also note that the costs claimed by the father are significantly less than the costs the mother says she has incurred. By way of comparison and as stated above, the mother says Dr Proudman's fee for drafting her skeleton argument was £20,000, which is some ten times more than Ms Bower's fee of £2,000 for drafting the father's skeleton argument.
28. I am therefore satisfied that the sum of £6,021 claimed by the father is both reasonable and proportionate.

29. Accordingly, the father's application for an order for costs against the mother is allowed in the summarily assessed sum of £6.021.