

IN THE FAMILY COURT SITTING IN LIVERPOOL

CASE NUMBER:

LV23P71350

Neutral Citation Number: [2024] EWFC 288 (B)

On appeal from The Lay Magistrates

Order made 19 February 2024

BEFORE HIS HONOUR JUDGE GREENSMITH

Heard remotely on 16 May 2024

Judgment:

Part 1 handed down in writing on 24 May 2024

Part 2 handed down extempore on 2 October 2024

BETWEEN

AM

Appellant

and

RF

Respondent

JUDGMENT

PART 1

For the reasons set out below I make the following order on the appeal:

ORDER

1. The appeal is dismissed;
2. The question of costs is reserved;
3. The proceedings are adjourned for the parents:
 - a. to obtain information and advice about, and consider using, non-court dispute resolution; and thereafter,
 - b. to undertake non-court dispute resolution; for the purpose of:
 - i. agreeing any amendments to the order presently in force which they agree will better serve the welfare of their child; and,
 - ii. agreeing methods of communicating in the future in a manner which is civilised and sustainable; and,
 - iii. agree how to resolve any future issues relating to the joint parenting of their child; and,
 - iv. agreeing how to treat their costs of this appeal.
4. The matter will be re-listed before myself on the next available date after 56 days (which may be further adjourned by agreement if NCDR is proving effective and

more time is needed to conclude) for a 30 minute hearing for the Court to take stock of the progress made by the parents and to give further directions or make an order as to the costs of the appeal.

5. Each parent will file and serve a position statement regarding their progress through NCDR at 1200 noon on the day before the next hearing limited to 500 words.

The Courts reasoning behind the decision regarding an adjournment pursuant to FPR 3.4(1A) and para 10D of PD3A

The parents seek costs against each other arising from this appeal alone in an aggregated sum in excess of £20,000.

I am very concerned for the parents' long-term ability to parent C. If they continue to communicate in such an unhealthy manner it will be detrimental to C's emotional welfare. I am also concerned that the arrangement ordered by the Magistrates may not work as well as either parent would like and that they may welcome the opportunity to fine tune it.

A provision has recently been introduced into the FPR enabling the Court to be more proactive in encouraging parties to engage in Non Court Dispute Resolution while proceedings are ongoing

FPR 2010 Rule 3.4(1A) states:

(5) Paragraph (1A) applies when the court considers that non-court dispute resolution is appropriate.

(1A) Where the timetabling of proceedings allows sufficient time for these steps to be taken, the court should encourage parties, as it considers appropriate, to—

(a) obtain information and advice about, and consider using, non-court dispute resolution; and

(b) undertake non-court dispute resolution.

(2) The court may give directions about the matters specified in paragraph (1A) on an application or of its own initiative.

(2A) Subject to paragraph (2B), the court may give directions referred to in paragraph (2) at any time during the proceedings.

(2B) In proceedings to which Practice Direction 12B applies, the court may give directions referred to in paragraph (2) at any time after the court has received the safeguarding letter or safeguarding report referred to in Practice Direction 12B.

(3) Where paragraph (1A) applies, the court will give directions about the timing and method by which the parties must tell the court if any of the issues in the proceedings have been resolved.

(4) If the parties do not tell the court if any of the issues have been resolved as directed under paragraph (3), the court will give such further directions as to the management of the case as it considers appropriate.

The rule is supplemented PD10D which states:

It may be that there are gaps in time between hearings which the court considers the parties should use to attend non-court dispute resolution and the court should make it clear to the parties if this is the case (Rule 3.4). The court also has general powers to adjourn proceedings, which could be exercised for these same reasons (Rule 4.1), with the court using its discretion on a case by case basis to determine the appropriate length of any adjournment.

In *X v Y* [2024] EWHC 538 Mrs Justice Knowles emphasised the importance of the Court's duty to encourage the parties to engage in NCDR:

Non-court dispute resolution is particularly apposite for the resolution of family disputes, whether involving children or finances. Litigation is so often corrosive of trust and scars those who may need to collaborate and co-operate in future to parent children. Furthermore, family resources should not be expended to the betterment of lawyers, however able they are, when, with a proper appreciation of its benefits, the parties' disputes can and should be resolved via non-court dispute resolution. Going forward, parties to financial remedy and private law children proceedings can expect – at each stage of the proceedings – the court to keep under active review whether non-court dispute resolution is suitable in order to resolve the proceedings. Where this can be done safely, the court is very likely to think this process appropriate especially where the parties and their legal representatives have not engaged meaningfully in any form of non-court dispute resolution before issuing proceedings.
[para 16]

In my judgment encouraging these parents to engage in professionally delivered NCDR will be the most effective way by which the parents will learn to communicate as parents. This will serve their child's long term welfare and ensure he has the best possibility of being parented by both his parents regardless of where he lives or how much time he spends with each parent.

I am adjourning these proceeding for the parents to engage in mediation. The extent to which each parent engages will be a significant factor in informing me what order to make in respect of costs or whether to make any order at all. The parents must not assume that costs will follow the event. The matter will be listed for mention on the next available date after 56 days. At the hearing, the respective engagement and progress in mediation will be considered, and the question of costs will further be considered. Information provided to the Court regarding engagement in and the success or otherwise of NCDR (eg Mediation) will inform the exercise of the Court's discretion regarding costs.

THE APPEAL

Miss Targett-Parker, counsel, for the Mother

Miss Allman, counsel, for the Father

1. The Court is concerned with the welfare of C, a boy born on 3 April 2019. C is aged 4 years. C's mother is AM and his father, who has parental responsibility, is RF. This is the hearing of an appeal from an order made by the Lay Bench on 19 February 2024. The mother is the appellant and is represented by Miss Targett-Parker of counsel. The father is represented by Miss Allman of counsel. The hearing was held remotely via Teams; both parents attended. The appeal was conducted on submissions. Neither party sought to admit additional evidence.
2. The order being appealed against is an order made under Section 8 of the Children Act 1989. The terms of the order are detailed as they cover living arrangements and provide for defined periods to be spent with each parent on a bi-weekly cycle and during school holidays. The relevant terms of the order are set out on paragraph 8 of the order:

Child Arrangements Order:

It is ordered that the child, C shall live with the mother and live with the father as follows:-

Week 1

The child shall live with the mother on Monday from school to school Tuesday

The child shall live with the father from school on Tuesday to school on Thursday

The child shall live with the mother from school on Thursday to school on Friday

The child shall live with the father from school on Friday to school on Monday.

Week 2

The child shall live with the mother on Monday from school to school on Tuesday

The child shall live with the father from school on Tuesday to school on Thursday

The child shall live with the mother from school on Thursday to school on Monday

In the event that the mother is working on a Saturday and C expresses a wish to spend additional time with his father then this shall be promoted.

During the February, May and October half terms the child shall live with whomever he is collected from school on Friday until 5pm the following Wednesday and shall live with the other parent from 5pm Wednesday to school the following Monday.

During Easter the child shall live with whomever he is collected from school on the last day until 5pm the following Saturday and the child shall live with the other parent from 5pm Saturday until return to school on Monday. The child shall spend Easter Sunday with the mother.

In respect of Christmas, the term time arrangements shall remain in place up until Christmas Eve and will resume on 27th December.

The child shall spend from 1pm Christmas Eve until 1pm Christmas Day with one parent and from 1pm Christmas Day until 1pm on Boxing Day with the other parent. Such arrangements will take place on an alternate year basis with the child spending Christmas Eve 2024 with the mother.

During the summer holidays the term time arrangements shall remain in place unless the parents agree to C spending a full week or more with the other parent or a holiday is arranged.

In the event that either parent seeks to take C on holiday (whether abroad or in the UK) they shall give not less than 8 weeks notice to the other parent and provide details of the trip including dates, accommodation and travel details. C's passport shall be handed over to the other parent upon request.

Whomever C is living on his birthday shall make the child available to spend a minimum of 3 hours with the other parent.

C shall spend Mother's Day with the mother and if Mother's Day falls upon the father's weekend he shall make the child available to spend time with the mother from 10am until 5pm.

C shall spend Father's Day with the father and if Father's Day falls upon the mother's weekend then she shall make the child available to spend time with the father from 10am until 5pm.

There be permission to the parties to vary or alter the arrangement upon agreement including for special occasions.

3. It is clear from the wording of the order and the Magistrates written reasons, which I have read, that the intention was to make an order which supported the intention that C should have a home with each parent and that his time should be shared quite equally between his two homes. Both counsel agree with the Court that the wording of the order leaves something to be desired but this is a detail that can easily have been rectified without an appeal being issued. The appellants mother's issue is with the "spirit" of the order. She is of the view that C should live with her and have contact with his father at defined times. Since the parents separated, 19 months before the order was made, C has lived with his mother; there has been in place (at the instigation of the mother) contact arrangements with the father along the following lines which is accepted is accurately recorded in the magistrate's reasons was:

C lived with his mother and spent time with his father each Wednesday from 3pm returning to school Thursday morning. In addition, weekend time with his father alternated so that one week C would spend Friday from School until 600pm when he would return to his mother and then would spend Saturday from 900am with his father until Sunday 900pm. On the alternate weekend, C would spend from school on Friday until Saturday at 5pm.

4. The father made an application for an order under s8 and the above order resulted. The terms of the order broadly reflected what the father wanted; the mother wanted the living and contact arrangements to remain as they had been at the time of the application. The mother appealed against the decision. There has (understandably having regard to the relevant test) been no application for a stay. The mother is to be commended for implementing the terms of the order pending appeal.
5. I pause at this point to make relevant observations upon the relationship between the parents. It is clear from all the evidence that the parents are unable to put their antipathy for each other aside for the sake of parenting C; this is very sad. It is the duty of parents to exercise their parental responsibility in a manner that serves the welfare of their child. I feel very sorry for C; if the parents continue the way they are doing, he will grow up in the middle of a toxic environment. This will cause him emotional harm and lead to all manner of developmental issues in the future. Meanwhile his parents will lose out. Instead of being able to enjoy all the benefits that co-parenting can bring, they will be trapped in a cycle of acrimony resulting in parenting becoming increasingly traumatic as C grows older. I intend to do all that I can to break this cycle in the way that have indicated I will treat the parents claims for costs arising from this appeal, the aggregate sum of which is around **£20,000**.
6. The appellant appeals

That part of the order (Paragraph 5 of the draft order attached) that deals with the division of time the child spends with each parent and more particularly during the school week: the order as it stands means that the child does not spend more than consecutive night with his mother during the school week. The order directs that the child shall spend time with his mother on alternate Saturdays, a day on which she works and is therefore unable to spend time with the child. As the order stands the child only spends 2 days per month at weekend (sic) with his mother, by way of contrast the child spends 4 weekend days with his father. The mother seeks a variation to the order so that the child is returned to her each Sunday morning at 1000am to allow the child and her to attend Mass. The mother seeks a variation of the order so that the child spends each Tuesday night with her.
7. No point is taken as to the wrong paragraph reference and Miss Allman generously accepts by implication that this is an error of drafting.
8. Accompanying the N161 the appellant filed and served is a document headed Grounds of Appeal dated 8 March 2024. There are two grounds of appeal contained within the document. Each ground is supplemented or expanded upon by 23 sub-paragraphs. I do not propose to set these out as they can only be described as “narrative”.
9. HHJ Brandon gave appeal directions on 15 March 2024 listing the appeal hearing today and making further directions including ordering that the appellant file a Skeleton Argument complying with FPR PD 30A by 13 May 2024. A Skeleton Argument dated 20 March 2024 was filed. Pursuant to the order of HHJ Brandon, the Respondent filed his Skeleton Argument dated 26 April 2024.

10. On the morning of the appeal hearing newly instructed counsel for the Appellant, Miss Targett-Parker filed a document titled a “Position Statement”. Miss Allman questioned whether permission should be granted to file the second document. Following submissions, I held that in so far as permission was needed, it would be granted and duly considered the document. I was of the view the further document may be helpful in it confirmed that despite the notice of appeal, which is a difficult document to follow, and the discursive Grounds of Appeal (taken with the subparagraphs), Miss Targett-Parker’s document confirms in paragraph 14 that the appellant appeals on two distinct grounds only which are :
11. The refined grounds of appeal are:

GROUND ONE

The Court was wrong and exercised its discretion in contravention of the child’s best interests in making an order that C should live with the Mother and Father on a 50//50 basis.

GROUND TWO

The Court was wrong and exercised its discretion in contravention of the child’s best interests to order the division of time that it did which results in C having only one night blocks with his Mother Monday to Friday each week and only one longer block on alternate weekends when the Mother is working thus restricting his quality time with her.

12. The Court received oral submissions from Miss Targett Parker during which she acknowledged that the grounds of appeal as drafted overlapped in their coverage of facts and that she would address the Court on:
- 1) The failure of the Magistrates to adopt an holistic approach;
 - 2) The effect of change on C;
 - 3) The inability of the parents effectively to communicate;
 - 4) Post determination costs.
13. The Respondent, through his counsel Miss Allman takes great exception to the manner in which the appeal has been presented. It is submitted that the grounds of appeal were not clearly set out. The two refined grounds of appeal essentially amount to the same thing: that the mother disagrees that the arrangements put in place are in C’s best interests. It is submitted that in so far as the appeal is based upon the manner in which the Magistrates carried out their welfare valuation the appeal is flawed in that in the context of this case the Magistrates demonstrated in their reasons that they considered what was being asked for and measured this against the welfare checklist and formed a conclusion that was well within their discretion to reach.

The Law

Regarding the appeal

30.12. (1) Every appeal will be limited to a review of the decision of the lower Court unless—

an enactment or practice direction makes different provision for a particular category of appeal; or

the Court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

(2) Unless it orders otherwise, the appeal Court will not receive—

oral evidence; or

evidence which was not before the lower Court.

(3) The appeal Court will allow an appeal where the decision of the lower Court was—

wrong; or

unjust because of a serious procedural or other irregularity in the proceedings in the lower Court.

(4) The appeal Court may draw any inference of fact which it considers justified on the evidence.

(5) At the hearing of the appeal a party may not rely on a matter not contained in that party's appeal notice unless the appeal Court gives permission.

An essential element of the appeal process is that an appeal should not be granted simply because the appellate Court would have made a different order (*G v G* (1985)).

Regarding the exercise of discretion by the Magistrates

When reaching its decision the Magistrates had a duty to place the welfare of the child as their paramount consideration and in doing so have regard to the "Welfare Checklist" (CA 1989 s1).

Analysis

14. This was a straightforward case involving where a child should live and how much time he should spend with each parent. The Magistrates did not receive oral evidence from either parent and proceeded on submissions only. Whether in this case the Magistrates might have been better to hear evidence, to get more of a flavour of how the parent might approach any future arrangements is irrelevant. This Court respects the Magistrates' decision to conduct the hearing in the manner they chose.
15. Following hearing the submissions the Magistrates conducted a detailed analysis of the s1(3) checklist. This informed their decision. The decision they reached was entirely consistent with what they considered would meet the welfare of the child.
16. Regarding the submission that the Magistrates were in error for having failed to carry out a global holistic analysis before reaching their decision I say the following. The Magistrates were being asked to decide which of the parent's respective choices better

met the welfare needs of their child. They were not being asked to consider a raft of public law orders and all their variables: care; special guardianship; supervision order; adoption, etc. In any event they were under no duty to introduce into the mix of options those arrangements that they had not been asked for. These are private proceedings between two parents. In my judgment the Magistrates exercised their discretion proportionately and properly. The written reasons demonstrate a detailed analysis of the Welfare Checklist and the Magistrates understanding of their obligation to place the welfare of the child as their paramount consideration. It *might* be that had I heard the case, I *might* have made a different order and divided the time C spent with each parent but that is not a ground to allow an appeal.

17. In so far as the Magistrates failed to have sufficient regard to the parents antipathy to each other and their apparent inability to communicate this is a misguided ground for an appeal. Parents have a duty to communicate. Neither parent has a physical or mental disability precluding them from communicating. Indeed each parent is (from the text evidence) equally capable of being vitriolic and inappropriately unpleasant to each other.

Regarding the Grounds of Appeal

Ground 1

18. The Court was wrong and exercised its discretion in contravention of the child's best interests in making an order that C should live with the Mother and Father on a 50//50 basis.

In my judgment, it was not wrong for the Magistrates to exercise their discretion in the way that they did.

Ground 2

19. The Court was wrong and exercised its discretion in contravention of the child's best interests to order the division of time that it did which results in C having only one night blocks with his Mother Monday to Friday each week and only one longer block on alternate weekends when the Mother is working thus restricting his quality time with her.

In my judgment, the manner in which the Magistrates exercised their discretion cannot be considered not to serve the child's best interests.

PART 2

Mr Smith, solicitor, for the Mother

Miss Natasha Johnson, counsel, for the Father

1. This is the second part of my judgment in this appeal and deals with the question of costs. The judgment is delivered extempore.
2. Following Part 1 of my judgment handed down in May this year, the matter comes back to court today in the manner that I indicated it would. The hearing was originally listed in July of this year and an application was made by the parties for hearing to be adjourned to give them a further opportunity to engage in mediation, the court granted that request and the matter was relisted today, 2nd October. Chronologically therefore, the parties have had since May to take on board the comments that I made in the judgment and to engage meaningfully, actively and willingly in the mediation process, I will return to that engagement, shortly.
3. The first question I must ask myself is, is an order for costs appropriate in principle in relation to the appeal? At this stage, I pause to say that the father seeks his costs in relation to the appeal only, not in relation to the original proceedings and to his, I would say great credit, and upon I am sure excellent advice, he does not seek his costs for any consequential matters since the handing down of the judgment. I say that because I am sure he has incurred further substantial costs since my initial judgment.
4. It is clear from the Father's summary that his solicitors have been actively involved in helping him to arrange the mediation process; that greatly assists the court because the prime issue that the court considers is whether to make a costs order or to consider if it is appropriate to make a costs order in principle in relation to the appeal.
5. I turn now to the law in relation to making costs orders in children proceedings, the starting point that costs in litigation generally follow the event, a thread that follows through all forms of civil litigation, does not apply in family proceedings. Family Procedure Rules 2010 (FPR). FPR 28(1) and (2) provides:

"28.1 The court may at any time make such order as to costs as it thinks just.

28.2 (1) Subject to rule 28.3 Parts 44 (except rules 44.2(2) and (3) and 44.10(2) and (3)), 46 and 47 and rule 45.8 of the CPR apply to costs in proceedings

6. CPR 44.2(2) says:

"(2) If the court decides to make an order about costs –
(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
(b) the court may make a different order."
7. CPR 44.10(2) is excluded pursuant to FPR 28.2. The totality of CPR 44.10 provides:

"(1) Where the court makes an order which does not mention costs –
(a) subject to paragraphs (2) and (3), the general rule is that no party is entitled –
(i) to costs;

(2) Where the court makes –
(a) an order granting permission to appeal;
(b) an order granting permission to apply for judicial review; or
(c) any other order or direction sought by a party on an application without notice,
and its order does not mention costs, it will be deemed to include an order for applicant's costs in the case."

8. The bottom line is that 'costs follow the event' does not apply in children proceedings. That position has been clarified by the Supreme Court in *Re S* [2015] UKSC 20. and was summarised by Lady Hale, who held the same principle applies as private to public law proceedings. She quotes Lord Philips who says at paragraph 44 of *Re T*:

The general practice of not awarding costs against a party, including a local authority, in the absence of reprehensible behaviour or an unreasonable stance, is one that accords with the ends of justice and which should not be subject to an exception in the case of split hearings”.

9. Lady Hale then makes the following observations that:

As long ago as Gojkovic v Gojkovic (No 2) [1992] Fam 40 at 57B, the Court of Appeal observed that it was unusual to make an order for costs in children’s cases.

10. At paragraph 20, Lady Hale reiterates that the child’s welfare is the paramount consideration and this applies:

as much to care proceedings brought to protect a child from harm as it does to disputes between parents or other family members about a child’s future.

11. Lady Hale goes on to say that:

It can generally be assumed that all parties to the case are motivated by concern for the child’s welfare. The parent who dispute with one another or with the local authority over their children’s future do generally love their children dearly and want the best for them as they see it. Although the proceedings are adversarial in form, they have many inquisitorial features. [22]

In most children’s cases, it is important for the parties to be able to work together in the interests of the children during and after the proceedings. [23]

There is one final consideration. In certain circumstances, having to pay the other sides costs, or even having to bear one’s own costs, will reduce resources available to look after the child or other children. [25]

On the other hand, there is one consideration which cannot be taken into account. The automatic availability of non – means- tested and non- merits –

tested public funding for parents at first instance in care proceedings has masked the issue. It has only surfaced on appeal. As here, or for interveners, where public funding is means-tested. But the question of whether it is just to make an order for costs should as matter of principle be determined irrespective of whether any of the parties arise publicly funded. [25]

All the reasons which make it inappropriate as a general rule to make costs orders in children's cases apply with equal force in care proceedings between parents and local authorities as they do in private law proceedings between parents or other family members. They lead to the conclusion that costs orders should only be made in unusual circumstances.

Lady Hale then quotes Mr Justice Wilson in *Sutton London Borough Council v David (No 2)* of the two unusual circumstances were identified: *where for example the conduct of a party has been reprehensible or the party's stance has been beyond the band of what is reasonable the pastries stance has been beyond the band of what is reasonable. [26]*

12. In essence, there are two stages when making an order for costs in circumstances such as the present case 1) has a party's conduct been reprehensible, another which is exclusive 2) has a party's stance been beyond the band of what is reasonable? So, at this point, I go back to my judgment in the appeal. In my judgment I was very clear that the decision of the Magistrates was unassailable It was a decision that they were entitled to make; they took great care in making and it fell well short of a decision which was appealable. I recorded the fact the decision was not truly on all fours with what the father wanted but he decided to live with it and to do his best to make it work. The mother on the other hand, took issue with details of the order and formulated her appeal on two grounds, neither of which had merit and both of which supported a reasonably held belief that the mother simply did not like the order. In my judgment bringing the appeal and taking the stance that she did was unreasonable: it continued the litigation, it continued the uncertainty for the child, it created a long period of time during which it would have been very difficult for the parents to co-parent. For those reasons I am satisfied that this is a situation which gives rise to the court having the option of making an order for costs in respect of the appeal against the mother.
13. I now turn to the question as to whether an order should or should not be made. In my earlier judgment I deliberately and carefully went to great lengths to try to help the parents break the cycle of resorting to the court and to assist them in the parenting of their child. I explained in my judgment my reasons for doing so. I also explained the law and the current legal thinking by referring to recent cases supporting my enthusiasm for helping the parties to mediate and I warned the parents that I would decide the question of costs and that their demonstrated input into furthering negotiation would go some way to informing my decision.
14. So, I look now at what has happened since May; the first comment I make is this, the appeal was brought by mother, the appeal failed and yet it was the father who initiated attempts to engage the mother in mediation. Father has filed a statement dated 30.09.24 which supports a finding that virtually immediately following the handing down of judgment in writing he instructed his solicitors to assist him to find mediator. On 14th June the father's solicitors proposed 2 mediators. On 20th June, the mother's

solicitors confirmed that they were happy with either. The father's solicitors sent a mediation referral. On 15th July father's solicitors drafted a consent application to adjourn the hearing on 31st July which I agreed to.

15. The father had his first meeting with the mediator who had been agreed by the mother on 12th August. On 20th August there was an appointment for the mother to meet the mediator which was cancelled on the day of appointment by the mother. On 22nd August the mother's solicitors confirmed they do not want to instruct Maura McKibbin as she does not hold a legal aid franchise and that they wished to instruct Tracey Winstanley; the father agreed, had his initial meeting and a joint session was agreed to take place on 21st October. I am informed that this session remains in the diary, and I hope the parents attend it.
16. The father's concern is that he says when discussing matters with mother it was referenced that all sessions would have to work around her work schedule when arranging mediation which means once every 6 weeks, I am satisfied those discussions took place. The father's solicitors wrote to the mother's solicitors on 13th September expressing concern but again took a sensible approach by saying a better way would be to book 4 or 5 sessions. Block booking is a common practice of mediation as it avoids delays, I pause to say that treating mediation as a session by session process is not always the best way forward, mediation often takes 2 /3 meetings, agreeing to pay for them is normal practice. If it works in the first meeting then its worked, it may have taken 3 or 4 but its worked, so I entirely endorse the father's approach to try and secure a sustainable process, however, the mother's solicitors confirmed that it was not possible. The father says he has done all he can to make mediation work.
17. I turn to the mother's statement dated 30.09.24, she says she initially agreed Maura McKibbin but learned on the day of the first session that the likely total fees would be in the region of £2500 and this was not something that she could afford. The obvious question is why the mother, or her solicitors, did not make any enquires before agreeing that as an acceptable choice? The mother says that she immediately then contacted Tracey Winstanley, there were some difficulties arranging a first meeting and one was eventually arranged for 21.10.24. The mother expands in her statement, giving reasons why she could not engage before then: she had a new job in education and she was on a probation period; it was a job for which she had studied. At paragraph 9 of her statement, she says that Tracey Winstanley said that she could offer zoom sessions after the session on 21st October and matters can move more swiftly, that would suggest that things were moving swiftly anyway which it is clear they were not. The mother explains in paragraph 11 why she could not agree to block booking, then she goes on to explain new difficulties the child has had which she says at paragraph 15, mediation is vital to work on matters as indicated by myself and for educational purposes and medical treatment. I cannot agree more, and it is unfortunate that it has taken 6 months for any real progress in that endeavour.
18. Finally, the mother tried to adjourn this hearing again until after mediation had concluded. Mr Smith, on behalf of the mother, confirmed that it was not a formal application to the court and confirmed his understanding accords with mine that it was not the intention to adjourn until mediation has concluded, it is a fluid process and

parents often return to it once they have established ways of communicating with each other and agreeing matters.

19. My judgment could not have been clearer, the court has done everything it can to try and promote the parents to engage in mediation. Having told the parents that their input into the mediation process would inform any decision as to whether a costs order would be made or not, it would be inconsistent not to make an order if I formed the view that one parent did not engage, adequately in the mediation process. I make the following findings:
 - a. The father has actively engaged in trying to engage the parents in mediation and has taken reasonable steps to ensure the parents engagement in the process.
 - b. I take note that whilst the father has offered mediators he has offered private mediation and not initially taken steps to source mediation with a family franchise nor has he offered to pay for both parties mediation, they are small criticisms but they are there.
 - c. I do not find that the mother has been actively opposed to mediation or deliberately frustrated mediation but do find that she has not engaged in the process with sufficient enthusiasm and pro activity to absolve herself of responsibility for the process not working.
 - d. It is open to the court when a costs application for costs has been made to make an order for costs to order party to pay a proportionate of the costs.
20. The father has filed a costs schedule at page 161 of the bundle.
21. My approach to the summary is to find that the overall total is a reasonable figure and I have no reason to go behind it.
22. I am going to make an order for costs against the mother and order that the mother pays 50% of the father's costs payable, subject to any other application, in 28 days.

END OF JUDGMENT