



Neutral Citation Number: [2024] EWHC 2218 (Fam)

Case No: FA-2023-000275

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
ON APPEAL FROM THE FAMILY COURT AT BARNET
Recorder Searle
ZW20P01007

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/08/2024

Before :

MS JUSTICE HENKE

Re: A (Appeal: Costs)

Dr Charlotte Proudman (instructed under the **Direct Access Scheme**) for the **Appellant**
Sabuhi Chaudhry (instructed by **Rayden Solicitors**) for the **Respondent**

AFTER CONSIDERATION ON THE PAPERS

Approved Judgment

This judgment was handed down remotely at 10.30am on 28 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MS JUSTICE HENKE

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.

Ms Justice Henke:

1. On 4 July 2024, I handed down my judgment in relation to appeal FA-2023-000275 (reported as [2024] EWHC 1669 (Fam)). I have re-read my judgment before proceeding to give this short judgment in relation to the costs of the appeal.
2. In the final paragraph of my judgment, I gave directions to enable any issue in relation to costs to be resolved on the papers. Accordingly, by skeleton argument, the Appellant now seeks her costs of the appeal. The Respondent resists that application.
3. The Appellant's arguments in support of her application for costs can be summarized as follows: -
 - i. The Respondent maintained the argument that the appeal against the order of Recorder Searle was a backdoor appeal against the order of HHJ Jacklin KC despite my granting permission to appeal the order of Recorder Searle.
 - ii. The appeal against the order of Recorder Searle succeeded on Grounds 1 and 2.
 - iii. She has always agreed to be psychologically assessed.
 - iv. The Respondent never conceded that a female psychologist was necessary in this case.
 - v. The Respondent did not make enquiries of any of the psychologists she had proposed until late March 2024 and did not tell her of those enquiries and their outcome until 11 April 2024 (days before the appeal hearing).
 - vi. The Respondent has known since 2018 of the third-party male violence she had suffered in her life.
 - vii. The Respondent submitted a bundle which exceeded the page limit set by court direction and a position statement sent to the court on the Friday before the appeal and given to the Appellant on the morning of the appeal. The position statement when properly formatted exceeded the relevant page limit. Its late service delayed the start of the Appeal Hearing.
 - viii. There is significant financial disparity between the parties with the Respondent having significantly more capital.
4. The Appellant's application for the costs of the appeal is supported by a number of documents. I confirm I have read them all. I have also read the N260 she has submitted.
5. The Respondent resists the application for costs. His arguments in summary are: -

- i. The Respondent's position in relation to the appeal was neither *unreasonable* nor *reprehensible* – *Re T Children* [2012] UKSC 36 and *Re S (a Child)* [2015] UKSC 20 applied.
 - ii. The Appellant's case in relation to the appeal evolved over time. The Appellant's conduct in relation to the appeal has been difficult for the Respondent and the Court to navigate and has not been beyond judicial criticism in this case.
 - iii. Linked to the above, the Appellant's objection to a male psychologist was not raised until the end of the hearing before Recorder Searle.
 - iv. Whilst the Respondent had known to a limited extent that the Appellant had experienced a difficult relationship with a previous partner, the extent of the third party abuse she now asserts that she suffered was not known by the Respondent until receipt of the argument in support of the appeal.
 - v. The Respondent's solicitors do not have a duty to advise the Appellant.
 - vi. The psychologists the Appellant suggested were not available to conduct the assessments proposed and the criticism of the Respondent's solicitors' behaviour when contacting a potential court appointed expert are rejected.
 - vii. The correspondence the Appellant has placed before this court to support her application for costs has been cherry picked and is thus inaccurate. I am asked to ignore evidence submitted after the appeal has concluded and which is not agreed.
 - viii. The Respondent prepared a position statement for the appeal on the understanding that one was to be prepared on behalf of the Appellant as well. It was only late on the Friday before the appeal that he learned that there was to be no such document on behalf of the Appellant.
 - ix. There is a dispute as to the quantum of costs the Appellant can claim.
6. Before determining the application for costs before me, I have reminded myself of the relevant law which I recently summarized in *Re O (Appeal: Costs)* [2024 EWHC 1163 (Fam)]. Having done so I have asked myself whether there is good reason in this case to depart from the general practice of making no order for costs in cases involving children. For the reasons I have set out in the paragraphs that follow I have concluded there is no such good reason.
 7. I have criticized both the Appellant's and the Respondent's litigation conduct in relation to this appeal. The Appellant's case has evolved. The Respondent submitted a Position Statement late and that late submission caused a delay to the start of the appeal. I granted leave to appeal the order of Recorder Searle. Despite permission being granted to appeal,

the Respondent maintained that the appeal before me was a backdoor appeal. That was an argument that I thus had to revisit and which I ultimately rejected. Doing so elongated the appeal and lead to judgment being reserved. I have stood back and considered the litigation conduct of both parties in this case. Having done so I have concluded that whilst both parties' behaviours have on occasion been frustrating, neither's behaviour can be categorized as reprehensible.

8. I have taken into account that Appellant succeeded on appeal on two of the three grounds she advanced before me. The third ground that the Recorder should have ordered a fact-find as pleaded was not successful.
9. I remitted the case for re-hearing.
10. I have considered the pre-appeal hearing correspondence the Appellant has placed before me. Even accepting her evidence at its highest (and I know the Respondent says it is partial), it demonstrates to me that the Respondent did try to compromise the appeal, albeit he would not concede all the grounds of appeal.
11. I place into the balance that the appeal I heard was in Children Act proceedings in which the welfare of the child is my paramount consideration. I factor in the obvious distrust and antagonism between the parties. I consider that there is real risk that by ordering one party to pay the costs of the other, that will further aggravate the poor relationship between the parties and undermine their ability to work together for the benefit of their child.
12. I have considered the financial inequality between the parties but factor into my decision-making the Schedule 1 proceedings and the potential financial impact on the subject child if I make a costs order against one or other party.
13. Consequently, and on balance, I have decided that the appropriate order for costs in this case is no order for costs between the parties.
14. That is my judgment.