

JERSEY / JUDGMENT

I -v- J (Family) [2015]

JCA 072A (13 April 2015)

[2015] JCA 072A

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Court of Appeal (Unknown) 13 April 2015 Before : Jonathan Crow, Q. C., President; Sir David Calvert-Smith, Q. C., and Robert Logan-Martin, Q. C. Between I (the mother) Appellant And J (the father) Respondent Advocate A. T. H. English for the Appellant. The Respondent appeared on his own behalf. Advocate M. H. D. Taylor for the Law Society. Advocate B. J. Corbett acted as Amicus Curiae.

judgment

the president: 1. Having given judgment dismissing the appeal on the 28 th November, 2014, we now have to deal with the Respondent's application for costs. 2. He appeared in person. He claims a total of £12,077.00, comprising three elements. First, a sum of £9,827 based on a detailed schedule of the time he says he spent preparing his case, and calculated by reference to the £60 per hour he would otherwise have been earning in the garage where he works (in other words, about 164 hours). Second, a sum of £1,770 based on the time spent by his assistant, Gail Wilkinson, whose time has been quantified at £15 per hour (in other words, 118 hours of her time). Third, he claims various disbursements amounting to £480. 3. The Appellant resists the Respondent's application, saying that each side should bear its own costs. She relies on a number of different grounds. 4. First, she says that the appeal concerned a costs order made at first instance against the Respondent in circumstances where findings of serious misconduct had been made against him. That is true, but irrelevant. The question before this court concerns the costs of this appeal, and as such the conduct which prompted the court below to make the costs order it did in relation to the proceedings below is irrelevant. The costs of the appeal have not been either generated or increased by any misconduct on the part of the Respondent. 5. Second, the Appellant draws attention to the relative means of the parties, contrasting the assets of the Respondent with the rented accommodation and relatively low wage of the Appellant. In principle, we are prepared to accept that the resources of parties to litigation of this kind are capable of being relevant to the exercise of the court's direction in costs (see by analogy *MG v. JF*

[2015] EWHC 564 (Fam)), but we do not consider that it has any real significance in this case. The order of the court below, which has not been overturned on appeal, requires the Respondent to pay £30,000 in costs, none of which the Appellant will actually receive. The effect of an adverse costs order against her in this court will simply be to reduce pro tanto

the amount the Respondent has to pay in respect of the adverse costs order against him at first instance. In the circumstances, the fact that there is a discrepancy between the parties' respective resources is largely immaterial. 6. Third, the Appellant says that the appeal was not unreasonable in all the circumstances. That is again true, but it carries very little weight in relation to the issue we have to decide. If the appeal had been unreasonable, that might well have prompted a particularly severe adverse costs order, but the fact that the appeal was reasonable does not immunise the unsuccessful Appellant in costs. The fact is that the appeal has been dismissed. 7. Fourth, the Appellant says that the appointment of an amicus effectively meant that the Respondent was legally aided, and the fact that the Appellant was legally aided was one of the reasons for capping her costs at first instance. That argument is simply wrong. The Respondent was not legally aided in this court, and the fact that we derived assistance from an amicus cannot logically operate so as to reduce the unsuccessful Appellant's liability in costs. 8. Fifth, the Appellant says that any order for costs in favour of the Respondent would either be inconsistent with the costs capping order at first instance or would effectively reduce his liability to meet that earlier costs order. We agree with the second proposition, because any adverse costs order against the Appellant in this appeal will serve to reduce the Respondent's liability to pay the costs order in the court below, but we do not agree with the first. The fact that the costs order below was capped cannot operate as any kind of fetter on this court's discretion in costs in relation to this appeal, because the court below was by definition not dealing with this appeal. Furthermore, if the Appellant's argument in that regard were to be accepted, there is a risk that it would operate as an incitement for any party in her position to appeal against costs orders, which would plainly be a highly undesirable outcome. 9. Finally, the Appellant says that any order for costs in favour of the Respondent would be liable to generate a prolonged process of taxation, and she points out a number of respects in which the bill he has submitted would on taxation be refused or reduced. We agree that it would be highly undesirable for the parties to be condemned to any further legal process, unless it is absolutely necessary. We also agree that the sums claimed by the Respondent are grossly excessive and in certain respects would be likely to be irrecoverable on taxation. 10. In all the circumstances, we will order that the Appellant should pay £1,000 towards the Respondent's costs of this appeal, such amount to be set off against the sum which the Respondent is liable to pay in respect of the proceedings at first instance.

Authorities MG v JF

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