



Neutral Citation Number: [2024] EWHC 278 (Fam)

Case No: 1664-4555-5241-3925

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12th February 2024

Before:

Mrs Justice Arbuthnot

Between :

KS

Applicant

- and -

VS

Respondent

Miss Perrins (instructed by Hughes Fowler Carruthers) for the **Applicant**
Mr Hale KC (instructed by Pillsbury Winthrop Shaw Pittman) for the **Respondent**

JUDGMENT – SUMMARY
ASSESSMENT OF COSTS – CIVIL GUIDE

Mrs Justice Arbuthnot:

1. On 20th November 2023, I gave judgment on the husband's application for a stay of divorce and financial remedy proceedings in this jurisdiction. In a contested case the husband argued Monaco was where the proceedings should take place whilst the wife contended they should take place in England and Wales. I ruled in favour of the husband.
2. The findings I made were set out in that judgment. In summary, the Court had found that although the wife had planned to move to London, the husband never intended to leave Monaco; there was an international life based in Monaco from their marriage to 2019; there was never a family home in England as argued by the wife; the family home was in Monaco; the husband was a businessman with international financial interests but his base was Monaco; the proceedings in Monaco predated the proceedings in England; the wife had engaged in the proceedings in Monaco having consulted lawyers in London; she had specialist lawyers in Monaco; financial disclosure would be obtained in Monaco and that any enforcement which would need to take place in Monaco could be assured; Monaco was the forum to which the parties have the most real and substantial connection and the continuation of proceedings in Monaco would not lead to any substantial injustice for the wife.
3. I adjourned the question of costs and asked for written submissions. I was grateful to both counsel, Mr Hale KC for the husband and Miss Perrins for the wife, who provided their written arguments on time and at the agreed length.
4. The submissions were received alongside a form N260 where the costs claimed by the husband came to £421,576.10. After I questioned the total, the amounts in the N260 were amended and the costs claimed by the husband were reduced to £331,448.50.

5. After I received their submissions, I informed counsel that I was considering setting out some, “very loose guidance” about the recovery of costs in financial remedy and associated cases.
6. I referred counsel to a recent case: *H v GH* [2023] EWFC 235 where in an application for an order varying the date for payment of a lump sum, DHCJ Colton KC considered the question of costs. He found that he had not been considering proceedings for a financial order and therefore he considered the liability for costs in accordance with FPR 28.2.
7. DHCJ Colton ordered costs to be paid by the husband on the standard basis and proceeded to summarily assess these. The DHCJ raised the question of the relevance or not of the guideline hourly rates published as an appendix to Sir Geoffrey Vos, Master of the Rolls’ ‘Guide to the Summary Assessment of Costs’.
8. In argument Mr Hale KC for the husband contended that costs should follow the event and he should be awarded the total costs he claimed. The husband preferred a summary assessment but accepted that as the hearing took place over three separate days, the usual course was for costs to be assessed if not agreed. He said the timing of the payment of costs was a matter for the court.
9. Mr Hale KC contended that in respect of one part of the wife’s application for divorce, where the wife claimed that, “both parties were last habitually resident in England and Wales”, the court had rejected that claim and dismissed that part of her application.
10. Mr Hale KC relied on the findings the Court had made and said it was not a finely balanced decision and by contesting this the wife had added to the costs.

11. Mr Hale KC submitted these costs should not be met by the husband and a costs order would fairly reflect the outcome. If ‘no order’ was made by the Court, this would in effect penalise the husband for bringing proper applications which had been determined in his favour. The husband had had to pay for his own costs but also had had to make a contribution to the wife’s costs so she could defend the applications. The husband had paid a total of £141,350 of the wife’s costs in the stay proceedings which he would not be able to recover even though he had won the argument.
12. Mr Hale KC said that the issue of hourly rates for solicitors in family cases, was not governed by the Civil Justice Council regulations. The ‘Guide to the Summary Assessment of Costs’ had not been adopted by the President for family cases nor had they been considered by the professions. The question of the level of hourly rates that apply in family case was a question for the President, the Rules Committee and the professional bodies. The Court should hear from the relevant bodies before giving even, ‘loose guidance’.
13. On behalf of the wife, Miss Perrins argued that no order for costs should be made against the wife. It was wrong in principle on the facts of the case. The wife could not afford to pay whilst the husband was a man of, “extreme wealth”. The wife was earning about £1K per month gross whilst the two properties owned by the husband that the wife was aware of, a Malibu estate and the Monaco flat, were valued at about \$40 million and 42 million euros respectively.
14. The only money that the wife had received from the husband in 2023 was £200K in June. This had been spent on legal fees. Miss Perrins pointed out that not ordering the wife to pay the costs would have a negligible effect on the husband. Miss Perrins also contended that any payment of costs here may prevent the wife from being

properly represented in the Monegasque proceedings. Furthermore, she was also having to litigate Children Act proceedings in relation to the husband's contact with their child.

15. Miss Perrins relied on aspects of the husband's conduct which was such that his application should be refused. His behaviour had increased the wife's costs. He had delayed his application for a stay; he had failed to comply with this court's directions; the wife had had to apply for a *Hemain* injunction; he had needlessly applied to adjourn the final hearing in September 2023; he had failed to pay the amount I had ordered on 26th June 2023 until the day before the final hearing and this was after the wife had been forced to apply for a LSPO and a *Hadkinson* order.
16. Miss Perrins also relied on the finding this court had made that the husband had not been truthful in some respects and had exaggerated his case. Perhaps Miss Perrins' most significant point was that the husband was pursuing a fault-based divorce in Monaco which would have prejudiced the wife until this court encouraged the husband to take a more sensible approach.
17. At a point when the husband's N260 had not been served, Miss Perrins contended that the husband's application was "procedurally defective and unfair". Miss Perrins was rightly concerned it seemed to me that the wife would be forced into a detailed assessment process and this would increase the costs for the wife who had limited funds.
18. Miss Perrins considered *H v GH (supra)*. She underlined the importance of any costs order being considered within the existing overarching principles of reasonableness and proportionality. Her primary position remained that the wife should pay none of the husband's costs, but she observed that the top hourly rates set out in appendix 2 of

the 'Guide to the Summary Assessment of Costs' as amended on 1st January 2024 were below the hourly rate being claimed by those acting on behalf of the husband. The hourly rate for the top 'London 1' category of work was £546 whilst the husband's two Grade A solicitors were claiming £750 and £605 per hour respectively.

19. Furthermore, Miss Perrins said counsel's fees were unreasonable and disproportionate and the husband although entitled to instruct very senior counsel should not be allowed to recoup these costs from the wife.

The Law

20. The first issue was which part of FPR 28 I should apply to the costs application made by the husband. Rule 28.1 says that "the Court may at any time make such order as to costs as it thinks just". Subject to certain modifications which are not relevant to this application, FPR 28.2 says, "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...". Rule FPR 28.3 sets out the regime to apply "in relation to financial remedy proceedings".
21. I agreed with the positions taken by Mr Hale KC and Miss Perrins that an application for a stay does not come within Rule FPR 28.3 and that I should apply FPR 28.2. The, 'no order' principle in Family Procedure Rule 28.3 does not apply to an application for a stay of divorce proceedings or a stay of financial remedy proceedings. I should approach the application in accordance with Rule 28.2, on a 'clean sheet' basis where each party can make an application for and be subject to an order for costs.

22. The rules for proceedings such as these are contained in parts of the Civil Procedure Rules which are applied by FPR 2010 Rule 28.12. I accept that the court must have regard to all the circumstances, including the conduct of the parties and whether a party has succeeded on part of his case, even if he has not been wholly successful. The conduct of the parties includes (CPR 1998, r. 44.2(5)):
- a. Conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction (Pre-Action Conduct) or any relevant pre-action protocol;
 - b. Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - c. The manner in which a party has pursued or defended his case or a particular allegation or issue; and
 - d. Whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim.
23. An order this court could make is that the wife pay a proportion of the husband's costs, a stated amount in respect of the husband's costs, costs from and to a certain date, costs incurred pre-proceedings, costs relating to particular steps taken in the proceedings, costs relating only to a distinct part of the proceedings and interest on costs from or until a certain date, including a date before judgment (FPR 2010, r. 28.2 and CPR 1998, r. 44.3(6)).
24. I observe that the husband's conduct at times fell beneath what a Court expects of a party involved in litigation. There was some delay in his application for a stay. He failed to comply with directions. The wife was forced to apply for a *Hemain*

injunction which meant there were further costs. He was slow at making payments I had ordered with the matter being brought back to court to ensure he made the wife the payment. He applied to adjourn the final hearing.

25. Although Miss Perrins relied on my findings in relation to the husband, that he had exaggerated to some extent his health issues and had not been truthful in some respects, I found that neither party had been entirely truthful with the court.
26. A more significant issue was that the husband was pursuing a divorce in Monaco on a fault basis. From the experts' evidence it was clear that this basis would have led to the wife being at a disadvantage. It was only after I had raised the matter that the husband gave an undertaking that he would change that approach.
27. I noted however that despite the husband's change of approach before the wife gave evidence, this did not lead to the wife reconsidering whether the Monaco jurisdiction was the correct one in all the circumstances nor did she reply to the husband's letter to her lawyers in Monaco let alone enter discussions in relation to the husband's altered position.
28. The first question is whether there should be no order as to costs. A short answer to that question is no. This is despite accepting that on the face of it the husband was a very wealthy man and that there was a large disparity between the financial positions of the husband and wife. When it came to consider the wife's position in the proceedings, in my view her arguments were weak. She chose to continue with the proceedings and then lost the argument. She was engaging with the proceedings in Monaco. Those proceedings started first. I found that she had had the opportunity to request interim support from the Monaco court and chose not to do so.

29. The next question for the court is whether a summary assessment should take place. Neither party argued against that and the wife contended that it would be good practice to follow the summary assessment procedure particularly in family cases to avoid further costs and conflict. I note in particular, that if the costs have to be assessed by a costs master, then that will cost further money, money that the wife at least cannot afford.
30. I accept that the more usual summary assessment takes place in cases lasting up to one day although there is no rule to that effect. Although this became a three day case, it had been listed for a shorter period. It could have been concluded rather more quickly than it was. I had had conduct of the case throughout and I considered the issues were straightforward.
31. For those reasons, I have concluded that it is appropriate to make a summary assessment of the costs if I decide that a 'no order' decision is not appropriate.
32. I have taken into account all the circumstances, including the conduct of the parties and the other matters set out in CPR 1998, r. 44.2(5)) (see above). The husband's conduct increased the costs. It should have been obvious that he should not have been pursuing the divorce in Monaco on a fault basis. The wife had a weak argument, the family home was never in London. She should never have launched these proceedings in London. Her other arguments failed.
33. When it comes to the recovery of the husband's costs, the husband argues that the civil 'Guide to the Summary Assessment of Costs' should not form part of a family court's consideration and particularly not before this has been considered by the President of the Family Division and professional bodies.

34. The application of the Guide was considered by DHCJ Colton KC in *H v GH (supra)*. The hourly rate and band for the work is set out in Appendix 2: ‘Guideline figures for the summary assessment of costs explanatory notes’. The hourly rates were re-considered on 1st January 2024 and a percentage uplift has occurred. To take just one example, for a grade A solicitor the hourly rate was increased on 1st January 2024 from £512 to £546.
35. Significantly the guide says that the general rule is that a summary assessment of the costs should be made in certain circumstances (when the case is a fast track case) and when the hearing has lasted “not more than a day”. The case I am concerned with lasted just over two days although perhaps it should have been shorter.
36. In paragraph 51 DHCJ Colton KC said that, “strictly speaking, the guideline rates do not apply in the Family Court” but said that, “it would be a very odd result if hourly rates which, in civil proceedings, could not be recovered absent a ‘clear and compelling justification’, can readily be recovered in family proceedings. It is also undesirable that the benefits of guideline hourly rates (consistency, proportionality, and predictability) should be lost in the assessment of costs in family proceedings”.
37. I accept of course that different considerations may apply in the Family Court compared to those in the Civil Courts, but these different considerations are perhaps not as obvious in financial remedy proceedings as opposed to ones about children and their welfare.
38. In my judgment, each part of the justice system should have a costs framework which is consistent, proportionate and predictable. This will be of great assistance to parties as they enter the system. If costs are treated in that way and parties become aware that they may not be able to recover every penny they have spent, that might have the

effect of first encouraging parties not to change representatives frequently and second, in parties looking for solicitors who charge less for similar work. This may drive down the costs of litigation in financial remedy proceedings, in particular.

39. It seems to me the guidance is helpful as it sets out what a reasonable and proportionate hourly rate is in the various types of cases that come before the court. As a really rough, rule of thumb a top hourly rate of £546 which can be recovered from a losing party, seems a proportionate amount.
40. In this case I am not going to give guidance, but I draw support from the Guide. Looking at the proceedings in the round and the findings as well as the relative positions of the parties, I make a summary assessment on the standard basis. I do not consider the wife should pay the full amount claimed by the husband because of his conduct as set out above which increased costs. A proportionate amount is 85% of the husband's claim of £331,000. This amounts to £281,000. The next step is to consider how much of that amount is recoverable. Taking a broad brush approach and assuming a reduction of 30% on standard assessment, the amount to be paid by the wife is £196,000. I consider this to be a proportionate and reasonable amount in the circumstances.
41. In view of the financial situation of the wife, this amount will be paid at the conclusion of the proceedings in Monaco including any appeal process.