



Neutral Citation Number: [2024] EWCA Civ 100

Case No: CA 2023 001078

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Sir Jonathan Cohen
[2023] EWFC 50

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/02/2024

Before:

LORD JUSTICE BEAN
LADY JUSTICE KING
and
LORD JUSTICE MOYLAN

Between:

Lazaros Panagiotis Xanthopoulos

Appellant/ Claimant

- and -

Alla Aleksandrovna Rakshina

Respondent/ Defendant

Philip Cayford KC and William Tyzack (instructed by Hall Brown Family Law) for the
Appellant
Lucy Stone KC and Helen Williams (instructed by Family Law in Partnership Ltd) for the
Respondent

Hearing dates: 1-2 November 2023

Approved Judgment (Costs)

This judgment was handed down remotely on 8 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice King:

The Respondent's application for costs:

1. The respondent seeks an order for costs against the husband in the sum of £425,000 made up as to the return of the £175,000 paid by her under the LSPO order made by Peel J on 23 September 2023 and her own costs of the appeal of £265,028.50 (excluding VAT for which she is not liable) which have been rounded down to £250,000. It is proposed that the order should be met by a reduction in the “needs” order made by the court.
2. The general rule that the unsuccessful party will be ordered to pay the costs of the successful party does not, by CPR r.44.2(3)(a), apply in relation to an appeal made in connection with proceedings in the Family Division. The respondent, however, did not succeed in resisting the appeal and had made no offer to settle in advance of the hearing of the appeal.
3. The respondent in support of this unusual application for costs in circumstances where the appeal was successful, relies on the appellant's litigation misconduct. That misconduct has been/will be reflected in two ways (i) in the order made to provide for his future needs as set out in the judgment and (ii) by the costs order the court intends to make on this appeal, as set out below, which reflects his litigation misconduct in relation to the appeal itself.
4. The respondent's application for costs against the appellant is refused.

The appellant's application for costs:

5. The appellant seeks orders for costs against the respondent on the basis that “he has been successful in the appeal in achieving a much better outcome”.
6. Even though the general rule set out in CPR 44.2(2)(a) does not apply because of the provisions of CPR 44.2(3), as Wilson LJ said in *Baker v Rowe* [2010] 1 FLR 761 at [25], “the fact that one party has been unsuccessful, and must therefore usually be regarded as responsible for the generation of the successful party's costs, will often properly count as the decisive factor in the exercise of the judge's discretion”.
7. The court will take into account all the circumstances under CPR 44.4 and in relation to conduct the matters set out at CPR44.2(5)5 (a) – (d).
8. The respondent made no offer to settle the appeal and strongly contested every aspect of the appeal.
9. The appellant succeeded on a number of his grounds of appeal and lost on others. Further, the appellant was successful in achieving a significant increase in percentage terms in the quantum of the award, even though this was significantly more limited than the overall award that he sought. The only offer he made to compromise the appeal was within an unagreed bundle, whereby he offered to settle for a figure in excess of £12m.
10. The court made findings of litigation misconduct against the appellant in relation to the appeal set out in the judgment at [34] – [38], this included having to increase the time

estimate for the appeal hearing by half a day to accommodate his numerous unmeritorious, ancillary applications.

11. In all the circumstances, whilst an order for costs is appropriate, there should be a significant discount to reflect these matters. See *Rothschild v de Souza* [2020] EWCA Civ 1215.
12. The appellant received £175,000 by way of a LSPO, that being the sum which Peel J felt to be adequate to run a proportionate appeal. £175,000 is equal to approximately 60% of the appellant's total costs of £267,657.30 including VAT.
13. The costs of the LSPO application were £17,378 including VAT. Peel J referred those costs to be dealt with by the Court of Appeal. The appellant succeeded in his application for a LSPO and has gone on to succeed in part on appeal. He should therefore receive the costs of that application.
14. Having regard to all the circumstances, the order for costs will be:
 - i) The wife to pay £175,000 towards the husband's costs of appeal, that sum having been already received by the appellant's solicitors;
 - ii) The wife to pay to the appellant's solicitors with 14 days of the sealing of this order the sum of £17,378 including VAT in relation to the LSPO hearing.

Lord Justice Moylan:

15. I agree.