



Neutral Citation Number: [2024] EWCA Civ 1518

Case No: CA-2022-002229

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (ADMINISTRATIVE APPEALS
CHAMBER)
UPPER TRIBUNAL JUDGE PEREZ

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 December 2024

Before :

LADY JUSTICE NICOLA DAVIES
LORD JUSTICE STUART-SMITH
and
MR JUSTICE COBB

Between :

TENDRING DISTRICT COUNCIL **Appellant**
- and -
(1) SECRETARY OF STATE FOR WORK AND PENSIONS **Respondents**

- and -

(2) CD

Kelvin Rutledge KC (instructed by Tendring Council) for the Appellant
The First Respondent did not appear and was not represented
The Second Respondent appeared in person (CD)

Hearing date: 23 October 2024

COSTS JUDGMENT

This judgment was handed down remotely at 2pm on 9 December 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 Nicola Davies, Lord Justice Stuart-Smith and Mr Justice Cobb:

1. Following the dismissal of Tendring’s appeal, CD seeks her costs of the appeal in the sum of £10,115.00. This is stated to represent 520 hours of work by CD at the rate of £19 an hour. Tendring objects to the payment of CD’s costs and submits that there should be “no order for costs” as between Tendring and CD.
2. Tendring contends that irrespective of any merit in CD’s claim for costs, all of CD’s costs should be disallowed pursuant to CPR 44.11(2)(a) on the grounds of unreasonable or improper conduct. CPR 44.11(1)(b) and (2)(a) states:

“44.11 - (1) The court may make an order under this rule where
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...
(b) it appears to the court that the conduct of a party or that party’s legal representative, before or during the proceedings or in the assessment proceedings, was unreasonable or improper.
(2) Where paragraph (1) applies, the court may –
(a) disallow all or part of the costs which are being assessed
...”
3. It is Tendring’s submission that CD’s gross overcharging represents such unreasonable or improper conduct. It notes that a claim for 520 hours equates to 65, eight-hour days or three working months and describes such a claim as fanciful. Further, Tendring raises a number of matters regarding the factual basis of the hours claimed.
4. We are not satisfied that CD’s conduct of the appellate proceedings can fairly be described as unreasonable or improper such as to deprive her of any order for costs. That said, the hours claimed are high and do require scrutiny and assessment by a costs judge.
5. Tendring has lost its appeal. CD has succeeded in her dismissal of the appeal and upon that basis is entitled to her costs. The amount which is finally recovered by CD will be the subject of a detailed assessment by a costs judge if agreement is not reached between CD and Tendring.
6. On 21 October 2024 CD applied for a Costs Protection Order. Given the result of the appeal and the consequent order for costs, there is no requirement for such an order.