



Neutral Citation Number: [2021] EWFC 85

Case No: LS20P01640

**IN THE FAMILY COURT in LEEDS**  
**SITTING AT THE ROYAL COURTS OF JUSTICE**  
**IN THE MATTER OF SCHEDULE 1 CHILDREN ACT 1989**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20/10/2021

**Before:**

**THE HONOURABLE MR JUSTICE COBB**

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**Between:**

**X**  
**- and -**  
**Y**

**Applicant**

**Respondent**

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**Re Z (No.3) (Schedule 1: Further orders)**  
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**James Roberts QC** (instructed by **Hunters Law LLP**) for the Applicant (mother)  
**Marina Faggionato & Janine McGuigan** (instructed by **Mills & Reeve LLP**) for the  
Respondent (father)

No Hearing Date: Written Submissions only  
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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
**THE HONOURABLE MR JUSTICE COBB**

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.

## The Honourable Mr Justice Cobb:

### *Issues*

1. In these proceedings, concerning Zoe, who will be one year old tomorrow, two issues require my adjudication:
  - i) The *duration* of the interim maintenance for the maternity nurse/nanny at the higher rate (£9,038pcm), and the *rate* of the interim maintenance allowance for the nanny thereafter;
  - ii) Whether I should make a costs order in favour of the father in relation to one aspect of the mother's recently adjudicated claim and if so in what sum.

### *Interim maintenance for the nanny at the higher rate*

2. In the drafting of the order, the parties have reached an impasse in relation to one aspect of my ruling, namely:
  - i) For what period should the mother receive interim maintenance in respect of the nanny costs at the higher rate (£9,038 per month)?
  - ii) And what should be the rate of the interim maintenance allowance for the nanny be thereafter?

This dispute is articulated within §18 of the draft order.

3. The background to the issue is rehearsed in §20/21/22 of the 16 August 2021 judgment which is published as *Re Z (No.2) (Schedule 1: Further Legal Costs Funding Order; Further Interim Financial Provision)* [2021] EWFC 72:

“§20 At the hearing in November, I accepted the mother's case for the cost of nanny provision without question ([2020] EWFC 80 at [49]); the mother was adjusting at that time to first-time motherhood, and I was satisfied that Zoe would benefit from the attention of an experienced maternity nurse. I fixed this claim at £5,600p.c.m. reducing after three months to £4,000p.c.m. in accordance with the mother's then presented case that the nanny would reduce her hours. In fact, when Zoe's heart condition was diagnosed in February 2021, the nanny's hours were not reduced...”

§21 Ms Faggionato accepts on the father's behalf that given the mother's vulnerable and anxious presentation at present, coupled with the forthcoming surgery, it is in Zoe's best interests for the current nanny (who is in fact a maternity nurse, accustomed to being engaged for relatively limited periods in family homes in the period immediately post-birth) to remain in place for a further period (measured in months at the outside). However, she argues that there is no clinical reason why the full-time childcare support already available to the mother should be extended. There appears to be no

clinical reason why the nanny should not be entitled to take the breaks to which she is entitled. The mother is not otherwise engaged in work and has the assistance of a regular cleaner.

§22 I recognise that the next few months, while Zoe undergoes major surgery and recuperates, are likely to be stressful for the mother, and she (and Zoe) would benefit materially from enhanced practical and emotional support at home; I expect this current need to be temporary, and a more proportionate/cost-effective housekeeping/nanny provision can be arranged for the medium and longer term, post-recovery. I consider that it is reasonable for the mother to continue to employ the current nanny, and although the monthly outlay is extremely high (by any standard), I propose to allow the additional cost of the nanny until the FDR. The mother's budget going forward beyond that date should be tailored to include nanny provision at a more conventional cost."

4. I have received further detailed written submissions from counsel on this issue. I am only sorry that issues like this cannot be sensibly negotiated particularly given Zoe's health needs; it does not augur well for the happiness of this little girl's life (and she is only at the beginning of it) that her parents are so oppositional with each other.
5. Mr Roberts QC, for the mother, proposes that the allowance at £9,038 should be maintained for the time being, and indeed until 10 weeks after Zoe's first surgery (which takes us to 31 December 2021). Mr Roberts submits that this accords with the rationale of my judgment following the 20 July hearing. He submits that the allowance should then be reduced to £5,600pcm which was the rate at which the nanny was being paid when Zoe was first born.
6. Ms Faggionato, for the father, continues to challenge the need for enhanced maternity nurse/nanny provision in principle; she alludes to several recent WhatsApp messages from the mother to the father which (of themselves) appear to paint a rosy picture of a happy, active, and engaged infant without particularly special care needs. The father therefore disputes the additional level of care need at present, and proposes that the allowance should be maintained at the higher rate for only a short period (up to the private FDR) and then fall to £4,000 immediately following the private FDR; £4,000 was the mother's original figure for nanny care. Ms Faggionato submits:
  - i) With the departure of [the original nanny], now would be an opportune time to consider more appropriate longer-term care for Zoe. The mother still does not work. Zoe is developing well. While the father accepts that she faces some medical challenges because of her condition these do not appear to be impacting her day-to-day care;
  - ii) What Zoe needs is not a maternity nurse or wrap-around professional childcare. At the moment she needs a nanny who can assist with her morning routine, with medical appointments and with bedtimes.

7. Mr Roberts is right to suggest that I was concerned to ensure that the continuation of the provision of maintenance at the level of £9,038 was intended to provide for Zoe while she undergoes surgery and recuperates. When I provided for enhanced nanny costs until the FDR, I was working on the basis that the operation would have been taking place in August 2021, and the FDR in November. As it happens, the actual date of the first surgery is now 22 October 2021, several months later than envisaged. I am told that Zoe will remain in hospital for a period of c.2 weeks post-operatively.
8. In my judgment, it is reasonable for Zoe to receive a high level of nanny care for about 8 weeks after the operation (i.e., 6 weeks after returning home); this takes us 17 December 2021. It may well take 6-8 weeks from now to find a suitable permanent nanny to replace the current maternity nurse in any event. I am concerned that it may be difficult (and/or in any event unsatisfactory) to employ a new nanny to start work in the week before Christmas (I expect that many nannies will move jobs after Christmas), so I will continue the provision until 31 December 2021 as the mother argues. The new nanny provision can therefore commence in the New Year. The nanny provision thereafter will be at the rate of £4,000 per month – the rate at which the mother originally claimed support. I see no proper basis for employing a nanny at £5,600pcm (£67,200pa) now that Zoe has reached 1 year old, is plainly doing as well as could be expected, and will by then have overcome her first major surgery.

*Costs order*

9. In the 16 August 2021 judgment I identified an issue of costs. At §61 of the judgment I said this:

“I have not been addressed on costs of this hearing. Ms Faggionato has put down a marker that her client will seek a costs order in his favour (or more accurately, the disallowance of the mother’s costs) in relation to that aspect of the welfare/medical case costs which pertain to the alleged £25,000 family loan; she has a powerful case in this regard. I would be inclined to accede to this argument, but will give Mr Roberts seven days in which to object, in which case he may file brief written submissions.”
10. I dealt with the ‘family loan’ at §49-59 of the judgment. I shall not repeat that section here; suffice it to say that I found that the mother had deliberately misled the court in relation to the family loan, and I refused her claim in that regard. Following the hearing, I gave Mr Roberts the opportunity to make submissions in writing, and I allowed for Ms Faggionato to reply. As judgment had been delivered during the legal vacation, I allowed time for counsel to prepare and serve their submissions. These are now with me.
11. Mr Roberts has contended that:
  - i) The mother’s falsehood was corrected immediately after the hearing;
  - ii) The mother has apologised and regrets her decision to present her case in the way which she did;

- iii) The mother was very stressed at the point at which she made her false claim;
- iv) The father has not incurred any additional costs in responding specifically to this aspect of the claim; there were many issues before the court in July 2021 and “costs were unlikely to be impacted by the inclusion of the asserted loan”;
- v) The First Appointment was a necessary hearing, given the father’s failure to make proper proposals in relation either to case management or to interim maintenance.

12. Ms Faggionato, in summary, submitted in reply:

- i) The mother’s conduct was particularly egregious (my word not hers) given her repeated misrepresentation to her lawyers and to the court;
- ii) The mother and her father had deliberately manufactured two e-mails to support the false claim;
- iii) The mother had misappropriated funds meant for Zoe, in order to fund her litigation;
- iv) The suggestion that the mother was so stressed that this had clouded her judgment does not withstand scrutiny; her conduct (and that of her father) was quite deliberate and calculating;
- v) The father has already paid for the preparation of a case which has been shown to be, in part, false;
- vi) Four pages of the position statement prepared for the hearing were dedicated to the existence of the loan, and the supplemental bundle was prepared in part to demonstrate the unhelpful intervention of the maternal grandfather in the welfare proceedings;
- vii) The court should ‘disallow’ £10,000 of the mother’s costs for the July 2021 hearing, and make a costs order in the father’s favour in the sum of £10,000, though this is not to be enforced prior to the conclusion of the *Schedule 1* proceedings.

13. I accept Ms Faggionato’s submission that the father and his legal team were put to additional expense in seeking to defend the mother’s claim in respect of the £25,000 alleged loan; it is difficult to assess the precise quantum given that the case concerning the loan was only part of the overall claim. I further accept Ms Faggionato’s assertion that the mother’s conduct should not pass without some censure; this was extremely serious litigation misconduct. I therefore propose to direct that:

- i) The sum of £5,000 will be disallowed of the mother’s costs to July 2021;
- ii) The mother will contribute £5,000 to the father’s costs of the July 2021 hearing.

The costs orders are not to be enforced prior to the conclusion of the *Schedule 1* proceedings.

*Conclusion*

14. That is my judgment on these issues.
15. I would be grateful if counsel could now tidy the order, and submit for final approval.