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IN THE FAMILY COURT AT READING

160-163 Friar Street
Reading

Before HER HONOUR JUDGE NOTT

IN THE MATTER OF

YE (Applicant)

-v-

ZY (Respondent)

MR H TRAVERS appeared on behalf of the Applicant, instructed by Clifton Ingram
MS N HYLTON appeared on behalf of the Respondent, instructed by Payne Hicks Beach

JUDGMENT
6th AUGUST 2024

WARNING: 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.

JUDGE NOTT:

1. This court is concerned - and has been concerned since September 2023 - with the welfare of A, the son of the applicant mother in substantive proceedings and the respondent father. A is currently 14 years old; he will turn 15 next month and, as I say, the court has been concerned with his welfare since 14 September 2023, when the mother made urgent application, seeking sole care of A. At the time, A was in a hospital bed, suffering from a functional neurological disorder, a psychological disorder, which caused him to believe or feel that he had lost the use of his limbs.

2. I had conduct of that early hearing. I have not had conduct consistently, but I have had conduct of sufficient of these proceedings through to today's final hearing to have a comprehensive overview and a very good idea of how the litigation has been conducted. This is an unusual costs issue, not least because proceedings are otherwise being concluded with a consent order, which I have already approved and which will be issued later, in respect of all welfare matters.

3. Broadly speaking, the parents will share care. There will be some therapeutic intervention for the mother. There will hopefully be some therapeutic intervention with A, if he can be persuaded that it is in his best interests, and there will be ongoing couples therapy, potentially, or co-parenting therapy, to help the mother and father parent A separately but in a constructive, joined up way. That therapy is going to be vital, because it has not taken place to date and all professionals have said throughout these proceedings, and indeed for the two years prior to these proceedings, that it is parental conflict that really is at the root of A's problems.

4. The reason that this hearing is unusual is not simply that it is has been concluded with a consent order, which is far from unusual, but that - notwithstanding there has been a consent order for all welfare issues - there has been a protracted battle this afternoon over costs. Applications for costs are unusual in Children Act proceedings matters generally, and I suspect that they are still more unusual where those proceedings end otherwise by consent.

5. I am not going to go through the lengthy history of these proceedings now; I will have to go into some detail later. I have received two position statements, or notes, as they have been called: one is a 15 page document which was served first thing this morning, drafted by Nasstassia Hylton, who is counsel for the respondent father, and the other document is of a similar length, and that was served on me this morning by Mr Travers, who represents the applicant mother. Both parties set out their respective applications – the father's for a third

of his costs expended in proceedings, the mother for the costs of today's hearing – and they make their respective arguments comprehensively in those two documents.

6. The parties are largely agreed as to the law as it applies to costs applications and, in particular costs applications within Children Act proceedings; they each set this out in detail in their respective statements, which, in large part, replicate each other. I will not refer to all of the law in this ruling; I will refer to some of it, but it is uncontroversial; it is agreed between counsel and I accept it and apply it as it has been set out in those two position statements.

7. There has been before me a bundle that exceeds 1,000 pages. That is a bundle specifically for this costs application, which is again another unusual feature of the conclusion of these proceedings. I was sent an electronic version of that bundle yesterday and I was able to read it yesterday. Much of it, really, was revision: I had looked at an awful lot of the material within it, certainly all the substantive matters – the medical reports, the Social Services records, the witness statements – prior to and during a previous hearing back in February. This morning I have reminded myself of the contents of all of those reports and additionally reviewed quite a large amount of litigation letters sent between the respective solicitors' firms instructed in this case; those, of course, being relevant to the issue of conduct and the issues of costs.

8. Both parties expanded this afternoon orally on their applications and I am not going to read into the record the written applications. But in terms of the oral expansion of those arguments, Ms Hylton went first and she really summarised her document by saying that the application was made on the basis that there was litigation misconduct in three particular areas: first, prior to issue; second, since proceedings were issued; third, the implementation of various recommendations. Finally she addressed me on ability to pay and mechanism for payment.

9. In respect of the alleged misconduct prior to proceedings, I was reminded that we began with a first hearing on 14 September 2023 but that prior to that hearing there had been two years certainly of Social Services and/or professional involvement, and long-standing medical professional involvement. Ms Hylton took me to a letter that was dated 31 August 2023; that was a letter that was written at a time when A was on ward in hospital. It was clear that his symptoms at that stage, while superficially serious, were functional neurological issues rather than having any physical cause. In fact, as became apparent during the hearing, the hospital was keen to discharge A because there was no medical reason for him being in hospital; however A was vehemently against being released from hospital, where he felt safe.

10. So that was the context in which the father's solicitors wrote to the mother's solicitors on 31st August, setting out what has been described by Ms Hylton as a comprehensive and considered settlement proposal. This was necessary because there had been a lot of family therapy work that had been conducted and, as is set out in that letter of 31 August, ultimately, the family therapy work was going nowhere because the parents simply could not agree, and the advice was given along the lines of, "Well, if you really cannot agree, you may have to go to court and get the court to decide, because what is happening is that the conflict between the two of you is causing significant harm to A and we can't help you if you are unable to work this out between yourselves."

11. That is really my summary of what the Therapeutic Clinic was saying in July 2023 to these parents. That was summarised in a more precise way within the letter sent by solicitors to the mother's solicitors and set out what was described, as I say, as a comprehensive settlement proposal, amounting to shared care and proposing a therapeutic package to assist A and his family to move past their issues and seeking to avoid proceedings, specifically on the basis that proceedings would cause A further harm.

12. I am not going to describe that letter in any more detail - but it is at page 1,005 of the bundle and it sets out and relies on the input of professionals up to that point, including medical professionals and Bracknell Children's Services, since at the time A was subject to a child protection plan. So that is the letter that I was taken to by Ms Hylton. I will indicate at this point my view that this letter was indeed a comprehensive and thoughtful letter. It was a letter that was deserving of a response. There was no response, other than the immediate issue of proceedings on an urgent basis.

13. NB, I would observe that the recommendation within the letter dated 5 July 2023 from the Therapeutic Clinic – that, because of the impasse in co-parenting A, both parties might need to consider legal proceedings in the absence of constructive cooperation – that recommendation was taken in very different ways by the parties, which shines a light on and reflects how each of them has behaved with respect to both professional advice and these proceedings from the outset.

14. The father took that recommendation in the spirit that I am sure it was intended and, having instructed solicitors and having considered legal proceedings and having considered the basis on which the Therapeutic Clinic made that observation and recommendation, he determined that ongoing conflict was the very worst thing for A. The mother, for her part, subsequently jumped on that recommendation or observation of the Therapeutic Clinic doctors to justify her urgent application. As I say, the father took on board the professional

medical opinion that the root of A's problems was inextricably linked to parental conflict, and thereafter tried to avoid such conflict. That is why he sent that letter on 31 August; that is why he copied Social Services in to that letter.

15. It is unfortunate that the mother did not engage with Social Services at that point. There was a child protection plan in place, A was in hospital; rather than engage either with the father or Social Services, the mother instead made her urgent application to court. My judgment on the costs arising from that urgent application is at page 61 of the bundle; within it I make plain my view that she was jumping the gun at that stage, albeit I made no order as to costs.

16. Returning to Ms Hylton's submissions, she says that the mother's failure to respond to the father's letter constructively or at all was not simply a missed opportunity but that it represented the beginning of a pattern of behaviour on her part whereby she chose to fan the flames of parental conflict rather than engage with reasonable suggestions from the father which were based on medical and social services recommendations. She submits that this refusal to engage was not only to A's detriment for welfare purposes, but that for the purposes of this costs application it was the beginning of an on-going pattern in these proceedings of litigation unreasonableness.

17. Ms Hylton submits that the pattern of the mother refusing to answer or respond to reasonable letters written by the solicitor, just like the letter on 31 August 2023, has continued. For example, the mother has been on notice since 14 April of 2024 that the father was considering seeking his costs or part of them, and she did not respond to that correspondence until the end of July.

18. Ms Hylton says to me that this delay has caused these parties both to prepare for this hearing and has brought us right to the door of court, making any reasonable negotiation opportunity limited to say the least, and she referred me back to paragraph 48 of my original judgment back in September, where I noted even then that it was regrettable that the mother had refused to engage in any negotiations on the morning of that hearing, notwithstanding the court had given two and a half hours for those negotiations to take place. Thus I am asked to hone in on that example back on 31 August as not simply being an example of how the proceedings started, but also reflective of how they have continued.

19. On the father's behalf, Ms Hylton further submits that the father has been very clear that A needs to engage in therapy, that the joint expert Dr D has been very clear that A needs to engage in therapy but also that he needs both permission and positive encouragement to do so. And she points to A's reluctance, at the moment, to engage in therapy, which she says is

because the mother is failing to encourage him properly to engage in therapy. She says that the father continues to work positively and the mother is unable to do so. That, it seems to me, is more of a welfare point than a conduct point, but I understand why it is raised, because Ms Hylton would say that it is reflective of the difference in parental approach, both to welfare and to these proceedings.

20. That then took Ms Hylton on to her second submission that, since proceedings have been issued, the litigation conduct has continued to be unreasonable, starting with the mother's averment, "My son is at risk of harm [from the father]," in her C2 application dated 7 September 2023. That averment was the basis on which proceedings were brought. Ms Hylton submitted to me that that position was not supported by any professional, it was not supported by A when speaking to professionals, it has not been supported by the court at any hearing and it is not supported by the single joint expert, Dr D.

21. She asked me to fast forward to today, pointing out that the mother's position remains the same, and she took me to a letter at 1,024 of the bundle from the mother's solicitors, dated 24 July 2024, where the mother set out again the risks that she says this father caused to his son; all of them historic, all of them having been looked at extensively throughout the child protection proceedings. And further, I was asked to consider what the mother is saying to Dr D now, because as of June the mother was still raising allegations of abuse and control by the father towards A and characterising matters that safeguarding authorities have determined are a matter of a different and perhaps more robust parenting style as "abuse."

22. It was submitted that the mother has never accepted the evidence and has never ameliorated her position in light of the expert. Again, Dr D's report is relied on for that submission, and I am reminded of the Social Services evidence to the effect that back in 2023, Social Services expressed concerns that A was exposed to parental alienation, particularly by the mother, and I am reminded that it was confirmed by Social Services in court in November that it was the mother who caused the Social Services to have a parental alienation concern – the mother having told the court that their concern was that the father was alienating A. This matter had to be argued and resolved at a hearing on 1 November before District Judge Nicholson and appears on the face of DJ Nicholson's order.

23. Ms Hylton further submits that the mother's position about the father not being a safe carer for A has most recently shown itself by a reference from her to Bracknell Children's Services in early June or late May of this year – so some two months ago – when there was an issue surrounding a school trip. A, at the time, was still on a Child In Need plan.

24. The mother disagreed with the father's attitude to or conduct around A's school trip and so she reported the same as a safeguarding concern to Bracknell Children's Services. Very shortly after that, on 14 June, Bracknell Children's Services took A off the Child In Need plan and closed the case, not finding there to be any safeguarding concerns, as can be seen in the report at 766 in the bundle.

25. Ms Hylton submits that, notwithstanding the clarity of Dr D in his report, the mother continues to allow her own anxiety to undermine A when he is with his father, as exemplified by that referral and as exemplified by the fact that he is currently with his mother, albeit he should, by their agreement, be with his father.

26. In terms of implementation, Ms Hylton submits that the mother has resisted Dr D throughout; she resisted, first of all, his instruction - she did not want him to be instructed, but he was instructed by the court in the face of her opposition - and then, once instructed, she was resistant in her engagement and then finally resistant in following the recommendations.

27. I was referred to paragraph 56 of Dr D's report at page 929 of the bundle, on the mother's need to self-reflect and consider the impact of her behaviour on A. Ms Hylton submits that the mother has never done that, there is no evidence of her doing that throughout these proceedings; instead her focus on the father's perceived faults has prolonged proceedings, which has been detrimental both to A's welfare, but which has also increased the father's costs. It is submitted that she continues to root all of A's difficulties externally, taking no share of the responsibility herself, but to continue to place the blame firmly and solely at the father's door.

28. That brings me then to Ms Hylton's fourth oral submission on ability to pay and the mechanism of payment. She pointed out that last year, the father paid the mother £1.67million so that she might buy a property; that sum was paid to her outright and ahead of schedule. The parties were not married but that is an outright payment made by the father to the mother; it is not the case that that is to buy a property that will be returned to the father when A turns 18; that is money that the mother received just ahead of these proceedings as a result of financial proceedings, and it is money that the mother, therefore, has at her disposal.

29. It is also submitted on the father's behalf that the mother has a rental income from a property in London that she owns with siblings. It is submitted that by seeking only a third of his costs – which represents half of the father's costs since I last dealt with costs on 14 September - the father has chosen to be proportionate. He has chosen to seek costs that only attach to the element of proceedings that I have not already adjudicated on; he has not sought

any indemnity costs; he has not sought all of the costs since November of last year, the point at which he says it became apparent that the mother's intransigence and unreasonableness was going to continue. He has sought his standard costs and that is a reasonable litigation position.

30. In terms of the needs of the family, those are met. Both the mother and the father have a home that A can reside in. Both have additional means and A is currently in school at a cost of £62,000 per year; half of that is for schooling, half of that is for a teaching assistant because of all the education he has missed. That will maintain until A has finished school and those fees are being met by the father and will continue to be met by the father.

31. Finally, in her oral submissions Ms Hylton indicated that she made it plain that costs were not sought on any punitive basis, but that the costs application was made because of unreasonable behaviour that ought to stand in costs.

32. Mr Travers, in his oral submissions started by pointing out that this was an unusual case. He further submits that where it has been agreed by all parties that there will be individual therapy taking place, that there will ideally be therapy for A if he is prepared to agree, and that there will be therapy for the parents as co-parents, this application is a hostile one, but also a difficult one for the father because proceedings have otherwise now resolved by consent.

33. In terms of the ongoing allegations that the mother makes about the father's alleged abusive behaviour, he says the court has a difficulty: he says that because the court has never heard any evidence it therefore cannot find in this costs application that the mother's preoccupation with those matters is unreasonable, because there has never been a hearing to determine them; he submits that she is simply seeking to ensure that her son is protected, and is keeping a weather eye on her son in the father's care.

34. Mr Travers submits that since this is an application for costs in Children Act proceedings, the fact that a parent makes decisions, or has made decisions, that some of the experts disagree with is not enough to reach the heights of unreasonableness that would justify an order for costs.

35. He submits that there is no real unreasonable conduct pointed to by the father, rather that it is a broad-brush approach adopted by the father, saying that the mother's approach has been unreasonable throughout. He submits that not only is it broad-brush, it is unfair when these are parties who are going to therapy. He took me to page 993 of Dr D's addendum report, establishing that the delay in the mother attending therapy - because this is something that has not yet happened - was actually in the psychotherapist and not in the mother, and that

these proceedings were also delayed by Dr D serving his addendum report late. It may be that that matters less when the welfare aspects have all been the subject of agreement.

36. He submitted that it is A's choice not to see the therapist and that there is no evidence that the mother has frustrated that, and that it is not enough for the court simply to listen to and accept a recital of the father's concerns about what has gone wrong. I agree that I cannot and will not make a finding that the mother has actively sought to disrupt or not support A in seeking therapy; I simply do not have the evidence to make such a finding. All I do is note that the expert and the father are very, very keen for A to start therapy – they both think it is essential for his wellbeing and his welfare – and that it is regrettable that it has not yet happened.

37. Mr Travers says that unfair criticism has been made of the mother for re-raising and going through in some detail her complaints about what she says is the harm that the father has historically caused her and A and continues to place A at risk of in his care. He submits that these are matters that are entirely appropriate for her to raise with Dr D, because he is a therapist and she should be encouraged to be open with any therapist. And again, he said that there are no trigger points in this litigation and asked the rhetorical question, "What is it that the mother has actually done that is unreasonable in terms of litigation conduct where proceedings have ended with a consent order and a therapeutic approach?"

38. As to the finances, Mr Travers expanded on his written document and has pointed out that there is a disparity in the wealth of these two undeniably wealthy parties. The mother was awarded £1.67million; she spent just over a million of that on a house for herself, but points out that the father lives in the original familial home worth £8million. The periodical payments for A that were agreed at court and by the court at £4,000 per month, have been reduced unilaterally in the last two months to £400 per month, without application to the court, and that is both a characterisation of the father's financial abuse, Mr Travers submits, but also highlights the lack of parity between the parties.

39. He points to the father's position that the father would give the mother time to sell assets in order to meet his costs, and submits that this is a recognition of the fact that a costs order will have a significant impact on the mother but no impact whatever on the father, who has indicated though correspondence over the last few days that he is prepared to walk away with no costs. Putting it shortly, Mr Travers submits that the father does not need the costs; he simply wants them. And he submits that the letters written on behalf of the father, in particular from 26 July of this year, themselves represent wholly unreasonable litigation conduct.

40. He submitted orally that in his letter of 26 July, the father was setting a condition: that he would not agree to end proceedings by consent - in terms of all matters, costs and welfare - unless the mother returned a horse box to him. That horse box has nothing to do with my order today, has nothing to do with these Children Act proceedings; its relevance is that there is an ongoing dispute - the last dispute, I think, financially - between these parties about who owns it and who should have it. That is a dispute that is not yet before the County Court, but I am told that it is likely to be before the County Court soon.

41. It is submitted on behalf of the mother by Mr Travers that in that letter of 26 July 2024, the father was essentially blackmailing the mother by saying that he would not agree in the draft consent order unless he got the horse box back. He then points to the last phrase in that letter: "We'll be asking the court to make the attached order, save for to order that your client pay our client his legal costs on an indemnity basis as a result of her unreasonable litigation conduct," and then reserves his position in relation to enforcement proceedings regarding the horse box.

42. So that was the letter I was taken to and it was put that this was the father refusing to agree to any order unless he got his horse box back and that that was unreasonable litigation conduct. I do agree that this would be unreasonable litigation conduct, but that is not in fact what the letter says. The letter makes it very plain that the welfare aspects of the consent order would be agreed; it is the costs matter that needed resolution.

43. Mr Travers, on behalf of the mother, also submits that in order to mount a successful application for costs, the father and his solicitors would need to identify not simply what the triggering events were that were said to so unreasonable as to trigger costs, but would need to particularise how those costs have been incurred; I was taken to the N260 that has been filed which sets out monies that have been earned and paid and it is submitted that there is no proper breakdown in that document.

44. Finally, really rolling together those submissions, Mr Travers submits that the mother has not refused to engage in therapy, that she has cooperated at every hearing, that proceedings at each hearing have generally moved on by consent, that proceedings have concluded by consent, and, therefore, that there cannot be said to be litigation misconduct and it would be inappropriate to make an order. He reminds me again of the unusual nature of this case and points out that the mother did not want this hearing and was prepared to settle on a no order for costs basis.

45. On the point about a non-identification of a litigation event, in reply Ms Hylton took me to a letter dated 25 October 2023, which is in the bundle of documents at page 1010 and

1011. She says that this is an example of a key litigation event where the mother had good opportunity to settle the case and points out that the consent order that I have made this afternoon essentially mirrors the proposals in this document. I am not going to read out this letter into this judgment in full, but it is right to say that it is a wholly reasonable document. It is met with a very abrupt response on 30 October 2023. This has been characterised to me by Ms Hylton as one of many missed opportunities where the mother declined to properly engage.

46. In response, Mr Travers says that actually, that short letter written by his instructing solicitors at page 1012 of the bundle - he says, "Well, it is not unreasonable, is it, to want to seek expert advice? And it is not unreasonable for the mother to say that she doesn't believe that there should be any psychological expert input into proceedings or into A, and it's a reasonable position for her to state that this is an issue that the court would need to decide upon."

47. Ordinarily I would agree with that submission, but there is merit in the point that by this time, by 30 October 2023, there had been years of doctors saying that psychological input was required; that A's problems were not physical, they were psychological, and the father's letter making that proposal on 25 October 2023 was certainly not the first time that that was proposed.

48. Mr Travers, again, in response, says that this is all about a horse box; that the father wants the horse box and he wants a punitive financial penalty from the mother. He has chosen not to pay, he will not pay; he will not pay reasonable monthly childcare costs, having reduced them by 90 per cent but without returning to court; he does not need the money and he is seeking to punish the mother. And I was taken to the proposed ground rules document that accompanied the letter dated 25 October 2023 and it was said that that was an unreasonable document and it was not unreasonable of the mother to respond to that letter in the way that she did.

49. Looking at reasonableness, I do not think I can do much better, really, than look at the conclusions of Dr D, the registered clinical psychologist, who was instructed as the joint single expert on direction of this court. I believe that that instruction was made by order of the court after a hearing on 1 November.

50. The report is dated 20 February 2024 and at page 923 in his summary, Dr D sets out: "A has a complex presentation in which neurodiversity, past medical history and medical procedures, as well as a complex relationship with the parental couple and his relationship with his mother contribute to his behaviour. The gaps in education may contribute, together

with his educational needs which have been assessed and described in detail elsewhere, to uncertainty about his abilities."

51. He goes on to describe the parents each having a different view on their approach to A's medical problems, with the mother's focus being more on A's medical needs; the father more on A's psychological needs and his possibilities. He pointed out and concluded that A knew how to use those differences between his parents for his own gain. There is also evidence that he uses what has been referred to as 'conversation disorder' - I think that is a slip of the typewriter; it is conversion disorder, FND - to ensure the parental couple stay together.

52. Recommendations were made for treatment which is psychotherapeutic in nature; for A individually, the mother individually, the father and the mother together. The work of the parents should be more pragmatic and focus on co-parenting. Dr D considered the three central diagnoses of autism, FND and complex regional pain syndrome. He found that A, when diagnosed, was just above the clinical threshold for autism. He went through, in some detail, the detailed explanation of the science, the literature and the current thinking surrounding functional neurological disorder and then applied that to A's case from paragraph 26.

53. "It is possible that A has developed a traumatic memory of being paralysed following his operations; the memory of distress can be activated and enacted, or another way of looking at his behaviour is that there was trauma after medical intervention, leaving him paralysed, not able to use his limbs, which he now, in moments of distress, repeats. This behaviour, it seems to me, is intertwined with A having some awareness, a point that the father wishes to make when photographing and videoing A [moving normally] only shortly after A allegedly couldn't walk.

54. A may have learned to use this behaviour to ensure, for example, he doesn't go to school; he uses the behaviour to manipulate others, particularly his mother. A's behaviour may play into his mother's anxiety. The mother has not felt that she had a choice when engaging in the assessment and was, during her two interviews, mostly focussed on A or on the father's behaviour; her anxiety was poignant during the interviews. She generally focussed her anxiety outside herself, on others. Her way of managing her anxiety is by managing others' anxiety. A may understand this and seek a relationship with his mother on the basis that he will have her full attention and exclude his father, perhaps his sister, when she is focussed on his medical needs."

55. Then he talks about A a bit more. He talks about FND a bit more, talks about his educational delay and then, describing the mother, at paragraph 45 he gave this opinion: "The mother displaces her distress into the father by making him feel as if he is an abuser by calling the police or Social Services. The father, referring to himself as a problem solver, will often have tried to contain his ex-wife's behaviour. I think that was a characteristic of their relationship; he would contain her dependency on him."

56. Paragraph 46: "The mother's manner of dealing with A's behaviour is by focussing on his medical behaviour by giving him a wide berth when he is with her, and in his mother's care it is as if a balance is found in which A, to some degree, needs to be dysfunctional or medically unwell, so that his mother can then look after him. His father does not tolerate this behaviour, not from A or the mother, but he can feel set aside when the mother intrudes upon her son. In the extreme, A is nurtured when he does not function, but cannot feel contained when he outraged or distressed."

57. He makes further recommendations and observations and on the mother's allegations, he says this: "Her allegations which are put but not pursued function to retain a relationship with the father and the life she used to have with him. She referred to the house they had together, but also to the dominance he, in her view, has over her. It is, in my view, the mother who tries to control both A and the father, to keep them close to her, so as not to feel the loss of the relationship with the father and the loss of a child who is growing up and needs much less of her. The father has played into this dynamic by trying to solve matters for her. It is a difficult dilemma because A is involved, but it will be important to carefully distance himself more and encourage the mother to find her own solutions."

58. Then there were the recommendations about psychotherapy, etcetera, which I have already examined. He also discusses the ground rules, which he says are vital. There was an agreement that was set out in a letter to Dr D, I think jointly by both parties. The parties agreed that the Therapeutic Clinic should be approached to act as a central person; there should be individual psychotherapy for A, for the mother, and pragmatic couple work.

59. There were further matters that Dr D was asked to resolve as a single joint expert and he provided an updating report which was dated 17 July 2024. By this time, neither the mother nor A had engaged in any therapy; A because he went to one session and determined that he did not want to continue; the mother because the psychotherapist could not be contacted and by the time she did respond, couples or co-parenting therapy had begun and the professional view was that that should continue for a while before the mother began to engage in individual work.

60. It would appear from that the mother then again referred the father to Social Services about the issue concerning A's school trip, rather than working with the father.

61. When I look at Dr D's report, the concern that I had, and which I believe I expressed clearly in the hearing on 26 February, is that the mother's attitude has not changed. She was just using different ways to impose her views and, at best, undermine the father or, at worst, paint him as an abuser. She was still complaining to Dr D that he was a domestic abuser at their meeting on 24 June, stating in that context that she was a magistrate.

62. She said to Dr D on 24 June of this year that she had gone to court initially on the advice of the Therapeutic Clinic. I had already dismissed that assertion at the first urgent hearing that she had sought and obtained, when she said untruthfully to me that she had made her application on the advice of Social Services. Whilst stating that she wanted A to have therapy, she maintained that this could not be forced and that professionals had to listen to A rather than tell him what he needed, but very quickly she reverted to complaints about the father, accusing him of ongoing emotional and financial abuse.

63. This has been very much a continuing theme throughout these proceedings, right from the first time this was before me in September of last year, of the mother expressing unhappiness with her financial settlement, always pointing out a disparity between her means and the father's wealth, and she has, sadly, brought that unhappiness into these Children Act proceedings.

64. The court, i.e. me, could tolerate that at the outset. It was not lost on me, back on 14 September, that the financial proceedings were either still ongoing or had only just been brought to an end and the mother was still very raw about the outcome of those proceedings, particularly about the father retaining the family home. But it is unfortunate that the mother has maintained her grievance and her determination to depict this father as financially abusive and controlling, notwithstanding the clearly expressed views of the court, of A's treating clinicians and of the single joint expert, and although lots of criticism has been made of the father bringing the horse box into these proceedings, it has been clear that it is the mother who resents the financial disparity between the parties and who has repeatedly brought that discontent into these proceedings, as much as the father has tried to bring the horse box in. This afternoon is not the first time that the mother has complained in these child welfare proceedings about the father's financial conduct – his failure to pay, for example, an appropriate amount of child maintenance.

65. She refers to co-parenting, but while she uses those words, in particular Dr D is very clear that when the mother talks about co-parenting, she means her parenting style which

needs to be adopted by the father and supported by the professionals. There is very little focus in what she says to Dr D, certainly in June of this year, on A, but there is certainly a wholly disproportionate focus on her complaints about the father. Her complaints about the father's alleged aggression and controlling behaviour, when unpicked, really amount to observations that the father has a much more boundary-led parenting style than she does, and that clear from Dr D's July 2024 addendum report at appendix A from his paragraph 13:

66. "It is a pity that the long-term therapeutic work that the mother needs has not yet been able to commence, but it is heartening to hear that the mother is committed to beginning that work in due course. However, at the current time, possibly because that work hasn't started, she is more determined to maintain a status of victim and survivor, while consistently failing to produce cogent evidence that she is either and meaningfully to engage in co-parenting.

67. "On the contrary, I think the fact of the nature and the length of these proceedings have served to highlight the mother's overwhelming need to control both her relationships with the father and her son, and the court. She has a need to pathologise her son, which continues; she has a need to demonise his father, which continues. And she confuses her inability to persuade the father to agree in her medicalisation of their son, and otherwise to bend to her will, with emotional, psychological and financial abuse."

68. The mother's attempt to characterise his costs application at the end of drawn-out proceedings, started by her on a false premise and in the absence of any attempt to negotiate the father's reasonable position - a position that was in line with all of the professionals involved with A - her attempt to characterise that as financial abuse is misconceived, but it also exemplifies her approach.

69. She was first written to about costs in the middle of April. It was a detailed letter. It was a robust letter, but it wasn't unkind or unreasonable. She wholly ignored that correspondence until five working days before this hearing and, even then, refused properly to engage; instead she characterised the fact of the notice of application to seek costs and additional further attempts to negotiate as simple abusive behaviour.

70. The father did not seek these Children Act proceedings; the mother did. The father did not start these proceedings; the mother did. The father has engaged in these proceedings fully; he has made constructive, detailed suggestions throughout; he has made child-focussed submissions throughout. He has followed faithfully the advice of medical and safeguarding professionals; he has tried to implement the recommendations of the single joint expert, but he has at times been frustrated by the mother's failure properly to engage. I remind myself that the mother made it plain in her first meeting with Dr D that she was there under

sufferance; she felt coerced into attending - that is in paragraphs 45 to 46 - and latterly has reverted to complaining about the father, again raising largely historic domestic abuse allegations that she declined to have tested by the court, even though she had been given ample opportunity to do so.

71. She repeated the false assertion that she took matters to court on the advice of Social Services due to A not being safe in his father's care. It may be that my decision not to award the father the costs of that first hearing emboldened the mother to revert to this false narrative, this time with a different professional, that it was Social Services that was behind her decision to issue proceedings and that it was Social Services who were behind that in order to safeguard A from his father.

72. In fact, as I made clear in that judgment of 14 September, the social work team had made it plain to me that not only did they not advise the mother to make the application, but that they had no concerns about A's safety in his father's care; their concerns were about alienation by the mother and parental conflict.

73. Mr Travers says to me that there needs to be a trigger, a particular unreasonable event, but this is not a trigger case. In this case, the mother's unreasonableness permeates throughout. On the face of it, she engages. She is intelligent, she is cogent, she will attend, even though she does not want to, to speak to psychological experts who she does not believe in at all because at heart of this, the mother does not accept the psychological diagnosis. Accepting the psychological diagnosis would mean reflecting on flaws her own parenting and substantially reframing her chosen narrative that she is the abused mother of a significantly disabled teenager himself belittled and abused by an uncaring father. She prefers the previous but no longer supported medical diagnosis of complex regional pain syndrome – which fits her narrative but which does not currently fit A's fluctuating symptoms – and that is what she is hanging on to and that is why she is not really engaging.

74. Even though the final order is a consent order, even though the mother has stated that she will engage in therapy, I share the father's deep concerns that in reality, once these proceedings are over, that engagement will further abate. To date, she has paid lip service to court orders rather than accept that those court orders are in fact rooted in A's welfare interests. And when I step back and I look at her approach through these proceedings, she has a tendency to deny the validity of any opinion other than her own.

75. As I have just described, she said at the outset that it was Social Services who advised her to issue these proceedings and urgently. When Social Services denied this, the mother sat in court, shaking her head and gesticulating while Ms Chowdhury addressed me on behalf of

Social Services. The mother disagreed with the Social Services' conclusions at the end of the lengthy child protection process that she initiated; those conclusions being that the father is a safe and competent parent. She disagrees with those conclusions and she has continually brought that disagreement into the courtroom and into meetings with professionals, mis-describing the same to Dr D even after Social Services had clarified the position before me in court.

76. She asserted in court in November, before District Judge Nicholson, that Social Services had found that A had been alienated by his father. Social Services had to clarify that no, their concerns in fact surrounded potential alienation of A from his father by the mother, and that is present on the face of the order dated 1 November.

77. During the hearing on 26 February when, having heard submissions, I indicated that the hospital at which A regularly attended should remove the open access to it that he enjoyed and that was clear was detrimental to his psychological wellbeing and his recovery – and I made that indication following the recommendation of Dr D – the mother gesticulated, she talked over her own counsel, she talked over me and, when I reaffirmed that that was my decision, she directly addressed the father, saying words to the effect that she hoped that he was happy.

78. As I say, I did not conduct the hearing on 1 November but I did conduct that hearing on 26 February and was struck by the mother's approach. It may be a personality issue, but it is not an intelligence one. She was myopic and she was again fixated on the father, rather than on her own conduct.

79. Regrettably, because this is an unusual case and there is a consent order, I do find that this is a mother who has not acted reasonably in proceedings. While I gave her the benefit of the doubt at the father's first application for costs, as can be seen from the transcript of my oral ex tempore judgment, which should be read alongside this oral ex tempore costs ruling, I found that the mother had not behaved reasonably, but I declined to order costs against her for child welfare reasons. I said, "I think her conduct is so far not so unreasonable as to justify a costs order at this early stage of proceedings." Sadly, the mother may have taken this as licence to maintain her intransigent approach.

80. That decision that I made not to make a costs order has not been appealed and I do not revisit it now, but it does provide important context. The fact that I did not make a costs order does not equate to a finding that the mother's behaviour, ahead of and during that period, was reasonable; simply that I accepted that she had A's welfare at heart and that

while her judgment had become clouded, I was prepared to give her considerable latitude due to the nature of proceedings and the complexity of A's presentation.

81. Nearly a year later, the mother's judgment remains clouded and her position remains intransigent. And while it is true that the outcome of the substantive proceedings is a consent order – made in almost the exact terms that the father offered pre-proceedings and repeated throughout these proceedings – and so on the face of it the mother has engaged, she has not changed her fundamental position throughout.

82. She has, in truth, largely maintained her position about A's psychological issues; she has returned again and again to CRPS as a diagnosis, even taking him to hospital in February of this year and, most unreasonably, she has not let go of her serious allegations that the father is a perpetrator of domestic abuse. She attacks him to professionals whenever she has the opportunity to do so and she undermines his proper, boundary-driven approach to parenting. As recently as June this year she complained to Social Services about him; today she complains to me that his pursuit of his costs is abusive. It is not.

83. Just as the mother is entitled to make Children Act applications to the court, the father is entitled to defend them and to have a costs hearing. Litigation is expensive, but it has consequences. The submission that this hearing is unnecessary because the father could, and accordingly should, have abandoned his attempt to recoup some of his litigation costs is misconceived. The mother's application that the father pay her costs of today is, therefore, refused.

84. Turning to the father's application, I have set out the background in some detail above. Approximately a third of his costs were in that first hearing; those are not sought, rightly, because I have already ruled on those matters. He seeks about half of his subsequent costs. I have a broad discretion, pursuant to Family Procedure Rule 28.1. I exercise it, taking into account the particular circumstances of this case.

85. In my judgment of 14 September 2023 I refer to the key principles set out by Mr Justice Williams in *RR Re costs* [2021] EWFC 100. I am not going to set them out again now in any detail, but of course I have to have regard to all of the circumstances, conduct before and in proceedings, whether it was reasonable to raise, pursue or contest a particular allegation issue, the manner in which a case has been pursued or attended, whether a claimant has succeeded in whole or in part, any admissible offers to settle.

86. I have particular regard to Lord Justice Neil's three categories of reasons why costs only exceptionally are ordered in family proceedings, as (inaudible) by Lady Hale, then Mrs Justice Hale, in the 1997 case at 2 Family Law Reports. The first, of course, is that we do not

make orders generally because orders for costs between the parties will diminish the funds available to meet the needs of the family. Both of these parents have significant means. The mother has received a large sum of money from the father to meet A's needs, as well as her own. A's schooling needs, which are very considerably expensive, are being met by the father and there is no evidence before me that by making the mother pay a proportion of the father's costs that will diminish the funds available to meet the needs of her family, or indeed the family generally.

87. The second, described as the major reason, is that the court's concern is to discover what will be best for the child. People who have a reasonable case to be put forward as to what will be in the best interests of a child should not be deterred from doing so by the threat of a costs order against them if they are unsuccessful. So the question here is whether the mother's case put forward was reasonable. I have set out in very great detail the reasons why, certainly from November of last year, it was not.

88. And the third is, in effect, a costs order will add insult to the injury of having lost in the debate as to what is to happen to the child in the future; if it is likely to exacerbate rather than calm existing tensions, and this will not be in the best interests of the child. I have to say, I do not think that that is possible here. The mother has a clear, entrenched view of the father as an abusive and coercive controller. It is a wrong view, but it is her entrenched view and the order that I make, whether I make it or not, is not going to change that.

89. I note that the relevant passage goes on: "Nevertheless, there clearly are," as Lord Justice Neill pointed out, "cases in which it is appropriate to make costs orders in proceedings related to children," and he described one of those sorts of situations: cases where one of the parties had been guilty of unreasonable conduct. The point is made that, in Children Act cases, one must not confuse unreasonableness in relation to the child – because one might say we are all expected to be unreasonable in our attitude to our children - and unreasonableness in the attitude to the litigation.

90. This has given me some pause because there is a cogent argument that the mother's unreasonableness in the litigation derives from her unreasonable attitude to her child and if they are indivisible I ought not make a costs order against her. But again, I take myself back to the circumstances under which these proceedings began – the false basis on which they began – and the mother's intransigence and refusal properly to accept any of the expert opinion, both in the lead-up to proceedings being issued and in the course of proceedings. And I am satisfied that her unreasonableness in her attitude to the litigation derives more from her attitude towards the father and her need to punish or have recognised his perceived

faults than they do to any unreasonableness that she has in her attitude to A and his complex medical or neurological or, in fact, psychological needs.

91. Therefore, I do agree with the father that this is one of those rare cases where he should not be expected to bear all of the costs of his litigation. He will bear the brunt of them; he will bear two-thirds of them, but the mother will pay a third of his costs, that sum being both proportionate and reasonable.
