Case No: MK24P00014
Neutral Citation Number: [2024] EWFC 394 (B)

IN THE FAMILY COURT AT MILTON KEYNES

351 Silbury Boulevard
Witan Gate East
Milton Keynes
MK9 2DT

30 December 2024

Before:

RECORDER PATEL

- -

Between:

M

Applicant

- and -

F

Respondent

- -

MS ALEXNDRA GILMORE, of counsel for the **Applicant** instructed by **Mr Seth Mensah** of **Goldfield Solicitors**
MS BETH HIBBERT, of counsel, for the **First Respondent** instructed by **Ms Sadie Glover** of **Machins Solicitors LLP**

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JUDGMENT (No. 2)

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

Introduction

1. This judgment addresses the ancillary issue of whether I should exercise my discretion to award costs in relation to the mother's application regarding A, a boy born in 2008 and now 15 years old. The mother's application was generally refused but I did vary the child arrangements order I made in October 2023.

2. The father seeks the mother and or her solicitors, Goldfield Solicitors, pay the totality of his costs totalling £36,461 plus VAT. The mother opposes any costs order being made.

3. I have received written submissions from both parties and Goldfield solicitors to show cause why a wasted costs order should not be made. Quantum is not disputed, the issue is whether the mother or her solicitors should pay the father's costs.

Legal Principles

Costs Generally

4. The rules on costs in family proceedings are found in FPR Part 28 and PD28A. Rule 28.1 provides a power to make any such order as to costs as the Court thinks just.

5. Rule 28.2 applies CPR Parts 44 (except rules 44.2(2) and (3) and 44.10(2) and (3)), 46 and 47 and rule 45.8 to family proceedings.

6. Thus, under r.44.2(4) the Court must have regard to all the circumstances of the case, including:

   (a) the conduct of the parties;
   (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
   (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences of Part 36 apply.

7. Under CPR r.44.2(5), the conduct of the parties includes:

(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 its case or a particular allegation or issue; and
(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

8. When applying these rules, the Court must, of course, have regard to the overriding objective in FPR Part 1 of dealing with cases justly, having regard to any welfare issues involved. Dealing with a case justly includes, so far as is practicable:

(a) ensuring that it is dealt with expeditiously and fairly;
(b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
(c) ensuring that the parties are on an equal footing;
(d) saving expense; and
(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

9. The general practice concerning costs orders in family proceedings involving children is that there is no order for costs in the absence of "reprehensible behaviour or an unreasonable stance" (*Re T (Children)[2012] UKSC 36* at [44]; followed in *Re S (A Child) [2015] UKSC 20*). The classic explanation for this was given by Wilson J in *Sutton London Borough Council v Davis (No. 2) [1994] 1 WLR 1317* at p.1319:

> *"Where the debate surrounds the future of a child, the proceedings are partly inquisitorial and the aspiration is that in their outcome the child is the winner and indeed the only winner. The court does not wish the spectre of an order for costs to discourage those with a proper interest in the welfare of the child from participating in the debate. Nor does it wish to reduce the chance of their cooperation around the future life of the child by casting one as the successful party entitled to his costs and another as the unsuccessful party obliged to pay them. The proposition applies in its fullest form to proceedings between parents and other relations;…"*

10. The approach taken to deciding whether to make a costs order in any individual case involves identifying the factors for and against the general rule and analysing them against the case at hand to decide whether it can, and should, be distinguished and an order made (*Re T (Children)* at [11] – [14] and *Re S (A Child)* at [19] – [27]). The underlying object of making a costs order in family proceedings involving children was described in the following way at [33] in *Re S (A Child)*:

> *"… The object of the exercise is to achieve the best outcome for the child. If the best outcome for the child is to be brought up by her own family, there may be cases where real hardship would be caused if the family had*

to bear their own costs of achieving that outcome. In other words, the welfare of the child would be put at risk if the family had to bear its own costs. In those circumstances, just as it may be appropriate to order a richer parent who has behaved reasonably in the litigation to pay the costs of the poorer parent with whom the child is to live, it may also be appropriate to order the local authority to pay the costs of the parent with whom the child is to live, if otherwise the child's welfare would be put at risk. (It may be that this is one of the reasons why parents are automatically entitled to public funding in care cases.)"

11. In *Re T (Children)* the Court identified some potentially relevant factors at [12] – [14]:

    (a) Orders for costs between the parties will diminish the funds available to meet the needs of the family.
    (b) It is undesirable to award costs where this will exacerbate feelings between two parents, or more generally between relations, to the ultimate detriment of the child.
    (c) Where costs have been incurred because a party acted in an unreasonable way.
    (d) Where a party's conduct has been reprehensible or that party's stance has been beyond the band of what was reasonable.

12. In *Re S (A Child)*, the Court held at [17] that although CPR r.44.2(4)(c) does not readily fit the conduct of children's cases, it serves as an aspect of the general desirability of the parties co-operating and negotiating to reach an agreed solution which will best serve the paramount consideration of the welfare of the child. As such, it is part of the general conduct of the proceedings.

13. The Court then identified the following considerations underlying the general rule at [20] – [24]:

    (a) Family proceedings are much more inquisitorial than other civil proceedings and the welfare of the child is the paramount consideration; the child should be the only winner.
    (b) Generally, each of the persons appearing before the court has a role to play in helping the court to achieve the best outcome for the child.
    (c) Generally, all parties to the case are motivated by concern for the child's welfare.
    (d) In most children's cases, it is important for the parties to be able to work together in the interests of the children both during and after the proceedings.
    (e) In certain circumstances, having to pay the other side's costs, or even having to bear one's own costs, will reduce the resources available to look after this child or other children.

14. The Court was minded to point out at [31] that there may well be circumstances other than where there is reprehensible behaviour or unreasonable conduct of the proceedings which justify a costs order.

15. Nonetheless, reprehensible behaviour and/or unreasonable conduct are now accepted to be the ordinary test upon which an order for costs in family

proceedings involving children can be made (see *Re A (A Child) [2018] EWCA Civ 904* at [14] - [15] and *The Mother v The Father [2023] EWHC 2078 (Fam)* at [12]). In the latter case, Sir Andrew McFarlane P held at [40] – [42] that a finding of unreasonable conduct is merely a gateway finding, granting the Court the jurisdiction to make an order for costs, but not obliging it to do so.

16. When deciding whether there has been unreasonable conduct, each case must turn on its own facts (*Re W (A Child) [2020] EWCA Civ 77* at [10]), remembering that the unreasonable conduct must relate to the litigation, not the child's welfare (*Re T (A Child) [2005] EWCA Civ 311* at [36], citing *R v R (Costs: child case) [1997] 2 FLR 95*). The unreasonable conduct can be before as well as during the proceedings and unreasonableness can be found in the manner in which a case has been pursued or defended. Unreasonable conduct has been found to consist of:

(a) bringing an appeal with no proper basis (The Mother v The Father (above) at [41]);
(b) misleading the Court (Re W (A Child) (above) at [10]);
(c) failing to engage with other parties or attend court hearings (Re E-R (Child Arrangements [2016] EWHC 805 (Fam) at [79]); and
(d) making/maintaining allegations known to be wholly false (The Mother v The Father [2021] EWHC 2602 (Fam) at [34] (also found to be reprehensible behaviour)).

Wasted Costs

17. Ms Hibbert and Mr Mensah set out the law and there is no material difference within the core principles. I adopt that which is within Ms Hibbert's submissions as follows –

18. CPR Part 46 and PD46 applies to family proceedings by virtue of FPR 2010 r28.2.

19. A wasted costs order is an order that a legal representative pay a sum (either specified or to be assessed) in respect of costs to a party or for costs relating to a specified sum or items of work to be disallowed (CPR PD 46 para 5.1). The court may make a wasted costs order of its own initiative (CPR PD 46 para 5.3).

20. Per CPR PD 46 para 5.5, "*it is appropriate for the court to make a wasted costs order against a legal representative, only if –*

(a) the legal representative has acted improperly, unreasonably or negligently;
(b) the legal representative's conduct has caused a party to incur unnecessary costs, or has meant that costs incurred by a party prior to the improper, unreasonable or negligent act or omission have been wasted;
(c) it is just in all the circumstances to order the legal representative to compensate that party for the whole or part of those costs."

21. Although a legal representative should not be held to have acted improperly, unreasonably or negligently simply because they act for a party who pursues a claim or a defence which is plainly doomed to fail, they may be liable for wasted costs where their assistance in proceedings amounts to an abuse of process. Per Bingham LJ in *Ridehalgh v Horsefield, and Watson v Watson (Wasted Costs Orders)* [1994] 2 FLR 194 at [206]:

> "*It is, however, one thing for a legal representative to present, on instructions, a case which he regards as bound to fail; it is quite another to lend his assistance to proceedings which are an abuse of the process of the court. Whether instructed or not, a legal representative is not entitled to use litigious procedures for purposes for which they were not intended, as by issuing or pursuing proceedings for reasons unconnected with success in the litigation or pursuing a case known to be dishonest, nor is he entitled to evade rules intended to safeguard the interests of justice, as by knowingly failing to make full disclosure on ex parte application or knowingly conniving at incomplete disclosure of documents. It is not entirely easy to distinguish by definition between the hopeless case and the case which amounts to an abuse of the process, but in practice it is not hard to say which is which and if there is doubt the legal representative is entitled to the benefit of it*."

22. Per FPR 2010 PD 2.2, an application may amount to an abuse of process justifying the striking out of that application "*where it cannot be justified, for example because it is frivolous, scurrilous or obviously ill-founded*."

23. In *Hunter v Chief Constable of the West Midlands Police & Ors [1981] UKHL 13*, at 536, Lord Diplock defined abuse of process in general as:

> "*'misuse of [the court's] procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right- thinking people. The circumstances in which abuse of process can arise are very varied ... It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power*".

24. Bringing an application or an appeal which should never have been brought because it is without merit may well amount to an abuse of process justifying a wasted costs order for 100% of the successful party's costs (*B v B (Wasted Costs: Abuse of Process) [2001] Fam Law 340*).

The Evidence

25. I have had the benefit of the bundle from the final hearing in this case which totalled 574 pages containing the applications, orders, statements of the parties, Cafcass safeguarding letter and s7 report from the local authority social worker and disclosure from A's school including his EHCP, CPOMS

records and CIN review meeting minutes. I also had the benefit of a transcript from the final hearing in October 2023 and the additional report prepared by a Family Support Worker who observed A at both the mother and father's home.

26. I have also taken into account the findings I made following the final hearing contained in the court's written judgment of 5 September 2024, the written submissions of Ms Hibbert for the father, Ms Gilmore for the mother and Mr Mensah on behalf of Goldfield Solicitors.

27. I have also had the benefit of the costs bundle of 23 pages and the N260 submitted detailing the costs applied for.

The Background

28. The October 2023 order was for A to live with both his parents. His time to increase incrementally until he was spending 50% of his time with both parents. Shortly after the order was made, the mother stated A was not coping with the new arrangements and in January 2024 issued an application to vary the arrangements. However, no detail was provided as to the variation sought.

29. The mother also relied on domestic abuse allegations including physical, financial, emotional and psychological. There is some reference to this within the June 2023 s7 report of the local authority but was not relied on by the mother. Within the same report, the parents' other children identify the mother as having been abusive to the father as well and the father makes those allegations in his statement. Contact moved forward by consent in June 2023 and while the court was not explicit about it, I infer that it determined a fact finding hearing unnecessary because overnight contact was conceded.

30. At the October 2023 final hearing before me, a significant portion of time was utilised for the parties to discuss and reach agreement. However, that was not possible and I determined the remaining disputes. In an oral judgment I found

there had been parental conflict in relation to A, their divorce and financial separation; it was necessary to make orders because they would not put aside that conflict, including at handovers; there were no reasons why it would be unsafe for A to spend extended time in his father's care; and it was necessary to make a Family Assistance Order to protect A's welfare.

31. In January 2024, the mother applied to reduce the father's time with A. At the FHDRA hearing on 21 March 2024, the court made a non-molestation order against the mother of its own motion after she admitted placing a recording/tracking device in A's bag to track/record him and the father as well as the allegations of the father. The court expressed concern about A not being taken to school. On 4 June 2024, the mother removed A from school and intended to home school him. The court made prohibited steps orders on the father's application.

32. Thereafter, the mother applied for but was denied permission to adduce the covert recordings she had made of A with his father. Subsequently that application and permission to adduce additional evidence was renewed before

me. I refused permission to rely on the covert recordings. In relation to other video recordings the order of 1 July 2024 recites –

> *9. The court indicated to the parties that their evidence for the final hearing must remain proportionate. The mother suggested it may be 4 videos of A, 2 in the morning and 2 in the afternoon. The court gave indications that would be proportionate. However, the only restriction is that any evidence submitted must be proportionate.*

33. At the outset of the final hearing, it was raised by Ms Hibbert that the mother had filed 6 statements totalling 33 pages rather than the one statement of 8 pages directed. Mr Mensah claimed he had misunderstood the direction. I did not accept that and made the following finding -

> *"11. I do not accept that the mistake was a simple misreading of the direction. The direction is clear - "a statement dealing with the following matters". The father filed a single statement and it would be suspicious that he did not file several statements."*

34. I also note the emails, dated 5 August 2024, where the filing of these statements was challenged by Ms Glover of Machins Solicitors LLP on behalf of the father. Ms Glover asks why there are multiple statements when there was only permission for a statement. Mr Mensah responds the direction is for multiple statements. However, that was not the direction.

35. There was also a further application by the mother, on the day of the final hearing, for permission to adduce further evidence in respect of a compilation of clips making up videos of A and some still images. While these were permitted, I noted they did not comply with the court's indications, they were undated and carried narrative within the videos to explain them. They had not been served in a viewable format on the father or his legal team. And I made the following finding -

> *"14. …The mother has submitted a small number of videos however, they are compilations and contain 45 videos across them. that is far from the indication that I gave as to what might be proportionate. In my assessment it is in direct violation of the direction and purposefully so."*

36. I heard the oral evidence of the parties. The mother attempted to portray a meek character and that there were misunderstandings because English was her second language. I did not consider this an accurate portrayal of herself; there was no ambiguity in her seeking to withdraw A from school; gathering evidence by covertly recording; elevating minor matters, including making allegations of sexual abuse against a baby sitter. I found the mother was inconsistent, independently recorded evidence, raised new details only in oral evidence, exaggerated and at times was not honest.

37. I did accept the mother considers she is not listened to. Professionals appear to hold a fixed view. I considered the mother herself to be rigid and that only she can care for A.

38. The father was direct but not always open. He accepted in oral evidence for the first time that A can be dysregulated in his care but not to the extent the mother describes. He accepted that they have never discussed it.

39. I concluded that there had been a failure on the part of the local authority in providing support under the Family Assistance Order I made in October 2023. Some help is offered but rejected by the mother.

40. I determined –

> *"68. I am satisfied that A has experienced harm from the changes in his circumstances because he has not been properly supported and the parents' failure to communicate. The lack of a parenting plan, ordered in October 2023, demonstrates that each of them have continued to parent separately not together for A's benefit."*

41. I concluded that

> "*69. … he [A] can be dysregulated at times and there are suggested ways of managing that and that it is unlikely he is dysregulated to the extent that mother perceives…*
> *70. … I note that parental conflict stems from the intransigence from both parties, but more so of the mother. Her disclosures less than a month after the October 2023 order of coming back to court and then applying in January 2024 demonstrate there was no real attempt to give the order time to work. That was compounded by the lack of real support as envisaged by the Family Assistance Order…*
> *71. …there has been no material change in the circumstances of the parents or A in the period since October 2023. however, there has been a digging in by both parents. I note there is ongoing financial proceedings between them and this likely has added to the conflict. That ongoing conflict is harmful to A…*
> *… The current arrangement of time means there are more transitions for A…*
> *… I consider it necessary to vary the child arrangements order to reduce the number of transitions and the level of conflict that A experiences…"*

42. I made orders that

(a) A live with each parent in alternating weeks;
(b) A prohibited steps order that A is not removed from his school following the mother's concerted efforts to remove A from his school, which I considered a protective factor.
(c) A non-molestation order made in March 2024, extended for 9 months because the mother had continued to be abusive to the father in messages following the order being made.
(d) A s91(14) order.

43. I also determined –

> *"75. This is the second application made about A in 12 months. I note the first was by the father for contact, the second by the mother for a*

variation of that order. I am satisfied that this application was without merit. While the mother applied for a variation, the underlying focus has been a reduction of time in the father's care. That application was not made by way of an appeal, which much like this application would likely have been considered as without merit. The mother's application was put in motion from as early as 9th November 2023 when she attended the GP surgery and complained about A's sleep being dysregulated and hitting out at her. Yet by this stage, there had been no change in

A's arrangements as from the final hearing in October 2023.

76. In pursuing that course, the mother has not complied with court directions. While ultimately a party's conduct is their own, I note that some of that conduct is attributable to her solicitors, in particular in relation to statements…"

44. The correspondence of the parties further highlights that the mother's solicitors submitted statements to the court without the courts permission or seeking it. An email between the parties' solicitors, on 5 August 2024, highlights the submission of multiple statements in contravention of the court's order. Mr Mensah is aggrieved and suggests the court should decide but does not seek to raise it with the court. His oppositional approach extends to the identity of counsel for the final hearing, claiming he would only reveal it if the father's solicitors did so first. Following a number of emails, it is evident the father's solicitors' seek answers to questions or explanations for submission of documents but they are not responded to directly.

45. The final hearing did not conclude in the time allocated to it. It had to be adjourned. A portion of time was taken up with the applications the mother made to rely on additional evidence. Although, it cannot be said that was the sole cause of the court adjourning part heard.

46. Following the judgment being handed down in the absence of the parties to save further costs, directions were made for the parties to address the issue of costs.
The mother's solicitors failed to respond as directed by 18 October 2024. Ms Gilmore was instructed the day before the response was due and sought an extension from me directly. That extension was granted and Ms Gilmore duly filed the response in time. However, Ms Gilmore was not instructed to respond in respect of the show cause direction to the solicitors. The father's solicitors chased up the mother's solicitors but got no responses as at 30 October 2024.

47. On 4 November 2024 I received an email from Mr Mensah explaining his difficult personal circumstances. Time to respond was extended to 14 November 2024 and I directed a chronology be provided as to why there was a delay and why no other member of the firm took up responsibility.

48. Mr Mensah filed the firm's response on 14 November but no chronology was included. Ms Glover chased this up and Mr Mensah emailed to state it had been included within the response. However, there is no mention of matters beyond the final hearing within the response. Mr Mensah's email of 19 November sets outs his personal difficulties and then provides that the firm's

family department was understaffed because the other three fee earners were also experiencing personal difficulties –

> *"1. One team member was in [African Country] for her mother's funeral and has yet to return*
> 2. *Another team member had travelled to [African Country] for urgent family matters and is also still abroad.*
> 3. *A third team member was on extended leave."*

49. Ms Glover's response was to point out this approach was a feature of Goldfield's solicitors' conduct throughout and has increased the costs of the father.

Conduct

Solicitors

50. I am satisfied that there has been improper, unreasonable and negligent acts on behalf of Goldfields Solicitors. I have no doubt that there was no misunderstanding about the direction regarding statements. The approach to video evidence was almost identical. The court's directions were not complied with on multiple occasions. Thereafter there was no permission sought or it was sought at the final hearing.

51. Mr Mensah's approach to relatively routine enquiries from the father's solicitors was obstructive. At times he failed to respond at all and others he failed to act when necessary. That conduct continued following the court issuing directions regarding costs. Mr Mensah suffered terrible personal circumstances and there can be no doubt the impact upon anyone would be significant. However, I note that he returned to work on 4 November 2024, yet still failed to comply with the courts directions.

52. I do not consider that the mother's solicitors are responsible for her making the application or pursuing it in circumstances I have considered it to have been totally without merit. In order to do so I would have to consider their assistance to an abuse of process of the court. While there are a number of failings, the solicitors conduct cannot be said to have been dishonest, misleading or to have risked the interests of justice. Furthermore, the instructions provided by the mother may have had some basis to cause the solicitors to consider there was merit in the application. I therefore do not consider the conduct of the solicitors to amount to an abuse of process of the court.

53. The applicant is responsible for preparing the bundle, in this case Goldfields on behalf of the mother. However, I note that they failed to do so and the bundle was prepared by Machins' instead. That in my assessment has furthered the overriding objective in circumstances where they were not the responsible party. It further underlines the negligence of conduct of Goldfields.

54. Mr Mensah and Goldfields Solicitors conduct in failing to comply with directions and engage with the father's solicitors has caused the father's solicitors to incur costs. Those costs have been in chasing up non-compliance, seeking clarifications when met with obstructive responses, responding to or seeking permission to respond to late filing of evidence. Those costs were unnecessary.

The mother

55. The mother's case did not succeed. The variation of the order was made because I was seized of A's welfare and in light of the conflict brought about by the mother, it was necessary to vary the order. Conflict that occurred at handovers or had the potential to impact A's welfare and therefore handovers needed to be reduced.

56. The mother always intended to return to court, her indication was given shortly after the October 2023 final hearing. During these proceedings offers made by the father's solicitors to settle have not been responded to or rebuffed. The mother sought to raise several matters that had no basis in fact, in particular the dysregulation of A, the allegations against the baby sitter and that the father was not able to cope with A's care, threatening him physically. The mother pursued these matters, including by covertly recording to gather evidence – which did not support her allegations, until very nearly the final hearing. She raised new matters during oral evidence and sought to defend the allegations she made despite the evidence being to the contrary. The mother not only sought to gather evidence but created it as well in the stitched together videos. These videos could not possibly, undated and without any real length to each clip, demonstrate what the mother was articulating. The videos themselves went directly against the courts indication about proportionate evidence. Proportionality that I consider the solicitors ignored when seeking to admit them. Also during the proceedings the mother has submitted a number of witness statements, that the solicitors have not sought permission for, late or without direction.

57. I consider it was unreasonable for the mother to raise or pursue A's dysregulation or disrupted sleep as a basis to vary the child arrangements order. At the time the mother gave her first indication of applying to court, nothing had yet changed, thereafter there was nothing to indicate A's dysregulation was any different to that he normally experienced or directly linked to spending more time with his father which had not changed yet. I therefore reject the submission on behalf of the mother that the local authority's failure to provide support under the Family Assistance Order justified the application. The courts findings about the lack of support came later. In any event the proper recourse to a lack of support from the LA would be judicial review. During the proceedings the conclusion of the local authority was that there should be no change in the arrangements from the October 2023 order, yet the mother pursued it.

58. In fact, the mother pursued the course so doggedly that she essentially withdrew

A from school unilaterally. There was no concern from the school that A was dysregulated there. It was a significant step and bypassed the father's parental

responsibility while in proceedings. It necessitated an application to the court. I have no doubt that this was connected to the mother's attempts to evidence her position and not A's behaviours or welfare.

59. I am satisfied a combination of the mothers and solicitors conduct has caused delay in this matter. The non-compliance with directions was met with robust case management and ensured the final hearing was able to proceed. However, the applications on the day of the final hearing coupled with the mother's evidence caused the hearing to run over. That necessitated a further hearing day and both the mother and solicitors are partly responsible for that.

The father

60. The father is also responsible for not engaging in the co-parenting. However, that is not litigation conduct. Once the proceedings were underway, his solicitors made offers to settle matters, his conduct personally has not been unreasonable or reprehensible.

Costs

61. I remind myself that costs in family proceedings are unusual. I must ensure that A is the only winner. I note the parties continue to litigate financial settlement, however, it does not appear any hardship would be caused to the mother by an order for costs. While that is submitted on her behalf, there is nothing to demonstrate why or how. I do not consider there would be any risk to A's welfare for the mother to pay costs even though it may diminish the funds available, it will not do so to the extent that hardship will follow. I am mindful that costs will exacerbate feelings between the mother and the father. However, not to the degree that it will be to A's detriment anymore so than the conflict that already exists. The financial remedy proceedings are imminent and therefore it would be short lived. A bright spot in the parties conduct is that the October 2023 order was fully implemented, so they have demonstrated they are capable of putting aside the conflict even if only in a limited capacity.

62. In my assessment the mother's behaviour has been unreasonable and in some respects reprehensible in pursuing the application and the manner in which it has been pursued. There was no scope on her part to co-operate or negotiate, indeed only at the final hearing was any offer made of the arrangements that could be accepted for the future arrangements. In my assessment the mother's conduct has been to achieve her own ends in the arrangements A has, that has included reducing the time with his father.

63. I am satisfied that this application was without merit, the court making an order

because it was necessary to safeguard A's welfare. The mother and her solicitors failed to engage with the father and his solicitors, at times with the court, including failing to comply with it's directions or seek relief. I have taken into account that costs should not prohibit parties assisting the court where a child's welfare is under consideration. However, the mother's conduct

is such that a costs order is justified in this case. While she has attempted to place this
against A's welfare, I am satisfied it has been about her intent and not A's welfare. I consider it just to order a proportion of those costs be borne by Goldfield Solicitors

Quantum

64. While the quantum of the costs has not been disputed, I do not consider the totality of the costs can be paid by the mother or the solicitors individually. They have each contributed to the costs incurred. The mother from the outset of this application and in the way it has been pursued thereafter. The solicitors in their negligence to properly conduct the litigation. I am not assisted by any breakdown of the costs incurred as a result of the solicitor's approach. There is no identification of how often responses or chasers were sent or how many extra minutes or hours work went into matters as a result of Goldfield's actions. I note from the evidence produced and my own interactions, at least 3-4 emails, letters or calls were required each time; responses from Ms Glover or Ms Hibbert then followed. As a result of the staggered nature of Goldfield's responses that itself required more than one response by Machins on behalf of the father. I am therefore satisfied that while the overall responsibility for this application rests with the mother and therefore the majority of the costs, there is a significant element that is attributable to the conduct of Goldfields.

65. In those circumstances I am satisfied that the appropriate approach is to order a split in the costs of 35% against the solicitors and 65% against the mother.

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