

T (Children) [2012]

[2012] UKSC 36

25/07/2012

Barristers

Teertha Gupta KC
Charles Hale KC
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Practice Areas

Public Children Law

Summary

Supreme Court appeal concerning the liability of a local authority to pay the costs of a party to care proceedings. Held unanimously that the general practice of not awarding costs in care proceedings against a party, including a local authority, in the absence of reprehensible behaviour or an unreasonable stance, should not be subject to an exception in the case of discrete fact-finding hearings.

Facts

This appeal concerns the liability of a local authority to pay the costs of a party to care proceedings.

The proceedings related to two children, whose parents were separated. The local authority applied for a care order under section 31 (2) Children Act 1989 in response to the making of allegations by the children that they had suffered sexual abuse by their father and six other men, in which the father's parents ('the grandparents') had colluded. The six men and the grandparents were joined to the care proceedings as interveners. The judge conducted a lengthy fact-finding hearing, as a result of which he exonerated five of the six men and the grandparents of any such abuse.

The interveners were entitled to be represented at the hearing. The six men qualified for legal aid but the grandparents did not. They incurred costs of £52,000, which they met by taking out a mortgage on their house. At the end of the hearing they applied for an order that the local authority should pay their costs on the ground that they had succeeded in defending the allegations made against them. It was accepted that the local authority had acted reasonably in bringing the proceedings.

The judge refused their application on the basis that it was not usual to order costs in a child case against a party unless that party's conduct had been unreasonable or reprehensible. The Court of Appeal allowed the grandparents' appeal, holding that costs could be awarded in respect of discrete fact-finding hearings.

Although it rarely hears appeals relating solely to costs, the Supreme Court granted permission to appeal because of the important point of principle raised by the appeal, on terms that, whatever the result, the

grandparents' entitlement to recover their costs as a result of the order of the Court of Appeal would not be disturbed.

Held

JUDGMENT

The Supreme Court unanimously allows the appeal. It holds that the general practice of not awarding costs in care proceedings against a party, including a local authority, in the absence of reprehensible behaviour or an unreasonable stance, should not be subject to an exception in the case of discrete fact-finding hearings. Lord Phillips delivers the judgment of the court.

REASONS FOR THE JUDGMENT

Family proceedings depart from the general rule applicable in civil proceedings that the unsuccessful party will be ordered to pay the costs of the successful party (CPR 44.3(2) (a)). This is because there are special considerations that militate against the approach appropriate in other kinds of adversarial litigation, particularly where the interests of children are at stake. It is usual in proceedings involving a child for no order to be made in relation to costs [11].

Care proceedings usually involve allegations of misconduct towards a child by some persons, typically a parent. The object of the proceedings is to reach a decision which is in the best interests of the child. Often it is necessary to resolve issues of fact which are disputed. The decision whether or not to have a split hearing is one of case management, taken by the court, and cannot affect the principles to be applied by the court when dealing with costs. If it is correct in a particular case to award costs in relation to individual issues of fact this can more easily be done if the costs associated with those issues are incurred in a separate hearing, but this is only relevant to the practicality of such an order [28].

The question of whether it was just to make an award of costs against a public authority had to be distinguished from the question of whether a litigant's costs should be publicly funded, which was a matter for Parliament [39]. The current arrangements might lead to injustice for interveners in the position of the grandparents in the present case, but it did not follow that justice demanded that any deficiency in the provision of public funding should be made up from the funds of the local authority responsible for care proceedings [40]. Equally, if in principle a local authority should be liable for the costs of interveners who succeed in showing that factual allegations against them are unfounded, this liability should arise whether or not the interveners are publicly funded [41].

It was legitimate to have regard to the competing demands on the limited funds of the local authority. It was not right to treat it as in the same position as a civil litigant who raises an issue that is ultimately determined against him. A local authority has a duty to investigate reports that a child has been subjected to significant harm and, where there are reasonable grounds for believing that they may be well founded, to instigate care proceedings. In this respect the role of the local authority has much in common with that of a prosecuting authority and it is for the court to determine where the truth lies [42]. There was no valid basis for restricting the approach of the Court of Appeal in this case to findings of fact in a split hearing and the effect on the resources of local authorities would be significant [43]. For these reasons the Supreme Court concluded that the general practice of not awarding costs in care proceedings against a party, including a local authority, in the absence of reprehensible behaviour or an unreasonable stance, is one that accords with the ends of justice and which should not be subject to an exception in the case of split hearings [44].

Permission

Family Law Week 