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In the matter of S (A Child)

[2015] UKSC 20

25/03/2015

Barristers
Cyrus Larizadeh KC
Dorothea Gartland KC

Court
Supreme Court

Practice Areas
Public Children Law

Summary
The principle that local authorities should not generally be ordered to pay costs in care proceedings, as set out in T (Care Proceedings: Costs: Serious Allegations Not Proved), Re [2012] UKSC 36, [2012] 1 W.L.R. 2281, was applicable to appeals. The Court of Appeal had therefore erred in ordering a local authority to pay a father's costs where there were no exceptional circumstances to justify that.

Facts
The appellant local authority appealed against a decision ([2015] UKSC 20, [2015] 1 F.L.R.130)) that it should pay the costs incurred by the respondent father in care proceedings concerning a seven-year-old child (S).

The local authority had made a placement order in respect of S. The Court of Appeal allowed the father's appeal against that decision. It found that the local authority had not taken an unreasonable stance at first instance, but observed that it had resisted the appeal while recognising the deficiencies in the judgment in the lower court. It ordered the local authority to pay the father's costs of the appeal. The issues were whether (i) there was any reason to depart from the principle, set out in T (Care Proceedings: Costs: Serious Allegations Not Proved), Re [2012] UKSC 36, [2012] 1 W.L.R. 2281, that local authorities should generally not be ordered to pay costs in care proceedings; (ii) there were circumstances other than reprehensible behaviour towards the child or unreasonable conduct of the proceedings which might justify a costs order.

Held
(1) There were several distinctions between Re T and the instant case. Re T was a fact-finding decision at first instance, whereas the instant case concerned an appellate hearing in which the essential facts were not in dispute. Costs at first instance were governed by the Family Procedure Rules 2010 Pt 28, whereas costs on appeal were governed by the CPR Pt 44. Further, Re T concerned the costs to be borne by interveners concerned with clearing their own names, whereas the instant case concerned the costs to

be borne by a parent who wished to undertake care of a child (see para.15 of judgment). The general rule that the unsuccessful party would be ordered to pay the costs of the successful party did not apply to first instance or appellate proceedings about children. However, CPR r.44.2(4) and r.44.2(5) applied. Whenever a court had to determine a question concerning a child's upbringing, the welfare of the child was the court's paramount consideration. There were no adult winners and losers: the only winner had to be the child. No one should be deterred from playing their part in helping the court achieve the right solution by the risk of having to pay the other side's costs. In most children cases, it was also important for the parties to be able to work together and with the local authority, both during and after the proceedings. Stigmatising one party as the loser and adding to that the burden of having to pay the other party's costs was likely to jeopardise the chances of their co-operating in the future. In addition, having to pay the other side's costs might reduce the resources available to look after the child in certain circumstances. If local authorities were faced with having to pay parents' costs as well as their own, there would be less in their budgets for looking after the children in their care, providing services for children in need and protecting other children who were at risk of harm. All of those considerations led to the conclusion that costs orders should only be made in unusual circumstances, such as where the conduct of a party had been reprehensible or a party's stance had been beyond the band of what was reasonable, Re T followed (paras 15, 20-24, 26). The fact that Re T concerned interveners rather than parents was not a valid reason to distinguish it. All the reasons why costs orders were inappropriate in children's cases applied much more strongly to parents and local authorities. In general, parents were always entitled to resist the state's claim to remove their children from them and they would usually be reasonable in doing so. They should not have to pay the local authority's costs if they lost. It did not follow from that that if the local authority lost, it had been unreasonable in seeking to protect the child: that would depend on the circumstances of the case. Nor was the fact that the instant case concerned an appeal rather than a trial at first instance a good reason to depart from the general principle. It might be that conduct which was reasonable at first instance was no longer reasonable on appeal, when factual findings had been made and the judge's reasons were known, but that did not alter the principles to be applied (paras 27-29). (2) The judgment in Re T had not ruled out the possibility that there might be other circumstances in which costs awards in care proceedings might be appropriate. However, local authorities should not be in any better or worse position than private parties when it came to paying the other parties' costs. If the best outcome for the child was to be brought up by her own family, there might be cases where real hardship would be caused if the family had to bear its own costs of achieving that outcome. If a child's welfare would be put at risk, it might be appropriate to order the local authority to pay the parent's costs (paras 31-33). (3) In the instant case, it was not suggested that the local authority had behaved in any way reprehensibly. It had been reasonable for it to have maintained the stance which it took at first instance. None of the exceptions to the general approach applicable to awards of costs in children's cases applied (paras 35-39).

Permission

To read the judgment, please click here.