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The Issue of Costs following the Supreme Court Decision in T (Children)

An Article for Family Law Week

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Barristers

Dorothea Gartland KC

Dorothea Gartland, barrister, 4 Paper Buildings and Penny Logan, principal lawyer, Cafcass, consider the lessons to be learned from T (Children).

The Supreme Court decision in ***T (Children)*** [2012] UKSC 36 reaffirmed the general practice of not awarding costs against a party, including a local authority, in the absence of reprehensible behaviour or an unreasonable stance by that party.

This case started as a result of care proceedings brought by a local authority which involved a lengthy fact finding hearing. The local authority sought findings which included allegations made against non-parties. The non-parties included the children's grandparents who were invited to intervene in the proceedings to answer the allegations against them. The grandparents were not eligible for public funding and so borrowed money to afford legal representation at the hearing. They were completely exonerated in the fact finding judgment and consequently sought the costs of their representation from the local authority. HHJ Dowse in the care proceedings rejected their application.

The grandparents appealed to the Court of Appeal where this decision was overturned and costs were awarded against the local authority (***Re T*** [2010] EWCA Civ 1585, [2011] 2 FLR 264). The local authority was granted permission to appeal to the Supreme Court with the requirement that, whatever the result, the grandparents' entitlement to their costs from the local authority would remain.

As the Supreme Court notes, it is ironic that in a case about costs, the advocates prepared and attended the hearing on a pro bono basis.

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