

# Kent County Council (Respondent) v (1) A Mother (2) F (3) X (A Minor) (4) Y (A Minor) (5) Z (A Minor) (6) IR (Applicants) (2011)

**[2011] EWHC 1267 (Fam): [2011] 2 FLR 1088 : [2011] Fam Law  
933 : (2011) 108(26) LSG 18**

18/05/2011

## **Barristers**

Jo Delahunty KC

## **Court**

Family Division

## **Practice Areas**

Public Children Law

## **Summary**

Where the court took the lead in identifying the issues to be litigated at a fact-finding hearing, it would generally be inappropriate to depart from the general proposition that there should be no order as to costs in family cases.

## **Facts**

After a fact-finding hearing in care proceedings concerning three children, the applicants, being the children's mother (M), the father (F) of one of them, the children themselves and the mother's current partner (P), sought an order for costs against the respondent local authority.

The judge had found that the local authority had undertaken its disclosure obligations in "a wholly unsatisfactory, piecemeal and haphazard fashion". He also found that much of the task of reading through the local authority documents to identify relevant material had been carried out by the applicants' counsel, who had to work late into the night and at weekends in the course of the hearing.

The applicants argued that the local authority should pay a proportion of their costs as a result of its failure to comply with its disclosure obligations. P also argued that the local authority should pay all or part of his costs on the ground that he, unlike M and F, had been completely exonerated of all allegations made against him.

## **Held**

(1) The hearing had exceeded its time estimate by seven days. At least three of those days, and at least one of the extra advocates' meetings that had taken place, were attributable to the local authority's failure to disclose documents in accordance with its duties. The local authority should pay the applicant's

costs in respect of those days and that meeting. P's position was different: the local authority's approach to disclosure had not caused additional costs to be incurred on his behalf. Further, it had been wholly inappropriate for the local authority to delegate the task of reading through its documents to the applicants' counsel; it should meet the costs of such work. Moreover, a significant proportion of the written submissions on behalf of the guardian had been occasioned by the local authority's failings, and it was right that the local authority should meet those costs as well (see paras 29-32, 48 of judgment). (2) It was true that serious allegations had been made against P at the fact-finding hearing and that he had been completely exonerated. However, the decision to investigate those allegations had been made by the court on F's application, not the local authority's. It would therefore not be right to order the local authority to pay P's costs (paras 41-43). (3) (Obiter) Wilson L.J. had expressed concern that the order for costs made in J (Children) (Costs of Fact-Finding Hearing), Re [2009] EWCA Civ 1350, [2010] 1 F.L.R. 1893 should not be taken as an indication that it would be appropriate in the vast majority of children's cases to make an order for costs by reference to the court's determination of issues of historical fact. That observation was a sound one, Re J considered. It was sometimes said that, at the fact-finding stage of applications for care orders, the proceedings were essentially adversarial, in contrast to the second stage, when, once it was established that the threshold under the Children Act 1989 s.31 had been crossed, the court adopted an inquisitorial or quasi-inquisitorial process to determine what orders should be made to meet the child's welfare. In fact, as this case had shown, that analysis was simplistic and often inaccurate. In many cases, particularly in the county court and High Court, the court would take a proactive approach to identify the issues to be investigated at the fact-finding stage. Indeed, the trend in public law cases in recent years was to encourage courts to adopt such a proactive approach, and all the indications were that this trend would be endorsed and extended following the Family Justice Review. Where the court took the lead in identifying the issues to be litigated at a fact-finding hearing, it would generally be inappropriate to depart from the general proposition that there should be no order as to costs in family cases (para.45).

Applications granted in part

**Permission**

Lawtel 