Neutral Citation Number: [2019] EWHC 2800 (Fam)

Case No: MB19P00683

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/10/2019

Before :

THE HONOURABLE MR JUSTICE COBB

- -

Between :

Redcar & Cleveland Borough Council — **Applicant**

- and -

Respondents

PR

SR (father of PR)

TR (mother of PR)

- -

Re PR (Application under the inherent jurisdiction: Costs)

- -

Simon Burrows and Fay Collinson (instructed by **Cygnet Law**) for the Local Authority
Nageena Khalique QC and Alexander Ruck Keene (instructed by **BHP solicitors**) for the First Respondent (PR, subject)
Ella Anderson (instructed by **Punch Robson**) for the Second Respondent (father of PR)
Jacqueline Thomas (instructed by **Switalskis**) for the Third Respondent (mother of PR)

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in public. 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 PR and members of her 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.

The Honourable Mr Justice Cobb :

1. On 5 September 2019, I handed down judgment in this case, bringing to an end proceedings which had been launched by Redcar and Cleveland Borough Council in March 2019: see [2019] EWHC 2305 (Fam). I indicated at that time, and in the Order which followed the judgment, that if any party sought to argue the question of costs, they could informally apply to me in writing (within a defined timetable), and that I would resolve the issue in writing.

2. In accordance with that direction, I subsequently received written submissions from Miss Anderson (on behalf of SR) and Miss Thomas (on behalf of TR); both counsel seek to recover their client's costs of the proceedings from the Local Authority. There is no such claim from PR. The Local Authority has responded in writing, opposing these applications for costs.

Costs principles: application under the inherent jurisdiction in relation to a vulnerable adult.

3. *Section 51(1)* of the *Senior Courts Act 1981* provides that, subject to rules of court, costs shall be in the discretion of the court.

4. Although not expressly addressed in the submissions, it is my view that the applicable 'rules' for present purposes are the *Civil Procedure Rules 1981* ('*CPR 2010*'), not the *Family Procedure Rules 2010* ('*FPR 2010*') The *FPR 2010* only apply to 'family proceedings' (see *rule 2.1 FPR 2010*), otherwise the *CPR 1998* apply. The proceedings before the court under the inherent jurisdiction in respect of a vulnerable adult, albeit brought in the Family Division, are not categorised as 'family proceedings'. 'Family Proceedings', for these purposes, has a specific meaning as set out in *section 32* of the *Matrimonial and Family Proceedings Act 1984*:

> "… "family business" means business of any description which in the High Court is for the time being assigned to the Family Division and to no other Division by or under *section 61* of (and *Schedule 1* to) the [*Senior Courts Act 1981*]; "family proceedings" means proceedings which are family business".

5. The *Senior Courts Act 1981*, *section 61(1)* ('Distribution of Business') provides that "business in the High Court of any description mentioned in *Schedule 1*, as for the time being in force, shall be distributed among the Divisions in accordance with that

Schedule". Within that schedule (at *Schedule 1, para.3(b)(ii)*), there are assigned to the Family Division a range of cases including those where the High Court is exercising "the inherent jurisdiction … with respect to minors, the maintenance of minors and any proceedings under the *Children Act 1989*, except proceedings solely for the appointment of a guardian of a minor's estate". There is, materially, no reference in *Schedule 1* to the exercise of the inherent jurisdiction of the High Court in relation to vulnerable adults.

6. *Rule 44.1 CPR 1998* emphasises the discretion as to *whether* costs are payable by one party to another, and if so, the *amount* of those costs; and *when* they are to be paid. While the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, the court may of course "make a different order" (*rule 44.2*).

7. Specifically, in deciding what order (if any) to make about costs, the court is enjoined (*rule 44.2(4)/(5)*) to have regard to *all the circumstances*, including (but not limited to):

   i) the *conduct* of all the parties;

   ii) whether a party has *succeeded* on part of its case, even if that party has not been wholly successful.

   In relation to 'conduct':

   iii) this includes "conduct before, as well as during, the proceedings";

   iv) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

   v) the manner in which a party has pursued or defended the case or a particular allegation or issue; and

   vi) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

Key findings

8. The judgment at [2019] EWHC 2305 (Fam) should be read in its entirety in order to understand the context for this decision. As I indicated there:

> "No-one doubts that cases concerning vulnerable adults raise extremely challenging issues – for the professionals 'on the ground' making clinical and/or skilled judgments in the exercise of their responsibilities towards the person who, it is felt, would benefit from protection" [37].

   The issue is particularly acute for Local Authorities, as here, which owe various duties towards a vulnerable person, such as PR, including those duties under *section 42* of the *Care Act 2014* (see [3]).

9. For the purposes of this judgment, it is important to note that at the time of the application in March 2019:

i) PR had recently disclosed aspects of her home life with her parents which gave the professional safeguarding and care agencies considerable concern about her future well-being should she return there [6], though I made no findings about this;

ii) There was a suggestion in the documents that parental influence over her was disabling her from making true choices [6]. At that time, "PR was threatening to end her life if she did not receive protection" [6];

iii) "PR appeared to be a vulnerable person because of her range of mental health difficulties, and she was believed to be susceptible to coercive or controlling influence at home" [39]; in fact, PR was anxious that the Second and Third Respondents should not have access to some of the information (relevant to her) filed in support of this application [31]; this led to HHJ Hallam and, later, me adopting in this case, as it happens uncontroversially, a form of 'closed procedure' process;

iv) "[T]here was sufficient evidence that PR was confused in her thinking about her immediate future and/or was possibly being coerced and thus unable to make a decision of her own free-will; she was also suffering from a possible mental disorder" [43];

v) There was "significant pressure of time" to achieve protection for PR [7].

The consequence of all of the above is that I was "not in the least surprised that HHJ Hallam felt herself compelled to exercise the inherent jurisdiction to protect PR when the application was first presented to her, while time was taken to assess the situation" [39].

10. It is appropriate to note that after a period of time, the proceedings became "counter-productive" [12]:

> "… PR has started to withdraw her co-operation from the programmes and therapies designed to assist her, and has largely disengaged from professionals. It appears that she is worried that information she shares confidentially in the sessions and programmes will ultimately be disclosed to the court" [12].

Interestingly, it was the *First Respondent's* (i.e. *PR*'s) case that the Local Authority should have used *other* (statutory) remedies against the Second and Third Respondents (instead of using the inherent jurisdiction) [18]; it was not *her* case that proceedings should not have been brought to regulate the behaviours of her parents.

11. By the time the application was placed before me on 2 July 2019, a large measure of agreement was achieved between the parties about the way forward [4], and the proceedings concluded.

12. SR and TR argue that the proceedings were unnecessary and have proved expensive. They make the point that at no stage of the period prior to the commencement of proceedings did any social worker or other representative from the local authority

seek to canvas with them the possibility of either an undertaking or entering into a written agreement as a pre-action step prior to launching the application. I bear in mind that at an early stage of the proceedings, undertakings were given by TR, without any contest. PR's parents maintain that it was not reasonable for the Applicant to bring the proceedings without having first attempted to resolve matters with the family.

13. Mr Burrows objects to any order for costs. He maintains that the application was brought reasonably, particularly given the pressure of time and context. He adds that during the relatively short time in which the proceedings were on foot (about 14 weeks), the case was properly reviewed, reflected by the fact that the Local Authority responsibly applied to bring the proceedings to an end as soon as it was apparent that they were no longer achieving their objective.

Discussion

14. The outcome of this application did not produce one or more obviously 'successful' party, nor one or more obviously 'unsuccessful' party (*rule 44.2(2)(a)*); it may be said that the proceedings achieved the Local Authority's objective, but in the end resolved with no significant substantive order. Thus, there is no easy application of the 'general rule' (i.e. "that the unsuccessful party will be ordered to pay the costs of the successful party").

15. I have acknowledged that cases of this kind raise extremely challenging issues for a local authority or other safeguarding agency. Indeed, this case is a paradigm example. On the information available at the time of this application, it was in my judgment reasonable for the Applicant to conclude that if they notified the Second and Third Respondent of the intention to apply for an order this could have exposed PR to undue or inappropriate pressure from them (see [9](i)-(iv)). PR had disclosed aspects of her home life with her parents which gave the professional safeguarding and care agencies considerable concern about her future well-being should she return there. PR was concerned not to disclose certain information to her parents (see [9](iii)).

16. The acute situation appears to have arisen urgently, given PR's imminent discharge from hospital. The stakes in this case could not have been higher; the situation was so distressing to PR that she was contemplating ending (indeed threatening to end) her own life (see specifically [9](ii) above). So, as I further accepted when reviewing the substantive case, it was not at all surprising "that HHJ Hallam felt herself compelled to exercise the inherent jurisdiction to protect PR when the application was first presented to her" (see [9] above).

17. Once the proceedings were underway, I am satisfied that the Local Authority responded appropriately to the evolving picture; it modified its case against TR and indicated that it would be prepared to seek the discharge of the injunction against her. In fact, the injunction was maintained at PR's request. It further responded to the changing attitude of PR to the protective regime which the court had created around her on the Local Authority's application. In those circumstances, the Local Authority successfully sought to conclude the proceedings as soon as practicable, when it was apparent that they became "counter-productive" to its objectives. That said, PR remains living away from home.

18. Notwithstanding the persuasive submissions on behalf of SR and TR, I am satisfied that it was not unreasonable for the Local Authority to approach the court for protective orders, rather than attempting to obtain voluntary agreements to the safeguarding regime which they wished to create for PR. Given the limited scope of the disclosure of documentation to the Second and Third Respondents, the potential for meaningful negotiation as to outcome was limited. As it happens, the hearing on 2 July was required to determine, *inter alia*, whether the court should have made the orders which it did (see [4] of the earlier, substantive, judgment). I am not unsympathetic to the fact that the Second and Third Respondents have been put to expense in responding to this application, but see no justification for foisting that bill upon the Applicant.

19. In those circumstances, the proper order at the conclusion of these proceedings is no order for costs.

20. That is my judgment.