



Neutral Citation Number: [2021] EWFC 28

Case No: BV19D33156

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/03/2021

Before :

MR JUSTICE MOSTYN

Between :

**LM
- and -
DM**

Applicant

Respondent

Patrick Chamberlayne QC (instructed by **Keystone Law**) for the applicant
Nicholas Chapman (instructed by **Moss Fallon Solicitors Limited**) for the respondent

Hearing dates: 11 March 2021

RULING ON COSTS
(Made on written submissions)

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MR JUSTICE MOSTYN

This judgment was delivered in private. 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 the children and members of their 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.

Mr Justice Mostyn:

1. These proceedings for maintenance pending suit, interim periodical payments for the children, and for a legal services payment order are not governed by the no-order-for-costs general rule in FPR r.28.3(5). They are governed instead by a soft costs-follow-the-event principle. Calderbank offers are admissible, although none was made in this case by either side. The obligation to negotiate openly and reasonably is especially important in interim applications, which ought to be pragmatically settled in circumstances where by definition they do not make a final determination of the parties' positions. This obligation to negotiate clearly applies to these interim proceedings notwithstanding that PD 28A para 4.4 technically applies only to r.28.3 cases.
 2. The result of the case was clearly a win for the applicant. Although she did not achieve as much in quantum as she sought, the result was much closer to her position than the respondent's. She also succeeded on issues of principle which divided the parties. I agree that there were aspects of the respondent's case which were unreasonable and which reinforce my starting point that the applicant should be awarded her standard costs of the application.
 3. However, I agree that the applicant made no serious attempt to negotiate openly and reasonably beyond setting out her in-court forensic position in her witness statements. My impression was that the applicant was determined to fight the application come what may.
 4. Litigants must learn that they will suffer a cost penalty if they do not negotiate openly and reasonably.
 5. Accordingly, the applicant will be deprived of 50% of the award which I would otherwise have made in her favour. Therefore my order is that the respondent shall pay 50% of the applicant's costs of the applications to be assessed on the standard basis if not agreed. The applicant does not seek a summary assessment, or a payment on account.
 6. For the avoidance of any doubt, I confirm that no part of the sum payable pursuant to my legal services payment order is to be treated as reducing the amount of the applicant's assessable costs pursuant to s.22ZA(9) Matrimonial Causes Act 1973 as that legal services payment award relates to costs yet to be incurred, whereas the order for costs made herein in the applicant's favour relates to costs already incurred, and which will be met from the applicant's own funds namely the car sale proceeds.
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