Case No: FD20P00356

Neutral Citation Number: [2020] EWHC 3762 (Fam)

**IN THE HIGH COURT OF JUSTICE**
**FAMILY DIVISION**

**IN THE MATTER OF THE INHERENT JURISDICTION OF THE HIGH COURT**

**In the matter of R (A child)**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 December 2020

**Before**:

**MR DAVID LOCK QC**
**SITTING AS A DEPUTY HIGH COURT JUDGE**

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**Georgina Rushworth** (instructed by **Axiom Stone Solicitors**) for the Applicant Father
**Paul Hepher** (instructed by **Blackfords**) for the Respondent Mother

Hearing dates: 30 November and 1 December 2020

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**JUDGMENT ON COSTS**

**Mr David Lock QC:**

1. On 3rd December 2020 I gave judgment in a wardship application brought by "**the Father** against **the Mother** in relation to their child, R. In substance, the orders sought by the Father were that the Mother returns R to live in UK on the basis that R had been habitually resident in the UK and was wrongfully removed from the UK by the Mother.

2. I dismissed that application on the basis that R had been habitually resident with the Mother in Spain since at least January 2018, and that in any event R had not been habitually resident in the UK at any time after September 2014. The Mother now applies for an order that the Father pay her costs of these proceedings.

3. Neither party is in receipt of legal aid to fund these proceedings.

4. These are family proceedings governed by the Family Proceedings Rules 2010. Rule 28.1 provides:

> "The court may at any time make such order as to costs as it thinks just"

5. The general rule in CPR 44.2(2) that the unsuccessful party will be ordered to pay the costs of the successful party does not apply in family proceedings. In *K v K* [2016] EWHC 2002 (Fam) McDonald J said:

> "In deciding whether to make an order in respect of costs, pursuant to CPR 44.2(4) the court must have regard to all the circumstances, including the conduct of the parties, whether a party has succeeded on part of his case even if he has not been wholly successful in any admissible offer to settle made by a party which is not an offer to which costs consequences under CPR Part 36 apply. The court is also entitled to have regard to a disparity of means between the parties (E C-L v DM (Child Abduction: Costs) [2005] 2 LFR 772"

6. In exercising the broad discretion which has been given to me by Rule 28.1 FPR I bear in mind that the usual order in child abduction cases is that there will be no order as to costs: see *(E C-L v DM (Child Abduction: Costs)* [2005] 2 LFR 772 at §68. However,

it is entirely appropriate for a costs order to be made where one of the parties has behaved unreasonably or there is substantial disparity between the means of the parties.

7. In this case, it seems to me that there are a series of factors as which both individually and cumulatively constitute unreasonable conduct by Father thus justifying a costs order. These are as follows:

   a. The original application was misleading because the Father did not, as he suggested in the application, "*suspect*" that R was in Spain. He knew perfectly well that R had been living in Spain with the Mother and had been doing so on a near continuous basis since May 2017;

   b. The Father alleged that R had been "abducted" by the Mother to Spain when not only was this not true but he knew that this was not true. She had left for Spain in October 2018 with his specific consent;

   c. The Father sought to enforce the terms of an order of Mr Justice Holman of 16 March 2018 when he knew or ought to have known that this was only an interim order and that it had been overtaken by the agreement between the Father and the Mother that R would live in Spain with his Mother, at the very least for a period in the autumn of 2018;

   d. The Father commenced proceedings and sought orders on a without notice basis on the grounds that there was only "a very small window of opportunity to issue this application" when he stated factual basis for making a without notice application was wholly incorrect. The Father knew precisely where the Mother was and had had no difficulty in serving her in Spain for the previous set of proceedings and so had no need to disrupt the family when they came to England for her brother's funeral in June 2020;

   e. The Father asserted that R had been habitually resident in the UK when this was patently incorrect. R was not habitually resident in the UK once the family moved to the United States 4 months after his birth. He had only ever stayed in the UK for very short periods such as when he visited the Father for about 3

months in the summer of 2018, and therefore he cannot have genuinely thought that R's place of habitual residence was the UK;

f. The Father assisted in making unreasonable claims in this litigation including that the Mother was only living in Spain on the basis that she was "on the run" whereas it was patently clear that she had settled in Spain by choice, was living in the same village as her parents and was working full time running her parents' hotel and bar;

g. The Father had no real grounds for asserting that R was not habitually resident in Spain since he attended school there and was living a settled life there but he persisted with that allegation when it was close to absurd;

h. The Father persisted with a false and unreasonable argument that he did not know the "whereabouts" of his child when this was patently incorrect. He had been provided with the address where the Mother and the child were living and it was only his unreasonable refusal to believe the truth of this information which led to any claim that he did not know their whereabouts. However, his assertions were utterly unreasonable on both the facts and the law.

8. Taking those facts together, it seems to me that a substantially misleading picture was presented by the Father to the Court in both the original proceedings and in these proceedings. This was never an abduction case and should never have been presented to the Court as such a case. I do not accept that the Father made misleading factual statements because he was suffering psychological problems. I am satisfied he was lying.

9. In my judgment, he was pursuing these proceedings in London as opposed to pursuing the proceedings in Spain because he refused to accept that the Mother had made the decision to move with R to Spain and had settled there and sought to make a life for herself and R in Spain without him. That refusal to accept facts and harassment of the Mother was shown by a text message that the Father sent to the Mother on 5 February 2019 which said as follows;

*"Got order today. It's all a matter of time till you are served again. You need to tell R he will be coming back to the UK soon. You can't poison him no more. Get someone to take over the bar as you will not be ever leaving again with my son"*

10. There was no such "order" in February 2019 because the Father did not issue these proceedings until June 2020. It follows that this conduct cannot have been anything apart from an attempt to scare the Mother by making false claims about orders that the Father had obtained when this was untrue. I consider that the Father deliberately presented a false picture to the court in 2018, continued that conduct between the two sets of proceedings and continued it in these proceedings. I am therefore satisfied that it is appropriate to require the Father to make a substantial contribution towards the Mother's costs of these proceedings based on the Father's conduct.

11. The Mother has served a schedule indicating her costs are in the region of £25,000, to which VAT has to be added, bringing the total to over £30,000. Attempting to exercise the broad discretion given to me by FPR 28.1 and having regard to the overall level of costs, I order the Father to make a contribution of £25,000 towards the Mother's costs.