Neutral Citation No 2017 EWHC 284 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Case No: FD16P00547

Royal Courts of Justice
Strand
London
WC2A 2LL

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985 INCORPORATING THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION
AND IN THE MATTER OF: D & ORS (CHILDREN)

24th February 2017

Before:

MISS PAMELA SCRIVEN QC
Sitting as a Deputy Judge of the High Court

- -

Re: D & Ors (Children)

Counsel for the Mother: Miss Clare Renton
Counsel for the Father: Mr Edward Devereux (on 8th-9th December 2016) and Mr Edward Bennett (15th December 2016)

Hearing dates: 8th, 9th, 15th December 2016

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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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PAMELA SCRIVEN QC

This judgment is being handed down in private on 24th February 2017. It consists of 50 paragraphs pages and has been signed and dated by the judge. The judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

THE DEPUTY JUDGE:

1. On 15 December 2016 I gave judgement on the substantive matters in this case. The case concerned an application by the father for the return of the three children of the family to Spain pursuant to the 1980 Hague Convention on the Civil Aspects of International Child Abduction (as incorporated by the Child Abduction and Custody Act 1985). I refused his application for the reasons set out in that judgement which I shall not repeat here. Put briefly, I found that he had consented to the children's removal to this country by their mother and had consented to their retention here.
2. The mother made an application for costs against the father at the conclusion of my judgment. She had indicated at the outset of proceedings that she would do so if the father were unsuccessful, and had provided a Schedule of Costs when the case began. So it was no surprise that she made the application. However, Mr Devereux, who had represented her during the substantive hearing, was unexpectedly delayed in another Court and was unable to be present for judgment. As a result, a member of his chambers, Mr Bennett, attended for judgment with only about half an hour's notice. He was wholly unprepared in those circumstances to be able to deal with an argument about costs. Miss Renton, on behalf of the mother, outlined her arguments in relation to costs on the basis that they could be conveyed to Mr Devereux, but, with the agreement of both counsel, I directed that there should be written arguments to me about costs by both parties, thus enabling Mr Devereux to have the opportunity to consider the mother's application and to set out fully the father's case. I also said that I would consider whether I needed to hear further oral submissions on the question of costs when I had received the written submissions.
3. In due course I received written submissions from Miss Renton and Mr Devereux in accordance with my directions. After the written arguments had been served, I enquired of both counsel whether they wished to have the opportunity of making any further oral submissions to me. Neither wished to do so, and having had the benefit of the written submissions from each, I did not think it necessary.
4. This, then, is my judgment on the issue of costs.

The Law

5. By virtue of rule 1.2 Family Proceedings Rules 2010 ["FPR 2010"], the Court is required to give effect to the overriding objective. The overriding objective is set out in rule 1.1 of the FPR 2010.

6. Rule 28.1 of the FPR 2010 provides that: -

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

7. Rule 28.2 of the FPR 2010 applies some of the provisions of the Civil Procedure Rules 1998 ["CPR 1998"] to the costs in family proceedings, of which this case is one. Parts 44 (except 44.2(2) and (3), 44.10(2) and (3)), 46 and 47 and 45.8 of the CPR apply.

8. Part 44.2(1) of the CPR 1998 provides that: -

> "(1) The court has a discretion as to –
>
> (a) Whether costs are payable by one party to another;
>
> (b) The amount of those costs; and
>
> (c) When they are to be paid."

9. However, the general rule imported into civil proceedings by Part 44.2(1) that the unsuccessful party will be ordered to pay the costs of the successful party, is not imported into family proceedings such as these.

10. This Court is however required, by virtue of part 44.2(4), when deciding what order, if any, to make about costs to have regard to all the circumstances including: -

> "(a) the conduct of the parties;
>
> (b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and
>
> (c) any admissible offer to settle made by party which is drawn to the Court's attention, and which is not an offer to which costs consequences under part 36 apply."

11. By virtue of Part 44.2 (5), the conduct of the parties includes:-

> "(a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
>
> (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
>
> (c) the manner in which a party has pursued or defended his case or a particular allegation or issue;
>
> (d) whether a claimant who has succeeded in his claim, in whole or in part exaggerated his claim."

12. By virtue of Part 44.2(5), the orders which the Court may make include an order that a party must pay:-

> "(a) a proportion of another party's costs;
>
> (b) a stated amount in respect of another party's costs;
>
> (c) costs from or until a certain date only;
>
> (d) costs incurred before proceedings have begun;
>
> (e) costs relating to particular steps taken in the proceedings;
>
> (f) costs relating only to a distinct part of the proceedings; and
>
> (g) interest on costs from or until a certain date, including a date before judgment."

13. In *Re T (Costs: Care Proceedings: Serious Allegation Not Proved)* [2012] UKSC 36, [2013] 1 FLR 133, Lord Phillips of Worth Matravers said (at para [11]):-

> "In family proceedings, however, there are usually special considerations that militate against the approach that is appropriate in other kinds of adversarial civil litigation. This is particular true where the interests of a child are at stake. This explains why it is common in family proceedings, and usual in proceedings involving a child, for no order to be made in relation to costs."

He went on to say (at para [44]):-

> "we have concluded that the general practice of not awarding costs against a party, including a local authority, in the absence of reprehensible behaviour or an unreasonable stance, is one that accords with the ends of justice..."

14. So far as this Court is aware, there are only two reported or publicly available authorities which have considered an application for costs in proceedings under the 1980 Hague Convention: *EC-L v DM (Child Abduction: Costs)* [2005] EWHC 588 (Fam), [2005] 2 FLR 772 (Ryder J, as he then was); and *SB v MB (Costs)* [2014] EWHC 3721 (Fam), (Hayden J). I have had the advantage of being able to consider them both.

15. In *EC-L v DM (Child Abduction: Costs)* Ryder J said:-

> "[67] I do not believe that it would be wise upon the material presented to this court to create a new category of family proceedings for costs purposes or for new costs principles to be plucked from thin air. If a valid distinction is to be made as between children proceedings generally and Hague Convention proceedings then that will necessitate the formulation by others of new public policy criteria.
>
> [68] Accordingly, in case where a costs application is made there should be a costs inquiry on the merits, having regard to the statutory test in section 11(1) of the 1999 Act. It should be the expectation in child abduction cases that the usual order will be no order as to costs, but where a party's conduct has been unreasonable or there is a disparity of means then the court can consider whether to exercise its discretion in accordance with normal civil principles."

16. In that case, an application for costs was made by a Respondent father after an Applicant mother was given permission to withdraw her application under the Convention. Ryder J found that "the mother was unreasonable in the conduct of her case by reason of her persistent pursuit of uncorroborated, false

allegations" (see para [2]). The findings made by Ryder J included the following:

(a) The allegations made against the father were "very serious": kidnapping of the parties' child and "serious dishonesty involving the forgery of documents";

(b) The evidence "permitted of only one likely conclusion, namely that the child's mother was responsible for presenting a false case to the court";

(c) "Faced with compelling documentary evidence, the mother persisted until the final hearing in maintaining her allegations against the father, including allegations of forgery (in particular after the Portuguese Embassy confirmed that her marriage certificate was genuine and not, as she asserted, a forgery";

(d) The mother misled the court at the initial without notice hearing;

(e) The mother failed to cooperate with the court's inquiries in that she did comply with an order that she file corroborative evidence in support of her case; and

(f) The mother refused to agree to an adjournment of the final hearing when *Cafcass* said that it could not file its report on time.

17. In the case of *SB v MB (Costs)*, Hayden J said this (at para [4]);-

"Both party's legal teams agree on the framework of the law relating to the determination of costs in applications of this kind. The following common ground has been identified:

i) The High Court has jurisdiction to award costs in first instance cases brought pursuant to the 1980 Hague Convention. It is trite that it has such powers in applications made pursuant to the inherent jurisdiction though, for the reasons set out in my substantive judgment, that is of merely academic relevance here;

ii) Though there are few reported cases of cost orders having been made against applicants in this Hague Convention jurisdiction, the basis of the power to award costs was analysed and confirmed by Ryder J (as he then was) in *EC-L v DM (Child Abduction:costs)* [2005]

EWHC 588 (Fam), [2005] 2 FLR 772. There Section 11 of the Access to Justice Act 1999 was in focus and the Family Proceedings Rules 1991 that then applied. However, the principles identified in the case continue to hold, by parity of analysis, with the framework of the Family Proceedings Rules 2010;

iii) In each case where a costs application is made there should be an inquiry into the merits *EC-L v DM (Supra)*

> 'it should be the expectation in child abduction cases that the usual order will be no order as to costs, but where a parties conduct has been unreasonable or there is a disparity of means then the Court can consider whether to exercise its jurisdiction in accordance with normal civil principles';

iv) It is misconceived to talk of a 'presumption' of 'no order' for costs at first instance in either Hague Convention cases or children cases more generally. In *Re J (Children)* [2009] EWCA Civ 1350 Wilson LJ, as he then was, referred to the 'general proposition' of no order as to costs applied to a 'paradigm' situation. In *Re T (Costs: Care Proceedings: Serious Allegation Not Proved)* [2012] UKSC 36 'reprehensible behaviour' or 'an unreasonable stance' were identified as markers for an adverse costs order;

v) FPR 2010 r 28.1, CPR 1998 r 44.3 do not circumscribe the Judge's discretion on costs and invite the Court to consider 'all the circumstances'. It should of course have regard to the matters set out at CPR rule 44.2 (4) and (5):

> (4) 'in deciding what order (if any) to make about costs, the Court will have regard to all the circumstances, including –
>
> a) the conduct of all the parties;
>
> b) whether the party has succeeded on part of its case, even if that party has not been wholly successful;
>
> c) any admissible settlement by a party which is drawn to the Court's attention, and which is not an offer to which costs consequences under para. 36 apply.

The conduct of the parties include-

> d) conduct before, as well as during, the proceedings and, in

particular, the extent to which the parties followed the practice direction – pre action protocol or any relevant pre action protocol;

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

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

g) whether a claimant has succeeded in a claim, in whole or in part, exaggerated its claim.

vi) It is generally undesirable to award costs where the consequence of such order is likely to exacerbate hostile feelings between parents to the ultimate detriment to the child."

18. Later in the judgment he considered how the principles applied to the factual issues which arose in the case. He said (at paras [6-7]): -

"6. I do not consider it necessary to address each of the points raised by the parties as to the particular features of this case that influence the extent of the adverse costs order. It is, I hope, obvious that the fact the father was unsuccessful in his application does not render his conduct 'reprehensible' or 'unreasonable'. Nor is this a case in which disparity in means should lead, in and of itself to a costs order being made. Objectively, I am, in any event, dealing with a disparity that pits 'wealthy' against 'extremely wealthy'. Neither do I consider the fact of the father's extensive litigation in Israel to be directly relevant to my consideration of costs in this jurisdiction. It is however relevant in so far as it illuminates the father's mindset and general approach to litigation concerning his daughter. It is also important to emphasise that some of the remarks in my judgment concerning the father's personality have no relevance at all to his litigation conduct. Mr Gupta described his own client as 'terse', it was an exercise in forensic damage limitation. I found him to be 'dogmatic, occasionally capricious, highly opinionated and a bully'. All of this is irrelevant to my consideration of costs. (It is perhaps also worth noting that I also found despite this that he had much to offer his daughter, he has both

dynamism and humour which she plainly shares). What is relevant is how these features of his personality influenced his litigation conduct. MB's own words in evidence are illuminating. When the mother withdrew her daughter from the Israeli school at which all agree (even the father) she was plainly unhappy, he described her actions as 'a war against me' and 'my daughter'. In cross examination he was given every opportunity to claw back from that sentiment. I had expected him to disown it as a phrase used in the heat of the moment. He declined to. This unilateral action was indeed an act of war in his mind. In my judgment that has wider resonance for I find it has characterised his entire approach to this litigation.

7. Mr Setright contends that the ultimate ground relied upon by the mother i.e. 'habitual residence' was a 'finely balanced issue properly requiring two days of oral evidence to resolve'. It is true that from the papers the conclusion as to 'habitual residence' was not readily apparent. That it was not so however was, as I found, due to the fact that the father had deliberately sought to obscure it. The test is, as I set out in the judgment, essentially a question of fact which 'should not be glossed with legal concepts which would produce a different result from that which the factual inquiry would produce' (per Baroness Hale *Re KL (a child)* [2013] UKSC 75 . When the evidence was scrutinised it did not prove to be in any way finely balanced. In Israel I found M to be 'conflicted, unsettled, unhappy and unable to integrate'. She found no 'stable environment', she was unable to 'put down roots'. The contrast, I found with her life in Chelsea 'could not be more stark'. This was not a case of a father deluding himself that his daughter had settled and in effect, become habitually resident in Israel, he knew full well how unhappy his daughter had been. He was simply determined to get the outcome to the litigation he wanted, believing his daughter would be happy eventually. When the evidence was stripped down the reality was clear. That this process had to be undertaken forensically was due to the father's deliberate camouflage of the facts and his general dissimulation to the Court. In his terms it was 'war' and he wanted to win."

19. The father is in receipt of non-means tested public funding. By virtue of the Legal Aid Sentencing and Punishment of Offenders Act 2012 ["LASPO 2012"] s 26: -

> "(1) Costs ordered against an individual in relevant civil proceedings must not exceed the amount (if any) which it is reasonable for the individual to pay having regard to all the circumstances, including—
>
> (a) the financial resources of all of the parties to the proceedings, and
>
> (b) their conduct in connection with the dispute to which the proceedings relate.
>
> (2) In subsection (1) "relevant civil proceedings", in relation to an individual, means—
>
> (a) proceedings for the purposes of which civil legal services are made available to the individual under this Part, or
>
> (b) if such services are made available to the individual under this Part for the purposes of only part of proceedings, that part of the proceedings."

20. LASPO 2012 s26 (5) and(6) provide that regulations may be made specifying the principles which are to be applied in determining the amount of costs which may be made against a legally aided party, and limiting circumstances for enforcement against such a party. The regulations which cover this are contained in the Civil Legal Aid (Costs) Regulations 2013, and provide "cost protection" (meaning the limit on costs which can be awarded against a legally aided party in relevant civil proceedings) in certain types of proceedings. However, by virtue of Regulation 6, cost protection does not apply to family proceedings for which civil legal services are provided in the form of legal representation. Thus, apart from the general considerations set out at LASPO 2012 s26 (1) above, the position of the father is no different from that of any other litigant.

21. It is with these principles in mind that I turn to the question of costs in this case.

The mother's case in relation to costs

22. On behalf of the mother, Miss Renton points out that, whereas the father has had non-means tested public funding, the mother has had to borrow from her family to defend his application. The parties own a property in this country. It will have to be sold within matrimonial proceedings. There is a substantial equity. Accordingly there is a source of funds for an order for costs.

23. This is not simply a case where the father was unsuccessful. It is one where the father's litigation conduct has been "reprehensible and unreasonable." She relies on a number of features.

24. This was, she says, a case where the application was brought as an act of war. The father, as I found, consented to the mother bringing the children to live in this country, which she did with his full knowledge and agreement on 21st August 2016. It was, as I found, only subsequently that he changed his mind. However, by 6th September 2016 he was writing to a friend in what Miss Renton described as "war like" tones of bitterness and revenge, making it clear that he would be using the Convention proceedings as a weapon. He said: -

> "Yes, *[the mother]* will get a taste of how it feels when someone takes your children away from you but she'll get over it, either that or she will be spending 40 grand plus all her family's money trying to fight and overturn it. Fuckem."

25. His application to the Central Authority lacked frankness. He made no mention of the relevant surrounding circumstances: for example, that he had known of her planned departure since 30th July 2016, that he agreed to it, that he knew the family dog was sent to England on 15th August 2016, and that he himself helped to pack the oldest child's special bicycle. He failed to mention that he had emailed the mother on 28th August 2016 after her arrival with the

children in England saying that he "hoped they were settling in." The lack of frankness about his consent continued in his written and oral evidence to this Court.

26. The mother's solicitors wrote to the father's solicitors on 28th October 2016, after these proceedings had started. The letter said: -

> "Further to the recent hearing in this matter, you will have now had time to take instructions in relation to our clients statement.
>
> We would remind your client that an order for costs may be made in appropriate cases, despite him being in receipt of public funding. We would also question the appropriateness of your client being in receipt of legal aid in light of the merits of his case.
>
> Your client plainly consented/ acquiesced to the move in advance and after their return continued to do so. If your client has had a subsequent change of heart, this does not amount to abduction. This is an unmeritorious abduction case.
>
> This does of course do not prejudice your client from challenging the permanent location of the children's residence in the long-term.
>
> Mediation is an option which must be explored with a view to the parties reaching a sensible agreement on the children's future in the children's interest.
>
> Our client is having to borrow substantial sums of money to defend this application money which would be much better spent by our client on for the children's benefit. We urge your client to discuss with our client what time with the children in England and Spain he seeks."

27. The father did not respond, nor take up the suggestion of mediation. Miss Renton says that he ignored the invitation to consider mediation notwithstanding the well established principle that failure to consider mediation may be highly relevant in costs awards. It is at the heart of family law, she says, that family disputes should be resolved by agreement if possible. In this case where (i) travel costs were low, (ii) the family were English, (iii) both had families in England and (iv) had lived in England until

2010 the case was eminently suitable for mediation or at least an attempt to mediate.

28. On 23rd November 2016, the mother's solicitors wrote to the father's solicitors again. This time they said: -

> "We wrote to you on 28 October with regards to the potential for an order for costs to be made, despite your client being in receipt of public funding. In the event that our client is successful in defending your client's application, we will be asking the Court to make an order for costs against your client. In the view of this firm, our view with which counsel concurs, this is an unmeritorious abduction case.
>
> Our client has so far incurred the following with regards to her legal fees (including VAT)."

The costs to date and the costs which were envisaged if proceedings continued were then set out. The letter continued: -

> "We are aware that when considering costs, the Court will need to have regard to the financial resources of the parties. We are instructed that they jointly owned a property… We understand the property to be worth in the region of £190,000 to £200,000 and the current mortgage outstanding to be £I50,000. If our client's costs claim is successful, your client's share of the property is an asset against which the costs can be secured.
>
> If your client continues to pursue his application and the final hearing is to proceed, we shall provide you with a full cost schedule in advance. If he is minded not to pursue his application, then he is invited to withdraw at an early stage before the incurrence of the deemed fees referred to above. The costs incurred to date will still fall for consideration."

29. Miss Renton also argues that the father aggravated costs by changing the way he put his case on the morning of the hearing. He had pleaded his case throughout on the ground of a wrongful removal of the children by the mother. On the morning of the substantive hearing, he sought also to argue that there had been a wrongful retention of the children here after they arrived. As a

result of what Miss Renton describes as his "opportunistic attempt" to argue wrongful retention at this very late stage, argument about whether leave to amend his application was required and whether it should be permitted took about one hour. Thereafter Miss Renton had to take instructions on the new point and a supplementary statement be prepared for the mother. In effect a full morning of Court time, some two and a half hours, was wasted. This, says Miss Renton, was "litigation misconduct".

The father's case in relation to costs

30. Mr Devereux points out that, having regard to the statements of principle set out above in the leading authorities, it is clear that the usual course in child abduction proceedings, as with other family proceedings, is to make no order as to costs. That usual order may give way in exceptional cases to a costs order where a particular party's litigation conduct has been "reprehensible" or "unreasonable".

31. He submits that the 1980 Hague Convention has its own internal mechanism, by virtue of Article 27 of the Convention, to weed out obviously unmeritorious applications. Article 27 provides:

> "When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons."

32. In the present case, the Central Authority was satisfied that the father's application was not obviously unmeritorious and therefore it instructed solicitors to act for him by letter dated 23 September 2016.

33. The father's primary submission, however, in relation to the mother's application for costs is that his litigation conduct was in no way "reprehensible" or "unreasonable" as to merit a costs order against him.

Although each case will turn on its facts, the circumstances and litigation conduct in this case are a very long way from the types of circumstances or litigation conduct (as evidenced by the facts of *EC-L v DM (Child Abduction: Costs)* (*supra*) and *SB v MB (Costs)* (*supra*)) where a costs order has previously been made in child abduction proceedings.

34. The nature of child abduction proceedings under the 1980 Hague Convention leads to an inevitable binary outcome: one party will succeed or not in an order for the summary return of a child. In this case, the father did not succeed. That, of itself, cannot warrant a costs order against him. This case could not be properly described (as in *SB v MB (Costs)* (*supra*)) as a "war" that this father "wanted to win". His was a legitimately pursued case; not one motivated by spite or malice, nor one where he was simply litigating for the purposes of litigating.

35. Mr Devereux drew the Court's attention to the following matters which, he submitted, are (i) are directly relevant in considering this application for costs and (ii) justified the court conducting the forensic exercise it carried out:

    (a) Events moved very swiftly from 30 July 2016 when the mother announced that the marriage was over until her removal of the children on 21 August 2016;

    (b) The removal of the children took place in circumstances of high emotion;

    (c) The father did not know of his potential remedy under the 1980 Hague Convention until *after* the removal;

    (d) Once he had proper knowledge of his potential rights under the 1980 Hague Convention he speedily took steps to seek the children's return;

    (e) Many of the finer details of the children's future lives were left wholly unresolved at the time of the removal; and

    (f) The mother herself only abandoned the "defence" of children's objections the day before the final hearing and the "defence" under Article 13(b) during the course of, or at the end of, the final hearing: this was the sort of "opportunistic pleading" that is "antithetical to the

summary philosophy" of the Hague Convention which was deprecated by Hayden J in *SB v MB (Costs)* (*supra*) at para [8].

36. For all those reasons, he submits that there is no reason to characterise this case as sufficiently exceptional to warrant any order other than no order as to costs. If the court does not accept these submissions, then the court may consider it appropriate to order the father to pay a percentage of the mother's costs, the overall quantum being subject (in accordance with CPR 1998, Practice Direction 44, para [9.2]) to a detailed assessment.

My Analysis

37. I accept the proposition put forward that the expectation in child abduction cases that the usual order will be no order as to costs, but where a parties conduct has been unreasonable or there is a disparity of means then the Court can consider whether to exercise its jurisdiction in accordance with normal civil principles. In doing so, I follow the guidance given in *EC-L v DM (Child Abduction: Costs)* (*supra*) and *SB v MB (Costs)* (*supra*).

38. The fact that the father was unsuccessful in his application does not render his conduct unreasonable or reprehensible. However, contrary to Mr Devereux's submissions, in my view the father's conduct here was, indeed, unreasonable. He regarded the proceedings as an act of war. He knew of and consented to the children's relocation with the mother in this country. Subsequently, after they had come here, he changed his mind. Unfortunately, when he did so he became vengeful. The contents of the email, part of which I have set out at paragraph 24 above, are telling. They are redolent of anger and bitterness. He was well aware of the reality of the potential financial burden of the proceedings on the mother from the outset of the proceedings, and he relished it. It was part of his agenda in bringing the proceedings.

39. The mother's solicitor's letters of 28th October 2016 and 23rd November 2016 drew his specific attention to the realities of the costs demands on the mother as the case developed. He was told by the letter of 28th October 2016 that she

was having to borrow substantially to fund her legal representation. He was later told in detail of the mounting bill of the mother's costs in the letter of 23rd November 2016. None of this could have come as a surprise to him, as it was what he had anticipated in his email of 6th September 2016. It was precisely what he wanted to happen.

40. The mother suggested mediation in the letter of 28th October 2016 but he was not willing to contemplate it. The mother's solicitor's letter proposing it did not even get a response. His failure to engage in mediation must be seen in the particular circumstances of this case, in the context where the children had come to live in England with his knowledge and consent and where there were strong English connections on both sides. The fact that he refused to participate in mediation was, in my view, reflective of his bitterness. He wished to fight, and to continue to fight, a war with the mother, and a weapon in the war was her ever-increasing bill of legal costs.

41. Mr Devereux referred to the "weeding out" process which may be done by a Central Authority to prevent obviously unmeritorious proceedings being brought, but any such process is dependant on frank disclosure by the applicant for it to be effective. Unfortunately, the father was not frank in his application to the Central Authority. He painted a picture of a man who had not consented to the children's removal; a picture which was, as I found, a false picture. It was a picture he sustained in his affidavit evidence put before this Court, and which he attempted to sustain in his oral evidence.

42. I accept the point made by Mr Devereux that the period leading up to the mother's departure to England was one of high emotional stress to both parents, but, as I found, the father was well aware he could take steps to prevent the mother travelling with the children to England before she did so. He chose not to do so. I accept that he may not have been aware of the precise provisions of the Hague Convention until after she had left, but he was well aware before she went that he could involve the authorities to prevent her removing the children if he wanted to do so. In fact, he consented to them going.

43. I also accept that the mother's plans for life in England with the children were made over a period of only three weeks, but the father knew before the mother left as much detail as he wished to know about her plans for life here with the children. He knew where she would be taking the children on their arrival in England, and the area in which she would be looking for a home and schooling for them. As I found, he had confidence in the mother's abilities to make sensible and proper practical arrangements for the children and did not seek to be involved in the details of choosing a school or home.

44. I take into account the fact that the mother had originally opposed the return of the children on three grounds; (i) consent/acquiescence, (ii) the children's objections and (iii) grave risk of harm/intolerability under Article 13(b). She only abandoned the "defence" of the children's objections on the day before the final hearing (following receipt of the Cafcass report) and the "defence" under Article 13(b) during the course of, or at the end of, the final hearing. In reality, however, virtually no time was taken at the substantive hearing on the Article 13(b) point.

45. I am of the view that the fact she raised, but did not pursue, other defences in addition to the one on which she succeeded does not outweigh the strong features which favour the father paying the majority of the mother's costs. On the contrary, I am of the view that his conduct has been so unreasonable that it is appropriate to make an order for costs against him. However, the fact that she raised defences which she abandoned is a factor which I should take into account when considering how much of her costs he should bear, and I shall return to this matter later when I deal with the question of the assessment of her costs.

46. I also take into account the fact that the father's amendment of his claim to include wrongful retention by the mother caused additional time to be added to the case, amounting in total to a further half day. Mr Devereux castigated the mother's abandoned defences as "opportunistic pleading" but the retention ground, made very late in the day, bears similar categorisation. The delay in

making that claim meant that the case could not be completed in the two days allocated to it, and had to go over to a further half day for judgment. Ultimately it was also rejected by the Court. This is a cost which in my view should also be born by the father.

Assessment of costs

47. By virtue of LASPO 2012 s26 (1), I am mindful that any costs ordered must not exceed that which it is reasonable for the father to pay, taking into account the parties' financial resources and their conduct. I have already set out the relevant issues of conduct, which need no repetition in this context. As far as financial resources are concerned, I have been told of the equity in a jointly owned property from which an order of costs could be met, and Mr Devereux has not sought to make contrary submissions as to the availability of resources to meet an order for costs.

48. I have been provided with a detailed Schedule of Costs prepared by the mother's solicitor, upon which both parties' counsel have had the opportunity to comment. Having considered whether or not to order a detailed assessment of the mother's costs, I have come to the conclusion that the Schedule of Costs, and counsel's observations thereon, are relatively straightforward and are sufficient to enable me to make a fair summary assessment, and that the delay and additional cost of detailed assessment are not justified or proportionate here.

49. The Schedule of Costs was provided in December 2016 and claimed costs which totalled £19,793. It included costs for interim hearings which took place on 13th October 2016 and 29th November 2016. However, on each of those occasions, an order was made that there be no order as to costs. This was identified by Mr Devereux on behalf of the father, and was accepted by Ms Renton in her response to his submissions. She amended the figure claimed to £16,429.03 to reflect this, with explanation as to how it was calculated. The final figure claimed included Miss Renton's attendance for an additional half day for judgment. That additional half day is attributable to the time added to

the hearing before me because of the father's late assertion of a case of wrongful retention of the children by the mother, and in my view it is right that it should be included.

50. However, I also take the view that fairness requires some reduction to be made to the amount claimed to reflect the fact that two grounds of defence were asserted but, in the event, not pursued by the mother (children's objections and Article 13(b)). In considering this, I take into account that the major area of dispute in the written evidence presented to the Court was whether the father consented to the children's removal to England. Of the many pages of material in the bundle, very little relates to the question of the children's objections or to Article 13(b) issues. At the hearing before me, it was the removal and retention issues which occupied the Court's time. I take the view that it is right I make some discount for the defences which were not pursued, but it must be proportionate. Doing the best I can, I shall make a reduction of 10% in the costs otherwise recoverable. I therefore order that the father do pay the mother's costs assessed in the sum of £14,786.12.
