This Judgment was delivered in private, but the Judge hereby gives leave for it to be published.

The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the Judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

Neutral Citation Number: [2025] CIGC (Fam) 8

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION **CAUSE NO: FAM 263 OF 2020**

BETWEEN:	**BL**	**Applicant**
AND:	**JM**	**Respondent**

Appearances: **Ms Laura Hatfield and Ms. Amandy Jimenez from Bedell Cristin Cayman Partnership for the Applicant**
The Respondent in person

Before: **Hon. Mr. Justice Richard Williams**

Heard: **On the papers**

Applicant's Written Submissions filed: **24 June 2025**

Respondent's Written Submissions filed: **24 June 2025**

Date of Circulation of Draft Judgment: **24 July 2025**

Judgment Delivered: **29 July 2025**

Financial provision - ancillary relief - costs - whether to order payment on the indemnity basis

COSTS JUDGMENT

The Application

1. This is the ruling made to address the costs to be ordered in light of the Court's Judgment dated 9 June 2025 handed down in proceedings brought by the Respondent father's Summons issued on 27 December 2024 (later amended).

2. The Applicant mother seeks an order that the Respondent pay her costs for the proceedings to be taxed on an indemnity basis because she submits that the Respondent has conducted them in an improper, unreasonable and negligent manner.[1] The Respondent rightly concedes that a costs order should be made in favour of the Applicant as the costs should follow the event, but he argues that costs should be taxed on the standard basis. It being agreed that there will be a costs order made in the Applicant's favour, the issue for me to determine is whether those costs should be taxed on the standard or indemnity basis.

3. I hope that the parties will not be offended if I hereafter again refer to them, for convenience, as the mother and the father.

The Historical and Procedural Background

4. On 9 February 2021, I approved an order, signed by both parties, which had been submitted to me for me to consider on the papers ("the Order"). The relevant parts of the Order, relating to Schedule 1 Children Act proceedings brought by the mother stated:

> *"UPON the matter being dealt with administratively;*
>
> *AND UPON the parties by their signatures consenting to an order in the following terms;*
>
> *AND UPON the respondent undertaking to transfer to the applicant absolutely all his legal estate and beneficial interest in the property situated at South Sound Block 15E Parcel 50 within 14 days of the date of this order.*
>
> *IT IS HEREBY ORDERED BY CONSENT that:*
>
> 1. *The outstanding aspects of the Applicant's Schedule 1 claim are adjourned to be dealt with in chambers."*

[1] On 20 June 2025, the father wrote to the applicant's attorneys and informed them that he is prepared to consent to an order for costs against him to be taxed on the standard basis.

5. In an Amended Summons[2] the father sought an order that the Order be declared null and void and of no effect and set aside in its entirety. It was submitted that the procedure under which the Order was made is governed by the provisions of GCR O.42, r.5A and that the provisions had not been complied with. By the Amended Summons, if the Order was set aside, an order was sought, pursuant to s.140(1) Registered Land Law (2018 Revision), directing the Registrar of Lands to rectify the Land Register for the property at Registration Section South Sound Block 15E Parcel 50 ("the Property") to show that he is the proprietor of the property ("The RLL Application").

6. The hearing of the Amended Summons took place on 1 and 2 April 2025. That hearing proceeded on the basis that the RLL Application would not be dealt with at that time and would be put off until after the Stay Judgment had been handed down to be restored if, and only if, an order was made to set aside the Order.

7. On 9 June 2025, the Judgment in relation to the relevant part of the Amended Summons was delivered. That Judgment contains the relevant historical and procedural background and I see no merit in repeating that detail herein.

8. In the Judgment I noted that, although he had been informed by the Court at a mention hearing that his initial Summons did not comply with Grand Court Rules ("GCR") O.2, r.2(2) because it did not state the grounds of objection, the father failed to rectify this in his later filed Amended Summons. At the hearing, the mother argued that this was a mandatory requirement and therefore the father's application should fail. However, having regard to the Overriding Objective and adopting a pragmatic approach, I found that it was right to permit the father to fully present his application at the hearing and I did not dismiss his application based on his non-compliance with the requirement to state the grounds for objection in the Summons. I was satisfied that the mother had not been prejudiced by the father's *"unattractive"* approach as she had been able to deduce the grounds of objection by conducting a review of some of his filed and served affirmation evidence. I accepted that she would have been inconvenienced by the failure to set out the grounds concisely in a summons adding that she had to *"read through 17 pages of narrative evidence and affirmations to extract with certainty from them what the grounds might be rather than reading them set out briefly in a summons"*.

[2] The Amended Summons before the Court is one headed "Draft Amended Summons" which was filed as an attachment to the consent order dated 21 March 2025 which granted leave to file the Amended Summons.

9. At the hearing the mother submitted that the father's application to set aside the Order for irregularity should not be allowed as it was not made within a reasonable time and because the father had taken fresh steps after he became aware of the irregularity. In the Judgment, I highlighted the steps taken by both parties in the Children Act proceedings following the Order and the filing of the father's Summons bringing the present application. I found that the four years it had taken the father to make his application was clearly not a reasonable period of time. I dismissed the application made by the father in his Amended Summons. However, acknowledging that it might be later argued that I had been wrong in dismissing for delay, I felt it was appropriate for me to further consider the merits of the father's application. To his credit the father in his submissions as to costs remarks at paragraph 10:

> *"After consideration of the judge's comprehensive review of the evidence on the delay point and with the benefit of hindsight, I accept the judge's findings in relation to the delay."*

10. In the Judgment I rejected the father's submissions because I found that that his undertaking to transfer the property which was recorded in the preamble of the Order could not and did not form part of what the Court ordered. I found that the only order the Court made was for an adjournment of the father's application relating to Schedule 1 periodical payments. In fact, I forcefully highlighted in the Judgment that the parties had been made aware at the time that they were submitting draft orders that the Court did not have the jurisdiction to order a transfer of the Property.

11. I noted that the mother accepted at the hearing that the father must be treated as being a litigant in person and that the Court did not have the power to make the order pursuant to GCR Order 42, Rule 5A. However, I found that the order made was only a case management order. I highlighted that the use of the word *"dealt with administratively"* in the signed draft order was not the proper wording, because the exercise carried out was one undertaken upon the parties requesting the judge to consider the consent order on the papers without the need for a hearing. I additionally commented that, when a signed draft consent order is submitted, the judge reviews the court file as well as the draft order and then exercises his judicial discretion to determine whether it is an appropriate and fair order to approve. Therefore, having regard to the observations of Segal J in ***In the Matter of Trina Solar Limited*** [2017] (2) CILR 12, I found that GCR O.42, r.5A did not apply. I found that Rule 1.5 Children Act (Grand Court) Rules (2024 Consolidation) provided the Court with the necessary jurisdiction to approve the Order on the papers in the terms that were set out in the Order.

12. Having reached the above additional conclusions, even if I were to put to aside my delay findings, I found that I would still not make the order sought by the father in the Amended Summons. I did not find that the Order should be declared null and void and of no effect nor that it should be set aside. To date, neither party has submitted a draft order arising from the Judgement for my approval.

13. At paragraph 106 in the Judgment, I stated the following in relation to costs:

> *"...., the parties should submit any written submissions they wish to make in relation to costs within 14 days of the circulation of this Judgment. I will consider any costs application, if made, on the papers, I dispense with the need for cost summons to be filed."*

14. The parties' Written Submissions and case authorities were filed on 24 June 2025. Both parties accepted that I could deal with the application for costs on the papers. Therefore, I have carefully considered the content of the Written Submissions, the provided case authorities and the Judgment. This is my written ruling on the application for costs.

The Law – Indemnity Costs

15. The issue for me to determine is whether the costs to be paid by the father in relation to his Summons (later amended) should be in the standard or indemnity basis. Therefore, I need not comment in detail about the jurisdiction to make costs orders or the general principles that apply.

16. The general rule in litigation is that costs follow the event and that the successful party will be awarded costs on a party and party basis. It is recognised that this can leave the successful party out of pocket. The gap between the amount of costs in fact paid by a successful litigant and the amount of party and party costs which are recoverable can be substantial.

17. As highlighted by Henderson J in ***Sagicor General Insurance (Cayman) Limited and another v Crawford Adjusters (Cayman) Limited*** Cause No. 78 of 2006 Grand Court Rules, O.62, r.4(11) provides an alternative basis upon which costs may be ordered. The rule provides in respect of costs ordered on an indemnity basis that:

> *"The Court may make an inter-partes order for costs to be taxed on the indemnity basis only if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently."*

Therefore, to make an order that the costs should be assessed on an indemnity basis the Court has to be satisfied that the party against whom a costs order is being made conducted the proceedings improperly, unreasonably or negligently. Raj J ***In the Matter of the Avivo Group*** FSD 145 of 2022, with reference to ***Ahab v Saad***[3] *and* ***In Talent business investments Ltd v China Yinmore Sugar Co Ltd*** [2015] 2 CILR 113 rightly added the words *"to a high degree".*

18. The discretion under the rule is not fettered or circumscribed, and it must be exercised judicially in the light of the particular facts of each case. The jurisdiction to make a costs order on the indemnity basis is *"wide and flexible, allowing the court to exercise its discretion as the circumstances of the case may require".* The making of such an order *"will be the exception rather than the norm".*[4] There are many cases which have considered the appropriate principles to be applied in exercising the discretion to award costs on the basis other than party and party.

19. The mother refers the Court to Asif J's following comments found at paragraph 16 in ***Armand Hammer Foundation Inc. v Hammer International Foundation*** (Unreported FSD 2023-0113 (JAJ), November 2024:

> *"In my judgment, the starting point and the ending point is the wording of GCR O.62, r.4(11). In order to obtain an order for costs on the indemnity basis, the applicant must persuade the Court that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently. The Court should not seek to apply a gloss to the plain words of the Rule. The cases cited seem to me to provide examples of the kinds of considerations that the Court might take into account in a particular case and the kinds of situations where an order for indemnity costs may be appropriate. But, ultimately, each case must be considered individually and a decision made whether or not the threshold test in the Rules has been met, before the Court then considers how to exercise its discretion as to costs. Whether or not the proceedings have been conducted improperly, unreasonably or negligently is much easier to determine in the context of the particular case before the Court than trying to describe those characteristics in the abstract."*

[3] See citation at footnote 4 below.
[4] Smellie CJ, in ***Ahmad Hamd Algosaibi and Brothers Company v Saad Investments Company Limited and Forty Three Others*** [2012(2) CILR 1] at paragraphs 10 and 15.

20. In ***Bonotto v Boccaletti*** 2001 CILR 292, the Court of Appeal held that the Court has a discretionary jurisdiction to grant costs on the indemnity basis, but the discretion is to be exercised only in the most exceptional cases. It is generally accepted that something special or unusual must be demonstrated in order to justify a departure from the ordinary costs order.[5] These include where a losing party has misconducted itself in relation to the proceedings, where the institution of the proceedings was plainly unreasonable or where the proceedings were issued for multi-collateral purpose. A further example may be where the claim is *"speculative, weak, opportunistic or thin*[6]*"* especially if bringing it is motivated by an intention to embarrass or compel a party to comply with a claim. I do not find that the father in this case is so motivated. Whether an indemnity costs order should be made can depend on whether there is *"something in the conduct of the action or the circumstances of the case which takes the case out of the norm in a way that justifies"*[7] such an order.

21. The award of costs on an indemnity basis is generally reserved to cases where the Court wishes to indicate its disapproval of the conduct of the paying party. In the words of Halsbury's Laws, 4th Edition (2007), Volume 10, para 23, Note 8:

> *"Indemnity costs may be awarded against the party whose conduct has been unreasonable, even though the conduct could not properly be regarded as lacking moral probity or deserving moral condemnation:* ***Reid Minty (A Firm) v Taylor*** *[2002] 2 All ER 150."*

And as noted by the authors in the White Book (vol.1 p 1085ff) costs will normally be awarded on the standard basis:

> *"…Unless there is some element of a party's conduct of the case which deserves some mark of disapproval, it is not just to penalise a party for running litigation which it has lost. Advancing a case which is unlikely to succeed or which fails in fact is not a sufficient reason for the awards of costs on the indemnity basis."*

22. However, in ***Kiam v MGN (No.2)*** [2002] 2 All ER 242, 246 Simon Brown LJ, agreed that conduct that fell short of misconduct deserving of moral condemnation, could still be so unreasonable as to justify an order for indemnity costs. But he added that:

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[5] ***Billson v Residential Apartments Ltd*** [1992] 1 AC 494.
[6] Smellie CJ in ***Ahmad v Saad*** at paras 13-14.
[7] Waller LJ in ***Excelsior Comm. & Indus. Holdings Ltd. v Salisbury Hammer Aspden & Johnson,***

"….such conduct would need to be unreasonable to a high degree; unreasonable in this context does not mean merely wrong or misguided in hindsight. An indemnity costs order made under Part 44 (unlike one made under part 36) does, I think, carry at least some stigma. It is of its nature penal rather than exhortatory."

This means that the court is concerned principally with the losing party's conduct of the case, rather than the substantive merits of his position.

23. Having regard to paragraphs 21 and 22 above, the fact that the father used intemperate and inappropriate language towards the Court and the mother's previous attorneys in his pleadings and documents filed during the proceedings is not a factor that I take into account in this matter when considering what type of costs order should be made. It is clear that the father has carefully considered my chronological review conducted in the Judgment and the contents of paragraph 44 in the Judgment. The father's recognition, set out at paragraph 7 in his Written Submissions as to Costs, that his language was sometimes inappropriate and on occasion included mischaracterisation of events is welcomed and insightful.

24. Field JA at paragraphs 7 and 8 ***In The Matter of China Branding Group Limited (In Official Liquidation)*** referred to Henderson J's observations made in ***Bennett v Attorney General*** [2010 (1) CILR 478] [8] and he went on to say:

"7. I agree with the following view expressed by Henderson J in Bennett v Attorney General [2010] (1) CILR 478 at paras 6 - 9:

"Advancing a [case] which is merely weak or unlikely to succeed is to be distinguished from maintaining a [case] which is manifestly hopeless. The latter can be characterized as unreasonable. The former is a regular occurrence with which every barrister will be familiar…

The assessment of unreasonableness must avoid the wisdom of hindsight. The question is whether it was unreasonable to advance the claim or maintain the defence taking into account what should have been evident to the party concerned at the outset of the trial."

8. I note that in making these observations Henderson J justifiably cited with approval the following passage from the judgment of Coulson J (as he then was) in (Fitzpatrick Contractors Ltd. v. Tyco Fire & Integrated Solutions (UK) Ltd. [2008] EWHC 1391 (TCC), at para. 3):

[8] Bennett is a case in the Authorities Bundle prepared by the Applicant.

> *"There are a number of decisions, both of the TCC and of other courts, which make plain that the pursuit of a weak claim will not usually, on its own, justify an order for indemnity costs, whereas the pursuit of a hopeless claim (or a claim which the party pursuing it should have realised was hopeless) will lead to such an order.* In both *Wates Construction Ltd. v. HGP Greentree Allchurch Evans Ltd.* [2006] BLR 45 *and EQ Projects Ltd. v. Javid Alavi* [2006] BLR 130 *this court was persuaded that, in the circumstances of those cases, an order for indemnity costs was appropriate because the claimants should have realised that their claim was hopeless and should not have taken the matter on to trial. However, in Healy-Upright v Bradley & Another [2007] EWHC 3161 (Ch), the court reiterated that an order for indemnity costs was not justified by the mere fact that the paying party had been found to be wrong, either in fact or in law or both, or by the fact that in hindsight, the result of the case now being known, the position adopted by that party may be thought to have been unreasonable."*

25. Raj J, after conducting a review of a number of cases, put it more briefly ***in The Matter of the AVIVO Group*** when he stated at paragraph 10 that:

> *"It is not improper to advance a genuine case in what could be said to be in the way of usual litigation which fails as a result of the Court's rejection of the evidence or its interpretation of the law and in such a case, standard costs ought to be ordered."*

He added at paragraph 12:

> *"In the ordinary case even when the paying party has conducted its case unreasonably, unless it has advanced a case outside the usual latitude afforded to parties to argue cases which may be seen at the time to be without merit, speculative or weak, a standard basis order will be appropriate."*

Therefore, I bear in mind that it is not fair to penalise a party because a case has been advanced which was comprehensively lost, or which was unlikely to succeed. It is also not fair to penalise a losing party because it can be said to have been misguided in hindsight.

The Parties' Positions and Discussion

26. The mother contends that the father displayed a level of non-compliance with Court Rules and Practice Directions in the proceedings which went beyond what one would have expected from a litigant in person, albeit one who is an experienced litigator. She specifically referred to the lack of stated grounds for objections in the summonses filed by the father, despite the Court drawing that

deficiency to his attention[9]. I noted in the Judgment that, although the mother had not been prejudiced by the father's *"unattractive"* approach, she had been inconvenienced by it as it required some additional work to be undertaken on her behalf to clarify the case that she had to meet. The mother was unsuccessful in her application to have the father's Amended Summons dismissed for non-compliance with GCR O.2, r.2(2). I do not agree with the mother's characterisation that the father has exhibited non-compliant conduct throughout the proceedings. Although I commented in the Judgment about the inappropriateness of the content in[10] and manner in which certain correspondence was sent to the Court by the father, that is not conduct that I find to be relevant to a determination about the taxation basis of a costs order in this matter. Having regard to all the above, I do not regard the specific non-compliance relied upon to be sufficiently improper or unreasonable to form the basis for an indemnity costs order.

27. The mother indicates that the father's application was *"a hopeless case with little (if any) prospect of success, and this amounted to improperly wasting the Court's and the Applicant's time, and an abuse of the Court's process"*. I have had to consider this understandably made contention very carefully, when determining what type of costs order should be made. The mother rightly highlights that the Order was signed by both parties and that the father had the capacity and knowledge to understand what he was signing at the time. She rightly further comments that the father's conduct illustrates that he did intend to transfer the property absolutely, despite his assertion in the proceedings that he did not. In support of this comment, she refers to the four-year delay in bringing the present application to the Court, his failure to vary or discharge the undertaking and his active steps to sign the transfer form within a month of the Order being approved.

28. The mother submits, in relation to the father's approach to litigation and the contended weakness of the application, that the father's actions and inactions throughout the proceedings amount to improper, unreasonable and negligent conduct. She concludes that in such circumstances it is justifiable for the Court to order the father to pay her costs to be taxed on an indemnity basis.

29. The father in his written submissions highlights that there were four substantive issues that were decided in the Judgment which arose from the Amended Summons. The first related to GCR O.2, r.2(2). I do not intend to comment on that further save to refer back to paragraphs 8 and 26 above.

[9] See paragraph 8 above.
[10] For example, rehearsing his case or the merits of his case in emails.

The second was in relation to the delay in the father issuing the Summons[11]. The third issue was whether the transfer was affected by the Order[12]. The fourth was the issue of whether the Court had jurisdiction to make the Order[13].

30. Although the father accepted the findings in the Judgment in relation to delay, he retains his position that delay in and of itself may not be the only factor that the Court takes into account in deciding to dismiss a summons under GCR O.2, r.2(2). Therefore, it appears that the father may not agree with my decision to dismiss his Amended Summons on the basis that a period of just under four years is not reasonable. I do not intend to further address the father's contention herein, save to refer to paragraphs 76 to 84 of the Judgment and reiterate my decision set out at paragraph 84 therein. The father's inordinately delayed application inevitably introduced disruption and uncertainty to the mother, especially when it came to her regulating her financial and domestic affairs.

31. In relation to the third issue, the father rightly points out that prior to him issuing the Summons the mother and her then attorneys, on more than one occasion, stated and relied upon an assertion they were making that the transfer was made by the Order. This is graphically illustrated by the mother's approach to the Stamp Duty Commissioner and the entries made on the Land Registry Form RL 1 which the mother's then attorneys drafted before providing to the father to sign. It is not for me to make observations herein concerning the appropriateness of the beneficial stamp duty determination apparently received by the mother as a result of her above representations made to the Stamp Duty Commissioner. However, the impression that had been given to the father by the mother and by both of her earlier legal teams, emanating from them wrongly expressing to him and to third parties an incorrect position that the transfer had been made pursuant to the Order, is an understandable one for him to have then reached. In light of that, even though his application was not brought in a timely fashion, the father should not be viewed as being unreasonable when initiating proceedings to raise a challenge as a consequence of that wrongly expressed factual assertion. It was only after the mother's present attorneys came on the record that it became clear that the mother was now not representing that the property transfer had been made pursuant to a court order. Further, a party raising specific and general arguments about the status of and effect of

[11] See paragraph 9 above.
[12] See paragraph 10 above.
[13] See paragraph 11 above.

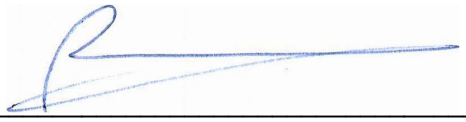
undertakings in a consent order is not in itself unreasonable. I find that the father seeking to make those arguments, albeit unsuccessful ones, in all the circumstances in the matter before me, does not amount to him advancing a case outside the usual latitude afforded by parties to argue a case.

32. In relation to the fourth issue, I accept that the father's observation that there might be said to be a *"certain tension"* between GCR Order 42, Rule 5A and Rule 1.5(j) Children Act Rules. For reasons set out in the Judgment, I found that the Children Act Rules provided the necessary jurisdiction to approve the Order in which I only ordered, by consent, a case management provision. I was unable to find any Grand Court or Court of Appeal decision concerning the application of the above Rules. The issues raised were novel ones and it is hoped that the Judgment will provide some future guidance. In such circumstances, I again do not find that an application seeking to argue this issue takes the case out of the usual latitude afforded to parties to argue cases.

Conclusion

33. With the benefit of hindsight, one may conclude that the weakness of the father's case should have been more apparent to him, especially after the greater clarity that was given by the mother's present attorneys. It may well be argued, particularly when considering the uncontroversial length of the delay in bringing the application, that the father's application was unreasonable and possibly improper. However, looking at the circumstances of the application and both parties' conduct, including my comments made in paragraph 31 above, I do not find that the father's conduct in pursuing his Summons (as amended) has been improper, negligent or unreasonable to a high degree.

34. Accordingly, I order that the father should pay the mother's costs of his Summons/Amended Summons, to be taxed on the standard basis.



THE HON. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT