The 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

CAUSE NO. FAM 2022-0069

BETWEEN:	**JW**	**APPLICANT**
AND:	**SC**	**RESPONDENT**

Appearances:	Ms. Louise Desrosiers of Travers Thorp Alberga for the Applicant Ms. Yvonne Mullen of Hampson and Company for the Respondent
Before:	Hon. Justice Williams
Heard:	11-12, 18-19 June 2024
Contribution application withdrawn:	10 July 2024
Draft circulated:	5 August 2024
Judgment delivered:	**9 August 2024**

Children Act proceedings – Appeal from Summary Court – Costs application in relation to a fact-finding hearing in the Family Division - Costs allowance/contribution application relating to Grand Court proceedings withdrawn after the conclusion of the hearing.

JUDGMENT

The parties and the Application

1. The proceedings concern RW, the six-year-old daughter of the Applicant father and Respondent mother. I will herein refer to the parents as "the father" and "the mother" and to RW as "the child".

2. By Summons dated and filed on 10 October 2023, the father sought a costs allowance/contribution order that the mother discharge his aged legal fees debt and an order that she make a contribution to his future legal fees as they fall due ("the Contribution Application" or "the Contribution Summons"). The application was made pursuant to s.17 of the Children Act ("the CA"), which incorporates Schedule 1(1)(d) of the CA, However, as I will later elaborate on herein, on 10 July 2024 (which was after the hearing had finished), the father's attorney emailed the Court stating:

   "On the basis of the recent grant of legal aid and securing of alternative counsel (the father) no longer meets the test for a contribution towards costs order and as such, a Judgment will not be required on this issue."

3. By Summons dated 12 April 2024, the father applies for a costs order requiring the mother to pay his costs ("the Costs Application" or "the Costs Summons") occasioned following a fact-finding Judgment delivered on 2 April 2024 ("the Judgment"). The father also sought costs relating to an appeal of an order made in the Summary Court in December 2022[1] ("the Second Appeal"). I believe that the Second Appeal and related costs have already been dealt with by the Chief Justice at a hearing on 23 December 2022[2] and, therefore, she should be the Judge to adjudicate if the parties feel that there are any remaining costs issues arising from the Second Appeal. Following the orders made by the Chief Justice and because of the relevant dates contained in the provisions in the Summary Court Order, the Second Appeal would have been rendered nugatory. After the Costs Summons was filed, I suggested to the parties that they may wish to reach out to the Chief Justice concerning the status of the Second Appeal and any related costs if there remained a dispute about its status. However, to prevent any ongoing uncertainty, it was recorded in an order relating to a mention held on 16 June 2023 that the Second Appeal was withdrawn. Both attorneys wrote to the Chief Justice on 17 June 2024 seeking clarification about the outcome of that hearing and about costs associated to that hearing. The attorneys informed this Court that they did not receive a reply.

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[1] See paragraph 9 below.
[2] See paragraph 10 below.

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Therefore, it is only the issues raised in the Costs Summons concerning the costs of the fact-finding hearing that require determination in this Judgment.

4. The father's Costs Application is opposed by the mother. The mother contends that there should be no order for costs made or, in the alternative, if any cost orders are to be made in the child proceedings, that should only be considered once the appeal[3] and the father's variation of contact application[4] have been determined.

Procedural background – Prior to the fact-finding mention hearing held on 16 June 2023

5. The procedural background in this case is set out in detail in the Judgment. I do not intend to substantially repeat that again herein. The parties should refer back to the Judgment for a fuller review. I attempt to tailor the background detail herein to that which may be relevant to the two Summonses which were before me at the hearing.

6. On 13 December 2021, Magistrate Hernandez gave a Ruling following a substantive s.10 CA hearing. The Learned Magistrate converted a Sole Residence Order made in favour of the mother into a Shared Residence Order. She made a 'Contact Order' increasing the time that the child would spend with the father. A Schedule 1 Maintenance Order for $500/month was also made, as well as orders for the equal payment of school fees, medical fees and other certain child related expenses.

7. The mother sought and still seeks to challenge the Magistrate's order by appeal ("the Appeal"). Although there were some issues with her filing the Appeal, on 7 January 2022 the Family Proceedings Unit confirmed to her that the Notice of Appeal had been processed. For reasons set out in some detail in the Judgment, I found that, prior to her present Counsel's involvement, the Appeal had been pursued for a lengthy period of time[5] in a dilatory manner by the mother and her former legal team.

[3] See paragraph 7 below.
[4] See paragraph 11 below.
[5] The Appeal was not mentioned or progressed at all between late January 2021 to December 2021.

8. The matter returned to the Summary Court on 14 December 2022 following an application filed by the father relating to Christmas travel and contact. Magistrate Hernandez gave leave for the child to travel with the mother from 16 December 2022 to 23 December 2022. She also set out the dates for the child's contact with the father over the holidays and she permitted the father to travel with the child for up to three consecutive nights for any period after 26 December 2022 with a return date on or before 30 December 2022.

9. On 22 December 2022, the mother filed the Notice of Appeal for the Second Appeal and indicated her intention to pursue her appeal of the 13 December 2021 Summary Court Order. This was the first time since January 2022 that the mother's then legal team had raised the December 2021 Appeal. On the same day, the mother filed a Summons in the Grand Court seeking to stay part of the 14 December 2022 Order.

10. On 23 December 2022, the mother's Stay Summons came on before Chief Justice Ramsay-Hale who dismissed the application. The Chief Justice made provision for indirect contact between the mother and the child during the father's travels. The Chief Justice also made a variation to the wider Contact Order and made *"no order for costs"*. The Chief Justice's decision has not been appealed.

11. The child proceedings again went dormant between December 2022 until 12 April 2023 and were only resurrected by the mother after the father had filed a Summons in the Grand Court (Cause No. G2022-0269) seeking a variation of the December 2021 Summary Court Contact[6] and Maintenance Orders ("the Variation Application" or "the Variation Summons"). The parties eventually confirmed their availability enabling them to attend a mention hearing relating to the Variation Summons on 16 June 2023. This was after the mother's present attorneys agreed, by email on 26 May 2023, that they would also come on the record for the Appeal.

[6] The father seeks a 50% shared care child arrangement.

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Procedural background – The mother's application for a fact-finding hearing made at the mention hearing held on 16 June 2023

12. At the 16 June 2023 mention hearing, it was agreed that the substantive child applications still before the Court were the Appeal and the Variation Summons. At the mention hearing, I accepted the parties' contention that the Appeal hearing should be a *de novo* hearing. I directed that the Appeal and the Variation Summons be case managed and heard together because they both required a full hearing to determine what order should be made having regard to the welfare of the child at this time.

13. The significant development arising at the June 2023 mention hearing was the mother's insistence that there should be a fact-finding hearing arising from her allegation that she and the child had been victims of controlling and coercive behaviour by the father. The mother complained that the Summary Court had refused to give her an opportunity to present her evidence/case and that the Magistrate had disregarded her claims concerning the father's alleged conduct and what it amounted to.

14. The Court informed the parties that, unlike in England and Wales, fact-finding hearings had rarely been sought or utilised in private law child proceedings in the Cayman Islands and there was no local Practice Direction.[7] The Court highlighted that the Court of Appeal in England and Wales had made it clear that:

> *"Not every case requires a fact-finding hearing even where domestic violence is alleged."*

The mother, however, referred to the ruling of Mangatal J in ***KN v MN*** [2015] (1) CILR Note 9 and the Learned Judge's observations about incorporating Practice Direction 12J from England and Wales into Cayman jurisprudence. The mother was adamant that a separate hearing should be conducted because there is:

> *"a discrete issue capable of a swift and conclusive determination which will enable substantive proceedings to be resolved expeditiously."*[8]

[7] In England and Wales Practice Direction 12J of the Family Proceedings Rules (2010) (PD 12J) contains detailed guidance on determining whether or not it is necessary to conduct a fact-finding hearing with respect to allegations of domestic abuse.
[8] Paragraphs 23 and 25 of Position Statement of the mother dated 15 June 2023.

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In support of her contention, the mother relied heavily upon the approach of the Courts in England and Wales, making reference to a number of English cases.[9] The mother placed great reliance on the case of ***RE H-N and others*** [2021] EWCA Civ 448 when submitting that a fact-finding hearing was *"necessary and proportionate"*, stating that the Court of Appeal in that case had provided guidance following the considerable development and refining of the thought and theory around how to manage allegations of domestic violence in the context of child proceedings.

15. I highlight the mother's above submissions, which she made when seeking to persuade the Court that in the Cayman Islands there should be fact-finding hearings held in cases of the same nature as the one before me, because they seem to be rather at odds with the submissions later made by her when opposing the Costs Application. At the hearing of the Costs Summons she stated that there was no Cayman case law in relation to the costs of such hearings, adding that fact-finding hearings are *"rare to the point of non-existence in Cayman"*.

She said in her costs submissions that:

> *"The procedural infrastructure does not exist to guide us as to when hearings are appropriate"* and that: *"In the normal course in Cayman, the facts dealt with in the FFH would be determined as part of the substantive proceedings."*

She argued that in England, unlike in the Cayman Islands, a fact-finding hearing would be *"mandated",* adding that in this jurisdiction:

> *"Allegations would be dealt with as a part of a wider hearing."*

With this in mind, the mother contended at the costs hearing that the usual practice adopted in children cases should be followed and that, in the absence of reprehensible or unreasonable conduct, there should be no order made as to costs. A difficulty that these later submissions made by the mother concerning the Costs Summons raise is that it was the mother's June 2023 submissions, made with specific reference to and reliance upon the approach adopted in the English Courts, which sought to persuade the Court to now adopt the English approach of holding fact-

[9] ***Re S (A Child) (Split Hearings: Fact Finding),*** 2014 1 FCR 477, ***In re (Children) (Care Proceedings: Standard of Proof)***, [2009] 1 A.C, ***RE M (A Child) (Fact-Finding Hearing: Burden of Proof)*** [2013] 2013 2 FLR 874.

finding hearings in certain children cases rather than leaving the allegations to be dealt with at the substantive hearing. It is a rather unattractive submission to now seek to avoid the possibility of a costs order being made by relying on the historical approach to these cases in the Cayman Islands, when she had previously successfully argued that they should be departed from and that the approach to such cases should be guided by the developing approach set out in English case law in relation to the holding of fact-finding hearings.

16. The mother made the application for a fact-finding hearing orally rather than by filing a Summons with supporting affidavit. This meant that the Court and the father were inadequately informed at the time about the extent of the allegations which the mother would be seeking determination on. Looking back at that hearing now with present knowledge about how the fact-finding proceedings were developed by the mother, it appears that even the mother had not given sufficient thought to and had little clarity in June 2023 about the extent of allegations which would be presented to the Court for findings to be made. In the circumstances that the father found himself in at the June 2023 mention hearing, he initially opposed the holding of a fact-finding hearing. The Court indicated that there was insufficient time at that mention hearing allocated a thirty-minute slot on a full Family Mention Day list to consider a contested application for a fact-finding hearing brought in the manner in which it had been made. The parties were informed that a hearing at which the Court would consider whether a separate fact-finding hearing was necessary to determine whether and to what extent allegations made by the mother against the father are true would have to take place on a later date. The father, upon hearing the mother's time estimate of two days for the fact-finding hearing, then changed his position and stated that he did not oppose such a hearing. His decision was partly a costs-driven one because he did not see the benefit of preparing for and then dealing with a contested hearing to determine whether a fact-finding hearing was appropriate if the actual fact-finding hearing was going to be only two days in length.

17. The mother rightly stated when making the application that following a fact-finding hearing, the Mediation Officer, the Welfare Officer and the Court would have the benefit of a factual matrix within which to mediate, assess or base a decision. The Court was aware that in recent times coercive and controlling behaviour has been deemed suitable for determination at fact-finding

hearings in England and Wales and 'taking on board' all the mother's submissions, including those highlighted in paragraph 14 above, it acceded to the mother's unopposed application.

18. The mention hearing was one conducted with only limited time available. As touched on above, due to the manner in which the application for a fact-finding hearing was made and due to the limited detail shared by the mother at the mention hearing, neither the father nor the Court could have possibly foreseen the breadth of the allegations and facts upon which allegations are being sought that have since been presented by the mother to this Court. I accept that more thought should have been given to ascertaining from the mother with more particularity the facts upon which she sought findings to be made.[10] At the fact-finding hearing the Court was required to review detailed evidence and make findings about over fifty allegations which arose in an unstructured way. I accept that controlling and coercive behaviour does not fit comfortably within the format of a Scott Schedule, given that it will usually be necessary to establish a pattern of behaviour which may span a long period of time and involve more subtle behaviours which in isolation may not appear relevant. Therefore, if a schedule was produced, there may be a need in coercive control cases for it to include more than the often seen five to ten facts set out in a schedule. The parties, recognising that a broader approach might be required to consider a pattern of behaviour, did not seek a direction concerning a Scott Schedule at the mention hearing. Despite that, the findings sought were clearly far more numerous than one would ordinarily expect at even at a fact-finding hearing to make a determination of fact as to whether a party has behaved in a coercive or controlling manner, especially in this case when the mother had originally estimated a two-day hearing. As I mentioned at paragraph 39 in the Judgment:

> *"By the end of the fact-finding hearing, it became increasingly evident that it had been used by the mother as a vehicle for her to seek findings on almost every act of the father, no matter how small, which she has interpreted as inappropriate or which she has a grievance about."*

[10] At paragraphs 40 and 41 in the Judgment I set out my 'with hindsight' observations about how the fact-finding application could have been better brought and reviewed before the decision to grant the mother's application was made.

Procedural background – The period between the June 2023 mention hearing to the fact finding-hearing commencing in July 2023

19. Relying upon the mother's time estimate, the fact-finding hearing was fixed for 25 and 26 July 2023. On 18 July 2023, the mother's Counsel raised for the first time the inaccuracy of the two-day time estimate given when she stated in an email:

"I harbor grave doubts that 2 days is sufficient for this case."

The mother nor her Counsel did not, as they seemed to wrongly infer that they had during the present costs hearing, suggest that the fact-finding hearing be aborted, and the proceedings continue to a substantive hearing. Therefore, on 18 July 2023, on the basis that the parties wished the hearing to go ahead, my Personal Assistant shared my following remarks with the parties:

*"**Time estimate and scott schedule** - I still hope that the hearing can take 2 days. The Scott Schedule approach was not pursued after having regard to the observations about coercion cases made in **Re H-N** (paras 41-49) which cautioned against allowing a Scott Schedule to distort the fact-finding process (by becoming the sole focus of a hearing). That said the Court of Appeal did not rule out the use of a schedule as a structure to assist in analysing specific allegations and I thought that the parties were going to consider some form of schedule/list.*

*In **F v M** the mother's legal team used an 'umbrella schedule' whereby allegations were set out under thematic headlines and examples of the behaviour alleged were provided under each headline. This could focus the mind at the hearing and reduce the risk of irrelevant evidence being given thereby keeping the case within the time limits. I note in the mother's affidavit that there are headlines and it may be that such a schedule could be provided. It will be important to know right from the outset what the court is being asked to make findings of fact rather than different things emerging at different parts of the hearing. The focus on the issue of coercive behaviour is to be to the extent that it is relevant and necessary to determine issues as to the child's future welfare and it is not simply a chance of a party to air her/his grievances.* [11] *I would recommend that thought be given to some sort of schedule."*

[11] My emphasis by underlining.

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20. Later, on that same day, the father's attorney wrote and highlighted that the mother:

> *"has suggested that two days of evidence will now not be sufficient, even with written submission to conclude."*

The attorney added that:

> *"Our client is concerned about further delay and about the cost of litigation .... We are most concerned about rushing the filing of our client's affidavit and putting him to the cost of preparing for trial if there is any indication that the Court will not be able to accommodate this matter on Tuesday/Wednesday, but as balanced against cost/delay."*

The mother's attorney then sent a further email on 18 July 2023 in which she highlighted the problems she was having with preparing for the fact-finding hearing because the father's Affidavit had not been filed. She then commented:

> *"I still harbor grave doubts that 2 days is inadequate",* adding: *"I do not have instructions to ask for an adjournment (I have not directly asked), although my client is expressing her concern to me. I do, however, think consideration should be given to one and whether that might be the best use of court resources and necessary to ensure a fair trial."*

What was being canvassed was not the possibility of discontinuing the fact-finding hearing approach because such a hearing would last longer than two days, but simply the possibility of adjourning the fact-finding hearing to a later date due to the late filing of evidence. The actual request for an adjournment flowing from the non-filing of the father's Affidavit was then made by an email at 9:26 a.m. on 19 July 2023.

21. I was troubled by the approach being taken by the parties with them frequently writing to the Court or copying the Court into *inter partes* correspondence. Therefore, I instructed my Personal Assistant to write to the parties in the following terms:

> *"I do not intend to case manage this matter by correspondence, however, I will share the below comments. It is now a matter for the parties to determine, in light of their difficulties with complying with the Court's directions and the larger than expected number of facts upon which findings are now being sought, whether they are able to proceed next week*

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which would hopefully give this Court sufficient time to complete the judgment before 18 August.

The directions on 16 June (over 4 weeks before the hearing date) were made with the parties' blessing. I therefore expected the affidavits to be filed on time. I also expected the mother to tailor the volume of findings of fact being sought to try to establish coercive/controlling behaviour to the agreed 2-day time estimate.[12] *I reiterate my earlier comment "The focus on the issue of coercive behaviour is to be to the extent that it is relevant and necessary to determine issues as to the child's future welfare and it is not simply a chance of a party to air her/his grievances".*

If the parties are not ready for this matter to proceed (or not in a position to have the bundles to me as ordered or the skeletons to me on Friday to enable me to pre read) or if they feel that the hearing cannot be completed in the 2-days, then the fixture may have to be broken and the hearing be used for case managing rather than future case management taking place via correspondence.....

If the matter cannot proceed as directed it may have to be adjourned until October at which time the Judge can hear the matter, receive submissions after the evidence and then write his judgment with matters fresh in his mind (as a gap is not helpful to a judge when reviewing factual evidence and making findings of fact upon it)."

22. On 19 July 2024, the mother's attorney replied by email stating that she had made her views clear that the hearing proceeding on the fixed date was *"unviable"* and would have no issues with an October hearing. The father's attorney responded by email saying that he was not requesting an adjournment and was *"ready and willing to proceed"* adding:

"I am concerned about:-

- *The breadth of allegations my client has had to answer under the guise of domestic abuse / coercive control which do not appear to be relevant.*
- *The lack of schedule at the mention hearing (esp. e.g. columns B & C) which would have allowed a review and control of the evidence at an early stage. This was completely within the mother's control as the seeking of a fact finding was hers.*

[12] My emphasis by underlining.

- *However, these concerns will now simply form part of any argument on costs in due course."*

It is evident that the father was at this pre-hearing stage putting the mother on notice that there would be a costs application flowing from the way the fact-finding proceedings were being pursued by the mother.

23. Having regard to the proximity of the hearing, the Court then wrote back to the parties stating:

"If the bundles are filed tomorrow and the skeletons on Friday and, importantly, if the parties feel it can be dealt within the 2 days allocated then I could still hear the matter next week…..

…. Now that the evidence has been filed & in the absence of an agreed umbrella schedule and armed with my above observations, I think it is really a matter for the parties to promptly and jointly consider (possibly directly rather than by a time consuming chain of emails) whether by Friday I will have both the bundles and skeletons and, if yes, whether they can realistically complete the evidence in the two days that they had requested the court to set aside. If they feel that the matter will go part heard and/or having considered my above observations about the judgment, they should both inform the court what they wish the Court to do about next week."

24. After receiving further emails from the parties, the Court wrote to the attorneys at 4:30 p.m. on Friday 21 July 2024:

"I have had to get overly-involved over the past few days in correspondence, in circumstances where I had given firm directions over a month ago (16 June 2023) to a fact-finding hearing (not for the substantive appeal or for a hearing to vary the current order). No mention of implacable hostility was raised at that hearing. If the directions had been strictly complied with and the hearing time estimate had been an accurate one, this time-consuming involvement would not have been necessary.

Regrettably, after the parties agreed a time estimate of 2 days and that listing then being made, the Court has very recently been informed that one party is of the view that such a hearing will go part heard as the oral evidence will not be completed in the allocated time.

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Of further concern is the fact that directions have not been strictly complied save for the filing of the core bundle and skeletons (albeit after an extension had been given). I also note that the core bundle rather surprisingly contains just under 1,000 pages and it is questionable how much of that content will be relevant to the fact-finding hearing. I would have wished the bundle to have been more focused as the excessive content (which will) inevitably increase the preparation time for the hearing. This yet again reinforces my view about the need for a similar PD to the one made in England and Wales the PD expects less than 350 pages without leave.

I had hoped my previous detailed emails had informed about the Court's position. Just to be clear, the matter remains in the list unless the parties ask for the fixture to be vacated. If the parties are ready to proceed and the witnesses are ready, then the matter may proceed on the directed days. If the parties feel that the hearing cannot now be used for a fact finding hearing due to implacable hostility being raised, then I imagine they will have to discuss that…..

I would be grateful if the parties could confirm promptly whether the hearing is effective or not. I remind the parties that it is solely for a hearing to determine whether, on the mother's application, there should be a finding of coercive and controlling behaviour on behalf of the husband based on the facts she seeks findings to be made."

25. The father's attorney wrote at 5:09 p.m. on 21 July 2023 that:

"We do not request that the fixture be vacated, nor do we consent to a vacation. We ask the matter proceed on Tuesday."

On Monday 24 July 2023, the mother's attorney wrote indicating that she was *"instructed to ask for an adjournment"*. The father's attorney then wrote that they *"resist any further attempts at an adjournment"*. The Court replied saying that it would consider any application to adjourn at the outset of the hearing. At 7:14 a.m. on 25 July 2023, the mother's attorney indicated that there would be no application being made for an adjournment. The fact-finding hearing commenced on the fixed date, 25 July 2023.

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26. What is clear from the above detailed review is that at no time did the mother or her attorney indicate to the Court or to the father that they wished to discontinue the fact finding-hearing approach once they realised that such a hearing would exceed the two-day time estimate.

Background – The fact-finding hearing - The filing of the Contribution Summons - The father making an application for legal aid and the processing of that application until 20 February 2024

27. Due to the number of facts in relation to which findings were sought by the mother, the time estimate for the hearing proved to be wholly unrealistic and resulted in a significant number of additional days having to be found which were spread over many months.[13] The filed evidence was voluminous and the number of findings of fact sought were unexpected and excessive. The evidence stage of the fact-finding hearing eventually concluded on 2 November 2023. The parties submitted Written Closing Submissions upon which they made oral representations on 13 December 2023.

28. The recently withdrawn Contribution Summons was filed on 10 October 2023, the same day that the second stage of the fact-finding hearing was due to take place[14]. It appears that the mother was made aware that this would be filed on or around 6 October 2023. At that stage of the proceedings the mother had already given two days of evidence[15] and was still due to give further evidence. It is not clear why the Contribution Summons was filed so close to the recommencement of the hearing and not filed sooner (i.e. before the July stage of the proceedings when concern was being expressed that a two-day hearing would likely be insufficient or, even more so, shortly after the first stage of the hearing when it was abundantly clear that much more than two days would be required). The receipt of the Contribution Summons clearly upset the mother at a sensitive time in the case for her when she was still enduring the stress of giving evidence and was unable to seek the support that may have been given from talking with her attorney. Although the evidence before me does not establish that the timing of the filing was done with a deliberate intention to impact the mother's well-being and amount to litigation abuse (I am conscious that the mother would have

[13] The first day of the fact-finding hearing was on 25 July 2023 and it did not conclude until the oral submissions were made on 13 December 2023. It was an eight-day hearing.
[14] The hearing could not proceed on 10-11 October 2023 due to the Judge's ill-health - A prompt new date was given for 17 October 2023.
[15] The mother gave oral evidence on 25-26 July 2023 and 17-18 October 2024.

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been restricted from talking with her attorney even if the Contribution Summons had been promptly issued at the end of July 2023), it was an insensitive manner in which to litigate.

29. On 10 October 2023, the Family Team Administrator at the father's attorneys emailed the father's attorney indicating that the Contribution Application would be made once the mother was *"off oath"*. I take this to mean that at that time they were seeking to interpose it and have it determined before the fact-finding hearing concluded. On 12 October 2023, the father's attorney indicated that the father opposed the mother's attorney talking to her client when she was part way through her evidence stating that his:

> *"objection is only on the basis that it seems the natural point to make the application on costs is following the conclusion of the mother's evidence (so Ms. Mullen can discuss the application with ease),"*

adding that Counsel would now expect the Contribution Summons to be heard:

> *"at a suitable juncture thereafter considering the Judge's availability."*

On the same day, the parties were informed by the Court that, due to the full Court list and if they wished the part heard fact-finding hearing to be concluded, there was no opportunity at that time to hear the *"very belatedly filed"* Contribution Summons. The Court indicated that it would not be able to hear the application until after the fact-finding proceedings had been concluded.

30. At the time of filing the Contribution Summons the father knew that he would be required to provide evidence that he had been unable to obtain legal aid to fund his legal proceedings. After it became aware Contribution Application, the Court reminded the parties during the October 2023 stage of the hearing about the requirements that needed to be fulfilled by an applicant. The father appears to have been conscious of that, as at paragraph 10 in his supporting affidavit sworn on 10 October 2023, he stated that he was making an application for legal aid, adding that he thought it would be *"highly unlikely"* that it would be granted. He completed the application form for legal aid, which he dated 5 October 2023. However, he delayed submitting that application for three months until 8 January 2024. His application contained very little detail about the nature of the proceedings, simply saying in a supporting email that he had:

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"been in a very contentious legal battle with my co-parent which has recently been heard by the family Court…."

Understandably, the Legal Aid Department felt unable to process the application and provided the father with a Notice-Incomplete Legal Aid Application Request for Further Information form. There then followed an exchange of emails between the father and the Legal Aid Department. Further correspondence and disclosure from the father did not adequately explain the nature of the proceedings. On 13 February 2024, the Legal Aid Application was refused with the provided notation that:

"Basis of appeal not provided or clear at this stage to justify public funding" and *"Applicant seems capable of making his own private arrangements with counsel of choice"* and *"Merits on appeal apply for further consideration."*

It was only later, on 20 February 2024, when the father informed the Department of Children and Family Services ("DCFS") that legal aid was not sought in relation to the Appeal but for a fact-finding hearing. On 20 February 2024, he was informed that he could apply for a reconsideration of his application and that to do that he just needed to send a letter outlining a wish to reconsider. He was informed that any application for reconsideration must be made within twenty working days after 13 February 2024. The father failed to apply for a reconsideration within the twenty working days.

Background – The Judgment – Mention Hearing on 18 July 2024 and directions relating to the Appeal and the Variation Summons

31. On 2 April 2024, the Judgment was circulated. Certain findings of fact were made in relation to specific allegations, but the mother's global allegation that the father had behaved in a coercive and controlling manner was not established.

32. Because of the hopefully informative content and findings made in the Judgment, this private law child dispute should not now be viewed as being a complex matter. The costs moving forward should also be greatly reduced due to the factual determinations contained in the Judgment. The parties were invited in the Judgment to reflect on the findings of fact contained therein and to use

them to assist them to move on to reach a *"sensible resolution of these drawn-out child proceedings"*. The intention of the Court was that they would attend mediation especially as one reason given by the mother when seeking the adoption of the fact-finding hearing route was to provide the parties with a factual basis upon which they could then go and mediate. Another reason given by her was that it would be more productive to commence mediation after an informed Welfare Officer assessment and that findings of fact would assist a Welfare Officer when carrying out her assessment. Following the delivery of the Judgment, on 16 April 2024, the Court made a referral to the DCFS for a Welfare Report to be filed by or on 12 July 2024.[16] A mention hearing was set for 18 July 2024 at which time the Court would consider whether to send the matter to mediation or case manage to a hearing.

Background – The Contribution Summons and the Costs Summons proceedings for the period from April 2024 to 11 June 2024 – The processing of the father's Legal Aid Application during the period May 2024

33. The Contribution Summons first came on for hearing on 16 April 2024. The more recently filed Costs Summons was listed to be mentioned on 16 April 2024. The Court agreed with the mother that it would not be appropriate for both Summonses to be fully heard together. Accordingly, it was directed that both Summonses be listed to be heard on 11-12 June 2024. At the April 2024 hearing the father again would have been fully aware from the content of the mother's Written Submissions for that hearing that he would need to produce evidence that he had been unable to obtain legal aid. It seems that it may have been that reminder from the mother's Counsel which spurred on the father to send his letter application for reconsideration to the Legal Aid Department on 3 May 2024. On 15 May 2024, the Legal Aid Department agreed to reconsider the father's Application for Legal Aid even though the twenty days for the making of such an application had passed. Thereafter correspondence between the father and the Legal Aid Department took place.

[16] The Appeal and Variation applications were adjourned to a mention hearing on 18 July 2024 at which the Court would decide whether the parties should be referred to mediation or whether direction should be given to a consolidated hearing. As an extension was given for the filing of the Welfare Report and because the available dates of the mother's new legal aid attorney the 18 July 2024 date was vacated and dates in August 2024 were offered.

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34. An issue arose following the April 2024 hearing at which the parties had been given leave to file[17] further affidavits in relation to the Summonses, if so advised, by or on 7 May 2024. It appears that they had discussions about extending that date. The father's attorney was of the view that the parties had agreed an extension for the filing to the week of 23-30 May 2024 as had been requested by her in an email to the mother's attorney on 2 May 2024. The father states that, as only a holding email in reply was received, a confirmation email was sent by his attorneys on 3 May 2024 concerning a possible extension concerning the affidavits. The father says that the mother's attorneys gave consent to an extension by an email sent on 3 May 2024 at 1:26 p.m. The father says that a draft of an email to be sent to the Judge's Personal Assistant was sent, on 7 May 2024, to the mother's attorney to formalise the extension for the exchange of evidence. One sentence in the email stated:

> *"Both parties are agreeable to an extension to exchange some time w/c 23/30 May, if that is OK with the judge?...If the judge is agreeable, we will just include the appropriate deadline in the final order, rather than two separate orders."*

The draft order arising from the April 2024 hearing, including details of an extended date of filing of evidence, was sent to the wife's attorney on 15 May 2024. It then appears that no adequate response was given, and, on 30 May 2024, a copy of the draft order was sent to the Court by the mother's attorney asking the Court to approve it without input from the mother. On Thursday 30 May 2024, the mother's attorney wrote to the Judge's Personal Assistant and to the father's attorney requesting that she be allowed the weekend to look over the correspondence/orders. On the same day, the father filed his Ninth Affidavit (sworn on the same day) out of time and without leave of the Court. As she had received nothing from the mother's attorney, on Monday 3 June 2024, the father's attorney again wrote to the Court asking for the Court to amend and then approve the submitted draft order as it saw fit.

35. On 4 June 2024, I made it clear that I did not wish to deal with this issue in email exchanges between the Judge and the parties and I stated that I expected the mother's Counsel to 'get on' with providing her comments about the order. I later received the draft order with both parties' comments thereon, which I promptly approved after I had made several amendments to it. I had hoped that would be

[17] The affidavits were to be mutually exchanged.

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the end of it but, alas, on 6 June 2024 the mother's attorney wrote to the father's attorney and to the Judge's Personal Assistant raising concern about the 30 May 2024 Affidavit that had been filed:

"at the last moment" as it contained *"a considerable amount of new evidence."*

The mother indicated that due to the *"late filing of the evidence"* she did not agree that the Affidavit should be admitted, but, if it was admitted, then she should be given an opportunity to respond with her own affidavit with documentary evidence and that in such circumstances the upcoming hearing should be vacated. The mother's attorney stated that:

"We request the court's direction on that aspect."

36. I instructed my Personal Assistant to send the following remarks in an email to the parties' attorneys. I share the content of that email herein as those who come before the Family Division should be reminded about: (i) the procedure for extending the time to file affidavit evidence beyond the ordered date; (ii) the inappropriateness of copying the Court into *inter parties* correspondence; and (iii) the inappropriateness of trying to litigate a matter by emails to the Court with an expectation that the Judge will case manage or resolve issues by email. My comments in the email were:

"I have been shown an inter partes email sent today by Ms. Mullen and copied into the Court concerning an affidavit that has been filed (without leave) by the father. The email seems to seek the Court's direction and case management by email.

I have seen an email then today sent directly to the Court by Ms. Desrosiers and cc'd to Ms. Mullen.

I yet again find myself compelled to remind Counsel that the Court should not be copied into inter-partes correspondence, and they should not expect a Judge to case manage disputes as they arise between parties by email. This approach by Counsel inappropriately occupies a great deal of judicial time and must stop. It would not happen or be acceptable in any other jurisdiction.

However, due to the imminency of the trial, I will comment as follows.

Firstly, it is not for the parties to simply agree any extension date for the filing of affidavit evidence and feel that enables them to file an affidavit at a later date which has not been approved by the Court. Parties would still need the Court's leave to do that (see para 7

Practice Circular No 1/2014)[18] *- Hitherto, I have been willing to take a flexible approach if parties file a consent order for administrative consideration to circumvent the need for the filing of formal application.*

Secondly, concerning the recent draft order I was asked to approve from the 16 April 2024 hearing: The lawyers are expected to file an order that accurately records the order that was made (i.e. the detail in the Minute of Order). The Judge's wording may be 'smartened up' by the lawyer. However, the submitted order should not contain wide provisions or preamble clearly not set out in the Minute of Order or even the Judge's note especially if they rehearse a position favoured by one party. If the Court sets a date for filling, then that is the date that should be set out in the order and not a different date that the parties may agree at a later date. The order to be submitted for that day should reflect the order that was actually made on that day.

At the hearing, I gave leave for the filing of affidavits by 7 May 2024, not by/on 30 May. I presume the 7 May date was agreed and ordered having regard to the parties' availability (in or out of office time) leading up to the hearing. I have not given leave for any affidavits to be filed by or on 30 May 2024, so the affidavit should not have been filed (no matter what the parties may believe they have agreed or not agreed about the filing).

Therefore, I will not read this affidavit at this time, as no leave has been sought or given.

If the father wishes the affidavit to be before the Court, he must first apply for leave or submit a consent order for administrative consideration providing for an extension of time for the filing of the affidavit. If contested, that application will now have to be made at the start of the hearing. If leave is given, then the Court will then have to determine whether the hearing can proceed.

In the interim, I will not be drawn into case managing this case by email, so please desist copying the court into your inter partes correspondence or writing directly to the Judge (via his PA) for the judge to case manage disputes by email."

[18] If a signed Consent Order containing the parties' agreement to an extension is not submitted for administrative consideration and approval by me, the expectation is that an application for an extension for filing should be made by Summons with a supporting affidavit and that those pleadings should be filed before the current due filing date.

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37. On 6 June 2024, the father filed a Summons for an extension of time to file the said Affidavit and it was supported by an Affidavit sworn on the same day by him.

Background – The Contribution Summons and the Costs Summons hearing commencing on 11 June 2024

38. When the matter came on before me on 11 June 2024, the mother indicated that she would not oppose the extension on the basis that the Contribution Application be adjourned to enable her to file an affidavit in reply and to obtain some of the verifying documentation referred to by the father in his Affidavit. I suggested that a way forward might be for the Court to proceed with the hearing of the Costs Summons, as the recently filed affidavit did not touch on that and that I would reorganise my Court list to enable the Contribution Application to be dealt with in the following week. Counsel for the mother said that she agreed, but then said that she was not sufficiently prepared to deal with the Costs Summons on 11 June 2024. She stated that she would be in a position to do so if the hearing of that Summons commenced on the following day. Counsel for the father expressed her frustration and argued that both applications should proceed on 11 June 2024 and said that she would not take issue with the mother introducing evidence related to the matters raised in her client's affairs in her oral evidence. Counsel for the father stated that if the Court was going to adjourn the Contribution Application, then the hearing of the Costs Summons should still commence in the remaining two hours available on 11 June 2024 and if needed run into the following day. After hearing from the parties, I decided that the hearing of the Contribution Summons would be adjourned to the first working day in the following week, 18 June 2024, and that the father's Costs Summons would be heard at 10:00 a.m. on 12 June 2024.

39. The mother's attorney rightly concedes that she had failed to address the issues arising in this matter in a timely matter. It appears that her available professional time was directed towards a Financial Services Division matter. Regrettably, it is not uncommon for attorneys who have matters in the other Divisions of the Grand Court to feel that those matters should be prioritised over their matters in the Family Division. Although I recognise their predicament, I do not know why they would hold such a belief and it is an approach that I do not share. If attorneys have matters in the Family Division, the cases by their nature relate to fundamental issues affecting the day-to-day lives of their clients who are often vulnerable members of the community. They are of high importance,

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merit adequate care and attention, and they must not be treated as being of a lesser priority. This means that attorneys must actively and professionally case manage these cases and not 'put them on the back burner' whilst they concentrate on other matters. That includes replying promptly and meaningfully to appropriate communications from their opposing colleagues at the Bar, especially in the lead up to a listed substantive hearing. The difficulty that the mother's attorney said she was facing resulted in the father having to file his Affidavit too close to the date of the hearing date without leave of the Court. The knock-on effect of the late filing of that Affidavit resulted in the hearing of the Contribution Summons having to be put back by a week. Further, it is not acceptable for an attorney to attend a long-fixed hearing and indicate at its outset that they are not in a position to deal with a core issue listed to be dealt with at that hearing, in this case the Costs Application, because they had not prepared for that part to be heard on that day. In this matter, Counsel for the Mother should have been aware that the father was advocating that, if the Court decided that the Contribution Summons hearing could not proceed due to the late filing of the Affidavit then, at the very least, the hearing of the Costs Summons *"should go ahead as planned"*.[19] Therefore, Counsel should have been fully prepared for the Costs Summons hearing going ahead and possibly concluding on 11 June 2024.

40. The parties made their submissions relating to the Costs Summons on 12 June 2024. I was not able to prepare a judgment in that matter before the Contribution Summons was heard on 18 June and 19 June 2024.[20] At the close of the hearing on 19 June 2024, I adjourned the matter to enable me to prepare a Reserved Judgment to determine the issues raised in the two Summonses then before me. However, the preparation of the Judgment was then delayed due to the uncertainty about the impact on the Contribution Summons arising from significant intervening developments concerning the father's Application for Legal Aid.

[19] Paragraph 10 in the father's Affidavit sworn on 6 June 2024.
[20] Oral evidence occupied all day on 18 June 2024 and Counsel made the submission on the afternoon of 19 June 2024.

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Background – The processing of the father's Legal Aid Application from 18 June 2024 – The effect on the Contribution Summons proceedings arising from the grant of legal aid to the father

41. On 18 June 2024, I became aware of potential developments in the father's Application for Legal Aid and I reviewed that file. That review informed me that the Legal Aid Office felt that it now had sufficient information to enable it to process the father's application for reconsideration of his Legal Aid Application[21] which had been refused on 13 February 2024. It was evident that the Legal Aid Director was actively considering the possibility of making a limited grant. The Court was made aware that she would be making a decision by the end of that week. I provided that information to the parties on 18 and 19 June 2024 because I felt that they might wish to address the legal aid position during their submissions relating to the Contribution Summons. With the parties' consent, I provided the Legal Aid Department with a copy of the Judgment which outlined the historical background to this family dispute as well as the determination of the issues raised in the fact-finding hearing. The Legal Aid Department was made aware of the Contribution Summons proceedings and the need for the Court to be informed about the outcome of the reconsideration of the Legal Aid Application before it could determine those proceedings.

42. Shortly after the hearing of the two Summonses had concluded, I was informed that legal aid had been granted to the father. I was informed that communications were taking place concerning the engagement of a named legal aid family law attorney.

43. On 20 June 2024, I sought clarification from the father's then attorney about whether, in light of the Legal Aid Grant, a ruling was still sought in relation to the Contribution Summons. The mother's attorney wrote saying that if the father wished to proceed with the Contribution Summons, she would *"need to point to case law that addresses this issue"* and that she would be happy to do that briefly in writing. The father's attorney wrote on 21 June 2024:

> *"I am seeking instructions. Once I have the terms of the legal aid and can speak with the attorney onboarding, I will be better placed to respond and will do so as quickly as is possible."*

[21] The application was dated 5 October 2023 (5 days before the Contribution Summons was filed), but was filed 3 months later, on 8 January 2024.

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The Court then informed the parties:

> *"In light of the legal aid development and the emails then received from Counsel, I will delay commencing the writing of my judgment until clarity is received about the status of the contribution summons and the filing of any additional written submissions if I am still being asked to rule upon it."*

On 24 June 2024, the father's then attorney indicated that until her client had clarity about his legal aid and representation, he would be reserving his position in relation to the Contribution Application, indicating that a ruling on the same may not be necessary in due course. On 25 June 2024, I made it clear in correspondence to the parties that it was incumbent on the father to proactively engage with/approach legal aid attorneys as well as the Legal Aid Department concerning instruction/appointment of an attorney. I added that the Contribution Application should:

> *"not be left in limbo with the father reserving his position about that application for an undetermined period of time"* and that: *"the expectation would be for him to now actively engage with Legal Aid concerning legal aid grant to enable him to seek the clarity he seeks within a reasonable timeframe."*

44. On 26 June 2024, a Civil Legal Aid Certificate was granted to the father naming Ms. McDonagh, an experienced family law practitioner at KSG Attorneys-at-Law, to represent him in the child contact/appeal proceedings. Ms. McDonagh formally came on the record when she filed the Notice of Change of Attorney on 17 July 2024.

45. As a result of the grant of legal aid, on 10 July 2024 the father's former attorney informed the Court that a determination of the Contribution Summons was not required. I was therefore able to revert to writing this Judgment upon my return to the jurisdiction on 15 July 2024. The husband's former attorneys commendably agreed to cooperate with the transfer of the father's files from them to the new attorneys. However, the father should not have pursued the Contribution Summons in the manner he did when he failed to diligently progress and/or provide the Court with clarity about the status of his Legal Aid Application.

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The Law – Costs Application in private law children cases and in related fact-finding proceedings

46. There are no Grand Court decisions in the Cayman Islands on the issue of costs orders being made in fact-finding children hearings. In fact, there appear to be no judgments concerning the making of costs orders in private or public law Children Act proceedings, likely because such orders are very rarely sought or made. I have not been asked to rule on a costs application in a private law child case in my time sitting in the Family Division of the Grand Court. Therefore, I will herein endeavour to review the position in the Cayman Islands. Conducting such an exercise may well make this Judgment longer than one might desire, but I hope that it may prove to be of use in future cases.

47. Costs in family proceedings in the Grand Court are governed by the Grand Court Rules ("GCR"), in particular GCR O.62. Although the present proceedings are not governed by the Matrimonial Causes Rules ("MCR"), I note that O.62 is one of the few GCRs that applies to MCR proceedings.[22] O.62, r.4(5) provides a general approach that costs will be ordered to follow the event.

48. In England and Wales, where a similar approach is followed in relation to costs in civil cases, costs applications in family proceedings cases may involve different considerations. Costs in family proceedings are dealt with under Part 28 Family Proceedings Rules 2010 ("FPR")[23], which import certain parts of the Civil Proceedings Rules 1998 ("CPR"). Family Proceedings are excluded from the general civil rule set out in r.44.2(2) CPR that the unsuccessful party will be ordered to pay the costs of the successful party. However, unlike financial remedy cases, the 'no order' starting point (FPR, r.28.3) does not apply under the Rules to Children Act proceedings in England.[24] Costs considerations are governed by the 'clean sheet' approach, which is found at FPR, r.28.1, namely:

"The Court many make at any time such order as to costs as it thinks fit."

This is not an unfettered discretion, because FPR 28.2 makes applicable to family proceedings, other than financial remedy proceedings, the majority of the rules in relation to costs of the CPR.

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[22] I note that there remains an inconsistency between MCR, r.22 and GCR O.1, r.2. The former does not include O.62 as being one of the Orders applicable to matrimonial proceedings, whereas the latter does. There remains a need for that inconsistency to be reviewed and attended to.

[23] Part 28 of FPR consolidates the previous law relating to costs, including the relevant provisions of the Family Proceedings Rules 1991 (SI 1991/1247).

[24] See r.28.3(5) FPR.

The most significant of the rules excluded is the general rule that costs follow the event, found at CPR 44.3(2).

49. In 'clean sheet' cases, the Court of Appeal considered in ***Gojkovic (No2)*** [1991] 2 FLR 233 that:

"…in the Family Division there still remains the necessity for some starting point. That starting point, in my judgment, is that costs prima facie follow the event (see Cumming Bruce LJ in Singer (formerly Sharegin) v Sharegin [1984] FLR 114 at [119]) but may be displaced much more easily than, and in circumstances which would not apply, in other divisions of the High Court."[25]

50. Therefore in England and Wales, when exercising its discretion, the Court must have regard to the factors set out at r.44.2(4) and (5) CPR, namely:

"(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 a party has succeeded on part of its case, even if that party has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

(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 the case or a particular allegation or issue; and

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

[25] My emphasis by underlining.

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51. When referring to the above criteria, Lord Phillips stated when delivering the Judgment of the Supreme Court in ***T Children*** [2012] UKSC 36 stated at paragraph11 therein:

"(4)(b) is relevant in relation to a regime where the general rule in (2)(a) applies. For this reason we do not see that it has any direct relevance to family proceedings. (4)(c) can have no relevance to public law proceedings and can thus be disregarded in the present case. The other rules are simply examples of circumstances that will be relevant when considering the result that justice requires in the individual case. 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 particularly 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.[26] The reasons for departing from the principle that costs normally follow the event differ, however, depending upon the nature of the family proceedings."

52. As the above illustrates, the long-applied position taken by Courts in England and Wales is that it is unusual to make an order for costs in private law child cases. The reason behind this general proposition was set out by Wilson J (as he then was) at 570H in the Case of ***London Borough of Sutton v Davis (Costs) (No2)*** [1994] 2 FLR 569:[27]

"Where the debate surrounds the future of a child, the proceedings are partly inquisitorial and the aspiration is that in their outcome the child is the winner and indeed the only winner. The court does not wish the spectre of an order for costs to discourage those with a proper interest in the child from participating in the debate. Nor does it wish to reduce the chance of their co-operation around the future life of the child by casting one as the successful party entitled to his costs and another as the unsuccessful party obliged to pay them. The proposition applies in its fullest form to proceedings between parents and other relations; but it also applies to proceedings to which a local authority are a party.....But the proposition is not applied where, for example, the conduct of a party has been reprehensible or the party's stance has been beyond the band of what is reasonable:

[26] My emphasis by underlining.

[27] Also referred to by Wilson J at paragraph 14 in the Court of Appeal decision ***In the Matter of J (Children) (Costs of Fact Funding Hearing)*** [2009] EWCA Civ 1350 ***("Re J")***.

Havering London Borough Council v S [1986] 1 FLR 489 and Gojkovic v Gojkovic [1992] Fam 40, 60C-D."

53. There has been some flexibility in the English Courts to that approach in private law child cases where applications or hearings do not directly involve a consideration of the child's welfare; but are more geared towards resolving factual or legal disputes. Therefore, Courts have been willing to find that fact-finding hearings may be an exception to the general proposition set out in paragraph 52 above. A seminal decision in cases concerning a party seeking to claim costs arising from a private law children fact-finding hearing is that of Wilson LJ in ***Re J***. The principle applied by Wilson LJ was that a fact-finding hearing arises by virtue of an individual making allegations. In the present matter before me that individual was the mother, and it is she who stridently insisted that there should be a fact-finding hearing. If the mother's allegations about the father had not been made and if the mother had not insisted on there being such a hearing, in a jurisdiction where fact-finding hearings in child cases are rare and where there is no local governing Practice Direction or Rules relating to the holding of them, the hearing would not have occurred. This would have been particularly so if the Court had been made aware that the hearing would occupy eight, rather than two, days.

54. Wilson LJ was of the view that, due to the way that fact-finding hearings arise, it is possible to ring-fence the costs of and incidental to such a hearing from the general proceedings where costs orders are rarely made. Wilson LJ stated at paragraph 17 in ***Re J*** that the fact-finding hearing consigned:

"The determination of the mother's allegations into a separate compartment of the court's determination of the father's application for an order for contact," adding: *"It went almost without saying …That the optimum outcome of the contact application could be determined only by reference to the findings made at the fact-finding hearing; but the effect of the direction for a separate fact-finding hearing was that the costs incurred by the mother in relation to the hearing can confidently be seen to be wholly referable to her allegations against the father. There was, in that sense, a ring fence around that hearing that surround the costs referable to it."*

55. Wilson LJ went on to indicate at paragraph 19:

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"I am well aware that, in most disputed cases in relation to children, whether in private or in public law, parties justify their proposals for the future arrangements for the child by reference, at any rate in part, to past events, of which another party or other parties will often present a different version. Thus, to a greater or lesser extent, issues of historical fact arise in probably the majority of these proceedings. I would be concerned if our exercise of discretion in relation to the mother's costs in this case today were to be taken as an indication that it was appropriate in the vast run of these cases to make an order for costs in whole or in part by reference to the court's determination of issues of historical fact[28] …the mother's costs of the hearing before the District Judge fell into a separate and unusual category. The hearing was devoted exclusively to the court's consideration of serious and relevant allegations against the father of what can only be described as misconduct on his part. Over two thirds of the mother's allegations were true… Of the true allegations, nine had been falsely denied by the father; and all but one of the remainder had been admitted by him only in part."

56. Wilson LJ did not find that there had to be unreasonable or irrational conduct for a costs order to be made[29] and he allowed the mother's appeal to the extent that the respondent father was ordered to pay two-thirds of the mother's costs of the fact-finding hearing. He found that if a party makes allegations of fact against another party, which proved to be unfounded, or who challenges allegations of fact that prove to be well-founded, they could well be liable for the costs of resolving those issues. Wilson LJ said that the Court should consider the nature, seriousness and relevance of the allegations and the extent to which they had been proved and not proved.

57. In ***R v A (Costs of Children Proceedings)*** [2011] EWHC 1158 (Fam), which was not related to a formal fact-finding hearing, a costs order was made by Sir Nicholas Wall P because he found that the uncle and aunt applicants had made *"unpleasant and irrelevant allegations"* against the respondent that he had been obliged to defend. When making the order he accepted that it was unusual to make orders for costs in children proceedings, but that under the Court's broad discretion

[28] My emphasis by underlining.
[29] At paragraph 18 in ***Re J***.

he felt it just to make the order having regard to the manner in which the claim had been advanced by the applicants which he felt amounted to litigation conduct.

58. At the outset of the hearing, I provided the parties with a copy of the recent decision of Dias KC (sitting as a Recorder at the Barnet Family Court) made in ***A Mother v A Father*** [2023] EWFC 105. The case has received quite a bit of attention in recent family law articles. In that case the child made a number of sexual abuse allegations against the father and a fact-finding hearing was held to determine whether the child was telling the truth. The father denied all the allegations, but the Court found all twelve allegations to be true. The father was ordered to pay the mother's costs of the fact-finding hearing in full. The Learned Recorder reviewed the case law including, at length, Wilson LJ's decision in ***Re J***. The Learned Recorder helpfully listed the following ten propositions concerning the approach of the Court when the issue of costs arises in private law fact-finding hearing:

"(1) For fact-finding hearings about child arrangements orders, the court has a wide general discretion as to costs;

(2) The disapplication of the general rule that costs follow the event does not itself apply to fact-finding hearings;

(3) However, it does not automatically follow that after a fact-finding hearing the party against whom allegations are proved must pay the legal costs, but an adverse finding or findings may trigger the discretion to make such an order;

(4) Generally, what is required is some form of unreasonable conduct. In Re N (A Child) v A and Others [2010] 1 FLR 454, a decision of Munby J, as he then was, the judge observed at [47]:

> *"The fact that a parent has litigated in an unreasonable fashion may open the door to the making of an adverse costs order, but it does not of itself necessitate the making of such an order. There is at the end of the day a broad discretion to be exercised having regard to all the circumstances of the case."*

(5) The discretion must be exercised in accordance with the overriding objective (FPR 1.1 and 1.2);

(6) The court must take into account the conduct and litigation conduct of parties as a whole, and this examination can include conduct prior to proceedings (Re T (Care Proceedings) (Costs) [2012] UKSC 36);

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(7) The court must have regard to the extent to which party has been successful;

(8) As a first approximation, the court should look at the number of allegations proved and not proved;

(9) As a second approximation, the court should determine the extent to which the determination of the adverse findings contributed to the cost of the hearing (Re A and B (Parental alienation: No 3) [2021] EWHC 2602 (Fam));

(10) If the overall successful party has engaged in litigation conduct that was not reasonable, that also may affect discretion and/or the ultimate figure awarded and indeed the basis upon which costs are to be assessed."

59. Having reviewed the approach in law to cost applications in private law children applications generally and in private law fact-finding hearings in England and Wales, I ask, how may that be applied to the approach to be followed in the Cayman Islands?

60. When I consider this question, I am conscious of how the Court of Appeal in ***McTaggart v McTaggart*** 2015 (1) CILR 123, a "big-money case", regarded the difference between the two jurisdictions relating to the costs regime in matrimonial proceedings. Sir John Chadwick P referred to an earlier judgment in the same matter (2011 (2) CILR 366) in which he stated at paragraph 106:

> *"Put shortly, the position, here, is that costs in matrimonial proceedings - as in other proceedings - are governed by the Grand Court Rules; and in particular by GCR O.62, r.4…"*

61. Chadwick P. went on to refer to what he had stated at paragraph 107 in the earlier judgment, namely that:

> *"…The general rule in ancillary relief proceedings (in England and Wales) is that the court will not make an order requiring one party to pay the costs of another party. <u>But there has been no corresponding change in the rules applicable in this jurisdiction.</u>[30] The position remains that, <u>if the court in the exercise of its discretion sees fit to make any order as to costs</u> in ancillary relief proceedings, it shall order costs to follow the event (save where there are some special circumstances)."*

[30] My emphasis by underlining.

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62. The approach to be adopted in relation to GCR O.62, r.4(2) & (5) in matrimonial proceedings is that of Chadwick, P. found at paragraph 23 in ***McTaggart*** where he stated that:

> *"…. unless and until there is a change to the relevant rule in this jurisdiction,*[31] *in awarding costs in ancillary relief proceedings courts here should give effect to the provisions of GCR, O.62 r.4 – that, generally, a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him in conducting that proceeding and in an economical, expeditious and proper manner."*

63. However, significantly at paragraph 24, before referring to the factors at s.21 of the MCA in ***McTaggart*** Chadwick P. added:

> *"….it is important to keep in mind (a) that GCR O.62, r.4 recognizes that the court has a discretion whether or not to make any order as to costs of any proceedings – the mandatory requirement that "the court shall order the costs to follow the event" arises only "if the court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings" – (b) that the mandatory requirement is, itself, qualified by the words except where it appears to the court that in the circumstances of the case some other order should be made as to the whole or any part of the costs."*[32]

64. I am aware of the judgment of Henderson J. in ***G v G*** (2010 (1) CILR 365) and the Judgment of Quin J. in ***DLF v DKT*** (2011 (2) CILR 273) in which the former case was reviewed by Quin J. Both Grand Court Judgments predate the Court of Appeal decision in ***McTaggart***. Henderson J took a similar approach to that adopted by the Court of Appeal by relying upon ***Gojkovic,*** stating there must be some starting point for a costs analysis and that the most rational starting point is the rule that costs ordinarily follow the event. Quin J, with reference to the view *"urging a rethink of this issue"* taken by Butler-Sloss LJ, Thorpe LJ and Mostyn J, favoured a new starting point of no order for costs, which could always be departed from where unreasonableness by one or other party is demonstrated.

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[31] My emphasis by underlining.
[32] My emphasis by underlining.

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65. In ***AKS v JS & RS&HS*** Fam 201 of 2014 (22 March 2016), taking on board the President's views in ***McTaggart,*** in relation to costs in the matrimonial proceedings, I adopted the approach of Henderson J and the Court of Appeal, finding that the President had indicated that there had been no change in the Rules applicable in the Cayman Islands which would support the approach advocated by Quin J. Also, echoing the President's approach, I found in ***DJ v BK*** **& RK** Fam 66 of 2014 (30 October 2015) that: (i) GCR O.62 provides a code for dealing with the entitlement to costs; (ii) that it governs costs applications in matrimonial proceedings; and (iii) that *"any power to make an order for costs under the Law must be read in conjunction with that order"*.

66. However, what emerges from the above two cases ruled on by Quin J and Henderson J is their shared view about how the Court may apply its discretion. Henderson J.'s commendable view expressed at paragraph 10 in ***G v G*** was that:

> *"The presumption that costs follow the event can be displaced much more easily in matrimonial cases than in other civil cases, the discretion of the court regarding costs is far wider than in other types of civil proceedings."*

Quin J rightly noted with reference to Henderson J's observation:

> *"…The discretion of the Family Division regarding costs is "far wider" than in other types of civil proceedings."*

These views are consistent with what Sir Chadwick P stated at paragraph 21 in McTaggart.[33] Although the views were expressed in matrimonial proceedings, I fully endorse the above views of Henderson J and Quin J when also considering costs in private law children proceedings in the Grand Court Family Division where the best interests of the relevant child is paramount. I do that having regard to the sentiment expressed by Wilson LJ in the first half of his comments at paragraph 19 in ***Re J***[34] and the reasoning he also set out at page 570H in ***London Borough of Sutton v Davis (Costs) (No2)***[35]**.** Wilson J's observations illustrate why a much more flexible and a not rigid 'costs follow event approach' should be adopted in private child law proceedings. I believe an even wider

[33] See paragraph 63 above.
[34] Set out at paragraph 47 herein.
[35] Set out at paragraph 44 herein.

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exercise of discretion than that advocated by Quin J and Henderson J for the financial proceedings they were dealing with should be adopted in child cases which are very different in nature.

67. I note with interest the difference between Summary Court private law Children Act cases (which usually involve the children of unmarried parents) and the same proceedings in the Grand Court (which usually involve children of married parents). The Summary Court Rules are basically a 'Caymanised' version of the Family Proceedings Court (Matrimonial Proceedings etc.) Rules 1991 in England and Wales. Rule 22 in the Summary Court Rules mirrors Rule 13 in the 1991 Rules. The Children Act (Grand Court) Rules 2013 were a 'Caymanised' version of the Family Proceedings Rules 1991 in England and Wales. There was no mention of costs in the latter English Rules. For Summary Court cases the Children Act (Summary Court Rules), 2013 provide at Rule 22:

> *"(1) In any relevant proceedings, the court may, at any time during the proceedings in that court, make an order that a party pay the whole or any part of the costs of any other party.*
> *(2) …."*

68. Both sets of the Cayman Rules had to be drafted in an extremely rushed fashion, because the Children Law was passed without any notice being given to the Rules Committee or to the Judiciary and without any of the required Rules being drafted.[36] This meant that there was insufficient time to look at the wider rules when drafting the Cayman Rules. One of the areas which must be looked at when now revising and updating the Cayman Rules is considering whether the approach to be adopted in relation to costs in Children Act proceedings at each level should be the same. There seems no good reason for having a different approach in relation to costs arising in private law proceedings for children with married parents (predominantly in the Grand Court) to the one that is adopted in proceedings (predominantly in the Summary Court) were the parents are unmarried.

Father's case in relation to the Costs Summons

69. The father refers to the fifty-two allegations made which appeared under eight headings and contends that the mother was not successful in making out any finding of fact that were relevant to

[36] I had to draft the Rules which were placed before the Rules Committee.

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the welfare of the child and or contact and therefore the father was successful defending the mother's application. The father is wrong to state that there were absolutely no such findings made, because some of the findings made in relation to specific incidents/allegations criticising the father's conduct are relevant to the welfare of the child and the contact issues. It is submitted that costs should be awarded to the father and that costs follow the event. It is contended that, even if the Court was to go on and exercise its discretion more widely in a child case than in a civil case, then the approach advocated by Wilson LJ in ***Re J*** in relation to costs arising from a separate fact-finding hearing should be adopted. The father highlighted that in ***Re J**,* as the Court had found that around two thirds of the mother's allegations were true and around one third were not established, the father was ordered to pay two thirds of the mother's costs of and incidental to the fact finding.

70. The father refers to the case of ***A (Children) (Parental Alienation) (No.3), Re A (Children)*** [2021] EWHC 2602 (Fam) in which allegations of domestic abuse were made by the mother against the father. A fact-finding hearing was adjourned as the parties agreed to undertake some therapeutic input. Mr Justice Keehan was not considering costs at the latter stages of the proceedings up to the conclusion of the final hearing, but only relating to the earlier stage when the mother had made and maintained very serious allegations of domestic abuse towards her and the children even though she knew them to be *"wholly false"*. The Learned Judge ordered the mother to pay the father's costs for that earlier stage of the proceedings, finding that the mother's conduct:

> *"plainly amounted to reprehensible behaviour and was a wholly unreasonable stance for her to have adopted in the litigation."*

The father in the present matter relies upon this case to support his contention that costs orders can be made when findings which are sought are not made. I agree with the father that such orders can be made in such circumstances. The father contends that the mother's application that the father had deliberately tried to make the mother crash her car with the child in it was reprehensible. He stated that some of the allegations were menial and should not have been pursued in a fact-finding hearing. He also added that some serious allegations were made which he had to challenge and that he was successful in so doing at the hearing. Those allegations included contempt of court, defamation, litigation abuse, emotional abuse, neglectful parenting, financial abuse, harassment and stalking.

71. The father contends that the mother's conduct should be regarded, at the very least, as being unreasonable. The father has pointed out a number of the findings and observations made in the Judgment concerning the mother's conduct.[37] He rightly says that once the mother sought findings to be made in relation to numerous allegations before the Court, even if those were excessive, he was left with no option but to fully address and defend those.

72. When I consider the father's submissions about the reasonableness of the mother's approach, I note what Mr Justice Keehan stated when he referred to the meritorious observation of Mr. Justice Munby (as he then was) said at paragraph 47 in ***Re N (A Child) v A and Others*** [2010] 1 FLR 545:

> *"…the fact that a parent has litigated in an unreasonable fashion may open the door to the making of an adverse costs order; but it does not of itself necessitate the making of such an order. There is, at the end of the day, a broad discretion to be exercised having regard to all the circumstances of the case. And a judge must be careful not to fall into the trap of simply assuming that because there has been unreasonable behaviour in the conduct of the litigation an order is therefore to be made without more ado. Careful attention must be paid to all the circumstances of the case and to the factors which, on the authorities I have referred to, indicate that normally it is inappropriate to make such an order – factors which do not simply disappear or cease to have weight merely because the litigation has been conducted unreasonably."*

Mother's contentions in relation to the Costs Summons

73. As mentioned at paragraph 15 above, the mother at the Costs Application hearing seemingly seeks to depart from the submissions that she made when she forcefully sought to persuade the Court that there was a need for a fact-finding hearing in this case and advocated that the Court should adopt the reasons for doing that and the procedure in relation to such a hearing set out in the English case law. Despite the fact-finding route being followed as a result of her application, she says that the approach to costs in such cases taken in England should not be adopted in the Cayman Islands. Firstly, the mother submits that the decision of Wilson LJ that there can be a 'ring fence' approach where a fact-finding hearing has been held to determine whether and to what extent allegations made by a party against the other party is true because the fact-finding hearing is distinct from the

[37] At paragraph 30 a.-x. in the Father's Skeleton Argument dated 6 June 2024.

issue of costs in the general application itself, is an *"incorrect"* one. Secondly, the mother contends that there should not be a different test applied to costs from a fact-finding hearing than for those incurred in the wider child proceedings. She argues that that the *"usual practice"* of no order of costs in children cases should be followed where there is an absence of reprehensible or unreasonable conduct because the Cayman Courts ordinarily would have to deal with the facts and allegations raised at the substantive child hearing. In the alternative, the mother contends that any issues about costs should be determined only at the end of the substantive child proceedings when the Court would have a *"more rounded view of the situation"* and understanding of what child arrangements are in the best interests of the child.

74. The mother points out that although the Court did not find that the father had behaved in a coercive of controlling manner, it made certain negative findings in relation to his conduct which were characterised as being insensitive, immature and inappropriate. The findings that I made in relation to his conduct, most of which were highlighted in a *"schedule of findings against father"* annexed to the mother's Updated Submissions dated 6 June 2024, even when viewed together could not be sufficient for the global finding of fact the mother was seeking about the father's behaviour.[38] They are the sort of findings that the Court might have to determine in a final child hearing rather than at a discreet fact-finding hearing. I accept that those findings, some of which were not complimentary about the father and his conduct, will now form part of a factual matrix under which the parties, with the assistance of the mediator and possibly the welfare officer, can negotiate or present their respective case moving forward. If a contested hearing is required, the content of the Judgment will shorten the length of that hearing and limit the amount of additional evidence that would need to be filed in preparation for such a hearing.

75. The mother's conduct in insisting on having and pursuing the fact-finding procedure was not reprehensible, but the manner in which she brought and conducted the proceedings resulting in them massively exceeding the time estimate she had given was unreasonable. I would have been troubled and surprised at the time if, at the mention hearing, it had been suggested that the final child hearing would have required the length of time spent on the fact-finding hearing. Even accepting that, when a finding of coercive and controlling behaviour is sought, there may be a need

[38] See paragraph 84 in the Judgment.

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to raise more allegations to try to establish a pattern of conduct, it was evident, when considering the number and nature of allegations raised and which the father had to address, that the fact-finding hearing was used by the mother as a catch all hearing to air all of her grievances about the father.[39] As I informed the parties on 18 and 19 July 2023,[40] this was not what a costly fact-finding hearing should be used for and it was not what the Court expected when agreeing to the mother's application for there to be a two day fact-finding hearing. I found that the mother was unable to view the father to any extent in a positive manner and that she had a tendency to over-exaggerate her negative interpretations of certain events. I noted in paragraph 58 in the Judgment about the mother:

> *"Whilst she was seemingly assured when giving evidence, and that it was evident that she was driven by a desire to do what she felt was necessary to protect the child, there were indications that her expressed views and actions were on occasion dominated by: (i) her distress at the manner in which the relationship had ended; (ii) her at times over-protective approach to parenting; (iii) an overly rigid reliance on her interpretation of the Court orders; (iv) her approach that her views and opinions relating to child related matters 'trumps' any views that the father may put forward; and (v) an inability to see any positives in the father's character or conduct concerning the child. She came across as someone with a lack of insight about how this young child should and could be able to develop a proper relationship/bond with the father and a lack of recognition about how a child's parents should co-parent with some flexibility, using a court order as a baseline when developing or nurturing the relationship."*

Conclusions

76. I accept that the mother can highlight some benefits emanating from the holding of the fact-finding hearing for the ongoing children proceedings due to the findings made in relation to some of the incidents/events laid before the Court upon which findings were sought. I acknowledge that: (i) the Welfare Officer will now be able to conduct her assessment in the context of the determined facts; (ii) the parties should be able to mediate in a more informed manner; and (iii) if a contested hearing is still needed, then time should not then be needed to be spent considering incidents upon which the Court has already made findings.

[39] See paragraph 84 in the Judgment.
[40] See paragraphs 19 and 20 above.

77. However, the above inevitable overlap caused by the mother's unattractive 'catch all hearing' approach (characterised by the large quantity of allegations she sought adjudication upon) does not mean that the Court cannot view, at least, significant parts of the fact find hearing as being ring fenced to determine whether the allegations made were true and whether the extent of the allegations amounted to the global finding of coercive and controlling behaviour which the mother failed to establish. The substantive finding sought, namely that the father acted in a coercive and controlling manner, has not been made out. Only a few of the facts sought to establish the general headline allegations were proved but they did not, for example, lead to a rounded up finding of litigation abuse or that the father had defamed, emotionally abused, harassed or stalked the mother or child. From the mother's perspective, the purpose of the fact-finding hearing was to persuade the Court that a stand-alone coercive and controlling behaviour finding should be made, especially as she felt that the Summary Court had failed to provide her with an opportunity to seek to establish that at a hearing. To adapt the words of Wilson J in ***Re J*** to the present case, the application for a bespoke fact finding hearing was to consign the determination of the mother's allegations, which she made to establish that the father behaved in a coercive and controlling manner, and the determination as to whether he behaved in that manner into a separate compartment of the Court's determination of the Appeal and the Variation Application. The majority of the costs incurred by the hearing are referable to the mother's desire to pursue the hearing to establish that the father had acted in a controlling and coercive manner over an extended period of time.

78. This child case is one in which the Court should consider whether to exercise its discretion about costs. I do not accept the mother' contention that the Court should not and cannot have regard to the approach adopted in ***Re J*** concerning the issue of costs arising in fact-finding hearings. The propositions set out by Recorder Dias KC[41] offer helpful guidance and I consider them. I am also acutely conscious of what was said by Wilson J in ***London Borough of Sutton v Davis*** about a parent feeling punished by the other parent if a costs order is made and the potential detrimental consequence of reducing parental cooperation which could flow from such an order, which in turn could impinge on the welfare of the child. With that in mind, when determining costs, although a rule that costs follow the event is not disapplied, I am not automatically restricted by a rigid costs follow event approach but may adopt a wider general discretion. An adverse finding or findings of

[41] See paragraph 58 above.

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fact may trigger the discretion to make an order. As highlighted by Recorder Dias KC, although not in itself necessitating the making of a costs order, litigating in an unreasonable fashion may open the door to the making of an adverse costs order. I have found that the mother was unreasonable in the manner in which she brought and conducted the fact-finding proceedings and I have regard to that when exercising my broad discretion concerning costs when considering all the circumstances of this case. When exercising that discretion, I have regard to the responsibility of the Court and of the parties to progress and determine the proceedings in a just, most expeditious and least expensive manner. In the Judgment, I did not find that the father, who can be regarded as having successfully defended the global or primary allegation at the fact finding hearing that he had acted in a coercive and controlling manner towards the mother and child over many years, had engaged in unreasonable litigation conduct in the children proceedings as alleged by the mother and I find that the manner in which he has litigated was reasonable when addressing the fact-finding allegations. In fact, he was compelled to strenuously defend the numerous allegations made.

79. I am satisfied, in the circumstances of this case, that a Costs Order should be made in favour of the father in relation to the fact-finding hearing. When I exercise my discretion in relation to what type of order should be made, I can look at the extent to which the father has been the successful party, including a review of the nature and number of the allegations proved and not proved. I also have regard to what I set out in paragraph 74 above and despite adopting the approach in ***Re J***, in the circumstances of the specific matter before me, I can see that some of the findings made will be beneficial to the disposal of the main child proceedings and would have had to have been addressed at that stage so that will inevitably reduce any later costs to be expended determining them. This does not detract from my view about ring fencing expressed in paragraph 77 above. If a party unreasonably and unsuccessfully seeks a separate fact-finding hearing to determine what are serious allegations requiring the other party to counter the supporting evidence, then, depending on the specific circumstances of the particular case, that party may be at risk of a costs order being made against them.

80. Having regard to the fact that some of the findings of fact about the father's conduct sought were established as set out in the mother's schedule mentioned at paragraph 74 above, and whilst acknowledging that the mother failed to prove that the father had acted in a controlling and coercive

manner, this is not a case where the mother should be required to pay all of the father's costs of the fact-finding hearing. I am satisfied when exercising my wide discretion about awarding costs that it would be just to order that the mother should pay 70% of the father's costs expended in relation to the fact-finding summons. Those costs are to be subject to detailed assessment if not agreed.

Costs in relation to: (i) the Costs Summons; and (ii) the Contribution Summons

81. Having regard to the outcome of the Contribution Summons which had to be fully argued at the hearing and this Judgment in relation to the Costs Summons, my preliminary view is that there should be a global approach taken in relation to the costs arising at the hearing and that the global order should be no order as to costs. I note that a draft Consent Order was submitted by the parties on or around 24 July 2024 relating to the proceedings. That order contained the agreed provision:

"M has liberty to apply in relation to the costs of the Costs Contribution Summons."

If a party seeks a different costs order in relation to the Summonses to the one expressed in my preliminary view, then they must file and serve a Costs Summons within 14 days of the delivery of the perfected version of this Judgment.

Observation about the level of legal fees

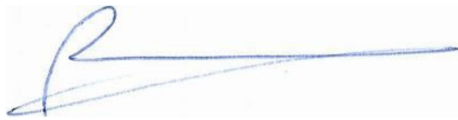
82. The amount of legal fees expended on this case, which but for the Appeal would have remained as a Summary Court matter, is astounding. The parties seem to have disregarded the principles promoted by the Overriding Objective resulting in legal fees reaching an unacceptable level. This is a timely opportunity to reiterate the concerns expressed by this Court in ***SD v AL*** *Fam 145 of 2006,* a Judgment handed down on 12 September 2017 in a variation of child maintenance case. As in that case, in the present mater before me, I have little doubt that the costs expended on these proceedings have been and remain massively disproportionate to the issues involved in what should be regarded as being a fairly standard child contact dispute. At Paragraph 31 in ***SD v AL*** I stated:

"31.I accept that this is not a big money case, but as a great deal of money and time has been squandered on these proceedings, I again share the sentiments of Munby J. ***KSO v MJO & Ors*** *[2008] EWHC (Fam) 3031 when he stated:*

"The picture is deeply dispiriting. And it is not as if it is only the adults who suffer from the consequences of such folly. The luckless children do as well. The present case is a sobering, and for me deeply saddening, example. If, instead of spending

> *– squandering – over £430,000 in costs, the wife and the husband had been able to resolve their differences at a more modest and, dare I say it, more seemly level of costs, there might very well have been enough left in the matrimonial 'pot' to house the wife and children and to enable the children to remain at their school, whilst still leaving something more than a mere consolation prize over for the husband. ……the mother and the father, for that is what they are – are faced now with the wretched and thankless task of trying to explain to their daughters how it has all come to this."*

I hope the parents of this young girl keep the above in mind if they do not sensibly and constructively engage in mediation after receipt of the welfare report and seek to litigate this matter further in the future.



The Hon. Justice Richard Williams
Judge of the Grand Court

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