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Case No. CO/1853/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Date: Wednesday 1 July 2015

B e f o r e:

MR JUSTICE HOLMAN

Between:

THE QUEEN ON THE APPLICATION OF E

Claimant

v

LONDON BOROUGH OF CROYDON

Defendants

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(Official Shorthand Writers to the Court)

Miss Martha Spurrier (instructed by CORAM Children's Legal Centre) appeared on behalf of the Claimant

Mr Rhys Hadden (instructed by Legal Department, London Borough Croydon) appeared on behalf of the Defendants

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J U D G M E N T

1. MR JUSTICE HOLMAN: Today was listed as the substantive hearing of this claim for judicial review. As is the case with many, though not all, such claims, it really boils down to issues of resources and funding. As is the case in many, though not all, such situations, the parties seem to have taken their eye off the ball and allowed legal costs to be incurred which are out of all proportion to the sums actually at stake. I am very pleased indeed that at court today, in response to my encouragement, the parties have reached an overall agreement, both as to the past and the way forward in the future, such that the claim will be discontinued. I now have the unenviable task of making a discretionary decision as to the costs.
2. The essential factual background is as follows. The claimant is a young lady who was born in November 1997. She is now aged 17¾. At the time most central to this case, she was aged 16. She was born and brought up in the area of the defendants, the London Borough of Croydon. For reasons which it is quite unnecessary to go into, there were problems or difficulties in relation to her living with either of her parents, who are separated from each other.
3. A time came when the claimant began to live with a family whom I will call Mr and Mrs C. At that time the London Borough of Croydon accepted that she was a child who was a child in need

for the purposes of sections 17 and 20 of the Children Act 1989, and a child whom they were under a duty to accommodate. So, after assessing Mr and Mrs C, they began paying a foster carer's allowance. Time went by and, unfortunately, again for reasons which it is not necessary to go into, the relationship between the claimant and Mr and Mrs C broke down such that the claimant felt she had no option but to cease living there. I do make clear that on such documents as I have read (which are only a small portion of the absurd volume of documents that this case has generated), the claimant was justified in feeling that she could not continue to live with Mr and Mrs C.

4. Of course the claimant needed somewhere to rest her head, and so it came about that she found somewhere where she could live, the home of a friend of hers who lived with her sister in the home of that friend's father, Mr LC. That was in about March 2014. She is still living there some fifteen or sixteen months later. Mr LC is in court today lending moral and practical support to the claimant, as indeed he has generally done in the whole period that she has been living with him.
5. Not surprisingly, the claimant desired the London Borough of Croydon to continue having responsibility for her and discharging duties towards her in a similar manner to that in which they had done while she was living with Mr and Mrs C. Equally unsurprisingly, the local authority were under an

obvious duty to investigate and make an assessment as to the suitability of the home of Mr LC as a home and environment in which the claimant should be living. They did that during June 2014 when a social worker performed an assessment. I have no doubt whatsoever that that assessment was performed in the utmost good faith by the social worker and was not in any sense whatsoever manipulated so as, in some way, to relieve the local authority of their duties or their financial obligations. For reasons which the social worker set out in her viability assessment report, she concluded that the home environment of Mr LC was not a suitable one for the claimant to be living in. Accordingly, the local authority felt that they could not approve it as a foster home under the regulations and, accordingly, they could not pay to Mr LC a foster carer's allowance. That was in June 2014.

6. A whole year now has gone by. Deeply regrettably, that year has been mired in complaints, wrangles, and ultimately this litigation.
7. On the positive side, the claimant has remained continuously living with Mr LC. With the utmost generosity he has continued to provide a home and, no doubt, food and other essentials for her out of his own pocket, with no support or financial help whatsoever from the local authority. It is, I think, important to stress that this is a situation in which

for a long time now the local authority have had clear obligations and responsibilities for this claimant; and, indeed, while she was living with Mr and Mrs C, they were regularly paying the foster carer's allowance. It is in fact entirely fortuitous and not the result of any decision by the local authority that the relationship between the claimant and Mr and Mrs C broke down and that, as a result, a situation arose in which they ceased making the financial payments.

8. In December 2014, solicitors on behalf of the claimant sent to the local authority a letter before action. It is very long and expressly purports to be written in compliance with the pre-action protocol before proceedings for judicial review are issued. Being unsatisfied by the local authority's reaction or response to that letter, the claimant ultimately issued her present claim for judicial review in April 2015.
9. Here now are the horrific financial statistics. I have been told that as of today the costs that the claimant has incurred in relation to this judicial review are approximately £15,000 plus VAT. I have been told that since the commencement of these proceedings the costs which the defendants have incurred are approximately £10,000 plus VAT. So between them they have incurred about £25,000 in costs plus VAT thereon of about £5,000, namely a total of £30,000. It needs to be emphasised that every single penny of these legal costs is public money.

The costs of the claimant have been entirely incurred by the Legal Aid Agency. The costs of the London Borough of Croydon have of course been entirely incurred out of the public funds of that body. How much have they been arguing about?

10. It is said that the London Borough of Croydon should effectively have been paying a foster carer's allowance since the claimant moved to the home of Mr LC, and that if they had paid that in full to date it would have been about £13,520. That is less than half the costs that these parties have allowed themselves to expend, having got enmeshed in frankly catastrophic litigation of this kind. Of course that is not the end of the matter, because the claimant also seeks future payments of a foster carer's allowance to Mr LC, at any rate between now and when she will attain the age of 18 in November 2015. But even if those further payments are added, the amounts that were in issue in this case are dwarfed by the legal costs that have been spent. Frankly, 1 despair again and again and again when sitting in the Administrative Court at how litigants and local authorities can allow huge sums in costs to be incurred when there is no real argument about some serious matter of principle and it is all an argument about current resources and payments.

11. The essential case of the claimant does seem to be that in some way the local authority should have treated her as a

child accommodated by them with Mr LC under section 20 of the Children Act 1989. Frankly, that seems to me to be a hopeless case, notwithstanding that permission was granted in this case. It cannot be the law that a young person - whether of 16 or even 17 - can select where and with whom she wishes to live and then in some way dictate to the relevant local authority that that is where she must be accommodated. The local authority performed an assessment in this case in good faith and decided that the home and environment of Mr LC was not a suitable one and, legally speaking, that, frankly, is determinative. There is a wrangle as to exactly what forms of alternative accommodation were offered, but that really is beside the point, because what the claimant has sought is that the local authority treat her as a child accommodated by them with Mr LC.

12. I make plain that it seems to me that the position of the claimant at the heart of this case was, legally speaking, a weak one and that of the defendants a strong one. However, morally speaking, the position of the claimant is a very strong one and that of the defendants a very weak one.

13. As I have spelled out, the claimant was accommodated with Mr and Mrs C. The local authority were paying the foster carer's allowance there. That arrangement broke down for reasons which are fortuitous. She found somewhere else to

live in which she feels comfortable and is, apparently, thriving. And it has been a somewhat blinkered approach of the legal authority not to recognise the realities of this situation.

14. What has been agreed, in essence, between the parties today is that the local authority will make ex gratia back-dated payments of £8,500, and that until the conclusion of a further viability assessment they will pay to Mr LC a foster carer's allowance. They have agreed that they will now perform a completely fresh viability assessment by a social worker who has not previously been involved in this case. How tragic that that obvious, sensible, negotiated outcome could not have been reached many months ago and all this stress, delay and waste of legal costs avoided.

15. At the last page of their pre-action protocol letter, the solicitors for the claimant wrote:

> "We acknowledge our obligation to resolve matters without resort to court proceedings and are, accordingly, prepared to discuss ways in which this matter may be resolved."

No constructive “way” seems to have emerged for resolving this matter until everyone was at court today and I urged upon them the power of talk.

16. What they have not been able to agree today is the outcome as to costs. On behalf of the claimant, Miss Martha Spurrier

asks that I should order the defendants to pay all the claimant's costs of and incidental to these proceedings, to be assessed if not agreed. On behalf of the defendants, Mr Rhys Hadden submits that I should make no order as to costs.

17. Essentially, the framework in which I should decide this issue is very fully described and elaborated upon by the judgment of Lord Neuberger MR in M v Mayor & Burgesses of the London Borough of Croydon [2012] EWCA Civ 595, with which Lady Justice Hallett and Lord Justice Stanley Burnton agreed. It cannot be said in this case that the claimant has been wholly successful. Accordingly, the outcome falls within paragraph 60 (ii) - or perhaps (iii) - of the judgment of Lord Neuberger, that is to say, a case in which the claimant "has only succeeded in part ..... pursuant to a settlement."

18. Mr Hadden says that it is, in truth, a category (iii) case in which there has "been some compromise which does not actually reflect the claimant's claims." All sorts of pleading points can be made by Mr Hadden. For instance, he says that that part of the detailed statement of facts and grounds which sets out the relief sought at paragraph 89 asked for "a mandatory order that the defendants undertake an assessment of the claimant's needs pursuant to Section 17 of the Children Act 1989" whereas what they have agreed to perform today is a fresh viability assessment of the

suitability of the accommodation. That submission rather demonstrates the legal treacle in which a case like this seems to get deluged, as reflected also in the immensely erudite but very lengthy skeleton argument prepared by Miss Spurrier in support of the hearing today.

19. I am satisfied, as Miss Spurrier points out, that at a number of stages in the run-up to this judicial review the claimant made very clear that what she particularly sought was a fresh viability assessment. That appears in a letter dated as long ago as 16 September 2014 at bundle page D4, and at internal page 10 of the pre-action protocol letter dated 12 December 2014, and is, I think, clearly implicit in the claim and the more recent skeleton argument by Miss Spurrier. Undoubtedly, the claim made express at paragraph 89 (ii) that it sought current and back-dated financial support or assistance to Mr LC. It seems to me that this is clearly a case in which, as a result of bringing this claim and pursuing it all the way to court, the claimant has achieved a partial but significant success. It is not a success which is proportionate to the amount of costs that have been incurred, but the defendants, every bit as much as the claimant, should have kept their eye on the costs ball.

20. In my view I should make an order as to costs here, reflecting the principles set out by Lord Neuberger in M, but

it should not be a full order as to costs in view of the fact that the claimant has only been partially successful on her claim.

21. Mr Hadden stresses a part of paragraph 62 of the judgment of Lord Neuberger in which he said, in relation to category (ii) cases:

> "I would accept the argument that, where the parties have settled the claimant's substantive claims on the basis that he succeeds in part, but only in part, there is often much to be said for concluding that there is no order for costs."

There may indeed be much to be said for such an outcome, but, as Lord Neuberger went on to say, much depends on the particular facts of the individual case. Although not expressly referred to by the Court of Appeal in M, it is clearly open to the court to make a partial or fractional award as to costs.

22. In my view this claimant has achieved some solid success from this case, which ultimately requires some order towards the payment of her costs. But she has not achieved total success, and I do need to take into account also my view that her claim was a very strong moral claim but a much less strong legal claim. For those reasons I propose to order that the London Borough of Croydon must pay to the claimant one-half of her costs of and incidental to this claim for judicial review, to be the subject of detailed assessment if not agreed. Once

a bill has been produced, I urge the parties very strongly indeed to agree a figure to avoid the yet further wasting of costs on a formal detailed assessment. With that, I think we can conclude this day.

23. Is there anything else that you need to raise or say, Miss Spurrier?

MISS SPURRIER: No.

MR JUSTICE HOLMAN: Mr Hadden?

MR HADDEN: No.

MR JUSTICE HOLMAN: I am very, very glad that agreement was reached. I think you have the message. I deeply, deeply regret that agreement was not reached, frankly, many months ago. But there is a saying "better late than never". So at least agreement has been reached.

E is still in law a child. She may not feel it but she is. She is still a child in need. She is a responsibility of the London Borough of Croydon and she and they have to work together. So, do you think we could use this agreed outcome today - costs are neither here nor there, because they would never have fallen on her personally (that is really between Croydon and the Legal Services Commission) - as a spring board for future co-operation? No more complaints, no more position-taking. Please, just learn to work together. It is so much more constructive, much more constructive. Local

authorities obviously have to pay a very great deal of attention to what 17-year olds are saying. We can forget about 16-year olds now because she will never be a 16-year again. I beg everybody to learn the lesson from today, move away from litigation and position-taking and complaints, and get on to the territory of discussion, conciliation and compromise. Would you try and do that? Will you try and do that? Thank you all.

I repeat to you [Mr LC] it is wonderful what you have done.

MR LC: Thank you.

MR JUSTICE HOLMAN: You owed nothing to this young lady. I think she was just a friend of your daughter.

MR LC: You do feel that it doesn't get recognised.

MR JUSTICE HOLMAN: It was recognised by me. Thankyou.