



3. The basis of the present application is that the Wife unreasonably defended the substantive application, that costs should follow the event and that they should be awarded on a full indemnity basis. In reply, the Wife acknowledges that the Court has a complete discretion to determine the issue of costs and submits that the general rule in family cases is that there will be no order for costs, in support of which Advocate Brown cites the Family Procedure Rules, paragraphs 5 to 7. I have received written submissions from counsel for both parties and have determined the application without hearing oral argument.

4. On behalf of the Husband, Advocate Wherlock relied upon the English Court of Appeal decision in Gojkovic v Gojkovic (No. 2) [1991] 2 FLR 233 (CA). That decision, as the headnote makes clear, was principally concerned with the issue of costs where a *Calderbank* offer had been made. In her submissions, Advocate Wherlock quoted from page 236 in the judgment of Butler-Sloss LJ: “..there still remains the necessity for some starting point. That starting point, in my judgment, is that costs prima facie follow the event.” However, that passage must be read in its correct which was concerned with *Calderbank* letters. Two paragraphs before the passage quoted, Butler-Sloss LJ said:

*“What are the principles governing costs in applications for financial relief in the Family Division and, in particular, in cases where open offers and Calderbank offers are made? In particular, what is the starting point of entitlement to costs?”*

5. I have no doubt that the starting point referred to is the starting point where open offers and *Calderbank* offers have been made and rejected.

6. Gojkovic was cited with approval by the English Court of Appeal in Solomon v Solomon [2013] EWCA Civ 1095. In that case, a husband had made an application for an order under section 37 of the Matrimonial Causes Act, 1973. That application having been considered and set aside, the judge held that the general rule in financial remedy proceedings did not apply. Ryder LJ in delivering the judgment of the Court of Appeal held, at paragraph 22:

*“Costs were then in the discretion of the court, and the principles set out in CPR Part 44 applied. The starting point for what are described as “clean sheet” cases is that costs follow the event. To find that principle one need look no further than Gojkovic v Gojkovic (No. 2)...”*

7. Gojkovic was applied by the Royal Court in B v B [2005-06] GLR Note 24 in relation to an offer that had been rejected in the course of the proceedings in a contested application for financial relief in which funds were available (which, sadly, is frequently not the case).

8. On behalf of the Wife, Advocate Brown cited Rule 28.3 of the Family Procedure Rules 2010, paragraphs (5) to (7). Paragraph (5) provides that:

*“(5) Subject to paragraph (6) the general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party.”*

9. Paragraph (6) provides that:

*“(6) The court may make an order requiring one party to pay the costs of another party at any stage of the proceedings where it considers it appropriate to do so because of the conduct of the party in relation to the proceedings (whether before or during them).”*

10. Paragraph (7) then details a number of factors to which the court must have regard when deciding what order to make. They include “(b) any open offer of settlement” which preserves the decision in Gojkovic and (c) to (e) which deal with aspects of a party’s conduct.

11. The costs provisions in the FPR were introduced, in part at least, to provide an exception to the Civil Procedure Rules Part 44 in order to recognise that there can be many reasons why, in

family cases, the general rule that “*costs follow the event*” may not be appropriate. They are a complicated set of provisions which we are not bound to follow and which I would be reluctant to adopt in their entirety because of their complexity although I accept that they may, on occasions, provide useful guidance for the Royal Court to bear in mind when exercising the wide discretion it has in costs matters.

12. The Royal Court’s wide discretion derives from section 1(1) of The Royal Court (Costs and Fees) (Guernsey) Law, 1969:

*“The costs of and incidental to all proceedings in the Royal Court shall be in the discretion of the Royal Court and the Royal Court shall have power to determine by whom and to what extent the costs are to be paid.”*

13. In this Bailiwick, the general rule in civil cases is that “costs follow the event” but in family cases, the general rule is frequently displaced especially in cases concerning the children of the marriage (see B v B). In applications for the award of a lump sum or periodical payments, the Court may make no order for costs but it may commonly have taken the costs incurred by the parties into account when assessing the size of the funds available to the parties and, in those circumstances, the Court must avoid double counting.
14. In the present case, none of those exceptions apply. The case did not concern children, there had been no open or *Calderbank* offers and as I was concerned solely with the manner of vesting of the former matrimonial home, I did not have regard to the totality of the funds available to either or both of the parties.
15. I must consider whether there exists any good reason to depart from the general principle that costs follow the event. The first ground relied upon by the Husband in seeking a variation of the Judicial Separation was that he consented to it under a misapprehension on his part. Having heard evidence, I held that I did not accept that he was acting under a misapprehension at the time. It was a serious allegation to make and it failed. If I had found that he consented to the Judicial Separation under a misapprehension as to its terms, my decision could have had wider implications if the Husband had later sought a variation of any other provisions. For that reason, the Wife was fully justified in defending the allegation.
16. I have seen correspondence from the Husband in which he was highly critical of Advocate Brown both at the time of the Judicial Separation and subsequently. I disapprove of the tone of some of his correspondence with Advocate Brown.
17. In relation to the other basis on which the application was presented, the Husband succeeded although differently from how it was presented, namely that the terms of the Judicial Separation operated unreasonably.
18. Thus if I was looking to make an issue based costs order, I would award the Wife her costs on one part of the application and the Husband his costs on the other part. I see no purpose in attempting to apportion the costs between the two different grounds of the application and award one party all or part of the costs of one part and the other party the costs of the other part as that would involve further expense for little or no gain.
19. Having regard to the basis on which the substantive application was presented and having regard, as I have said, to the Husband’s conduct, I shall make no order as to costs. Each party shall bear their own costs.