NEUTRAL CITATION NUMBER: [2025] EWHC 1027 (KB)

APPEAL REF: KA-2024-000200

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 April 2025

Before :

MR JUSTICE CAVANAGH
- -

Between :

Rebekah Vardy

Claimant/Appellant

- and -

Coleen Rooney

Respondent/Defendant

- -
- -

Jamie Carpenter KC (instructed by **Kingsley Napley**) for the Claimants
Benjamin Williams KC and **Robin Dunne** (instructed by **Brabners**) for the Defendants

Hearing date: 31 March 2025
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Ruling on consequential matters

This ruling was handed down remotely at 10.30am on 29 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Cavanagh:

1. On 10 April 2025, I handed down judgment in a costs appeal by the Claimant, Rebekah Vardy in the very well-known defamation proceedings against the Defendant, Coleen Rooney. Ms Vardy was unsuccessful in her claim and the trial judge awarded Ms Rooney 90% of her costs on the indemnity basis. The matter then proceeded to detailed assessment of costs before the Senior Costs Judge, Andrew Gordon-Saker. The issue in the appeal was concerned with one aspect of the assessment of costs, namely whether Judge Gordon-Saker had been wrong to decline to find that the Defendant or her solicitors had conducted themselves improperly or unreasonably for the purposes of CPR 44.11(1)(b), and had been wrong to decline to order a reduction in the costs award as a result.

2. The appeal hearing took place on 31 March 2025. I was accompanied by the Acting Senior Costs Judge, Jason Rowley, in the capacity of assessor. As I have said, I handed down judgment on 10 April 2025. For the reasons given in the judgment, I dismissed the appeal.

3. I gave the parties time to provide the court with written submissions on the form of the order and on consequential matters. They did so. It became clear that the only issues that were in dispute related to the costs of the appeal. There is no dispute that the costs should be awarded on the standard basis, or that the assessment should be by way of a summary assessment (pursuant to CPR 44.6(1)(a)). Against that background, there are three issues that I now have to decide. These are:

   (1) Should Ms Rooney receive 100% of her costs of the appeal, to be assessed on the standard basis, or should there be a discount to reflect the fact that some of the arguments in her Respondent's Notice were not accepted by the court?;

(2) Should the costs assessment be conducted by Acting Senior Costs Judge Rowley, or should it be conducted by Costs Judge Whalan, who has taken over the assessment of the indemnity costs due to Ms Rooney arising out of the trial of this matter, following the retirement of Senior Costs Judge Gordon-Saker?: and

(3) Should Ms Rooney receive a payment on account of her costs of this appeal?

4. I can deal with these points relatively shortly. I have consulted with Judge Rowley before reaching my conclusions on these matters.

(1) Should there be a reduction in the costs to be awarded to Ms Rooney in relation to the appeal to reflect the fact that not all of her arguments were successful?

5. On behalf of Ms Vardy, Mr Jamie Carpenter KC pointed out that, whilst Ms Rooney was successful in opposing Ms Vardy's appeal, the court did not accept two submissions that had been made on behalf of Mr Rooney in her Respondent's Notice. The first was a submission to the effect that the absence of a waiver of privilege meant that there could be no finding of misconduct. The second was a submission that Senior Costs Judge Gordon-Saker had been wrong to criticise Ms Rooney's solicitors for a lack of transparency. Both of these submissions were rejected at paragraphs 72-75 of my judgment.

6. Mr Carpenter KC said that Ms Vardy had incurred additional costs in order to address these arguments. It had been necessary to update her skeleton argument, and the points had been the subject of oral submissions at the appeal hearing. Mr Carpenter KC also pointed out that the Respondent's Notice had been filed and served out of time, though no argument had been advanced at the appeal hearing to the effect that this meant that Ms Rooney should not be permitted to rely upon these additional points.

7. Mr Carpenter KC recognised that the reduction in costs to reflect the lack of success of these arguments should only be "modest", and submitted that a reduction of 10% in Ms Rooney's recoverable costs would reflect the overall justice of the situation.

8. I do not accept this submission. The normal principle is that costs follow the event. Whilst there can be circumstances in which it is appropriate to disallow some of a successful party's costs because much of the hearing was taken up with a discrete point or points on which the party had been unsuccessful, this is not such a case. The reality is that Ms Rooney was entirely successful at the appeal hearing. As Mr Robin Dunne, her counsel, pointed out, I upheld the decision below for the reasons that were given by Senior Costs Judge Gordon-Saker and so, in the event, the additional grounds in the Respondent's Notice fell away. The two arguments referred to by Mr Carpenter KC only took up a small part of the argument, as is reflected in the fact that they were dealt with in 5 paragraphs of a 76 paragraph judgment. The fact that the Respondent's Notice was served out of time is nothing to the point, especially as there was no objection to it being relied upon.

(2) Should the assessment of costs be undertaken by Judge Rowley, or by Judge Whalan?

9. A hearing is listed before Costs Judge Whalan from 6 to 16 May 2025 to continue with the detailed assessment of the costs due to Ms Rooney, on an indemnity basis, as a result of the trial of this matter. Mr Dunne submitted that it would be convenient, and would save costs, if the summary assessment of the costs of the appeal was also allocated to Judge Whalan. Mr Dunne said that there would be ample time at the May 2025 hearing for him to do so, and that no difficulty would arise as a result of the fact that Judge Whalan had not been the assessor on the appeal. On behalf of Ms Vardy, Mr Carpenter KC submitted that the court has no power to allocate the task of summary

assessment to a judge who was not involved the hearing in respect of which costs were awarded. Mr Carpenter KC submitted that, in any event, the detailed assessment of costs and the summary assessment of costs are different exercises, and no benefit would be obtained by allocating the task of summary assessment of the costs of the appeal to Judge Whalan.

10. I agree with Mr Carpenter KC on this issue. Though I do not have to decide the matter, I think that there is considerable force in Mr Carpenter KC's submission that there is no power, in normal circumstances at least, for the summary assessment of costs to be conducted by a judge who had no involvement in the proceedings in respect of which costs were awarded. See CPR 44.6(1) and PD44, paragraph 9.7. In **Mahmood v Penrose** [2002] EWCA Civ 457, at paragraph 13, Sir Swinton Thomas said, "The rule clearly states that the only person who can make a summary assessment is the judge who awarded costs at the hearing." This case is slightly different from the norm in that a judge and a costs assessor were involved in the appeal. The reason why I do not have to decide whether it is ever permissible for a judge who was not involved in the hearing in respect of which an order for summary assessment of costs was made to conduct the assessment is because I have taken the view that, in any event, it is appropriate that Acting Senior Costs Judge Rowley should conduct the assessment. Where a judge has sat with a Costs Judge as an assessor, and an order for summary assessment of costs has been made, it is traditional that the Costs Judge will conduct the summary assessment. The assessor has the appropriate expertise, and the assessor will have the greatest knowledge and understanding of the matter in respect of which the order for summary assessment of costs was made. That is certainly the position here. Also, as Mr Carpenter KC submitted, the exercise of conducting a detailed assessment of costs,

which is the exercise that Costs Judge Whalan will be carrying out, is completely different from the exercise of carrying out a summary assessment.

(3) Should there be a payment on account of costs?

11. Mr Dunne submitted that, in addition to ordering summary assessment of costs, the court should order that Ms Vardy make a payment on account of Ms Rooney's costs of the appeal of £55,000. This is just under 66% of the total claimed costs of £85,468.50. Mr Carpenter KC submitted that it is not appropriate to order a payment on account of costs where a summary assessment has been ordered.

12. In my view, Mr Carpenter KC is right. Mr Dunne said that CPR 44.2(8) establishes there is a presumption that a payment on account will be made, save where there is good reason not to do so. However, what CPR 44.2(8) says is that "Where the court orders a party to pay costs ***subject to detailed assessment***, it will order that party to pay a reasonable sum on account of costs, unless there is a good reason not to do so." (emphasis added). Accordingly, the presumption that a payment on account will be ordered applies only where an order for detailed assessment has been made, not where, as here, there has been an order for summary assessment. The reason that a payment on account is normally appropriate where a detailed assessment has been ordered is that it will take a considerable time before that detailed assessment will be conducted, and it is only fair and reasonable that the successful party should receive a contribution to their costs at an early stage. The position is completely different where a summary assessment is ordered. Indeed, in the majority of cases in which an oral ruling is given at the end of a hearing in respect of which a summary assessment is ordered, the summary assessment will be done there and then. The circumstances are different here because judgment was reserved, but the summary assessment will nevertheless be

concluded within a few weeks. The whole point of a summary assessment is to ensure that the party in whose favour a costs award is made recovers its costs within a short time of the hearing to which the costs award relates. This means that there is no scope, and no need, for a payment on account. Neither Acting Senior Costs Judge Rowley, with his great experience in costs matters, nor I, is aware of any case in which a payment on account has been ordered in a case in which a summary assessment of costs was made.