

SCOTLAND / JUDGMENT

AB v BB [2011] ScotCS CSOH_127 (11 August 2011)

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[2011] ScotCS CSOH_127 [New search] [Help] OUTER HOUSE, COURT OF SESSION [2011] CSOH
127 F112/05 OPINION OF LORD BANNATYNE in the cause AB Pursuer; against BB
Defender:

Pursuer: Louden; Anderson Fyfe Defender: Wild; Beveridge & Kellas Curator ad litem : Moir;
Hughes Walker 11 August 2011 I. Introduction

- [1] This case came before me as a continued proof on 5 July 2011 and subsequent days.
- [2] Given the nature of the dispute between the parties and the nature of certain evidence which was led it was at all hands thought appropriate that I anonymise this opinion in order that the child could not be identified.
- [3] The principal issue at the continued proof was contact by the defender to the child of the parties' marriage, who is hereinafter referred as C. She at the date of the continued proof was ten years old. II Background
- [4] At this point it is perhaps convenient to set out the lengthy background and procedural history of this case.
- [5] The parties (AB the pursuer is the husband and father of the child C and BB is the wife and mother of the child C) were married on 7 October 2000 . The child C was born shortly thereafter. The parties lived abroad for most of the time that they lived together. The marriage became unhappy. The parties separated in or about September 2005 although they remain married. From shortly after the separation the issues of residence of C and contact to C have been litigated upon in this court. Accordingly there has been ongoing litigation for a period approaching six years.

- [6] On 14 October 2005 the pursuer, who at that time had the care of C, obtained an interim interdict in the following terms: "The Lord Ordinary ... ad interim interdicts the defender ... or anyone acting on her behalf from removing or attempting to remove the child C, from the care and control of the pursuer or furth of Scotland or from the United Kingdom ...".
- [7] By interlocutor dated 21 October 2005 the defender obtained an interim contact order to C. Despite the terms of the interim interdict the defender without the permission of the pursuer failed to return the child C to the pursuer at the end of the first contact period. Rather, she removed her to London . The child was eventually returned to the care of the pursuer and by interlocutor dated 4 November 2005 the pursuer obtained an interim residence order relative to C. She has remained in the care of the pursuer since that time.
- [8] From about 4 November 2005 the pursuer's address and the name of the school which C attends have not been disclosed to the defender.
- [9] Since an interlocutor dated 21 June 2006 , the defender has had regular contact to the said child. Said contact has been weekly for about two hours. It has always been on a non-residential and supervised basis. Initially it had to be exercised in an enclosed secure environment. For some considerable time it was supervised by the pursuer. However, in terms of an interlocutor dated 29 April 2010 the supervision requirement was altered and from that point supervision was provided in rotation by three nursery nurses, namely Angie Cairns, Zoe Sives and Kerry Stalker.
- [10] On 27 January 2010 the court appointed a curator ad litem to C, namely: Mr Ross MacFarlane. As well as the parties to the action, the curator ad litem was also represented at the proof and continued proof.
- [11] A proof commenced on 27 April 2010 and after certain evidence was led (on 29 April 2010) it was agreed by parties in terms of a joint minute No. 39 of process that a residence order be made regarding said child in favour of the pursuer. In addition it was agreed that an interim contact order should be made in favour of the defender in terms which I have already set out. It was further at that time ordered that the interim contact order should be reviewed in six months time.
- [12] The above background and procedural history was not a matter of dispute between the parties.
- [13] The hope of parties and the Court as at 29 April 2010 when the foregoing orders were made was that the settlement of the residence issue and the removal of the pursuer from the supervision of contact would enable the defender to form a closer bond with C and that the trust between the pursuer and defender, which was almost entirely absent as at that date, would materially improve.
- [14] It was additionally hoped that if the foregoing happened then in fairly early course: (1) the supervision of contact could be removed; (2) contact could be increased; and

- (3) residential contact at the defender's home could be started.
- [15] It was generally hoped that matters would settle down between the parties and that there would be no need for any continued proof and that the principal outstanding issue between parties namely contact, would be the subject of agreement.
- [16] Unfortunately it became clear following further sundry procedure that trust between the parties remained utterly absent, their relationship remained extremely difficult and there remained substantial issues surrounding the exercise of contact. Against that background I felt compelled to fix a continued proof to deal with the outstanding issues between the parties.
- iii. The Law Statutory Provisions
- [17] The material provisions of section 11 of the Children (Scotland) Act 1995 for the purpose of the continued proof are as follows: "(1) In the relevant circumstances in proceedings in the Court of Session ... whether those proceedings are or are not independent of any other action, an order may be made under the subsection in relation to -
- (a) parental responsibilities;
 - (b) parental rights;
 - (c) guardianship; ...
- (2) The court may make such order under subsection (1) above as it thinks fit; and without prejudice to the generality of that subsection may in particular so make any of the following orders -
- (a) an order depriving a person of some or all of his parental responsibilities or parental rights in relation to a child; ...
 - (d) an order regulating the arrangements for maintaining personal relations and direct contact between a child under that age (sixteen years) and a person with whom the child is not, or will not be, living. ...
- (7) Subject to subsection (8) below, in considering whether or not to make an order under subsection (1) above and what order to make, the court -
- (a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and
 - (b) taking account of the child's age and maturity, shall so far as practicable -
 - (i) give him an opportunity to indicate whether he wishes to express a view; (ii) if he does so wish, give him an opportunity to express them; and (iii) have regard to such views as he may express. (7A) in carrying out the duties imposed by subsection (7)(a) above, the court shall have regard in particular to the matters mentioned in subsection (7B) below. (7B) Those matters are -

- (i) any abuse; or (ii) the risk of any abuse, which affects, or might affect, the child;
- (b) the effect of such abuse, or the risk of such abuse, might have on the child;
- (c) the ability of a person -
 - (i) who has carried out abuse which affects or might affect the child; or (ii) who might carry out such abuse, to care for, or otherwise meet the needs of, the child; and
 - (d) the effect of the abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has (or by virtue of an order under subsection (1) would have) those responsibilities. (7C) In subsection (7B) above - 'abuse' includes -
 - (a) violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;
 - (b) abuse of a person other than the child; and
 - (c) domestic abuse; 'conduct' includes -
 - (a) speech; and
 - (b) presence in a specified place or area."

[18] The Inner House considered the proper approach to making a contact order in terms of section 11 in *White v White* 2001 SLT 485 . At paragraph 21 in the Opinion of the Lord President (Lord Rodger of Earlsferry) he stated: "Counsel for the respondent accepted that, where the court was considering whether to make an order which no-one had sought, the court had simply to consider all the relevant material and decide what was conducive to the child's welfare. That would be the paramount consideration. In my view, exactly the same applies to the case where a party seeks an order. The court must consider all the relevant material and decide what would be conducive to the child's welfare. That is the paramount consideration. In carrying out that exercise the court should have regard to the general principle that it is conducive to a child's welfare to maintain personal relations and direct contact with his absent parent. But the decision will depend on the facts of the particular case and, if there is nothing in the relevant material on which the court, applying that general principle, could properly take the view that it would be in the interests of the child for the order to be granted, then the application must fail. That might be so, for instance, if a father had abandoned his wife when the child was born and, years later, suddenly sought a contact order. A fortiori the application will fail if the relevant material shows that it would be definitely contrary to the child's welfare for the order to be granted. In practice, as Lord Oliver of Aylmerton remarked in *re K D* 1988 AC 827D, the court will indeed be able to determine the matter on the available material. If, having considered the material, the court is minded to make an order because it would be conducive to the welfare of the child, it has then to consider whether it would be better for the child to make the order than not to make any order at all. The second limb of the test is designed to give effect to Parliament's view

that, wherever possible, matters should be regulated by the parties without the intervention of the court." IV Evidence at Proof

- [19] I heard evidence on behalf of the defender (who had been ordained to lead) from the defender herself; the three nursery nurses to whom I earlier referred who had supervised contact over approximately the last year and who gave factual evidence as to what had happened on occasions when they had supervised contact. In addition I heard evidence from Imelda Utuk, a key worker at Shakti's Women's Aid. Lastly, I heard evidence from Dr William Uttley who for a short period had been the defender's general practitioner.
- [20] On behalf of the pursuer I heard evidence from the pursuer himself and Professor Jonathan Chick, consultant psychiatrist who had prepared a report, No 6/97 of process commenting on the defender's mental health. Lastly, I heard evidence from PC Andrew Dick who gave evidence as to the police investigation into the defender's allegations of sexual abuse of the child C by the pursuer.
- [21] On behalf of the curator ad litem I heard evidence from the curator himself and from Dr Brenda Robson, a psychologist who had prepared a report, 8/1 of process.
- [22] PC Dick's evidence can be summarised very briefly and was to this effect: Following an investigation which involved the interview of the pursuer, the defender, the pursuer's half-sister and the child C, he found there to be no substance in the allegations of sexual abuse of the child C by the pursuer.
- [23] As regards the others who gave evidence, their positions as developed in their evidence can be summarised as follows:
- [24] First, the evidence of the curator Mr MacFarlane. His evidence was given against the background of the two reports which he had prepared for the court, Nos 38 and 44 of process.
- [25] In evidence at the continued proof Mr MacFarlane stated that he had formed the following views:
1. That the defender's behaviour in relation to the issue of C was as though she was negotiating over something like a car, a chattel, C's welfare did not come into the matter at all.
 2. C got nothing positive from the contact.
 3. There was no warmth between the defender and C. There was no emotional attachment between C and the defender. C wasn't relaxed with the defender and was reluctant to interact with her. Contact was superficial.
 4. He was clear that C's views on contact were spontaneous and uncoached, and that she was not putting forth what the pursuer wanted, rather than her own views, as alleged by the defender.

5. He agreed with the views expressed by Dr Robson in her report. C, he judged, did not want to go for contact. She was only going because told to do so by the pursuer. She didn't trust her mother and would not go to unsupervised contact or to the defender's house.
 6. He was clear that the defender had made up her allegation that C had been sexually abused by the pursuer in order to further her chances in the present action. He was clear that C had never been sexually abused by the pursuer.
 7. He believed that certain aspects of the defender's conduct and certain beliefs that she held were unacceptable and undoubtedly potentially dangerous to C. These included her belief that the pursuer was committing incest with his half sister; the belief that the pursuer's sister-in-law had tried to kill C; her continuing expressed wish to have C subjected to an intimate internal medical examination (although knowing she had not been abused); her expressed desire that if C was to be examined by a child psychologist (which Mr MacFarlane had advised her he intended to have carried out), she should be removed from her family life with the pursuer and from her school and friends and made to live with a black family for three months.
- [26] Lastly, Mr MacFarlane referred to the writing of a book by the defender. This book had been fairly recently published. It contained, as summarised by Dr Robson: "Details of severe physical chastisement of children" and "pornographic material relating to sex acts." On the front cover of this book was a photograph of C and the author was identified as being C. It was not disputed by the defender that the book was written by her and that C's photo appeared on its cover and it bore to have been written by C.
- [27] This book was at the start of the continued proof freely available in this country and in particular available through Amazon.
- [28] Mr MacFarlane's evidence was that nobody looking to safeguard the welfare of a child would have connected a child to the content of that book. He described her conduct as lacking the essential factors of safeguarding and promoting the welfare of C. He said the crucial matter was now the protection of the child C. In the whole circumstances it was the view of Mr MacFarlane that direct contact should be ended.
- [29] Turning to the evidence of Dr Robson. She prepared the said report on the instructions of Mr MacFarlane. She spoke to that report in the course of her evidence. She had had the opportunity to view a period of contact between the defender and C.
- [30] In the course of her evidence and under reference to that report she stated that C had said to her about contact: "I don't look forward to going, I don't want to go. Dad makes me go. He persuades me."
- [31] Her strong impression was that C tolerated contact visits rather than enjoying them. She went to contact because she felt that she had to.

- [32] There was no physical warmth between C and the defender. C did not seek physical contact with her mother. There was no emotional relationship between them. She advised that C had told her: "She wouldn't feel safe (at her mother's flat) even if people were there." And "that she did not think she would ever want to see her mother on an unsupervised basis".
- [33] Dr Robson was of the opinion that C's views were genuine. She believed that C was more articulate than an average ten year old and was well able to express her views clearly.
- [34] Dr Robson felt that certain aspects of the defender's behaviour were bizarre and spoke in this context of the following:
1. Drawing the child C into an investigation of sexual abuse and in particular wishing her to have an intimate physical examination even though there had been a police investigation which had shown that there was no case to answer. This was clearly not in the child's best interests. The defender appeared still to have these ideas in her head that the pursuer was abusing the child and she was concerned about this and the risk to C's emotional well being arising from the defender continuing to believe this.
 2. Her concerns that the pursuer's sister-in-law was a witch and was trying to kill C Dr Robson described this as a very significant concern. She was concerned that these thoughts still remained in the mind of the defender.
 3. Turning to the book which had been published and written by the defender she had certain trenchant criticisms. She found it difficult to express her views. She said that the potential for damage to the child C emotionally from the defender having associated the child with this book having regard to its content were grave. She observed that there were no signs of the defender looking to the welfare and emotional wellbeing of the child when writing and publishing this book and associating her with it. She went on to say that she had never come across a mother who would associate a child in such a way with such an item. She described the book as the final straw which showed that the defender simply did not understand the emotional needs of C. She described the defender as a positive risk to C. She found the book very significant. In addition she found it of some significance that the defender had told C that she had written a book and had given her the name of the book. There was some dispute about the precise circumstances in which this had occurred, however, it was not disputed by the defender that she had told the child she had written the book and had given her the name of it.
- [35] Dr Robson accepted that it was very rare indeed for a mother's contact to a child to be stopped, however, she expressed in the strongest terms possible that contact in this particular case should be stopped.
- [36] I also heard from Professor Chick who gave evidence and in particular spoke to his report 6/97 of process.

- [37] In this report he looked into the issue of the defender's mental health. His conclusion was that it was very likely that she suffered from a recurrent psychotic illness, namely: delusional disorder and it was likely that episodes would continue to occur. This illness is one where perception of some aspects of normality is abnormal. He advised that it was characteristic during delusional periods that the individual tends to be so pre-occupied with the delusional beliefs and fears that they are distracted from normal contact with others even their children. He said that such persons tend to make impulsive decisions without always considering safety because they are driven by fears or irrational ideas from which they cannot be dissuaded.
- [38] He was of the view that certain of the text messages sent by the defender to the pursuer and certain of the telephone calls given their content, their fixedness, vehemence and repetitiveness were evidence of this psychotic illness. The pursuer had for a considerable length of time, unknown to the defender, been taping telephone conversations between the two of them and had also kept copies of text messages between them. In the course of these conversations and texts the defender among other things referred to the pursuer's alleged incestuous relationship with his half-sister, the sexual abuse of C by the pursuer and the pursuer's sister-in-law wishing to kill C.
- [39] In addition to these various matters above referred to, he also believed that the connecting of the child C to the book which the defender had written, given its content, was another sign of the psychotic illness.
- [40] Lastly, he took into account various matters which had occurred according to the pursuer when the parties were living together and also felt that these incidents backed up his position that the defender was suffering from this form of psychotic illness. He felt that even short contact between C and the defender during one of her psychotic periods would be damaging to C. He also felt that there might be physical danger if the defender acted impulsively while under a delusional misperception.
- [41] Turning now to the evidence of the pursuer. He denied the allegations made by the defender of incest with his half-sister; consorting with prostitutes, sexual abuse by him of C, assaulting and abusing the defender; taking the child C away from the defender on a number of occasions without good reason and that his sister-in-law had tried to kill C. In summary it was his position that the marriage had broken down due to the defender's behaviour resulting from what he thought was her mental condition. As regards contact he maintained that he had always tried to make this work and had not sought, as alleged by the defender, to influence C against the defender. He said that getting the child C to go to contact was becoming much more difficult. In recent times she more often would not get out of the car when she went for contact until considerable efforts had been made to get her to go to the contact. She was more often becoming upset as a result of contact. He was very concerned about what the defender might do at contact and what she might say to the child C at contact. He was particularly concerned at what she might say given her views about him and his family. He was particularly concerned by the connection of C to the book published

by the defender. His concerns about this book arose for the same reasons as expressed by Dr Robson and Mr MacFarlane.

- [42] He found dealing with the defender very difficult. The content of the phone calls and text messages from the defender he found particularly difficult given the nature of the allegations which they often contained.
- [43] He was clearly distressed by the allegations made about him by the defender. Particularly distressing to him had been the allegations of sexual abuse and incest and that this had resulted in him being interviewed by the police along with C. He was clearly concerned by what C had been put through in relation to these allegations, i.e. being taken from the family home and being interviewed by the police.
- [44] He remained concerned that the defender might remove the child C from his care. She had more than one passport; she had breached the interim interdict and had also removed the child to India without his knowledge.
- [45] Both the pursuer and defender gave evidence about an incident shortly before their return to this country. The pursuer's version was that the defender had stabbed him. He denied the defender's version that he had been brought home by the police having been stabbed because of a failure to pay a prostitute.
- [46] His underlying position throughout his evidence was that he had the best interests of C at heart in whatever he did.
- [47] As regards the evidence of the various nursery nurses I deal with the core of their evidence in the discussion section of this Opinion where I also deal with the core of Dr Uttley's and Miss Utuk's evidence. Accordingly I lastly turn to the evidence of the defender. It was her broad position in her evidence that the cause of the breakdown of the marriage was the pursuer's behaviour and in particular his abusive, violent and controlling behaviour towards her. In addition her position was that he had consorted with prostitutes.
- [48] In the course of her evidence she admitted to sending the various text messages and making the various phone calls the transcripts of which were before me.
- [49] Some representative examples of the content of these are as set out in 6/27 pages 8-14 which include accusations of the pursuer sleeping with his sister and of the pursuer and his sister planning to hire people to kill the defender. Also, reference can be made to 6/114 where, at pages 23 and 24, allegations are made of the pursuer's brother, sister-in-law and mother wanting to kill C and in the case of his sister-in-law and brother trying to kill C. At page 86 there are allegations of sexual abuse by the pursuer of C and of his having an incestuous relationship with his sister.
- [50] Her position in relation to these was that they were sent in response to distressing messages from the pursuer, although at no point was I shown evidence of even one such message.

- [51] She reiterated in her evidence that C had disclosed to her sexual abuse by the pursuer and that about two weeks after the disclosure she had reported this to her key worker at Shakti's Women's Aid. This disclosure, she said, involved not only the pursuer abusing C but also the pursuer's sister abusing C. She, in addition, reiterated allegations about an incestuous relationship between the pursuer and his sister. She also referred to the pursuer's sister-in-law trying to kill C. In the course of her giving evidence her position as to whether she currently believed these matters were true shifted. She continued to insist that the child C should be subjected to an intimate medical examination. When asked about parasites in her body about which the pursuer spoke, she accepted she had had strange feelings in her body (what Professor Chick believed to be a recognised symptom of delusional psychosis) although she explained this was due to a change in her environment.
- [52] She admitted after various changes in position in her evidence that she had taken C in defiance of the interim interdict that had been pronounced and that she had done this because the pursuer had on previous occasions taken the child away with him. In the end of the day it was her position as I understood it that she was aware of the terms of the interdict, aware that she was exercising interim contact and was required by the court to return the child, nevertheless she simply took the child away for the reason that she wanted in some way to get back at the pursuer given the previous occasions when he had taken the child.
- [53] Her position regarding the book was that she had written this book and had it published. She now appeared to accept that it had been a mistake to associate C with it.
- [54] Her position regarding contact was that it was going as well as could be expected given the restrictions on it, namely: that it was supervised (creating an artificial atmosphere); it was limited in length; she was not allowed to take the child C to her house and the pursuer did not allow contact to take place at other than what she regarded as somewhat unsuitable places such as the Meadows.
- [55] It was her position as I understood it that the pursuer was actively trying to turn C against her and was working positively to undermine her contact with C. Her underlying position was that the views expressed by C to others about whether she wished to attend the contact were not her true views and rather they had been put there by the pursuer. She alleged that the curator ad litem was biased and had improperly influenced Dr Robson to change her report so that it was less favourable to her. She alleged that Dr Robson had, disregarding the duties she owed the Court, in fact changed her report. She alleged that Professor Chick had produced his report for money and it was not a true report although she denied she was saying he had been bribed. Her position was that she was not mentally unwell as at the present moment and nor had she at any other stage been mentally unwell. Rather, when they were living abroad together the pursuer had maliciously tried to make others believe that she was mentally unwell. Unknown to her he had taken her to a doctor when she thought she was going to a marriage counsellor.

- [56] The defender was clearly anxious that contact continue and it was her underlying position that she had the best interests of C at heart. V. Submissions on behalf of the defender
- [57] Counsel for the defender began her submissions by moving that contact should be once a fortnight rather than the present position which was once per week.
- [58] She began her detailed submissions by accepting that the defender had made a number of serious errors of judgment:
1. She had removed the child when first given contact on their return to Scotland in the face of the interim interdict.
 2. Her allegations of incest. The defender's position was that she had believed these at the time she had made them. Her current position was that she did not know what to believe.
 3. In relation to the book she had written and had published, the defender now accepted that it was a mistake to link the child C to this book.
- [59] Having accepted the above, it was however her position that what we were dealing with was the best interests of the child C and whether contact should continue in a reduced form.
- [60] She submitted that it was the defender's position that although contact had been difficult, that this was partly due to it having been supervised by the pursuer. She submitted that contact was, on the evidence, getting better since the pursuer had ceased supervising it. It was not surprising that contact was not particularly easy given the constraints on the way in which it was exercised as set out by the defender in the course of her evidence.
- [61] In addition it was her position that, on the evidence, the pursuer was either consciously or unconsciously negatively influencing the child and that this was causing difficulties in the exercise of contact.
- [62] She pointed out however that despite this difficult background contact had taken place regularly and that in particular the child had attended regularly. She argued that the whole issue of contact had to be viewed against what she described as the abusive, violent and controlling behaviour on the part of the pursuer.
- [63] As regards the child C's views on contact, she stated that given that she was only ten, that if I accepted that they were true I should not place too much weight on them. However, in any event it was the defender's position that said views were stated because of the adverse influence of the pursuer.
- [64] Dealing with the evidence of the curator and Dr Robson she pointed out that the curator had noticed some improvement in contact over the last year. She also referred to the evidence of the three nursery nurses who had supervised contact over the last year. As I understood it, her position was that looking to that evidence as a whole it pointed to contact going as well as possible given the difficult circumstances in which it took place. In addition, it was the broad view of the nursery nurses when taken as a whole that the child's relationship was

improving with her mother and that if a better forum could be found for contact then things would improve further.

- [65] It was, as I understood it, said to be of some significance that the child continued to go for contact, that this was not a situation where the child would not attend at all for contact.
- [66] Turning to the issue of the psychotic illness and the evidence of Professor Chick, her position was that Professor Chick's conclusion was quite weak, namely that the defender might have delusional disorder. In addition Professor Chick was suffering under the handicap in giving an opinion on the defender's condition of not having the pursuer's whole medical records and not having had an opportunity to interview her. As I understood it she asked me to reject his evidence and rather to prefer the evidence of the defender and Dr Uttley whose position was that the defender did not have a major psychotic disorder which would have prevented her looking after her child at the time that he saw her.
- [67] She submitted that there was no evidence to support the proposition that the contact was harmful to the child. She submitted in the whole circumstances that there should be continued contact. If it were to be two-weekly this would fit in with what the child had said she wished when interviewed by Dr Robson. She submitted it was in the best interests of a child to see her mother and no basis had been shown here for departing from that view. I was invited, as I understood it, to accept the defender's evidence and to reject entirely the evidence of the pursuer, Dr Robson, Professor Chick and the curator ad litem .
- [68] On the subsidiary issues she made the following brief submissions:
1. As regards the issue as to whether the child should be allowed to leave the country for 6 weeks each year without the defender's consent she advised that the defender's position was now that she should be allowed to leave the country without her consent but only for four weeks in each year and to a Hague Convention country other than Thailand. She accepted that in those circumstances the interdict sought by the defender was unnecessary.
- [69] As regards the interdict sought by the pursuer she submitted that this was unnecessary in that the defender had made a home for herself in this country and there had been no occasion since 2005 when she had acted contrary to a court order and removed the child.
- [70] So far as the removing of parental responsibilities from the defender it was her position that the defender had not interfered in the exercise of the pursuer's parental responsibilities and in the whole circumstances it was not appropriate for me to make such an order.

Submissions

for the pursuer

- [71] Counsel for the pursuer's position was that I should not accept the evidence of the defender and that in relation to all disputed matters I should prefer the evidence of the pursuer whose evidence she submitted I should accept.

- [72] She moved the court that contact should be stopped. In doing so, she in particular relied on the whole evidence of the curator ad litem . In relation to the curator ad litem's evidence she submitted this: there can be no doubt of the independence of Mr MacFarlane and his understanding of his duty to the court despite what the defender had alleged in evidence. She submitted that his evidence must carry great weight in that he had seen the child and the parties over a substantial period of time and had seen them in various settings.
- [73] Turning to the evidence of Dr Robson, she submitted that in the course of her evidence in the clearest and strongest possible terms she had stated that contact should be stopped and this recommendation was made against the background of the doctor understanding how extreme that recommendation was. However, counsel pointed to the fact that Dr Robson felt that she had to make this recommendation due to the considerable risk of ongoing contact by the defender with the child C.
- [74] She relied on the evidence of Professor Chick and his diagnosis of the psychotic illness.
- [75] She submitted that the book published by the defender was of the utmost concern. It showed that the defender had no regard for the welfare of the child C. It showed a continuing disregard for the welfare of the child C continuing up to the present date. She described the inappropriateness of this book being associated with the child as being off the scale.
- [76] She relied on the content of the various telephone calls and other communications coming from the defender to the pursuer as supporting her position that contact should be stopped.
- [77] In relation to the evidence of Dr Uttley she accepted that at the point he had seen the defender he felt that there were no major mental health issues. She, however, also pointed to the defender's very odd behaviour when she was seeing Dr Uttley which Dr Uttley was not aware of at the time, namely: that she was raising the issue of infertility treatment with him although at that time she had been separated from the defender for some considerable time. As regards the nursery nurses' evidence, she said they were there merely to supervise and not to make any form of judgement as to how well contact was working. The evidence of Mrs Utuk she submitted was of no particular value.
- [78] So far as the subsidiary matters were concerned, it was submitted that 6 weeks in one year was appropriate for the time, the child could be removed from the country having regard to family holidays and school trips. It was submitted that having regard to the defender's removal of the child from Scotland in face of the interim interdict, a permanent interdict should be pronounced. Lastly, counsel recognised that there were no pleadings regarding removal of the defender's parental rights. However, she pointed out that the court was entitled ex proprio motu to remove these and in this context she referred to the whole background of the case. The submissions for the curator ad litem

- [79] I do not intend to detail the submissions made on behalf of the curator ad litem which broadly were in line with the submissions made on behalf of the defender and in many cases simply adopted those submissions. VI. Discussion Contact
- [80] I had no difficulty in holding on the whole of the evidence before me that it would not be conducive to the child C's welfare that contact should continue. I took as my starting point that in general it is conducive to a child's welfare to maintain personal relations and direct contact with the absent parent, in this case the defender. However, I was persuaded on looking to the whole evidence that despite that starting point it could not be said that it was in the interests of the child C for an order for contact to be granted. In my view the evidence clearly showed that it would be contrary to the child's welfare for an order for contact to be granted. There was nothing in the evidence to show that it would be in the child's best interests for contact to be continued.
- [81] In my view the evidence in support of my conclusion that contact was not conducive to the child's welfare was overwhelming.
- [82] There was first the evidence of the curator ad litem, Mr MacFarlane. I accepted in its entirety the curator's evidence. I found him to be a most impressive witness. He prepared the two reports for the court namely Nos. 38 and 44 of process, both of which he spoke to in the course of his evidence. I found both of these reports and the evidence which he gave in court to be carefully considered and to have taken account of all of the material before him. Mr MacFarlane, it appeared to me, had fully investigated all of the issues which were before him. His views and recommendations were well reasoned, founded on the information before him and based on a careful analysis of the whole material before him. I was of the opinion that his views were most insightful. Mr MacFarlane brought considerable expertise in the area of family law to his role as curator ad litem and had been involved as curator ad litem in this case for a considerable period of time. He had accordingly had a considerable opportunity to view how matters had developed particularly since the original proof.
- [83] I found there to be no substance in the allegations made by the defender that he had not been impartial and that he had gone even further and had improperly sought to influence Dr Robson into changing the terms of her report to make it less favourable to the defender. I am absolutely certain that Mr MacFarlane had not acted in these ways and that he had at all times acted in accordance with the duties which he owed to the court.
- [84] In that I regarded Mr MacFarlane's evidence as entirely independent and given that I had found him a most impressive witness for the reasons which I have just given, it was my clear view that this evidence should be given considerable weight.
- [85] Secondly, there was the evidence of Dr Robson. I found her to be an entirely credible and reliable witness. She was once more a very impressive witness. She had formidable experience in her field of expertise and was quite clearly an expert of the highest standing. Her evidence was very careful, thoughtful and considered. Her evidence was in the same way as Mr MacFarlane's evidence very insightful. No flaws in my view were identified in the

way she had reached her conclusions. It was alleged by the defender that, urged by the curator, she had deliberately falsified her report. As with the allegations against Mr MacFarlane I found them utterly unfounded. I could identify no basis for upholding such an outrageous allegation.

- [86] It seemed to me that Dr Robson's conclusion was fully supported by the evidence to which she had regard. She recognised, very properly, that the conclusion which she had reached was an exceptional one and one which she rarely made. However, in the course of her evidence it was clear that she was absolutely certain in her view that contact should be stopped.
- [87] In that I found Dr Robson to be an expert of considerable eminence, to be an entirely independent witness and to be a wholly impressive witness in relation to the matters on which she was opining, I again was of the view that her evidence required to be given considerable weight.
- [88] Thirdly, there was the evidence of Professor Chick. Again, Professor Chick was clearly a very eminent consultant psychiatrist. The opinion which he came to appeared to me to be carefully considered and based on a full analysis of such information as was before him.
- [89] It has to be accepted that Professor Chick was to some extent hampered in coming to his conclusion by the fact that the defender refused to be examined by him and in addition had refused to have her medical records from Australia made available to the Professor. Nevertheless Professor Chick felt that the information before him enabled him to come to his conclusion although he accepted that it would have been better for him to have seen the defender and to have had her full medical records available to him. Given that Professor Chick was prepared to express an opinion I do not see any reason why I should not give weight to that opinion. Had there been evidence from other psychiatrists that no opinion should be expressed in circumstances where an interview with the defender had not been carried out and only a portion of her records were available, then of course I would have had to make a decision as to whether any weight should be attached to his views. However, there was no such evidence. Accordingly I believe I was entitled to attach weight to his evidence.
- [90] It was of course suggested by the defender, that Professor Chick had simply produced his report for money and therefore no regard should be had to it. I am of the view that there was no support for this allegation. There was nothing in his report, in his evidence or in the way he gave his evidence that provided any support for this scurrilous allegation made by the defender, which I rejected.
- [91] There was thus looking at the issue of contact from a number of entirely different stand points, entirely independent evidence including expert evidence the terms of which supported the ending of contact. In my opinion this body of evidence when looked at together amounted to very compelling evidence.

- [92] When taken as a whole this body of evidence showed that the defender did not have the promotion of the welfare of the child as her central concern. Rather, that evidence tended to point to the defender being someone who had no concern for the welfare of the child or at least when acting often failed to consider the welfare of the child. Her actions on the basis of this evidence often appeared to be contrary to the child's best interests and pointed to a considerable risk that this would continue to be the position.
- [93] I judged that the evidence of Mr MacFarlane and Dr Robson in the strongest possible terms was to the effect that contact should be ended. In my view it was fair to hold that looking to these two witnesses' evidence there was considerable risk to the child in contact being continued. Although Professor Chick is not a child psychiatrist, his evidence as to risk fitted in and tended to support the views as expressed by Mr MacFarlane and Dr Robson.
- [94] Accordingly on the evidence of Professor Chick I hold that: (1) the defender is suffering from delusional disorder; and (2) the defender's allegations of the pursuer's incest with his sister, sexual abuse by the pursuer of the child C, her allegations that the pursuer's sister-in-law has tried to kill the child C and that other members of the pursuer's family wish to kill C; her allegation that the pursuer and his sister are going to kill her, her fears about neighbours and her accusations of infidelity are manifestations of this delusional disorder and that when she says these things the pursuer is not acting out of malice but as a result of said psychotic illness. Further, accordingly on the basis of the evidence of Mr MacFarlane, Dr Robson and Professor Chick I hold that the defender has acted in a manner which is not conducive to the child's best interests, there is a considerable risk that she will continue to behave in this way and therefore considerable risk of harm to the child if contact continues.
- [95] In addition to the foregoing I hold that even if I am wrong in holding as above, the evidence of Mr MacFarlane and Dr Robson that there are no positive benefits to the child in the continuing of contact and looking to their evidence regarding the views of the child as to contact it is proper to hold that there are no positive benefits to the child in the continuing of contact and on that separate basis contact should be ceased.
- [96] It was evident from the evidence of Mr MacFarlane and Dr Robson that the child no longer wished to go for contact and only went because she believed her father would get into trouble if she did not. I accepted without difficulty that this was the true position of the child. Given the age and maturity of the child I believed that her views were a material consideration and that I should take account of these.
- [97] Turning to the evidence of the pursuer I came to the view that he was a credible and reliable witness. In relation to all matters where his evidence differed from that of the defender, I preferred his evidence.

- [98] In particular so far as the evidence regarding the time when the parties lived together I preferred his version of events. I accepted his position that he had not been violent and abusive towards the defender and that the problems in the marriage arose as a result of her behaviour due to her illness.
- [99] In my opinion the pursuer's evidence regarding the child and the defender's behaviour was materially supported by that of Mr MacFarlane, Dr Robson and Professor Chick. There was also support for his position regarding the very difficult behaviour of the defender during the period when the parties lived together and thereafter in the recordings and transcripts of telephone conversations with the defender and text messages from her.
- [100] These recordings and transcripts had to be approached with some caution in that the defender was unaware she was being recorded. However, I took the view, that the recordings very eloquently evidenced the difficult behaviour of the defender including the various types of allegations (which I hold to be utterly unfounded) she was prepared to make regarding the pursuer and his family.
- [101] Further support for the pursuer could also be found in the various documentary productions from Australia . Again these had to be viewed with some caution given that they came solely from the pursuer's side. However, the content of them did tend to support the pursuer's position and appeared to fit in with the general picture of the defender that he was presenting in evidence.
- [102] In the course of his evidence it became clear that the pursuer had the best interests of the child at the forefront of his considerations. I believe that he had genuine concerns for the safety and wellbeing of the child C while in the care of the defender. These concerns were, in my judgment, when the whole evidence was looked at reasonably based. I also believe he genuinely feared the defender removing the child. I again thought on the whole evidence that this fear was reasonably founded.
- [103] I believe that at all times he had done his best to make contact between C and the defender work. I took the view that he had not deliberately prejudiced the child C against the defender. This was shown first by the fact that on most occasions he had managed to get the child C to go for contact, though she was reluctant. Secondly, he had managed to do this over a considerable length of time. Thirdly, his efforts to get people to supervise contact and to pay for this supervision again tended to support a conclusion that he had tried to make contact work.
- [104] I did not accept the defender's position that he had consistently tried to undermine contact and turn the child C against her.

- [105] At an unconscious level I am sure his ongoing difficulties over a substantial period with the defender and his worries about contact would have been communicated to C. That was in my judgment bound to happen where contact had been so difficult over such a lengthy period of time and where relations between the parties had been so poor over such a protracted period.
- [106] I gained the strong impression from the evidence of the pursuer that he was really at the end of his tether in relation to the proceedings and the defender's ongoing behaviour. In particular the allegations which she continued to make about him clearly distressed him. It did seem to me that contact was becoming a great strain for him and that continuing contact could begin to have a material effect on his general health and welfare which would be detrimental to the care of the child C. I found in his evidence further support for the view that it was not in the best interests of the child C that contact should continue.
- [107] On the other side of the case there was the evidence of the three nursery nurses who had been supervising contact. Their evidence as a whole can be summarised as follows: They believed that the emotional relationship between the defender and the child C had to some extent strengthened over the last year and that in their eyes contact had gone reasonably well given the constraints placed on contact due to it being supervised and the place where contact was exercised. In so far as their evidence presented a different picture of what was happening at contact from Dr Robson, I preferred the evidence of Dr Robson given her position as an expert. In looking at the evidence of the three nursery nurses it has to be borne in mind they were not there as trained observers to comment on the quality of contact. It did, in any event, not seem to me that their evidence, when looked at as a whole, to any material extent differed from Dr Robson. When their evidence was examined it seemed to me that they were saying no more than that contact was working on a superficial basis, which was the view of Dr Robson.
- [108] In addition in their evidence they spoke to contact on occasions being ended early, on occasions the child being reluctant to get out of the car for contact and of an incident where the defender tried to give clandestinely certain contact details to the child and her refusing these. It seemed to me that this evidence at least to some extent tended to support the position being put forward on behalf of both the pursuer and the curator ad litem .
- [109] As regards Mrs Utuk's evidence, I did not find her evidence to be of any material assistance in relation to the various issues before me and in particular in relation to the issue of contact. In saying this I am in no way criticising Mrs Utuk who I believed to be credible and reliable. I also thought that she had given good advice to the defender as to how to behave in relation to her exercising of contact, which in large measure the defender had chosen to ignore. However, as regards the rest of her evidence this was predicated on what she had been told by the defender and for reasons that I will turn to I did not believe the defender and accordingly this further evidence from her was of no real value.

- [110] Turning to the evidence of Dr Uttley, in my judgment this evidence in no way displaced the evidence of Professor Chick or caused me to have any doubt about accepting his evidence. Dr Uttley is a GP and is not an expert in the area of psychotic illness. It also has to be borne in mind that he was unaware of all of the incidents of which Professor Chick was advised and which formed a major part of the reasons for his opinion. He was wholly ignorant as to the background to this case of which Professor Chick was aware. Finally it has to be noted that on any view certain of the defender's behaviour when she was consulting Dr Uttley was at its lowest very odd. She clearly gave Dr Uttley the impression that she was living with the pursuer at the time that she was consulting him when she was not. At that time she appeared to be seeking various forms of infertility treatment. There was no suggestion that she was in a relationship with anyone else at that time. Her actions were, on the face of it, odd. There appeared to be no reason for her wishing infertility treatment and in particular IVF treatment.
- [111] I now turn to the defender. I regarded her as an extremely poor witness. I could not accept her as credible.
- [112] As regards her allegation made to Shakti's Women's Aid, that the pursuer had sexually abused the child C I came to the view, as did Mr MacFarlane, that this was at the outset a lie. I accept, as I earlier said, that this has become a fixed idea due to her delusional disorder. However, at the start I believe she knew there had been no disclosure and she invented this allegation. Her evidence on this matter did not ring true. I believed that no disclosure regarding this was made to her by the child C. I had no doubt that the pursuer was telling the truth when he denied any such behaviour. There was no support for the allegation in the evidence of any other witness.
- [113] In addition, the police investigation had found nothing. A particularly telling piece of evidence on this issue was given by PC Dick who said that on advising the defender that nothing had been found of concern following the police inquiry her reaction was not the expected one of either pleasure that the child had not been abused nor anger that the police had failed to confirm what she thought was true. She confined herself to saying that was alright. Over and above that it was very strange that the defender had done nothing about this supposed disclosure for two weeks. In my view, had any disclosure been made to her by C, she would have reported this at once not waited two weeks and further would have reported this immediately to the police and not to Shakti's Women's Aid. In my view clearly the defender had lied about this. It may now, as I say, be the case that this lie is part of her psychological condition, however, I am of the view that at least originally this was a lie.
- [114] This lie in my opinion showed that the defender did not have the interests of child C at the forefront of her mind and was in fact willing to act in a way which was clearly contrary to the child's interests.

- [115] This matter was compounded by her continuing to insist that she wanted the child to be given an intimate physical examination despite knowing there was no need for such. An examination of this type would have undoubtedly been considerably distressful to the child. Seeking to have the child examined in this way showed a complete disregard for the child's welfare.
- [116] Another four instances of such disregard were (a) her wish for the child to be removed from the pursuer, from her school, and from her friends for three months to live with a black family prior to her being psychologically examined. Evidence that that was her wish was given by the curator ad litem and there was no cross-examination on that issue. It is difficult to imagine how distressful such a removal from the pursuer would have been had this happened. However, this either did not occur to the defender or even worse, did not concern her.
- [117] (b) The removal of the child to India without warning the pursuer and without properly advising him as to their whereabouts again this showed in my judgment no concern for the child's wellbeing. There was no dispute that she had removed the child. There was no dispute that she had failed to warn the pursuer that she intended to remove the child. The defender's position was that she had done this arising out of some behaviour of the pursuer. In relation to this I did not believe her.
- [118] (c) Further, her removal of the child C on the first occasion she was granted interim contact in Scotland in the face of the terms of the interim interdict granted against her and the fact that she was in any event supposed to return the child at the end of contact again in my judgment showed no concern for the welfare of the child. It was the defender's final position in evidence that she had done this in order in some way to get back at the pursuer. She had, it was clear, no concern for the welfare of the child in taking her away.
- [119] In the course of her evidence about this matter, she said initially that she didn't know or perhaps understand the terms of the interim interdict. She appeared to be putting this forward on the basis that she had no legal advice at that time. However, as her evidence went on it became clear that she had solicitors and counsel at this particular time. She then stated that the solicitors and counsel had not advised her as to the effect of this interlocutor. I simply did not believe that that had happened. It would have been the first thing that they would have advised her. It then became her position that she had removed the child because the child was unwell. She was then asked why she had taken the child all the way to London if the child was unwell. She then changed her position yet again. She finally, as I have said, admitted that her reason for removing the child was to get back at the pursuer who had removed the child on a number of occasions when the parties were living together. There was evidence of these removals which was undisputed, however I preferred the pursuer's version of events relative to these that these removals had taken place as a result of the defender's behaviour.

- [120] (d) Finally her connecting the child C to the book she had recently published, given the nature and content of that book, again in my judgment showed no interest in the child's welfare and was positively detrimental to the child's welfare.
- [121] Her continued allegations that the pursuer was having an incestuous relationship with his half sister; that his sister-in-law had tried to poison the child and that members of the pursuer's family continued to wish harm to the child and to her; that the pursuer had had sexual relationships repeatedly with prostitutes while abroad and had shown sexual interest in a neighbour while abroad I find to be entirely groundless. I believe for the reasons advanced by Professor Chick that these were manifestations of her psychotic condition.
- [122] I noted that in relation to the alleged psychotic condition that the defender first refused to be examined by Professor Chick and secondly did not allow her medical records from Australia to be recovered. It was the pursuer's position that these would have confirmed that she was suffering from mental illness while in Australia . In my view an inference can be taken from these refusals, namely: that the defender knew if she were examined and these records were seen that this would only further confirm the position of Professor Chick that she was suffering from a psychotic disorder.
- [123] The further allegations which she made in the course of the proof about the curator, Dr Robson and Professor Chick in my view were entirely unfounded and are in my judgment further evidence of her mental disorder.
- [124] I have come to the conclusion that due to her psychotic illness the defender can no longer see what is in the child C's best interests. I believe she is prepared due to her illness to make the most vile and loathsome allegations against the pursuer and others and to take steps which are clearly not in the best interests of the child C in order in her own mind to seek to advance her claim for contact.
- [125] For all of the foregoing reasons I do not believe that it is in the best interests of the child C for there to be any contact. I realise that stopping contact between a child and mother is a very serious step, however, on the evidence I am in no doubt that it is the correct one. It would not be conducive to her welfare to allow contact to continue. It would not be better for the child that an order for contact be made.
- [126] As regards how contact should in practical terms be brought to an end, this was referred to in passing in the evidence of the curator and Dr Robson. I would intend that this matter along with the issue of expenses be further discussed at a By Order hearing.
- [127] The issue of indirect contact was also briefly raised in the course of the proof and the general view was that this could be of some benefit to the child C. However, again I wish to have a further discussion in relation to this issue at a By Order hearing. Subsidiary

Issues

- [128] First the question of the court removing ex proprio motu the defender's parental rights was raised by Mrs Loudon, counsel for the pursuer in the course of her address to me. It was raised in this way as there was no conclusion for such an order on record.
- [129] I do not believe that to this point the defender has sought to exercise her parental rights in such a way that it is in the best interests of the child that I should remove her parental rights. There have been difficulties regarding contact and the relationship between the pursuer and defender has been severely strained for the reasons which I have set out. I have made clear my concerns about the defender's behaviour generally and in particular regarding the child. In terms of my earlier decision contact will be ended. In addition, the defender is unaware as to the pursuer's address and as to where the child attends school. The pursuer advised in evidence that if contact were to be ended the telephone numbers the defender is currently aware of used by him will no longer be used. In those circumstances I find it difficult to see any practical way in which she could exercise her parental rights in such a way which would be contrary to the child's best interests. I will accordingly not ex proprio motu take this step.
- [130] Mrs Loudon sought to have the interim interdict against the removal of the child C made permanent. I have with some hesitation decided to grant this motion. It is, as was submitted on behalf of the defender some time since the defender removed the child and of course she does not know the address at which the child resides or the school which she attends. However I am concerned about her behaviour relative to this child. She has already removed the child in the face of a court order for reasons which as I have said were entirely contrary to her best interests. In addition, she continues to suffer from this psychotic disorder which makes her act in the ways discussed. In the whole circumstances I will grant the permanent interdict sought.
- [131] As regards the last subsidiary issue, namely: the child C being allowed to leave the United Kingdom for holidays without the consent of the defender (Conclusion 3), there was some measure of agreement in that the defender was willing to allow the child to go on holiday for four weeks but only to Hague Convention countries other than Thailand. I believe that the child should be able to go on holiday outwith the country for six weeks as concluded for. It does not seem unreasonable to me that each year the child should be allowed to leave the country for a total of six weeks, particularly when one takes account of holidays with the pursuer and school trips. As regards whether she should be confined to only going to Hague Convention countries I can see no particular reason for this. The pursuer is settled here. He has been in this country since 2005. I do not believe there is any basis on which I could hold that the pursuer would be likely to leave this country if able to do so and reside abroad. He has of course lived abroad in the past, however, as I have said he and the child are now settled in this country, she is at school here and the pursuer has set up a business here. I accordingly do not think that holidays should be limited to Hague Convention countries, and that she should not visit in particular Thailand . Decision [132] I accordingly, for the

foregoing reasons, uphold the pursuer's second to fifth pleas-in-law and repel the defender's second, third, fifth, sixth and seventh pleas-in-law. The case will be put out by order for discussion of the other issues identified. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: <https://www.bailii.org/scot/cases/ScotCS/2011/2011CSOH127.html>

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