
SCOTLAND / JUDGMENT

C AGAINST S [2016] ScotSC 23 (29 March 2016) [2016] ScotSC 23

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SHERIFFDOM OF GRAMPIAN,

HIGHLAND AND ISLANDS AT BANFF

[2016] SC BAN 23

F22/14

JUDGMENT OF SHERIFF PHILIP MANN

In the cause

C

Pursuer

;

Against

S

Defender

:

Banff, 21 March 2016

The sheriff, having resumed consideration of the cause,

Makes the following findings in fact: -

1. The pursuer is C
2. The defender is S
3. The parties were in a relationship. They lived together.
4. The parties were unable to conceive a child naturally. They underwent the procedure known as

in vitro

fertilisation as a result of which their child, C C, was born on 14 June 2008.

5. The parties are the parents of the child.
6. The pursuer is registered on the child's birth certificate as his father.
7. The parties separated during the defender's pregnancy with the child. They attempted a reconciliation shortly after the child's birth. The attempt was short-lived and it failed. Thereafter, there was intermittent contact between the parties until about December 2011.
8. The catalyst for the failure of the parties' relationship was that they experienced significant financial difficulties which, in part at least, resulted from the pursuer's inability to work due to his poor mental health.
9. Following the separation the pursuer had contact with the child on an irregular basis until December 2011. Some of the contact took place when the pursuer visited the defender. Some of the contact took place by way of the pursuer speaking to the child over the phone.
10. In early December 2011 the pursuer suffered a deterioration of his mental health.
11. Round about Christmas 2011 the defender decided not to allow any further contact between the pursuer and the child. The pursuer has not had contact with the child since then.
12. The cessation of contact exacerbated the deterioration in the pursuer's mental health. He had a breakdown. He was hospitalised for several weeks.

13. During his period of mental ill health which commenced in December 2011 the pursuer heard voices in his head. The voices told him, though it was not the case, that the defender's and the child's hands were being cut off. He became concerned for the safety of the child. He reported the matter to the police and to the social work department. These agencies investigated and concluded that there were no concerns for the safety of the child in the care of the defender. There was, in fact, no cause for concern for the safety of the child in the care of the defender.
14. The pursuer was released from hospital in about February 2012. Shortly thereafter he met relatives of the defender in the street. They had a conversation. The pursuer spoke about the voices in his head telling him about hands being cut off. The relatives were concerned about the pursuer's intentions. They took what he said as a threat towards the defender and the child. They reported the conversation to the defender.
15. Following upon being told by her relatives about their meeting with the pursuer the defender commenced interdict proceedings against the pursuer to prevent him from acting in an objectionable manner towards her. She obtained interdict

ad interim

. The proceedings were ongoing for several months. They were concluded with a recall of the interim interdict on the basis of an undertaking given by the pursuer that he would not act in an objectionable manner towards the defender. The defender has respected his undertaking.

16. Following the cessation of contact between the pursuer and the child and the interdict proceedings and the events leading up to them there has been great animosity between the pursuer and his family on the one hand and the defender and her family on the other hand.
17. The relationship between the parties has deteriorated to the extent that the defender wishes to have nothing to do with the pursuer. She dislikes even being in the same room as him, although she was able to be present throughout the proof in this case.
18. The defender does not speak to the child about the pursuer. The child gives no indication that he has any memory of the pursuer. The child gives no indication that he knows the pursuer.
19. The pursuer has never abused the child.
20. The pursuer suffers from a schizoaffective disorder which, in his case, is a significant enduring mental illness requiring ongoing treatment. The pursuer takes medication, including anti-depressant and anti-psychotic medication, to stabilise his mental health. He knows when to seek help, and does seek help, in the event of his mental health deteriorating.
21. The pursuer has a number of physical medical problems, though none that ought to prevent him from having contact with the child.

22. The defender is of the view that there is no benefit to the child in his having contact with the pursuer. She considers that contact will upset and unsettle the child. She considers that the pursuer poses a risk to the safety of the child due to his poor mental health.
23. The pursuer suffered a relapse of his psychotic symptoms and depression in April or May 2015. He sought help and responded well to medication.
24. The pursuer's mental health is currently good. He does not pose any risk of harm to anyone. He poses no risk of harm to the child.
25. The defender is not prepared to accept reassurance from the opinion of Dr Selena Gleadow-Ware, the pursuer's psychiatrist, as to the pursuer's current good mental health; nor from her opinion that many people in the position of the pursuer suffer relapses without posing a significant risk to others. This is on the basis that no-one can give the defender a one hundred per cent guarantee that the pursuer will not harm the child.
26. The pursuer loves the child. He wishes to resume contact with him. He considers that this would be in the child's best interests. He acknowledges that reintroduction of contact should proceed gradually and with care.
27. Neither of the parties has made any effort of any note to keep the pursuer informed as to the child's progress through life to date. The pursuer has not sent birthday or Christmas cards to the child. The pursuer has felt inhibited in these matters by the interdict proceedings, by the defender's implacable opposition to contact and by these proceedings. He would prefer to proceed towards contact with the benefit of a court order.
28. The child is currently happy and well settled in the care of the defender.
29. The defender is an excellent mother to the child.

Makes the following findings in fact and law: -.

1. The pursuer, being registered as the father of the child on the child's birth certificate, has the parental responsibilities and rights in respect of the child set out in sections 1 and 2 of the Children (Scotland) Act 1995.
2. In respect that it will help to allay any fear that the defender may have as to the return of the child after contact with the pursuer it is in the best interests of the child that a residence order in favour of the defender be made. It would be better for the child that such an order be made than that none should be made at all.
3. The defender's opposition to contact between the child and the pursuer is ill-founded and unreasonable.
4. It would be conducive to the welfare of the child that he comes to know the pursuer as his father.

5. It would be conducive to the welfare of the child that there be contact between the child and the pursuer. It would be better for the child that such an order be made than that none should be made at all.
6. It would not be conducive to the welfare of the child were either party to make derogatory remarks about the other party, or permit or encourage others to do so, to or in the presence of the child. It is necessary to guard against this by interdicting the parties in appropriate terms. It is better for the child that such orders be made than that none should be made at all.
7. It would not be conducive to the welfare of the child were either party to do or say anything to or in the presence of the child calculated to give the child a negative view or perception of either of the parties. It is necessary to guard against this by interdicting the parties in appropriate terms. It is better for the child that such orders be made than that none should be made at all.

Therefore, Ordains that the child C C, born 14 June 2008, shall reside with the defender;

ad interim

Ordains that there shall be contact between the pursuer and the child at such times and during such periods and subject to such conditions as shall be agreed between the parties, which failing as shall be determined by the court; Assigns 20 May 2016 at 12 noon within the Sheriff Court House, Low Street, Banff as a child welfare hearing to enable orders to be made, if necessary; meantime,

ad interim,

interdicts the pursuer from making derogatory remarks about the defender, or permitting or encouraging others to do so, to or in the presence of the child and from doing or saying anything to or in the presence of the child calculated to give the child a negative view or perception of either of the parties;

ad interim,

interdicts the defender from making derogatory remarks about the pursuer, or permitting or encouraging others to do so, to or in the presence of the child and from doing or saying anything to or in the presence of the child calculated to give the child a negative view or perception of either of the parties; Directs the sheriff clerk to issue this interlocutor and the attached note to parties' agents forthwith and directs parties' agents, in turn, to forthwith forward a copy to their respective clients, specifically directing attention to the terms of the foregoing interdicts and to confirm to the court as soon as reasonably practicable that they have done so; Finds no expenses due to or by either party in respect of the process to date.

Note

1. Introduction

1.1 The parties are the parents of C C who was born on 14 June 2008.

1.2 The pursuer has parental responsibilities and rights in respect of the child by virtue of being registered on the child's birth certificate as his father.

1.3 The parties cohabited but are separated.

1.4 The pursuer has not had any contact with the child since December 2011.

1.5 In this action the pursuer seeks an order permitting contact between him and the child.

1.6 The defender is wholly opposed to such contact taking place.

1.7 The defender craves a residence order in her favour. This is not opposed by the pursuer. Having heard the evidence, I accept that the defender is fearful that if contact were to take place the pursuer might not return the child to her care. Whilst I do not consider it to be likely, on the basis of the evidence, that the pursuer would seek to create difficulties in that regard I nonetheless consider it to be best for the child if the defender's fears are allayed. Accordingly, I have made a residence order in favour of the defender. The pursuer and his agent were at pains to confirm that, apart from the defender's refusal to allow contact, the pursuer has nothing but praise for the defender as a mother to the child. Accordingly the matter of residence is not in dispute and the rest of this note will be concerned only with the issue of contact.

2. The Evidence

2.1 I heard evidence over two days on 11 and 12 February 2016

2.2 The pursuer gave evidence and also called the following witnesses, namely his father E C, S F, his sister K C and Dr Selena Gleadow-Ware, Psychiatrist. Dr Gleadow-Ware gave wholly oral evidence. All others gave oral evidence in the course of which they adopted affidavits which had been granted on earlier dates.

2.3 The defender gave evidence and also called the following witnesses, namely her mother E S, her brother T S, her niece A S and her uncle G R. All gave oral evidence in the course of which they adopted affidavits granted on earlier dates. In addition, the defender lodged an affidavit sworn by C S, who did not give oral evidence.

2.4 It was clear that there was a great deal of bitterness and animosity between the pursuer and his family on the one hand and the defender and her family on the other.

2.5 On the pursuer's side the animosity and bitterness seemed to stem from the defender's decision to put a stop to contact between the child and the pursuer at or around Christmas 2011. The cessation of contact contributed to a serious breakdown in the pursuer's mental health which resulted in his being hospitalised for a few weeks. During this period of mental ill health, which commenced in early December 2011, the pursuer heard voices in his head telling him that the defender's and the child's hands were being cut off.

2.6 There was no clear evidence as to why, in fact, the defender put a stop to contact between the pursuer and the child. But, there is no doubt in my mind that the defender's decision was, at least in part, due to the pursuer's mental breakdown when he heard the voices in his head. The pursuer had made a report to the authorities who investigated the defender's care of the child and found no cause for concern. The pursuer also had a conversation in the street with relatives of the defender after he got out of hospital. The pursuer mentioned that he had heard voices in his head and what they had said. This was reported back to the defender who took it as a threat to her own and the child's safety. She brought interdict proceedings against the pursuer. These were eventually settled by the pursuer giving certain undertakings.

2.7 I also have no doubt that the pursuer's mental breakdown and the defender's view as to the defender's mental illness and the perceived threat that that poses to the safety of the child is a major factor in the defender's implacable opposition to contact between the child and the pursuer.

2.8 It is fair to say that the defender also maintained that the pursuer had been violent towards her during the parties' relationship but her allegations were unspecific. Whilst I have to acknowledge that the defender was not cross examined about her allegations of violence by the pursuer, neither were any specific allegations of actual violence put to the pursuer in cross examination. I recorded only one mention of violence in the cross examination when it was put to the pursuer, and denied by him, that he had often threatened violence to the defender. I thought it odd that the defender would actively pursue her desire to have a child by undergoing IVF treatment, which both parties said was prolonged and painful for both of them, if their relationship was characterised by violence. On record the defender only goes so far as to say that the pursuer repeatedly threatened her with violence. It is not clear at that point in the pleadings whether she is referring to the period of cohabitation or the period after separation. The defender cannot be said to have been consistent in alleging actual violence, otherwise that would have been condescended upon by her. For the foregoing reasons I found the defender to be neither credible nor reliable on this point.

2.9 I entertained the same misgivings about the defender's assertions in evidence to the effect that the pursuer had, effectively, stalked her. The nearest that the defender came to making such an allegation on record was to say that although living in Aberdeen the pursuer began making trips to the area in which the defender lived; and that "recently the pursuer has been contacting friends of the defender to enquire about the defender."

2.10 It was clear, though, that something destabilised the relationship between the parties because they separated round about the time of the child's birth and thereafter unsuccessfully attempted a reconciliation. On the evidence, I put this down to the dire financial circumstances of the parties, spoken to by a number of witnesses, exacerbated by the pursuer's poor mental health.

2.11 Throughout her evidence the defender remained implacably opposed to contact between the child and the pursuer despite having heard the evidence of Dr Gleadow-Ware to the effect that the pursuer's mental health was stable and well controlled and that the pursuer did not pose a risk. This was on the basis that she was not being given a "one hundred per cent" guarantee that the child would not be at risk from the pursuer.

2.12 The defender and her witnesses were unanimous in maintaining that the child had no memory of the pursuer and did not know who his father was. The defender could not see why she should risk unsettling the child by agreeing to contact between the child and the pursuer.

2.13 The defender and her mother pointed out that the pursuer had not attempted to maintain contact with the child by, for example, sending a card on his birthday. They reasoned that if the pursuer had seen fit not to maintain contact in this way then he should now be denied any contact with the child.

2.14 There was no suggestion in the evidence that the pursuer had ever been violent towards, or had abused, the child.

2.15 For his part, the pursuer maintained that he wanted to have contact with the child for the sake of the child. He did not criticise the defender in her care of the child. He considered that she was an excellent mother to the child. His only criticism was that the defender remained opposed to contact between him and the child. He maintained that he had not thought it appropriate to send cards or otherwise try to force the issue of contact with the defender, in view of her outright opposition to it, whilst the court processes were ongoing.

2.16 The pursuer refuted any suggestion that he poses a risk to the child. His mental health was well controlled by medication and he knew when to seek assistance in the event of any deterioration. This was supported by the clear evidence of Dr Gleadow-Ware. Dr Gleadow-Ware also considered that a relapse in the pursuer's mental health would not necessarily mean that he would become a risk to the child or anyone else. Dr Gleadow-Ware was of the view that many people in the position of the pursuer can suffer relapse without becoming a risk to anyone else.

2.17 The pursuer detailed various difficulties with his physical health for which he was also taking medication but maintained that this should not be a barrier to contact.

2.18 The pursuer's sincerity in relation to contact with the child was supported by the evidence of his sister, K C. It was also supported by the bar report prepared by Janice Smith, Solicitor, dated 14 August 2014, which had been instructed earlier in the proceedings and was lodged in process.

2.19 Such was the level of animosity between the two families that I found it necessary to treat all of the evidence emanating from these sources as to the character and behaviour of the parties with great care and scepticism. Every one of the "family" witnesses had an axe to grind and for that reason I found much of their evidence to be unreliable.

2.20 Those parts of the evidence which I found to be credible and reliable are, of course, reflected in my findings in fact. I found Dr Gleadow-Ware to be a wholly credible and reliable witness and I was greatly assisted by Janice Smith's very helpful bar report.

3. Submissions for the Pursuer

3.1 Mr Brown, for the pursuer, was at pains to stress that since the date of separation, whenever that could be said to have finally taken place, the defender had been an excellent mother to the child. He stressed that the pursuer had no criticism to make of the defender's care of the child other than as to the fact that she was opposed to there being contact between him and the child.

3.2 Both parties had wanted the child and had gone through IVF treatment to realise that desire.

3.3 The pursuer was registered on the child's birth certificate and thus had full parental rights and responsibilities.

3.4 The bar reporter recognised that both parties loved the child and that it would be beneficial to the child for there to be contact with the pursuer if that were possible.

3.5 The pursuer's mental health issues had to be acknowledged but the evidence of Dr Gleadow-Ware was that he was not currently a risk to anyone, including the child. The pursuer accepted that his illness in 2011/2012 had an impact on the defender and that this, understandably, led to the interdict proceedings which were concluded by late 2014. The pursuer had fully complied with the undertaking which he had given and which had enabled the interdict proceedings to be dismissed.

3.6 The pursuer did not seek a residence order and was not opposed to a residence order in favour of the defender being pronounced. The pursuer was interested only in having contact. There was no likelihood that the pursuer would fail to return the child were he to have contact with him. In any event, the pursuer recognised that contact would need to be introduced gradually and would need to be monitored through a process of child welfare hearings.

3.7 Both parties had supportive families and the child should have the benefit of that. The parties should be able to put the child's interests first and so it was disappointing that the defender said in evidence that the pursuer was effectively non-existent. There was a clear risk that the child's view of the pursuer would be clouded by the defender's view of him.

3.8 An order for contact was necessary because without it the defender would simply not allow it. The case of

White

v

White

2001 SC 689

acknowledged that it could be assumed that contact with the non-resident parent was conducive to the welfare of a child. There was no evidence to suggest that the pursuer had ever abused the child and thus no reason why it should not be conducive to the welfare of the child in this case to have contact with the pursuer.

4 Submissions for the Defender

4.1 Mr Lindsay for the defender began by referring to the case of

White

v

White

for the proposition that although, in principle, it was to be regarded as being conducive to the welfare of a child that there should be contact with the non-resident parent it was wrong to proceed on the basis that only in the most exceptional circumstances would it be appropriate to disallow such contact.

4.2 Mr Lindsay referred to the case of

Treasure

v

McGrath

2006 Fam. L. R. 100 in which Sheriff Morrison, QC, said that the test was “what is in the best interests of the child?” and that in answering that question it was necessary to consider all the factors relevant to the paramount consideration of the welfare of the child, including:-

- (1) the degree of commitment by the applicant to the child;
- (2) the degree of attachment between the applicant and the child;
- (3) the importance of that commitment and attachment to the child's welfare;
- (4) the reasons or motives of the applicant in applying for the order;
- (5) whether the applicant would take account of the child's views, where appropriate;
- (6) any need to protect the child from conduct of a person;
- (7) where the applicant and a parent or other person having parental responsibilities and rights have to co-operate in matters affecting the child, whether they can do so; and
- (8) whether it is better for the child that the order be made than that no order should be made.

4.3 Mr Lindsay also made passing reference to the case of

R

v

R

2010 Fam LR 123

in which Sheriff Holligan analysed and applied what he termed “the abuse provisions” and “the cooperation provisions” to be found in sections 11(7A) to 11(7E) of the Children (Scotland) Act 1995.

4.4 In this case, the pursuer had done nothing to demonstrate commitment to the child. From shortly after the birth there had been virtually no contact and such contact as there was had been about the pursuer trying to get back to the defender. The child’s school had tried to engage the pursuer but he had failed to respond.

4.5 It was too great a risk to the welfare of the child to reintroduce the pursuer to him at this stage. The bar reporter had voiced grave concerns. It had to be acknowledged, however, that the reintroduction of contact might not have a detrimental effect on the child.

4.6 The raising of this action by the pursuer should not be seen as a demonstration of commitment to the child by the pursuer. It fell to be characterised as being too little too late. The pursuer’s motives had to be questioned. The defender was of the view that the pursuer was simply trying to get back at her. The pursuer had cited the interdict proceedings as an excuse for not making any effort to find out about the child by, for example, contacting his school. That was not a tenable position.

4.7 The evidence in this case was that there was no attachment between the child and the pursuer. The child did not even know the pursuer or that he was his father.

4.8 There was a risk to the child arising from the pursuer’s poor mental health. In the past he had told people that the child’s hands had been cut off. He had made unsubstantiated allegations that he had suffered a head injury as a result of an assault upon him by the defender’s brothers. It would be a concern were the pursuer to stop taking his medication for any reason. The issues surrounding the pursuer’s mental health were factors to be taken into account.

4.9 The parties were so estranged that they would be unable to bury their differences. This was commented upon by the bar reporter who had grave concerns that, were a contact order be made, the parties would have great difficulty in setting aside their obvious bitterness towards one another to cooperate in the best interests of the child. The two families were completely unlikely to speak highly of one another. The question of cooperation between the parties was a big issue. It was highly likely that the defender would simply not obtemper a court order.

4.10 According to the bar reporter the pursuer had a romantic view of the reintroduction of contact. In reality, there was a risk to the child to be suddenly introduced to a man he did not know and to be told that this was his father. There would be disruption to the child’s life.

4.11 In all the circumstances it would be better for the child that no order for contact should be made.

5 Discussion and Decision

5.1 Having seen and observed the pursuer giving evidence and having heard the evidence of Dr Gleadow-Ware I have formed the view that the defender's fears for the safety of the child were there to be contact between him and the pursuer are ill-founded and unreasonable.

5.2 I have assessed that the pursuer is genuinely of the view that the defender is an excellent mother to the child and that he has no wish to disturb the residence of the child. In these circumstances the risk that the pursuer would fail to return the child to the defender after any period of contact is remote.

5.3 I have not accepted the defender's evidence as to physical violence by the pursuer towards her or of the pursuer stalking her but, in any event, the view that I have formed of the pursuer is that he does not have any intention of behaving inappropriately towards the defender. He gave an undertaking in the interdict proceedings more than two years ago. There is no complaint by the defender that he has breached that undertaking.

5.4 I formed the view that the pursuer is genuinely interested in the welfare of the child. It is a reflection of his consideration for the welfare of the child that he acknowledges that resumption of contact has to be approached gradually and with care and sensitivity. I am in agreement with the view of the bar reporter when she says at paragraph 5(b) of her report that "the pursuer is sincere in his desire to be part of his son's life. Despite not having seen the child for 20 months [as it was at the time of the report], the pursuer clearly loves his son and misses him greatly."

5.5 Given the defender's outright and vehement opposition to contact and the existence of interdict proceedings (even though those proceedings at the instance of the defender may have been entirely justified at the time), it seems to me to be not wholly fair to criticise the pursuer for failing to contact the child's school or attend parents' evenings and for failing to send birthday and Christmas cards to the child. I have no doubt that any attempt by the pursuer to fulfil his parental responsibilities or exercise his parental rights in those ways would have been met with strident opposition by the defender. It could be said that the only possible foundation for criticism on these matters is that the defender considers there to be a benefit to the child for there to be such contact. If that is the case then the defender could be criticised for not doing anything to encourage such contact, it being her parental responsibility, as much as the pursuer's, to promote the welfare of the child.

5.6 I also consider it to be unfair to say that the raising of these proceedings by the pursuer is "too little too late". In the circumstances, the pursuer was right to pursue the matter of contact through the court rather than attempt to force the issue in other, more direct, ways as he could have done, given that he has full parental responsibilities and rights. That is a further measure of his consideration for the welfare of the child.

5.7 In my view, it is beyond question that, in general, it serves to promote and maintain the welfare of a child that the child should have contact with both parents. That this may be assumed is confirmed by the case of

White

v

White

. The defender acknowledges the general proposition in her pleadings and in submissions, although she seeks to assert that the proposition is not valid in the particular circumstances of this case.

5.8 In this case we are not dealing with a situation where there has been historic abuse of the child by the pursuer. We are not faced with the problem of overcoming entrenched, or any, reluctance on the part of the child to having contact with the pursuer. We are not dealing with a situation where the child is in fear of the pursuer. This is so because the defender makes a point of asserting that the child has no memory of the pursuer and does not know that the pursuer is his father. I see no reason to disbelieve the defender on this point.

5.9 No specific risk to the welfare of the child arising from the resumption of contact between him and the pursuer has been articulated in the evidence. I have to acknowledge that there must be a risk that the child might be upset and unsettled by resumption of contact just as he might be upset and unsettled by the introduction into his life of a stranger. But it is in the power of the parties, and especially the defender, to reduce or eliminate that risk by approaching the resumption of contact in a careful, sensitive and positive fashion. On the other hand, there must be a chance that contact will work well and will prove, actually, to be of benefit to the child. That was acknowledged by Mr Lindsay in his submissions. In my view, it is better for the child in this case to take the chance than to avoid the risk.

5.10 The parties in this case have the best chance that any parents could ever have to successfully re-introduce their child to contact with his estranged father. The probability is that the child has no negative perception of the pursuer. He can only come to have a negative perception of the pursuer through anything said or done by either of the parties. It should be no more difficult to introduce the child to the pursuer than it would be to introduce the child to a total stranger.

5.11 Both parties have a legal obligation to promote the welfare of the child. I can see no compelling reason for not attempting to reinstate contact. All that the parties have to do, difficult though it may be, is to put their animosity towards one another to one side and ensure that when the child is introduced to the pursuer it is done in a positive and engaging way.

5.12 It is not reasonable or in any way helpful for the defender to assert that the effect of a contact order upon her will be so devastating that it will impact on the welfare of the child and, for that reason, should not be made. She does not have to allow such an order to have such an effect upon her. It is certainly not helpful, or even appropriate, to suggest as a reason for not making an order that the defender will not obtemper it.

5.13 At paragraph 5(h) of her report the bar reporter expresses concern that the defender has little insight into the possible long term effect on her child of not only not seeing his father but also knowing nothing of his existence. I share that concern. The bar reporter, in the same paragraph, expresses a lack of confidence that the defender would treat the matter sensitively or try to make it an easy introduction for the child, were contact to be ordered. That, again, reflects the view that I have of the defender. It indicates to me that the defender is currently consumed by her feelings towards the pursuer to such an extent that her judgment in relation to the benefit to the welfare of the child to be gained from contact with the pursuer has become clouded.

5.14 The bar reporter, at paragraph 5(m) of her report, expresses the view that “it is difficult to conclude that any reintroduction of contact at this stage would benefit the child more than it would cause him upset and distress”. I can see why she has come to that view, because of the defender’s attitude as narrated above, but I do not share it. In my view, the child is only likely to be upset and distressed by contact if he has any bad memories of the pursuer or if he is made to be fearful of the pursuer or anxious about temporary separation from his mother by anything said or done by either of the parties. The defender needs to examine her motives. She needs to examine her attitude. She needs to reflect on what is truly in the interests of the child. She most definitely needs to realise that if she deliberately fails to comply with, or does anything deliberately to frustrate, an order of court she will be courting unpleasant consequences for herself.

5.15 Mr Lindsay is right to say that there is a risk that the child will be upset and even distressed by contact with the pursuer. But he does not go so far as to say that the risk is great. Of course, no one can guarantee that the child will actually like the pursuer or that he will come to have a familial bond with him. But that does not mean that the parties should not try to engender that bond which will ultimately be to the child’s benefit.

5.16 I found the cases of

Treasure

v

McGrath

and

R

v

R

to be of only limited value. They were dealing with applications for the grant of parental responsibilities and rights whereas in this case the pursuer already has full parental responsibilities and rights. Even in those two cases the court made orders for contact despite refusing the grant of parental responsibilities and rights. Both cases merely emphasise, as was held to be the case in

White

v

White,

that there is no onus on either party and that the task for the court is to take account of all the circumstances thrown up by the evidence and, having done so, to make such order as it deems to be in the best interests of the welfare of the child.

5.17 In the whole circumstances I have determined, in terms of section 11(7) of the Act, that having regard to the child's welfare as being the paramount consideration I should make a contact order

ad interim

. I am satisfied that it is better for the child that such an order should be made than that none should be made at all. Having regard to the child's age and to the need for the re-introduction of contact to be carefully managed, I do not consider it appropriate to seek the child's views on the matter.

5.18 It is recognised by the parties, or at least by the pursuer, and by me that contact will need to be built up gradually and monitored over a period to ensure that it is working to the benefit of the child. It seems to me that the first several periods of contact should be supervised, perhaps in a contact centre. Its reintroduction will need to be planned and handled carefully. My suggestion is that parties should have a meeting, with agents in attendance, to discuss and agree how that should be tackled. It may be thought, for instance, that before there is any face to face contact there should be some indirect contact by way of card or letter, preceded by some positive "grooming" of the child by the defender. The parties might have to agree on the most positive way of explaining the absence of the pursuer from the child's life without assigning blame to one party or the other. It may even be that the parties should seek external advice, on a joint basis, on how to proceed. These are merely suggestions. However, the primary responsibility in this matter rests with the parties. I would like to think that they will proceed carefully and with a positive resolve to make it work for the benefit of the child. I would also like to think that they will make sure that their respective families understand and respect the need not to undermine the situation by engaging in any negative comment or action. I have given parties a period within which to attempt to come to an agreement on the matter. If the parties are unable to come to a workable agreement, then I will consider making a specific order at the child welfare hearing

after giving the parties an opportunity to make submissions.

5.19 I have considered the provisions of section 11(7A) to 11(7E) of the Act. Even if it were the case that the defender has suffered some abuse at the hands of the pursuer that is in the past and the child has no knowledge of it and has no need to have any knowledge of it. There is no evidence that the child has been abused by the pursuer.

5.20 In my view it would be an abuse of the child if either party were to seek to undermine the contact order that I have made. I consider that the interdicts that I have pronounced are necessary to protect the child from the risk of such abuse and to guard against the parties, deliberately or otherwise, destroying the opportunity to start off on the right foot. It is better that these orders be made than that none be made at all.

5.21 Finally, I recognise that the parties will find it difficult to put their animosity towards one another to one side but I do not believe that they should find it impossible to do so if they truly have the best interests of their child at heart. Even though it may be difficult for the parties to cooperate with one another I consider that it is appropriate to make the contact order.

6 Expenses

6.1 Agents were at one in submitting that there should be a finding of no expenses due to or by either party. I have provided accordingly.

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