

SCOTLAND / JUDGMENT

DS v JH [2004] ScotCS 267 (16 December 2004)

[2004] ScotCS 267

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[2004] ScotCS 267 [New search] [Help] DS v JH [2004] ScotCS 267 (16 December 2004) EXTRA
DIVISION, INNER HOUSE, COURT OF SESSION Lord MacLean Lord Penrose Lady
Cosgrove OPINION OF THE COURT delivered by LORD PENROSE in APPEAL From the
Sheriffdom of North Strathclyde at Greenock by J. H. or S. Pursuer and Respondent;
against D. S. Defender and Appellant;

Act: Miss Dowdalls; Balfour & Manson (Cook Stevenson, Greenock) (Pursuer and Respondent)
Alt: Party (Defender and Appellant) 16 December 2004 [1] The appellant, Mr S, was divorced from
his wife, Mrs S, the respondent, by the Sheriff at Greenock. The extract decree of divorce brought
together a number of decisions disposing of aspects of the action and reflected in interlocutors of
7 September 2000, 24 August 2001, 31 January 2002 and 4 July 2002. The interlocutor of 24 August
2001 inter alia awarded Mrs S a capital sum of £13,810 and ordered sale of the former
matrimonial home. A solicitor practising in Greenock was appointed to undertake the sale. [2]
The appellant refused to co-operate in arrangements for the sale of the matrimonial home, and
in particular refused to vacate the property. He continues to reside there. The respondent
brought an application for an incidental order in terms of section 14(2) of the Family Law
(Scotland) Act 1985 craving an exclusion order, suspending the appellant's occupancy rights in
the matrimonial home. She craved warrant for summary ejection, and interdict against the
appellant from entering the matrimonial home without her express permission. After sundry
procedure the sheriff granted the orders sought by the respondent on 17 May 2004. This appeal is
taken against her decision. [3] In her note, the sheriff dismissed the averments made by the
appellant on the basis that they did not disclose a defence to the application. Before turning to
those averments, it is necessary to note a change that had occurred in the circumstances of the
case after divorce. The sheriff had awarded custody of J, the youngest of the children of the
marriage, born on 15 March 1990, to the respondent. J lived with the respondent until 2002. She
then left the respondent and went to live with the appellant in the former matrimonial home. In

March 2003, formal custody of the child was awarded to the appellant. At the date of the incidental application, and at present, J continues to live with the appellant at the former matrimonial home. [4] In his answers to the incidental application, the appellant relied on J's position in support of his opposition to the orders sought. In order fully to understand the appellant's position, it is necessary to paraphrase the averments and to take account of his submissions to the court. The appellant contended that the child had suffered destabilisation over a number of years, by being moved repeatedly from house to house while in the custody of the respondent, and, more generally, by being subjected to unspecified forms of ill-treatment before she returned to his care. She had settled in his care at the former matrimonial home. Removing him, and her, from that house, threatened further to destabilise the child. He contended that so to do would involve breaches of the Children (Scotland) Act 1995 "in almost every area". [5] The appellant ranged widely in directing his attack. He averred that the respondent's legal advisers and the Scottish Legal Aid Board were in breach of duties under the Act. He alleged that the present proceedings were open to challenge as a "star chamber". As an aspect of that allegation, he challenged the "devolved settlement" as permitting "endless flawed decisions" in breach of the 1995 Act, and, more particularly on the ground that it failed to assure his and his child's rights under Article 6 of the European Convention on Human Rights. He contended that the Bank of Scotland, the creditors in the mortgage agreement relating to the matrimonial home, were in breach of the 1995 Act by allowing a member of the Law Society of Scotland to act against his interests and those of J. [6] The second distinct feature of the appellant's answers was his contention that he had been denied the opportunity and benefit of proper legal representation. In developing this matter, the appellant alleged that there had been a conspiracy among officers of the Law Society of Scotland to prevent him from obtaining legal representation after he had made complaints against lawyers on the ground that they were acting against the best interests of J. [7] A further feature of this contention was the allegation that those who had acted to prevent him from obtaining legal representation were influenced by a desire to protect the Law Society's master indemnity policy. He made allegations of an unspecific kind of abuse of public funds, embezzlement and fraud. The appellant made reference to litigation at his instance and at the instance of J, in which he intends to seek trial by jury, intended to focus his complaints. He wishes to cite as witnesses, among others, the Scottish Executive, and the Lord Advocate. [8] It was further averred that the appellant had initiated an investigation by the Office of Fair Trading into "the malicious persecution being enacted against the defendants family by complicity to defraud and asset strip the family home. The defendants childrens future inheritance". This is to be understood as an allegation that alternatives to the sale of the former matrimonial had been proposed to the respondent and her advisers that could have preserved the house as a prospective inheritance for the children of the marriage, but had been prevented from being put into effect by the combined efforts of the respondent and her legal advisers. An associated contention was that the Bank, as mortgage lenders, had agreed to aspects of a 'rescue' operation for the former matrimonial home. However, there were inconsistent averments that the Bank itself was in breach of its obligations under the Mortgage Rights (Scotland) Act 2001. [9] There were contentions directed to the Sheriff Principal of North Strathclyde which are irrelevant for present purposes. Finally it was contended that only jury trial could ensure the impartiality of

the investigation of his allegations. [10] Much of the background to this appeal was before the court in *JH or S v DS* 2003 SCLR 261, a previous appeal to this court. In that appeal the present appellant appealed against an interlocutor of the Sheriff Principal refusing his appeal against the sheriff's interlocutor of 24 August 2001. The Court refused the appeal and affirmed the interlocutor of the lower court. The issues of the sale of the former matrimonial home and the administrative orders made for giving effect to that decision were therefore already determined by this court. [11] When he appeared before us, the appellant moved that the present appeal be sisted pending the outcome of the actions raised, or intended to be raised, against the Scottish Executive and others and based on the allegations referred to earlier, to enable him to obtain representation, and for 'audio recording of hearing'. The final matter was not insisted in since the person who was to make the recording had not arrived in Edinburgh. It has to be said that the motion was unlikely to be granted. [12] The appellant's argument in support of a sist was effectively an argument on the merits of his answers. He expanded on the contention that he had been denied effective representation because of a conspiracy designed to protect the master policy, and explained that there were at least twelve people complaining to the Legal Services Ombudsman on similar grounds. He referred to supporters present in Court who fell into that category. He referred to correspondence he had had with the New York State Attorney relating to the activities of the insurer. He explained that the equity in the matrimonial home was of little value because the Law Society of Scotland had laid an inhibition on the property to secure its large claim for recovery of legal expenses paid to the respondent's legal advisers. And he expanded on his belief that the exclusion order and sale would inflict damage on his child. [13] It was clear that there were no grounds for a sist independent of the substantive grounds of appeal. The litigation against third parties for remedies relating to the appellant's complaints is independent of the present proceedings and could not properly be a ground for denying the respondent the benefit of the orders that had been pronounced in her favour, especially having regard to the fact that they had previously been affirmed by the Sheriff Principal and by this court. The other issues could properly be developed, so far as they were relevant and material, in argument before the Court. [14] We therefore refused the motion for sist and invited the appellant to address us on the substantive appeal. The appellant's initial response was equivocal. He proceeded to read a prepared statement that he had clearly distributed among his supporters, who held their copies prominently as he read. The document was in the following terms:

"STATEMENT TO COURT 2 DEC 2004 I STAND BEFORE THIS COURT UNDER SUI JURIS RULES OF MY OWN RIGHT, POSSESSING FULL SOCIAL AND CIVIL RIGHTS, NOT UNDER ANY LEGAL DISABILITY, OR POWER OF ANOTHER OR GUARDIANSHIP I STATE THAT IN LIGHT OF THE RECENT EXPOSURE OF MARSH & McLENNANS CORRUPT INSURANCE PRACTICES WHICH HAD PREVIOUSLY BEEN BROUGHT TO ATTENTION OF THE COURT OF SESSION, AND THE ENORMOUS EFFECT THIS HAS HAD ON PARTY LITIGANTS. I GIVE NOTICE TO THE COURT OF SESSION IN FRONT OF WITNESS'S ACTING AS AMICUS CURIAE THAT THIS COURT HAS AN INTEREST IN THE DECISION TO THROW MYSELF AND MY CHILD ONTO THE STREET. THIS WHILE THE OFFICE OF FAIR TRADING INVESTIGATE THE MASTER POLICY OPERATED BY THE LAW SOCIETY ON MY BEHALF AND WHY SO MANY PEOPLE, LIKE MYSELF AND MY CHILD, END UP WITHOUT REPRESENTATION. ALSO WERE LAW LORDS ACTING FOR THE CROWN

HAVE, WHILE BEING FULLY AWARE OF HOW THAT, NOW PROVEN, CORRUPT LAW SOCIETY INSURANCE IS BEING PROTECTED FROM CLAIMS BY LAW SOCIETY MEMBERSHIP WHO REFUSE TO ACT FOR PARTY LITIGANTS CHALLENGING THIS PROCESS. LAW LORDS WITH FULL KNOWLEDGE OF THIS CONTINUE TO FORCE UPON THE UNSUSPECTING CITIZENS OF SCOTLAND UNDUE BURDENS OF REPRESENTING THEMSELVES WHILE DECISIONS ARE BEING MADE TO STEAL BILLIONS OF POUNDS OF LAND, BUSINESS AND PROPERTY. I GIVE NOTICE TO THIS COURT TODAY THAT I INTEND ALONG WITH OTHERS TO CONTINUE CHALLENGING THIS DISGRACEFUL SYSTEM TO THE EUROPEAN COURT LEVEL THAT BOTH MYSELF AND CHILDREN HAVE BEEN TREATED DESPICABLY BY COLLUSION WITHIN THE LEGAL SYSTEM OF SCOTLAND WHILE DISREGARDING THE LAWS OF SCOTLAND THAT ARE SUPPOSED TO PROTECT SCOTTISH CITIZENS. THIS COURT AND ITS LAW LORDS NOW SHOWING COMPLETE DISREGARD FOR THE LAWS OF SCOTLAND AND AS SUCH ARE ACTING NOT IN THE BEST INTERESTS OF THE CITIZENS OF SCOTLAND BUT ABSOLUTELY ILLEGAL UNDER LAWS THAT ARE THEIR TO PROTECT OUR GOOD CITIZENS. I THEREFORE WISH TO PLAY NO FURTHER PART IN THIS PROCESS TODAY AS IT IS ACTING AS A STAR CHAMBER DEVOID OF ANY HOPE OF FAIRNESS AND JUSTICE AND WHILE IT IS BEING PROTECTED BY A CORRUPT INTERNATIONAL INSURANCE SCAM OPERATED BY MARSH UK WHO'S CEO RETIRED RECENTLY UNDER A CLOUD OF CORRUPTION DUE TO INTERNATIONAL FRAUD AND CRIMINALITY. I AM NOT WELL ENOUGH TO STAND HERE AND FIGHT THIS ANY LONGER WHILE THE LAW SOCIETY AND ITS MEMBERSHIP FAIL IN THEIR DUTY TO PROVIDE PARTY LITIGANTS WITH TRUSTWORTHY REPRESENTATION." [15] The appellant declined an invitation to add to or expand on this statement or to present argument in support of his appeal. There was therefore no alternative but to refuse the appeal on the respondent's motion. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: <https://www.bailii.org/scot/cases/ScotCS/2004/267.html>

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Prepared on 28 October 2026 · Esheria