

SCOTLAND / JUDGMENT

George Mackenzie Ferdinando against Kerry Ferdinando

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SHERIFF APPEAL COURT

[2026] SAC (Civ) 55 EDI-F326-26 Sheriff Principal N A Ross OPINION OF THE COURT delivered by SHERIFF PRINCIPAL N A ROSS in the appeal in the cause GEORGE MACKENZIE FERDINANDO against KERRY FERDINANDO Pursuer and Appellant Defender and Respondent 14 August 2026 [1] The sheriff dismissed this action shortly after it was raised. The action sought a contact order under section 11(2)(d) of the Children (Scotland) Act 1995, and an interim order. Warrant for service was granted on 28 April 2026. There was a hearing on the interim order on 1 May 2026, at which the sheriff dismissed the action and found the appellant liable in expenses. The appellant appeals against dismissal. [2] The sheriff's note to the interlocutor explains the background. The appellant had already raised a family action. Warrant was granted on 27 April 2026. That action sought divorce, financial orders, interdict against selling joint property and sundry other orders. The present action was warranted the following day. It sought to regulate contact with the children. [3] The sheriff explained that she could see no rationale for raising two simultaneous actions in a family matter when all craves could be included in a single action. It would not be possible to grant decree of divorce in the first action without considering the welfare of the children. The actions had been warranted a day apart by two different sheriffs. Raising two actions appeared to waste public money and court time. The appellant was legally aided. The hearing on 1 May 2026 represented both a hearing on interim interdict on the first action, and a hearing on an interim contact order in the present action. [4] The appellant's agent explained that the appellant was in receipt of legal aid, and in the event that any financial award were made, the Scottish Legal Aid Board would claw back some of the award. The purpose of raising a separate action for contact was to isolate the proceedings for contact from the financial dispute. In that way, the contact proceedings could be conducted at public expense without risk of the appellant being liable to make repayment to SLAB. The claw-back payments would be restricted to the first action, in which procedure had been minimised. The sheriff did not regard that position as mitigation and dismissed the action. The appeal proceeded by written submission. Submissions for the appellant [5] The appellant's submissions set out the factual background of the dispute. The respondent had denied contact with the children and had made false allegations against the appellant. Early judicial intervention was required. [6] The sheriff was not entitled to dismiss the action summarily. The

Ordinary Cause Rules did not contain provision for dismissal except in regulated circumstances. It was not unusual for a client to run more than one family action concurrently. The sheriff had stated that both actions could be combined but had acted illogically in sisting the first action for a period of 3 months. The sheriff's actions ran contrary to the need for expeditious resolution. The sheriff's actions had served to delay matters and was without basis in law. Submissions for the respondent [7] The respondent's submissions founded on an inherent power of the court to do whatever was necessary to discharge all of the responsibilities of the court (Macphail, Sheriff Court Practice (4th ed) 2.08). The sheriff had power to prevent any abuse of court procedure, resources or time, as well as of public funding. While the raising of multiple actions was not prohibited, public funding required to be used responsibly, and the raising of two actions simultaneously was unnecessary and wasteful. Contact could be dealt with in the first action alongside the craves for financial and other remedies. [8] The sheriff had sisted the first action. It was open to the appellant to move for recall of the sist and for an early child welfare hearing. He had not done so. Expenses had been properly awarded against the appellant. Decision [9] The appellant's decision to raise of two actions between the same parties within a period of 2 days, each dealing with separate aspects of the same dispute, cannot be described as necessary or reasonable. [10] The agents managed to raise, warrant and serve two separate actions with identical parties, and arranged the same interim hearing for both actions. The waste in time and resources of an unnecessary second action are self-evident. The only justification stated to the sheriff related to saving the appellant making due repayment to the same public fund which was financing the unnecessary duplication of effort. [11] The appellant founded on an absence of express power within the Ordinary Cause Rules for the sheriff to dismiss the duplicate action. The sheriff did not require an express procedural power. The court had an inherent jurisdiction to do so: "There is always an equitable power and duty of control in each tribunal to see that there is not on the whole an improper and oppressive accumulation of litigation or diligence" (Macphail, above, paragraph 2.117).

- [12] While the foregoing statement was made in the context of a preliminary plea of *lis alibi pendens*, it nonetheless accurately describes the general power of the court. The power is part of the inherent jurisdiction of the court and does not require a motion by either party. It includes power of dismissal to prevent abuse of process (Macphail, above, paragraph 2.10). The power exists at common law (*ibid*, paragraphs 2.08, 2.117). This appeal cannot succeed. [13] The position of the appellant was also that the sheriff acted irrationally or somehow contrary to the interests of justice. Such a submission was unstateable. The sheriff acted in the public interest and to stop an abuse of process. The appellant did not suffer any denial of justice, as he had at all times the remedy (in the first action) of introducing relevant averments relating to contact and enrolling a motion to recall the sist and fix an early interim hearing. The effect of the sist was to allow time for the appellant to adjust the pleadings in the first action to introduce a crave and averments directed towards contact. The sheriff narrated that she explained this to the appellant's agent. Having amended the

pleadings the appellant could enrol for recall and for an expedited child welfare hearing. [14] The appellant did not act reasonably in duplicating the expense of drafting, warranting and serving a second action, or in requiring the court to create and administer a second process. The only motivation explained to the sheriff was self-serving and an apparent manipulation of the legal aid rules to thwart an otherwise effective obligation to repay public funds. The sheriff was both empowered and justified in dismissing the action and finding the appellant liable in the expenses as taxed. Disposal [15] The appeal is refused. The question of expenses remains. Parties should attempt to agree a joint position on expenses, failing which within 21 days the clerk will arrange a further hearing by written submission.

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