

SCOTLAND / JUDGMENT

P.A.D. v. A.A.B. [2011]

ScotSC 18 (2 March 2011)

[2011] ScotSC 18

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

[Home] [Databases] [World Law] [Multidatabase Search] [Help] [Feedback] [DONATE]
Scottish Sheriff Court Decisions You are here: BAILII >> Databases >> Scottish Sheriff Court
Decisions >> P. A. D. v. A. A. B. [2011] ScotSC 18 (2 March 2011) URL: <https://www.bailii.org/scot/cases/ScotSC/2011/18.html> Cite as:

[2011] ScotSC 18 [New search] [Help] SHERIFFDOM OF GRAMPIAN HIGHLAND AND ISLANDS
AT ABERDEEN F341/07 INTERLOCUTOR in causa PAD Pursuer and Minuter against AAB
Defender and Respondent

Act: Buchan Alt: Barclay ABERDEEN , 2 March 2011 . The Sheriff, having resumed consideration of the cause, finds the following facts admitted or proved.

- 1) The pursuer and minuter is PAD, aged 29, who is employed as a postman. The pursuer resides in Aberdeen .
- 2) The defender and respondent is AAB, aged 25, a housewife. The defender formerly resided in Aberdeen but now resides in Greenock .
- 3) The parties are respectively the father and mother of child RAD , currently aged four, and born at Aberdeen on 23 March 2006 .
- 4) The parties are not married.
- 5) Both parties have parental rights and responsibilities, the pursuer deriving those from a registered agreement, registered on August 2006 .
- 6) There is no formal order regulating the residence of RAD . From birth, the child has resided with the defender. Following upon the parties' separation in August 2006 the said child continued to reside with the defender. The pursuer's contact with the said child is regulated by interlocutor of this court dated December 2007 . Said interlocutor provides for residential contact on a four weekly cycle in week one from Friday to Monday with one additional overnight day during the week, week two providing overnight contact on Friday and Sunday nights and one further night during the week, week three repeating week one and week four for one night during the week. There is also provision for holiday contact and alternating

contact on Christmas Day and RAD 's birthday.

- 7) Parties regard this arrangement as being a shared care arrangement. 8) The defender moved to Greenock in July 2010. Since that time parties have adjusted the contact arrangements by agreement.
- 9) The pursuer's full-time employment as a postman involves him in working certain weekends and from early morning. As a result, to accommodate contact with the child, he has required to rely to a major extent, on assistance from his mother, KD. The child sleeps at the pursuer's mother's house on around half of occasions when attending for contact with the pursuer.
- 10) By agreement between the parties the child was enrolled at Walker Road Nursery School . It was agreed that whichever party had the child overnight on any particular day would take the child to the nursery.
- 11) The pursuer was largely assisted in this task by his mother, KD. His record at getting the child to nursery is excellent.
- 12) For a variety of reasons, the defender's record in facilitating the attendance of the child at nursery is poor. The child now resides in Greenock and when there attends Overton Nursery. The defender's record of facilitating the child's attendance at that nursery has also been poor.
- 13) When on contact visits in Aberdeen the child has continued to attend at Walker Road Nursery. The pursuer's record of facilitating his attendance there has remained excellent.
- 14) Both parties have accepted advice that RAD requires speech therapy. The pursuer and his mother, KD, instigated appropriate arrangements. A number of appointments for speech therapy were missed, mainly when RAD was in the care of the defender. There were difficulties regarding intimation and arrangements for said appointments. The defender did not make it a priority to ensure that the child attended such appointments.
- 15) Joint minute number 24 of process is an agreement between the parties that each undertake to ensure that the child attends nursery school and medical appointments including speech therapy and to keep one another informed of medical and educational developments.
- 16) Following upon the parties' separation, they held regular meetings with one another to discuss the care and upbringing of RAD . Said meetings ceased at the instigation of the defender as she considered that the pursuer sought to misuse the meetings as a platform for reconciliation. Parties continued to discuss care arrangements for RAD on occasions when they met, principally at contact changeover times.

- 17) The defender complained to the pursuer that she believed that he, on occasions, allowed the child excessive quantities of juice drinks. She advised him of one occasion when she had refused to allow the child a drink before eating his breakfast. She asked that he exercised control over the number of drinks he allowed the child.
- 18) This situation was elevated by the pursuer and his mother, KD, to a complaint to the social work department, complaining that the defender withheld fluids from the child. Said complaint was not warranted.
- 19) The defender's property in Aberdeen included a steep staircase. The child's bedroom was upstairs. The defender had a stair gate which fitted the frame of the child's bedroom door but did not fit across the top of the stairs. The defender permitted the child to play alone in his bedroom fitting the stair gate across his door to prevent his exiting from the bedroom and falling on the steep stairs. On these occasions, the defender would monitor the child's activities and check him on a regular basis. The time periods involved were not unreasonable. The defender advised the pursuer at one point that she followed this practice. This followed from an isolated incident when the child had smeared faeces from his nappy on the wall of his bedroom. The defender had discovered this when checking and had appropriately cleaned the child and the bedroom.
- 20) This incident was elevated by the defender and his mother, KD, to a complaint to the social work department, claiming that the defender locked the child behind a stair gate in his bedroom for long periods of time. This complaint was not warranted.
- 21) The defender advised the pursuer that on one occasion she had smacked the child. The pursuer and his mother do not smack the child. Smacking is not a form of behaviour control recommended by social workers. The defender does not use smacking to an unreasonable extent, her limited use thereof does not constitute abuse of the child nor is it to the detriment of his welfare.
- 22) The pursuer and his mother, KD, initially made a complaint to the child's health visitor concerning the issues of nursery attendance, smacking, an allegation that the child was not kept clean or appropriately dressed, withholding of fluids and shutting the child away for long periods of time. They were advised that if they remained concerned they should report their concerns to the social work department.
- 23) Over four months after raising their concerns with the health visitor, the pursuer and his mother, KD, attended at the social work offices to make a complaint against the defender and her care of the said child focussing on the same issues. Social work undertook an investigation and were satisfied that the defender's level of care was satisfactory.
- 24) The pursuer's mother, KD, is the dominant figure within her family. She takes a major and leading role in the care of RAD when he is with the pursuer for contact periods.

- 25) The present arrangements for care of RAD are unsatisfactory due to the number and level of different surroundings and carers involved. The requirement for the pursuer's mother to take a major and leading role during contact periods is not satisfactory. In any event they are now rendered unworkable by the defender's moving outwith Aberdeen and the child's age whereby, in particular, he will shortly require to attend one primary school.
- 26) In the event that the child were to reside with the pursuer, he would require to either reduce his employment to part-time working, which he will be able to do, or to cease work altogether. By doing so, he would reduce the number of hours during which the child would be in the sole care of his mother, KD, or other family members. He would however, continue to rely on their assistance and would continue to be strongly influenced by his mother, KD.
- 27) The defender is now married and is expecting her third child shortly. Her husband is in employment as a kitchen porter. She is not in employment.
- 28) In the event that residence of RAD remains with the defender he will reside in a family unit. The defender has a support network comprising her husband's extended family. Her parents-in-law live close to their address. The defender and her husband have stable accommodation although they may require larger accommodation in the medium term. The defender does not have a dominant outside influence.
- 29) Both parties are able to provide the child with a satisfactory level of physical care.
- 30) The defender is better able to provide the child with a satisfactory level of emotional care and a family environment. Finds in Fact and in Law
 - 1) That the present arrangement is not in the best interests of the welfare of RAD .
 - 2) It is in the best interests of the welfare of RAD that he reside with the defender and that an order for residence be made in her favour.
 - 3) It is in the best interests of the welfare of the child that he should maintain contact with the pursuer and that an order for contact be made in favour of the pursuer.
 - 4) In the circumstances, it is better that such orders be made rather than no order being made.
 - 5) There is no requirement for the granting of Interdict. Accordingly, sustains defender's pleas-in-law 1, 3 and 4 and repels defender's pleas-in-law 2 and 5; sustains pursuer's plea-in-law 4 and repels pursuer's pleas-in-law 1, 2 and 3; Dismisses pursuer's craves 1,2 and 6 and defender's crave 2; and therefore
- (1) Recalls the contact order set out in interlocutor dated December 2007 ; (2) Makes a residence order in terms of section 11(2)(c) of the Children (Scotland) Act 1995 providing that the said child, RAD , born 23 March , shall live with the defender, AAB, (3) Makes a contact order in terms of section 11(2)(d) of the Children (Scotland) Act 1995 providing that the said child, RAD , will have direct contact with the pursuer as follows, (a) every second weekend from Friday, 4 pm until Sunday, 4.30 pm (and when such contact falls on a weekend when there is a Monday school holiday or when RAD is not attending nursery or school on such Monday

then until Monday, 4.30 pm); (b) for one-half of the said child's school Christmas holidays, to include Christmas Day every second year commencing 2011, Easter and October holidays and specifically for two weeks during October 2012 when said child may be taken on a holiday abroad; (c) for three weeks during the school summer holidays;

- (d) on RAD 's birthday every second year in the event that this does not coincide with his scheduled contact, commencing 2012; (e) telephone contact every three days.

4) Finds no expenses due to or by either party. NOTE:

- [1] This action commenced in 2007 and relates to a child of the parties, RAD , born on 23 March 2006 . The action initially resolved by way of interlocutor dated 27 December 2007 whereby the pursuer was, of consent, granted a contact order in the terms set out in that interlocutor. On 23 April 2010 , a minute to vary the order was lodged on behalf of the pursuer. The pursuer sought in that minute to recall the contact order, to interdict the defender from removing the child from outwith this court's jurisdiction, and for a residence order in his favour. The minute was opposed. After sundry procedure, the matter was continued to an evidential child welfare hearing on 11 January . That hearing proceeded before me on 11, 12, 17, 18 and 19 January .
- [2] The pursuer led evidence from himself, his mother, K D and his brother-in-law, M W. He also lodged affidavits from two further witnesses, A B and J W. The defender led evidence from herself, her husband, her sister, the health visitor and a social worker. I also had regard to the terms of the detailed court report submitted by Mrs O'Neil in July 2010. As is not infrequent in cases of this nature, the witnesses, other than the professional witnesses, whilst generally seeking to be truthful demonstrated a pronounced bias in favour of the party for whom they appeared. This was particularly noticeable in the pursuer's mother's evidence and to a lesser extent in the evidence of the defender's sister.
- [3] I found the pursuer to be reasonably genuine in giving his evidence but it was far from balanced. He did not impress as someone with a strong personality. He sought to downplay the influence which his mother exercised over him and her prominent role in the child care arrangements currently in place, but these factors are clear. Although not raised as a factor in the action I thought it interesting that he had confirmed an ability to work part time and accepted the possibility that he might require to cease employment altogether but did not appear to have addressed the financial consequences of either step, particularly in the context of the potential for him to have additional child responsibilities. A considerable part of his evidence involved sniping at the defender although at points he seemed a little reluctant in this task. To his credit I do accept that he is genuine in his wish to look after his son and would make satisfactory arrangements, however his mother would continue to play a major role.
- [4] The pursuer's mother seems to be a generally sensible and experienced parent whose opinions should carry some weight. She is the dominant figure in her wider family. The pursuer relies heavily upon her for support and guidance and although not living at her

house, is there almost every day. She is substantially involved in the care of the child during his contact periods. Her involvement is such that at one point the child became confused as to whether she was his mother or grandmother. She is unable to see or accept any flaws in the pursuer's care and proposed care arrangements for the child and is not prepared to accept any merit in the defender's care and proposed care arrangements for the child. Both she and the pursuer sought to latch onto anything which they could claim as an admission of failure on the part of the defender and elevate such into major issues. They portrayed their report to the social work department as illustrating their level of concern for the care and wellbeing of the child whereas it is clear that this was little other than an attempt to damage the defender's position. I have no doubt that had their complaint to the social work department been upheld either in whole or in part they would have used that to launch an application for residence whether or not the defender completed her move to Greenock . The pursuer's mother accepted in evidence that she saw all of the issues in favour of her son. She was prepared to accept that she had made derogatory comment on the defender in the presence of the child. That is a matter of great concern. Her evidence significantly lacked objectivity.

- [5] The pursuer's brother-in-law was a more measured witness but his evidence appeared guarded. He clearly did not wish to antagonise his family members. It was, I thought, significant that he admitted that when he had married into the family he too had experienced a level of difficulty with their approach and had taken some time to adjust to the close order imposed within the family.
- [6] I did not find the contents of the two affidavits lodged from A. B. and J. W. to be of assistance. They add nothing to the material issues in the case and little even to the pursuer's attacks on the character of the defender.
- [7] I found the defender less critical of the pursuer and his family than they had been of her. I thought her evidence, to the effect that the pursuer's mother had persistently sought to undermine her, to be credible. This was to a considerable extent confirmed by the pursuer's mother's own evidence. I also thought her evidence that she curtailed discussion with the pursuer due to his seeking to use that as a platform for reconciliation to be credible. I found it little wonder that she was reluctant to continue with discussions when anything she said was to be analysed and if possible presented as some form of complaint about her care of the child. I was concerned about her evidence concerning the child's attendance at nursery. I am satisfied that her initial evidence with regard to his attendance at Overton Nursery in Greenock was incorrect and was an attempt to keep from the court the fact that even in her new circumstances her record of taking the child to nursery remained poor. I do not accept her explanation that she was confused about what she was being asked. Her position on the matter was clear and only when confronted with documentary evidence from the nursery did she alter that position and accept responsibility for poor attendance. Her reasons for that failing would have been more convincing had they been raised initially and not in response to her being found out. There is, I consider, a cause for concern with regard to the

issue of nursery attendance, which concern has the potential to affect the child's school attendance. For the purposes of these proceedings, however, given the terms of the joint minute whereby parties agree to undertake to ensure attendance, and by implication each accept that undertaking, then at this time, this concern should be given little weight.

- [8] I thought the defender's husband was genuine in his wish to create a family unit with the pursuer, the two children and the new arrival. He did not indulge in the sniping and had some positive things to say about the pursuer. His evidence was largely supportive of the defender, although he will also require to examine his attitude, approach and responsibility to the issue of school attendance. He was able to confirm the arrangements applying to their current care of the child and the involvement of his wider family. [9] The defender's sister offered many criticisms of the pursuer and his family. She is aged 23, is not married nor a mother but expressed a considerable number of opinions on issues of child care. I cannot treat her as an expert and therefore place little weight on her opinions. She did however raise one point which has some merit namely that the approach of the pursuer and mother is to treat RAD as a "golden child" and effectively to spoil him. From the other evidence I think there is something in this point and that it is not in the best interests of the child. An example of this can be seen in the issue of controlling of behaviour. [10] The two professional witnesses, the health visitor and social worker, were independent and entirely credible. Although the social work investigation could not be characterised as exhaustive, both confirmed that they had no significant concerns over the defender's ability to care for the child. [11] I also have had the benefit of considering the independent bar report. I note that the reporter, based on her meetings and observations, comes broadly to the same conclusions as have I, based on the evidence led in the case. Her comments and observation of the child's behaviour when with different parties is of particular note.
- [12] I do not propose to review the evidence in detail. As I have indicated much of the evidence comprised attacks on and criticism of the opposing party. It tended to be polarised into the two separate camps. I do not think it helpful to discuss other than the main relevant issues. Pursuer's

submissions

- [13] The pursuer's solicitor reviewed the evidence, focussing on the main issues and particularly emphasising the perceived failures of the defender in a number of respects. She submitted that the defender's evidence with regard to nursery attendance had been unreliable and changed only when she was confronted with the letter from the Overton Nursery. The concerns of the pursuer had not been fabricated and had been properly communicated to the health visitor, then to the social work department. The delay between these two reports was due to the hope, on the part of the pursuer that the first report would result in an improvement. This required to be seen in the context of the lack of communication between the parties. The fact that no action was deemed necessary did not make the complaints unjustified. She submitted that the pursuer's witnesses should be preferred to those of the

defender. The defender was undermined by her evidence on nursery attendances and her sister was rehearsed and unqualified to comment.

- [14] She submitted that the paramount consideration was the welfare of the child, as set out in the Children (Scotland) Act 1995. Consideration required to be given to all facts and circumstances so that a decision may be made on the basis of what welfare demands. *Osbourne v Matthan* (No. 2) 1998 SC 682 and *Pearson v Pearson* 1999 SLT . There were a number of authorities indicating what can be taken into account. The status quo should not be changed if it is satisfactory. She accepted that the circumstances of the present case meant that could not remain. She submitted that an order was required. In particular, to facilitate the speech therapy the child's place of residence needed to be established. There was no basis for the view that residence with a mother should be favoured over residence with a father. *Whitecross v Whitecross* 1977 SLT 225. The child here is almost five years of age and was therefore past any stage where an argument that very young children should remain with their mother could be applied. She accepted that there were a number of authorities concerning the splitting of children in a family. *Early v Early* 1989 SLT was a case in very different circumstances to the present when it was decided that three children should remain together. *Casey v Casey* 1989 SCLR 761 was another case where the decision had been to keep the children together. There, however, they had been full siblings brought up in the same house. In the present case, the two children were not full siblings and had not been brought up in the same house. RAD was used to spending considerable parts of his time with his father and family. Were the child to reside with the pursuer he would not lose touch with his half brothers. It was clear from the evidence that different parties had differing relationships with their various siblings.
- [15] She submitted that there were competing factors in the pursuer's favour. If residing with the pursuer the child would be the centre of attention whereas if residing with the defender, would not. The evidence showed that the child was already left by the defender to watch DVD 's on his own. Being centre of attention would be a positive factor for the child. She accepted that undertakings had been given both in respect of the nursery and speech therapy. There was no doubt that if the child were to reside with the pursuer these undertakings would be carried out. There was no evidence to suggest, however, that the same would apply with the defender. It was accepted that the pursuer's mother had been actively involved with the care of the child. He was used to that. The pursuer's proposal would result in a reduction in the child's contact with KD. The arrangements proposed by the pursuer involving a change to his working hours would enable the child to reside with him overnight and simply require the assistance of his mother in the morning. The arrangements proposed were positive. They would provide the child with a higher level of stability than would be the case if the child were to reside with the defender.
- [16] The solicitor accepted that given the child's age it was not appropriate to seek a formal view from him. There had been evidence led about what he had said to people concerning these issues. Continuity and stability would be best achieved by the child residing with the

pursuer. He would continue at the nursery with which he was most familiar. He would continue to have the care and guidance of the pursuer assisted by his mother. Her support should not be regarded as a negative factor. Her support would principally arise through assisting whilst the pursuer was working. There was a close relationship between the child and his father. The defender's life had undergone considerable recent upheaval. She had left her home, had married and had moved away from the area. This necessitated the child starting in a new nursery and staying with a different family. Her arrangements also involved overnight stays with her mother-in-law. She submitted that the changes which had been made by the defender were negative influences so far as the child was concerned. Granting residence in favour of the pursuer would be a positive step and in the child's best interests. Defender's

submissions

- [17] The defender's agent accepted that both parties had a good relationship with the child and, from their own perspective, wanted what was in his best interests. The issue before the court was with whom he should reside. She submitted that the present arrangement was not an arrangement of joint carers but that the defender was the child's primary carer. There was a shared care arrangement which had worked reasonably for a period but it was the defender who had the greater involvement throughout. There was a concern at the amount of time that the pursuer's mother spent with the child during his contact periods. It seemed that his mother looked after the child for two of the four nights and for significant parts of the days. Whilst it was accepted that the defender's current mother-in-law had the child overnight to enable him to attend church on Sunday, her involvement was at a very different level. The defender did not rely on others to look after the child as did the pursuer. The defender had in place sufficient support to call upon if required. The child would have a permanent place of residence with the defender and a high level of stability with her. The arrangement at present had, at one point, resulted in the child becoming confused about the identity of his mother as between the defender and the pursuer's mother. Such uncertainty was against his best interests. Even in the event of the pursuer reducing his hours to part-time he would still have to rely on his mother for much of the child's care. It seemed from the evidence that at present the child was rarely in the sole care of the pursuer and on such occasions was only in his sole care for short periods of time. She further raised the point that the pursuer's future was by no means certain. He might form another relationship. The court should take a long-term view of what is in the best interests of the child. *Brixley v Lynas* 1994 SLT 847. Whilst there could be no certainty about the future it was clear that the defender offered a settled family lifestyle and that she and her husband intended to create a long-term family environment. The degree of certainty concerning the parties' circumstances was important. *Ellis v Ellis* 2002 GWD 1273 .
- [18] The pursuer and his mother had raised a number of concerns with the health visitor and thereafter the social work department. Not all of these had been fully spoken to during the proof. The defender accepted that there was an element of merit in respect of the issue of

the child's poor attendances at nursery and speech therapy and there was an issue about smacking. The defender accepted that she had struggled with regard to the speech therapy and nursery appointments. It had to be accepted that she had changed her evidence during the course of the hearing. This had been as a result of the stress caused by the proceedings and her simply becoming confused by the questions she was asked. It should not affect her credibility and reliability as a witness. She recognised that she had to take steps to ensure a proper attendance record. She had given her undertaking to do so. So far as the issue of smacking was concerned there was only one occasion when this had occurred and it had been used as a last resort. It was not her common method of discipline. The investigation had not found there to be any concern in this regard. What she had done was no more than reasonable chastisement. It was clear that the remainder of the complaints had no foundation. The pursuer and his mother had sought to make life difficult for the defender, had been critical of her care of the child and had constantly undermined her. It was no coincidence that the concerns raised with the social work department and had been so raised after the pursuer had been told that the defender intended moving from the area. They had been raised five months after the initial discussion with the health visitor. That was not indicative of a party who had serious concern. The manner and content of these complaints called into question the credibility and reliability of the pursuer. *Hastie v Hastie* 1985 SLT 146.

- [19] She submitted that the age of the child was a factor and that a child of young age, at present only four, should be in his mother's care. Both the health visitor and social worker had considered that the relationship between mother and child was an appropriate one. They had also accepted that the father's relationship was appropriate. It was the view of the health visitor, who had ten years experience, that the more damaging arrangement for the child would be the breach of his relationship with his mother, the defender. Although not a child psychologist, some weight should be given to her view on that matter. Contact between the child and the father had been reduced since the defender moved to Greenock . There had been no evidence to suggest that his bond with his father had been affected by that reduction. The pursuer had suggested that the child's behaviour had deteriorated but this was not supported by others. Any such deterioration could be attributed to the different disciplinary regimes adopted by the two sides. There was no evidence of a deterioration in the welfare of the child as a result of the reduced contact arrangements during the previous six months.
- [20] There had been clear evidence that the child bonded well with his half brother and they had a close and loving relationship. Although the circumstances in each case were different it was unwise to separate siblings. *Cairns v McNulty* 1989 GWD 1688 . It was better for the child that he be brought up in the same household as his half brothers. The child would benefit from remaining in the care of the defender. He would have maternal care on both a long and short-term basis. He would have continuing association with his siblings and the present position regarding residence would be maintained. These were the factors which had been regarded as persuasive in the case of *Brixley* . The defender did not work. She was available

to be the child's full-time carer. The child had a good relationship with the defender's husband. The child had made a fresh start in nursery at Greenock and that would be strengthened. The child had, and would continue to have, a close relationship with the step-father's extended family. The child would maintain contact with the pursuer and his family in Aberdeen . An arrangement for the child to reside with the defender would provide him with the appropriate level of certainty. It was for the pursuer to demonstrate that the welfare interest dictated that the child would be better off residing with him. He had not done so. A residence order should be made for the child to reside with the defender. My decision [21] In coming to a decision I require to have regard to the terms of the Children (Scotland) Act

1995. The paramount consideration is the welfare of the child, which includes both emotional and physical welfare. I also require to be satisfied that it is better for orders to be made than not made. I am entirely satisfied that it best for the child's welfare that he reside with his mother. The circumstances here are such that orders are necessary. [22] The defender offers the child a secure family unit where he will have a mother, father and two siblings. He will also have access to his step father's wider family in the Greenock area. He will have generous contact with his father and his family as also his maternal grandparents. I do not accept the attempt by the pursuer to suggest that the child has a poor bond with his mother nor that he has a poor bond with his step brother. This suggestion comes purely from the pursuer and his family and no other source. I consider that in their desire to support their position they have completely lost sight of the importance for the child of the emotional side of his care. He needs to feel secure and, as far as is possible, be protected from an environment where point scoring and behaviour designed to undermine a parent is common place.
- [23] I do not consider that the defender is a perfect mother. She has had difficulties in the past. In particular she must improve her position on the child's school attendance. Any failure to do so will be unacceptable. In my view the problem with speech therapy demonstrates one of the major problems which can arise where shared care is being attempted. Neither party took proper control of that situation. As a result there was confusion and missed appointments. The defender is perhaps more culpable than the pursuer but it was he who organised the therapy in the first place and on one view he who should have been ensuring the child's attendance.
- [24] Whilst I accept that the pursuer has the child's best interests to the fore of his thinking there was, in the evidence given by both him and his mother, an element of satisfaction in the defender's perceived failures. They provided him with additional ammunition. I am satisfied that, excepting the complaint of failure to organise the child's regular attendance at nursery, the complaints raised by the pursuer were not justified and cause no level of concern about the defender's abilities to look after the child. They amount, at best, to no more than minor disagreements of the type that might well occur even within a stable family unit. [25] I accept that were the child to reside with the pursuer he would, with the help and assistance of his mother be able to provide a satisfactory level of physical care. I have little doubt that

his mother would continue to play a major role and he would continue to heavily rely on her for assistance. He does not appear to have addressed the financial consequences for him nor the child of his restricting or terminating his employment. He does not appear to have considered his own long term future and the effect of any new relationship he may form. I think it of great concern that he and his mother have very little regard for the child's relationships with persons outwith their own family, writing off as weak and insignificant his bonds with his mother, step father and step brothers. Obvious problems with the past and present arrangements are brushed aside by them on the basis that the child is used to those arrangements. I am satisfied that both the pursuer and his mother have sought to undermine the defender in respect of her care of the child, even in the presence of the child. It is of concern that neither seems to appreciate that this is damaging to the child. In her evidence KD, the pursuers' mother, accepted this conduct, albeit to a limited extent, but was quite unrepentant. I do not think that the pursuer is best able to meet the emotional needs of the child. [26] I have no doubt that the child's welfare will best be served by his residing with his mother. In reaching this view I have taken into account the various factors raised at proof. Although there is no presumption in favour of a mother, I do consider that the young age of the child is a relevant factor in this case. I consider it best for him to be brought up with his siblings rather than on his own. I do not think it of great relevance that each have different fathers. The fact that he will be in a family environment rather than with a heavily supported single parent is also important. The defender is, for the reasons which I have set out, better placed to meet the child's emotional needs [27] My decision should not be taken as a vindication of the defender's position. I consider that she requires to review her priorities and improve her approach to the child's attendance at school and medical appointments. As she now has residence she needs to take full control over such issues and can expect to be judged on any failures in that regard.

- [28] The pursuer and his mother require to exercise the generous contact arrangements in a responsible fashion. He is entitled to voice genuine concerns. He must not regard contact periods as an evidence gathering exercise. He, and his family, must stop seeking to undermine the relationship between the child and his mother. That would be damaging to the child. Were they to continue to do so consideration would require to be given to restricting contact arrangements. [29] Both parties and the families involved should work together in the interests of the child. They do not require to like each other but need to establish a working arrangement where discussion can take place without fear of minor comments being turned into major issues and then complaints. They should endeavour to harmonise, as far as they can, their approach to controlling the child's behaviour. It is ironic that it is the pursuer and his mother, so critical of the defenders' care standards, who appear most lax in this task. The lead in this should be taken from the resident parent, the defender. I would express the hope that parties now put aside their differences in the interests of their child's welfare. [30] It was agreed that there should be no expenses found to or by either party irrespective of the outcome hereof. Sheriff of Grampian Highland and Islands at Aberdeen . 2 March . BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback |

Donate to BAILII URL: <https://www.bailii.org/scot/cases/ScotSC/2011/18.html>

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/scot/cases/ScotSC/2011/>

CASE PAGE <https://chat.esheria.ai/case-law/scotland/p-a-d-v-a-a-b-2011-scotsc-18-2-march-2011>

Prepared on 26 October 2026 · Esheria