

SCOTLAND / JUDGMENT

RM v RPMM [2000]

ScotCS 147 (2 June 2000)

[2000] ScotCS 147

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[2000] ScotCS 147 [New search] [Help] OUTER HOUSE, COURT OF SESSION OPINION OF LORD
KINGARTH in the cause R. M. Pursuer; against R. P. M. M. Defender:

Pursuer: Mackie; McGrigor Donald Defender: Party 6 June 2000

- [1] The parties were married on 28 May 1983. They separated in July 1993 and were divorced on 31 January 1996. The pursuer lives in Ross-shire. The defender lives in Edinburgh. They are the parents of three children - A. M., born on 16 January 1988 (now 12), H. M., born on 14 February 1990 (now 10) and E. M., born on 8 February 1992 (now 8). On divorce no order was made by the court in relation to the custody of the children. In practice, however, the pursuer has, since the separation been the principal carer of the children - certainly during the school week - although the defender has had frequent and regular contact. It is agreed that the children reside with the pursuer. The current arrangements are regulated by a Minute of Agreement dated 29 July and 14 August 1998. In terms of the agreement the parties retain joint parental rights and responsibilities in respect of the children. At present the children have residential contact with the defender for two out of every three weekends in the summer months and every alternate weekend in the winter. They also spend half of their school holidays with the defender. It is provided in the agreement that "Neither party will be entitled to remove any of the children who are habitually resident in Scotland from the United Kingdom or to retain any child outwith the United Kingdom without the prior written permission of the other In the event there is no agreement the parties are free to apply to the court for an adjudication on the matter."
- [2] In this action the pursuer seeks (first) an order in terms of section 11 (2)(c) of the Children (Scotland) Act 1995 that the three children reside with her; (second) an order in terms of section 11 (2)(e) of the said Act that the said children may be removed by the pursuer forth of Scotland to reside with her in the United States of America and (third) an order in terms

of section 11 (2)(a) of the said Act reducing the present level of contact between the defender and the said children to six weeks during their school summer holidays (excepting the first and last two weeks of such holiday) and alternate Christmas or Easter school holidays in each year or to such other periods as the court shall consider to be appropriate. It was accepted on behalf of the pursuer that for the purposes of this action the critical conclusion is for an order authorising the children's removal furth of Scotland to reside with the pursuer in the United States of America. It is only if this is allowed (a matter strongly opposed by the defender) that the pursuer seeks a formal residence order in her favour. In addition, although it is the pursuer's belief that the current contact arrangements involve too many weekends, the particular reduction in contact which is sought is dependent upon the situation changing to the extent that the children reside with her in the United States of America.

- [3] In the course of the proof evidence was given by the pursuer herself, the head teacher of the children's current school, a trained nanny formerly employed by the pursuer after the separation and by S. M., to whom the pursuer is now, since 14 April 2000, married. The defender, who appeared on his own behalf, gave evidence, as did a near neighbour, a friend of the defender's and the sister of his current partner, and his brother. It was agreed by both parties - under reference to the Children (Scotland) Act 1995, section 11 (7)(b) - that I should see the children and this I did, individually and in chambers, at the conclusion of the proof. As I indicated at the close of the proof, although the issue between the parties clearly gives rise to strong feelings, the evidence was led and given with dignity and restraint (in manner, if not always in content) on both sides. On any reasonable basis it is plain that both parties - although in different ways - have been good parents to the children following upon the separation. Any comments while I may make about them hereafter are therefore relative only, and are dictated solely by the need for a decision to be made on the issue which currently separates them. All were agreed, and section 11 (7)(a) of the 1995 Act requires, that the welfare of the children must be the paramount consideration. By way of emphasis only, counsel for the pursuer referred me in that connection to *Sanderson v McManus* 1997 SLT 629 (Lord Hope of Craighead at page 634), *Osborne v Matthan* 1998 S. C. L. R. 692 (in particular Lord Hope of Craighead at pages 697 and 701) and, in relation to disputes of at least a broadly similar nature, *Huddart v Huddart* 1961 S. C. 393 and *Johnson v Francis* 1982 S. L. T. 285. Reference was also made to *Wilkinson & Norrie Parent & Child* nd Ed., paragraph 8.31 on pages 245 and 246. The Past
- [4] A substantial amount of time was spent in evidence in relation to past events. Although this was no doubt thought (correctly) to provide the court with the context for the present dispute, it was also clear that the defender strongly believed that any difficulties since the separation have been caused by what he characterised as the entirely selfish actions of the pursuer and that the present dispute was similarly provoked. In these circumstances it is perhaps necessary that I deal with the evidence relating to the past in more detail than I would otherwise have been inclined to do.

- [5] The pursuer was born of American parents in the United States, and retains an American passport. She was educated in the United States, latterly at a private boarding school, Orme in Arizona. After university in the States she worked for two years in her family's real estate business (as to which more later). She came to the United Kingdom, and after some time at college, she met and married the defender who, though Scottish, was then apparently living in England. Thereafter the parties were engaged in farming in Surrey and in Scotland. At the time of their separation they lived, and had for some years been living in Perthshire. The causes of the parties' separation were not investigated in evidence, nor did they need to be. According to the pursuer she was then undertaking the main day-to-day responsibility for farming a number of acres of the estate. According to her the defender mainly, but not exclusively, provided accounting help such as looking after the business accounts and writing cheques etc. This was not disputed by the defender, who is a trained accountant and now works on his own in that capacity in Edinburgh. After the separation, when he left to go to live in Edinburgh, the pursuer carried on working on the farm. Cottages on the estate were renovated for rental purposes. The children lived with her and she had the assistance of a nanny. Initially the children stayed with the defender every weekend. Essentially that pattern of contact has remained, although from time to time it has been reduced in frequency (although not it seemed without resistance, at all times, from the defender) to its present amount.
- [6] Part of the parties' settlement involved that the pursuer pay the defender a capital sum of £300,000. No obligations of maintenance were undertaken on either side. The defender undertook no formal obligations to maintain the children. This remains the position. On the pursuer's evidence, which I accepted, she required to sell the house in Perthshire and the estate principally to meet her financial obligation to the defender. She tried for some time - as confirmed by the evidence of the nanny - to find alternative accommodation - indeed to find another farm. She hoped for the children's sake (and her own) to find property in the same area. At one stage she was close to the purchase of farming property in Arbroath but this fell through due to problems with title. Ultimately in 1995 she bought property in Inverurie, a house large enough to house the substantial furniture and contents of her previous house and of a type which she believed would maintain a similar environment for the children. She accepted also in her evidence-in-chief the fact that her then boyfriend lived in the area made it seem less foreign. She did not hide this factor in her choice.
- [7] The defender's position was that the sole reason for her move had been so that she could be near her boyfriend (who lived some ten miles away) and that she had given no thought to her children and in particular to the implications of the increased distance from him. While as indicated it was clear that her boyfriend's position played a part and no doubt an important part in her ultimate choice, I am entirely satisfied that the pursuer had regard to the interests of the children so far as she reasonably could. She was in general an impressive witness, careful and restrained but strong-minded and resourceful and with an apparent warmth and practical understanding of the emotional and physical needs of the children. The defender's concern about the increased distance was plainly genuine but seemed -

though this is understandable - to be as much for the impact on himself (with the increased travelling and costs involved) as on the children. His criticism of the pursuer in this matter was not only, it seemed to me, largely ill-founded and in any event overstated, but appeared to be borne of a distrust of the pursuer which was led him to see the worst and most sinister motives in her every action. In part also, it seemed to me, that it stemmed from a somewhat unrealistic expectation as to how parents could and should order their lives after separation. It is inevitable that other attachments may form. It is not possible or practicable or in all cases desirable for the children that the parties remain physically static. Further, it seemed to me to stem also from a somewhat unrealistic and, to a degree, self interested belief that he was entitled to equal time with the children - an arrangement which even if desirable (which must, in any particular case, be open to question, given in general the need for stability and continuity in children's lives) was in this case from an early stage plainly out of the question when the defender moved to Edinburgh.

- [8] After 1995 the pursuer lived for two years in Inverurie, although the original intention had been to live there for a shorter period. While there contact with the defender continued at weekends, but this latterly was reduced to three weekends out of every four. Whereas before the pursuer had driven the children to Edinburgh, with the defender returning them, the parties now drove to (roughly) a half-way point (Dundee), both at the beginning and at the end of the weekends. Again this form of arrangement has broadly persisted. It seems that while at Inverurie she met her now husband while he was engaged in the course of his business as a farrier in Aberdeenshire. She had always had an interest in breeding horses, as he does too. As part of her continuing search for farming land she and her partner moved to Ross-shire, to which they had become attached. She lived in Tain for nine months. Certain farming land was purchased. She and S. M. then moved to their present address nearer to the farming land. Although the present accommodation is rented they have plans to build upon the land. I am in no doubt that an important factor in the move, as far as the pursuer was concerned, was that the children could attend the local school which, like the previous primary school in Inverurie, would, she thought, be entirely suitable for their needs. These moves were again the subject of criticism by the defender at the time and in evidence. Again I have to say that I find the defender's criticisms, for similar reasons, to be to a large degree ill-founded and in any event overstated. The Present
- [9] The pursuer continues to run the farming operations on the land which they own, although her income, like that of many farmers, is restricted (the net farming income for the last accounting year was said to be £2,500). She has, in addition, income from a loan to the family business of about £2,600 per month and her husband has what she described as quite a decent income from his business as a farrier. Together they are able to provide a reasonably comfortable standard of living for the children. All three children now go to the local primary school. A. M. is in her last year and is due to go to secondary school at Dingwall Academy next year. The evidence of the head teacher confirmed the pursuer's evidence that all of the children were doing well there now, albeit there had been a degree of unsettlement following the initial move. The head teacher, who spoke well of the pursuer

as a concerned and interested parent, described all the children as delightful, mannerly and very popular with other children and staff. A. M. had blossomed a great deal in the last year; whereas she had been quite far behind when she arrived at the school, she had gained in confidence and had done very, very well. She had an impressive level of maturity. Though H. M. had been to a degree isolated to begin with, he had settled very well and seemed very happy. He had some dyslexic tendencies but had benefited from the assistance of a support teacher. E. M. had had some similar difficulties but was also making good progress. From my discussions with all the children it was plain that they were content at the school and had numbers of friends. H. M. in particular spoke with enthusiasm for art and for sport - in particular running and the javelin. He would like to get into the shinty team next year, which would mean playing matches midweek and at weekends. The defender questioned the head teacher as to whether the children arrived late, whether they were badly dressed and whether they appeared to come from an environment which was not child-centred. These questions were answered firmly in the negative. The nanny, who had worked with the children until July 1995, and who has kept in regular touch and had visited last in November 1999, spoke warmly of the pursuer's abilities as a mother and thought the children were the happiest she had seen them. She confirmed that the children had affection for S. M., and that they appeared to be settled in a family unit. She confirmed in particular that as far as could be judged the pursuer's new husband had done much to bring H. M. out of his shell. S. M. himself spoke warmly of the family unit and of his interest in the children, although careful to recognise that he could not, and did not wish to, take the place of their father, the defender.

- [10] As indicated before, the defender exercises contact with the children during two out of every three weekends in summer and on alternate weekends in the winter months - in addition to half the school holidays. The pursuer, or someone on her behalf, drives the children to (roughly) a half-way point and they are returned in a similar way by the defender. The tenor of the evidence of the defender and his witnesses was that he had effectively organised his life around the children - although he does now have a new partner. It was his evidence that although he now worked in a self-employed capacity in Edinburgh he could, he thought, have sought work elsewhere. His present accommodation was bought to enable him to accommodate the children. Each of them had their own bedroom. It has a garden. It was clear from his own evidence (and that of his witnesses) that he devoted considerable time to organising trips and activities for them when they came at weekends. It seemed that they had come to know some children who lived nearby; in particular H. M. was friendly with a boy who lived close and they from time to time stayed over at each other's houses - all as confirmed by the boy's father A. D. E. M. was friendly with the boy's elder sister, who is the same age as A. M. A. M. however confided that she was not so keen - consistent at least with A. D.'s evidence that recently she had been reluctant to take part when the children were playing together. During the holidays the children are taken by the defender to his mother's house in Gatehouse of Fleet.. There, and at other times, they see, and plainly get on well with their uncle - himself now divorced. I have no reason to doubt the defender's love and

concern for the children or the efforts which he has made to look after them during periods of contact - all as spoken to by his witnesses.

- [11] It is clear however that there are problems with the present contact arrangements at weekends. It is not simply, as the defender stressed (with some apparent justification), that the journey to and from Ross-shire is longer and more difficult than the one undertaken before. Since 1995 the children have faced two very long car journeys, as much as two out of three weekends in the summer. Unsurprisingly, this was plainly disliked by them. More importantly the effect is that the children's ability to spend time with school friends and on other activities close to home outside the school week is substantially restricted. This is a particular concern in the case of A. M. She is now a maturing 12 year old, keen to do grown-up things. A recent weekend trip to Inverness with some of her school friends, on their own and by bus, was a great success. It was abundantly plain from talking to her (and indeed from the evidence of the pursuer and S. M.) that she resented, and had for some time resented, this apparently restrictive effect of the contact arrangements. While neither H. M. or E. M. voiced any similar concerns, it is clear that H. M., realistically, will be unable to take part in team games if the arrangements were to continue with the present regularity, and there must be a risk that as he and E. M. grow older, similar hostile feelings will develop in both. Both the pursuer and S. M. spoke, it seemed to me sensibly and impressively, about the need for the children to have time to grow and relax more in their own environment. Further, A. M. left me in no doubt that she felt that the defender was overprotective, and that he treated her, as she saw it, too much like a child. She disliked, she said, the fact that he still insisted, for example, on drying her hair with a towel. She appeared to think the same of her paternal grandmother. While adolescent truculence may have a part to play (and while I do not comment at all on the relationship with the defender's mother), these are feelings which cannot be ignored - more particularly, as I had the distinct impression that the defender's approach to care was perhaps, to a degree, overprotective and based heavily on organising activities, with perhaps insufficient emphasis on the benefits of leaving the children time to themselves (especially A. M.). In evidence he showed little understanding of the restrictive effect of weekend contact, in one revealing answer saying that the drawbacks for the children, from the point of view of their lives in Strathpeffer, while they were in Edinburgh, were equal to the drawbacks, from the point of view of their lives in Edinburgh, when they were at home. In the whole matter I am in no doubt that if I had required to make a decision on this matter it could not be said to be in the best interests of the children for the weekend contact exercised by the defender to continue at the current levels of frequency. The Future
- [12] The pursuer wishes to go (along with her children and her new husband) to live in the United States of America. She explained in evidence that there were two interrelated reasons for this. The first related to her family. Her father had died recently and her mother, who lived in the United States, was now 79 and was increasingly physically frail and forgetful. She wished at least to be nearer to her to offer her support and help, in particular at times of crisis. The second reason related to a family business in which she has an interest. This was a business formed originally by her great-grandfather. It is a business which owns and

manages heritable property, partly in California but mainly in the form of mobile home parks in Arizona. The best evidence relating to it came in the form of an affidavit from Scot La Rose who holds an executive position in it. It was agreed between the parties that his evidence would be given in the form of the affidavit. The tenor of his evidence was that as at the date of the last income tax return (and the pursuer's evidence, unchallenged in this respect, was given on the basis that this position remained the same) was that the pursuer held a 5.5% stake in the company. Her mother, who lives in California, held a very substantial share of the remainder. Smaller shares were held by two others (including Mr La Rose) who nevertheless were involved in the running of the business and who had votes at board meetings. The pursuer's interest in the company and in certain related property is valued at about \$850,000. Her mother's interest in the company and certain related property is valued at about \$15 million. Each has a vote at board meetings of the company. The head office of the company is in Irvine, California, although as indicated, much of the property which it owns and manages is in Arizona. The pursuer had every expectation that she would inherit the major part of her mother's share when she died. Until the last few years she had not played much part in the running of the business. Increasingly, in particular since, as I understood it, an apparent attempt by others to assume control from her mother in 1998, she had done her best, albeit at a distance, to play a greater part to try to protect her own and, what both parties described as, the children's heritage. She was in the habit of going to board meetings several times each year. The trips to the United States and the time she spent away had increased. She combined the trips with visits to her mother and at times she had been away for up to three weeks. While away the children were left essentially in the care of S. M.. It was clear, according to her own evidence and from the children, that they missed her very much when she was away and that these trips were disruptive of home life. Although it was suggested by the defender that she could take steps to organise such trips to coincide with times of contact exercised by him, or that she could exercise similar influence by means of video conference facilities etc., I had no reason to doubt that there were practical reasons which required her attendance, otherwise she would have made different arrangements. She had at any rate clearly come to the view that she could only sensibly protect her and her children's interests (and be nearer her mother to afford more help) if she was in the United States of America. It was also plain that if she was to move to the United States she had an offer of employment from the company in the position of Regional Asset Manager for the Arizona operations. The salary offered, in terms of a letter produced from her mother, was in the range of \$40,000 to \$60,000 per year. It was Mr La Rose's evidence that the pursuer's mother had strongly encouraged her to become involved in the family business; that he had spent several days with the pursuer visiting the Arizona properties, reviewing

- [13] S. M. was supportive of the pursuer's aims. It was his evidence that although he had no reason to move, equally he had no reason to doubt that he would find employment and indeed would do well in that and in horse breeding given his knowledge, qualifications and experience. Although the defender expressed the belief that he was the main mover in the

decision to move to the United States, I did not get the impression from the evidence that this was the case. The impression he gave was of a straightforward and essentially decent man, content to support his wife, but well positioned to take advantage of the demand which it seemed would exist for services of the type he could offer. The pursuer and S. M. had already purchased 117 acres of land in Arizona which they intended to farm and on which they intended to build a home. The land, which was well favoured with water, was near to the small township of Snowflake, Arizona. The pursuer hoped that together they would be able to farm the land and to breed horses. In addition she proposed to spend time each week in Phoenix supervising the running of the mobile home properties (requiring, she thought, one night away per week) in addition to travelling when necessary to California for Board meetings etc. These business interests would require her to be away from home for substantially shorter periods than at present. Until the house was built (which they expected could be done relatively quickly in the absence of planning controls) the intention was to live for five or six months in an up-market form of mobile home which would be placed on the land. This would have three bedrooms, and although the children would require to share rooms would be of a type to enable the family to live comfortably. The pursuer had assessed the potential schooling of the children. It was proposed that A. M. go to the Snowflake Junior High School, whereas the two younger children would go the Intermediate School in Snowflake. The two schools were run by the same Schools Authority District and were subject to one supervisor, although both had separate principal teachers. The pursuer had spent time (once with A. M.) with the principal of the Intermediate School and obtained written information in relation to both. She was, she said, very, very happy with what she had seen and heard. She was content that the schools were entirely satisfactory for the children. If the schools or either of them proved unsuitable another option was a Charter School, a type of school, the pursuer explained, supported by the State but run on different lines like Montessori schools in this country. In due course it was the pursuer's hope that she and S. M. would be able to send the children to the same private school in Arizona which she had attended. S. M. was in no doubt that they would be very much better-off financially in the United States (as was the pursuer) and was clear that if the pursuer was to realise her ambition of sending the children to private school it would have to be in that country. He set considerable store in his evidence by education, and was very keen to support the pursuer in her ambition.

- [14] It was the pursuer's position that she recognised the children should continue to have contact with their father - indeed that this was an important part of their lives. If permitted to take the children to the United States she was content that the defender should exercise residential contact to them for nine weeks out of the twelve weeks' summer holidays which the children would enjoy (from the end of May to early September). She would want the children to have three weeks at home in the summer. She was less keen on residential contact being exercised in Scotland in the winter or at Easter because of jet lag and the potential interference with the children's education. If the defender was to seek residential contact, however, in the United States she would have no objection. She would like to have at

least one of the two holidays with them. There was no reason why generous telephone contact etc. could not continue.

- [15] My impression from the evidence was that while no doubt the pursuer genuinely desired to be nearer her mother (and to a very much lesser extent other relatives who still apparently lived in the United States), the major reason behind her proposed move related to the family business (and in particular to her desire better to involve herself in the management of the business and to take the opportunity of the job which had been offered (and the extra income) better to learn of the running of the company). She also plainly believed that there were better material prospects for life on the land and in the environment which had been chosen and I also sensed - as the defender stressed - a certain pull towards the land of her birth.
- [16] The defender's concerns were that the pursuer's plans were essentially borne of whim and were ill thought out. He questioned - not without some justification - the pursuer's ability to give much greater help to her mother if she were to live in Arizona. He also questioned her present lack of training and experience or her ability to exercise influence on the personnel of the company - in short he questioned her ability to play any effective increased part in the management of her and the children's interests in the company.
- [17] While of course it may be that she will not achieve her ambitions, I have no reason to doubt that, as she herself believes, she will be better able to protect her stake in the company if she does build up a knowledge and experience of its workings in the job which has been offered, the potential advantages of which were not disputed. Further I have no reason to doubt, that by increasing contact with the others involved in the company and by being closer to the decision making, she will be better placed to exercise influence at board level. In short, there appear to be strong reasons behind the move concerned with the management of her own present, and potentially very large future, stake in the company. Equally, while both she and her new husband accepted that things would realistically be hard, at least initially, I have no reason to doubt her expectation and that of S. M. that they will, in due course, be materially better-off if they move. In short, I am clear that she and her husband have good reason to make the proposed move. She had, it is true, raised this matter before in 1997, before deciding then to stay, but far from showing that this was "a whim" it seemed to emphasise, if anything, that her plans were ones to which thought had been given over some period. I had no reason to doubt her evidence that in the different circumstances then pertaining that she had decided then not to pursue the matter.
- [18] The fact that the pursuer has good reason to go to the United States may of course enable her to resist the defender's contention that she has no sound reason at all for the move. It does not however of itself take the matter much further, save of course insofar as this may impact on the interests of the children. It is true (and this was not disputed) that the children do reside with and spend most of their time with her, but I am not persuaded that this is a case where (despite an initial submission to that effect) there is anything approaching an absolute need for her to go to the United States. The pursuer wishes to exercise a choice. If

she is not permitted to go she would stay and the children would continue to reside with her here. The question therefore remains whether it is in the best interests of the children that they go with the pursuer to the United States as she proposes.

[19] I have come to the clear view that on the balance of the evidence it is.

[20] Inevitably with any plans and hopes there is a degree of uncertainty. There are, however, a number of positive features. The reasonable expectation - based in particular on the ability of S. M. to command a greater income as a farrier and in the development of his horse-breeding interests - is of a materially better life for the children. Moreover, so far as can be judged, it will be a life in which they will have more time to develop friendships and generally to grow in a stable environment compared with their life in this country so frequently punctuated by weekend visits and long travel to Edinburgh. There is further no reason to suppose that the pursuer will not be better able to realise her ambition (which the defender thought entirely valid) to send the children in due course to private schooling. There must, by contrast, be a fear that in the short-term at least (and perhaps over the longer term) the general family atmosphere in Strathpeffer will be affected (however careful the pursuer and S. M. may be) by a strong sense of regret if the current plans are thwarted. There are further at least better prospects that the children's inheritance will be protected if the pursuer is able to live and work in the United States. Further, the children will, to a material degree, avoid the disruption presently caused by the pursuer's long spells away from Scotland on business and family trips. Further, and significantly, A. M. - who seems old enough to know her mind and who has, it seems, a reasonably clear idea of what is at stake and who has been to the States and to Snowflake recently - very clearly expressed her wish to go. H. M. and E. M. are not only younger but are plainly much less able to form clear views as to what the prospects are. H. M. was not certain either way, and the same was true of E. M., although both were, understandably, concerned about what this would mean in relation to seeing their father.. The children's views expressed to me were consistent with what I had been led to expect by the evidence - in particular from the pursuer, S. M. and the head teacher. As to A. M., and, as he saw it, her current negative attitude towards him, the defender was clearly concerned about possible influences having been brought to bear upon her in Strathpeffer, but I did not get that impression from A. M. herself. Nor do I think the pursuer or S. M. are people who would deliberately try to turn her against her father.

[21] Against these factors, the children will require to move from a stable environment in which they are materially reasonably well off and from a school in which they have settled well, despite a number of earlier moves. This is a disadvantage which plainly cannot be underestimated. On the other hand, although the information in relation to the proposed schooling in America is limited, I have no reason to doubt the pursuer's judgment that, so far as it can be assessed, the children will be well provided for. It is she, the pursuer, who has been involved day to day in the children's schooling, and with their current teachers. Further, the evidence was that the children were or had become relatively adaptable, and further that A. M. will require to leave her current school in any event. It was the nanny's

judgment that all the children would be able to cope. The head teacher believed A. M. and E. M. would be able to cope as well as any children of their age. She had more concern about H. M., but was sure that the pursuer was well aware of the support that he would need. It also has to be remembered that they will be going not to somewhere wholly unknown but to the land of their mother's birth, and that the children already have U. S. passports (in addition, as I understand it, to U. K. passports). In addition, of course, it is clear that the children will be able to see their father (and probably also, although to a lesser degree, their grandmother and their uncle) less regularly, and there is no doubt that contact with their father has played a significant part in the children's lives. It would seem appropriate that that should, so far as possible, continue, even in the case of A. M., who, it seems to me, would benefit from the maintenance of reasonable contact with her father. There seems little doubt that the defender himself will be devastated by any lessening of contact with the children. The effects on the children, with whom I am principally concerned, should not, however, be exaggerated. It is plain to me, as indicated above, that the children's interests are not being best served by the regularity and intensity of the weekend contact presently exercised. If they go to the United States the evidence suggests that this could be replaced by a very much longer period (than present) of residential contact in the summer and by residential contact at other times and there is reason to hope that the children will benefit from, or at least that they will not be significantly disadvantaged by, that.

- [22] In the whole circumstances I have come, as indicated, to the clear view that an order in terms of the second conclusion should be granted and further, standing the differences of view which exist between the parties, that it would be better for the children that a residence order be made in terms of the first conclusion than that no such order be made.
- [23] There remains the question of contact. The pursuer's offer of nine weeks residential contact in the United Kingdom in the summer is acceptable to the defender - albeit his expectation is that he will require to employ a nanny for at least part of the time to enable him to continue work. In evidence he made it plain that he had no wish to see the children in what he regarded as entirely artificial circumstances from a hotel base in Arizona, although he had not, it seemed, wholly thought through the prospects of otherwise arranging for residential contact in the United States. It did not, however, seem from his evidence, likely that he would be able to take advantage of the fact that his brother and sister both lived in Denver, for example, by staying (along with the children) with one or other of them. There is therefore on the evidence little basis for the specific provision of residential contact in the United States. It seems plain, having regard to the history, that the children would benefit from some further residential contact with the defender in addition to the summer weeks. In ordinary circumstances I would be inclined to allow for contact during alternate spring and Christmas holidays, but having regard to the distances involved, to the timing of the children's summer holidays in America and to the desirability of the defender maintaining a degree of regularity in his contact with the children, I am persuaded that it would be right to allow for residential contact in Scotland for two weeks every Christmas. It is to be hoped that it will be possible to arrange for the children to spend Christmas Day with each of their

parents, but if that is not possible my judgment of the pursuer is that she will be realistic enough to accept the matter as a necessary consequence of their new lives. The children will of course, as the defender stressed, remain with their current family unit in the United States at Thanksgiving. Although the defender submitted that the court should order the pursuer to pay for the children's travel to and from Scotland for periods of residential contact, I am not persuaded that these should not be shared. In addition it would seem at least possible, if the defender could so organise things, for him to exercise such further contact in the United States as might be arranged with the pursuer. I shall endeavour, in the order which is pronounced, to allow for such flexibility. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: <https://www.bailii.org/scot/cases/ScotCS/2000/147.html>

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