SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2017] SC GLA 64

A8741/06

JUDGMENT OF SHERIFF AISHA Y ANWAR

In the cause

GERALDINE McWILLIAMS

Pursuer

Against

RICHARD RUSSELL

Defender

Pursuer: Crosbie, Solicitor
Defender: Party Litigant

Glasgow, 4 October 2017

The **s**heriff having resumed consideration of the cause, finds in fact:

(1) The pursuer was formerly head teacher of St Monica's Primary School in Glasgow ("the school"). She is now retired.

(2) The defender is the father of VR, RR and IR, all of whom were formerly pupils at the school and all of whom are now 16 years of age or more.

(3) On 22 May 2006, VR informed her class teacher that she had been slapped on her leg twice by the defender. The class teacher reported this matter to the pursuer. The pursuer completed and submitted a Child Protection Referral Form ("the Referral Form") to the social work department. She was duty bound to do so in terms of Management Circular No 57 issued by Glasgow City Council. In compliance with a request for further information, the pursuer and class teachers compiled and submitted reports to the social work

department in relation to each of the defender's children in June 2006. The Scottish Children's Reporter Administration took no further action in relation to the issues raised in the Referral Form.

(4) The defender repeatedly demanded details of the contents of the reports and the Referral Form. He attended at the school on a number of occasions and was confrontational and aggressive with school staff and with the pursuer. He accused the pursuer *inter alia* of 'lying' and fabricating the content of the Referral Form. In a series of letters between October 2006 and early December 2006, the defender demanded a written apology, the pursuer's resignation and compensation from the local education authority. He asserted that the contents of the Referral Form were untrue and that the defender was an 'incompetent and dangerous' individual. He threatened the pursuer with negative media attention if no offer of compensation was forthcoming. He was asked to desist from harassing the pursuer and from making defamatory comments about her. He refused.

(5) On 13 December 2006, *interim* interdict was granted against the defender prohibiting him from (a) making, publishing or distributing by any means, false or defamatory statements about the pursuer and in particular concerning the submission by the pursuer of the Referral Form and; (b) molesting the pursuer by abusing her verbally, by threatening her, by placing her in a state of fear and alarm or distress. Those *interim* interdicts remain extant.

(6) On 10 January 2007, the defender spilled paint close to where the pursuer's car was parked in the school grounds. He did so to intimidate the pursuer.

(7) On 4 February 2007, the defender sent a letter to the pursuer's solicitor, Mr Stephen, enclosing a note bearing the same date, addressed to the pursuer. The defender requested that Mr Stephen give the note to the pursuer. The note stated *inter alia*:

> "In the name of Jesus, I am asking you to admit you have told evil lies about me. Admit that you have lied to your own lawyer and council bosses . . . . admit all your sins and you will be forgiven by God . . . If you do not, then the Lord, King of Kings, Lord of Lords, will condemn you to solitude. If you do not tell the truth now, this letter and my voice will be the last things you see and hear before being cast to Hell".

(8) The note was threatening and menacing. The defender intended it to be so. The note contained a threat upon the pursuer's life. The pursuer's solicitor was alarmed by the content of the note. He contacted the pursuer. The pursuer was alarmed and frightened by the terms of the note. She was advised by the police to leave her home until they were able to put security measures in place.

(9) On 8 February 2007, the pursuer sought and obtained *interim* interdict preventing the defender from approaching the pursuer or attending at the pursuer's place of work, or communicating with the pursuer and in particular from entering the school. A power of arrest was attached to the *interim* interdict for a period of three months and was extended on a number of occasions. The *interim* interdict remains extant.

(10) On 8 March 2007, the defender deliberately approached the pursuer in the school playground. The defender did so to intimidate and provoke the pursuer. The defender was aware that he had been interdicted from doing so. The pursuer was placed in a state of fear and alarm by his conduct. The police were called and the defender was arrested.

(11) On 11 October 2007, after the children had moved to another primary school, the defender added a handwritten entry to his son's homework diary containing the following comments:

> "Recently, [RR] has been talking about his maltreatment and abuse at the other school (St Monica's) in particular, being segregated and left sitting alone in a corridor for hours . . . Please have this reported . . . . . Regards my eldest daughter, she recounts how she was <u>molested</u> by the head teacher of her other school . . . I expect you to report this . . ."

After proof, in January 2009, the defender was found in contempt of court for breaching the terms of the *interim* interdict granted on 13 December 2006. The presiding sheriff found that the allegations made in the homework diary entry were false and malicious. They were designed to embarrass the pursuer, cause her fear and alarm and damage her professional reputation.

(12) In March 2008, the pursuer left the school to become the head teacher of a school in East Ayrshire. She did so because of the defender's conduct towards her. In August 2008, the defender made an anonymous complaint to East Ayrshire Council alleging that the education authority had employed a head teacher who was a 'child molester'.

(13) On 12 March 2008, the defender was found guilty after trial of the following charge:

> "between 6 February and 8 March 2007 at the premises of Wright, Johnstone and MacKenzie, solicitors. . . Glasgow and at St Monica's Primary School, Glasgow, you did conduct yourself in a disorderly manner repeatedly harass [the pursuer], a teacher at St Monica's Primary School and did by means of a letter threaten said [pursuer] enter the playground, repeatedly fail to comply with requests to retreat from the teacher, place [the pursuer] in a state of fear and alarm for her safety and commit a breach of the peace."

The defender was fined £350. The court made a non-harassment order for a period of 12 months prohibiting the defender from approaching, contacting or communicating with the pursuer and from seeking to enter the school. The conviction was upheld upon appeal.

(14) In December 2008 and January 2009, the defender lodged complaints against the pursuer with the General Teaching Council. He alleged that the pursuer had covered up child abuse, physically assaulted his eldest daughter, and committed perjury. The allegations were designed to cause the pursuer fear and alarm and to damage her professional reputation. The complaints were investigated and no further action was taken.

(15) Between 10 May 2011 and 9 January 2015, the defender operated a twitter account on which he posted a substantial number of tweets concerning the pursuer and her solicitor, Mr

Stephen. He invited journalists, broadcasters and politicians to report his allegations. He referred to the pursuer as a 'child abuser' and a 'perjurer'; as having 'indecently assaulted a child', of covering up 'many other assaults' and of 'psychologically abusing' his children. The defender's tweets were designed to cause the pursuer fear and alarm and to damage her reputation.

(16) In 2014, 2015 and 2017, the defender made allegations against the pursuer to the police services. The police did not consider any of these allegations to merit further investigation. During his discussions with police in February 2015, the defender advised the police that he knew where the pursuer lived. On each occasion, the police required to advise the pursuer that allegations had been made by the defender. On each such occasion, the police have reviewed the security measures in place to protect the pursuer from the defender. The defender's conduct caused, and was designed to cause, the pursuer fear and alarm.

(17) The defender has sent a significant volume of emails, over a number of years, to the pursuer's solicitor repeating the allegations he has made about the pursuer. He continues to do so. The defender has copied a number of these emails to a range of individuals including politicians, journalist and broadcasters. The defender's purpose in doing so was, and remains, to cause the pursuer fear and alarm and to damage her reputation.

(18) Since the submission of the Referral Form in 2006, the defender has engaged in a persistent, sustained, malicious and vengeful course of conduct designed to harass and malign the pursuer, cause her professional embarrassment, fear, alarm and anxiety. He intends to continue this course of conduct.

(19) The defender has deliberately disregarded the terms of the *interim* interdicts. He intends to continue to do so.

(20) The pursuer has suffered fear, alarm and distress as a result of the defender's conduct for a period of around 11 years.

FINDS IN FACT AND LAW:

(1) The defender's words and acts since 2006 constitute a course of conduct deliberately and wilfully pursued by the defender and calculated to cause the pursuer fear, alarm and distress.

(2) The defender's course of conduct has caused and continues to cause the pursuer fear, alarm and distress.

(3) The defender's course of conduct amounts to harassment of the pursuer.

(4) The defender's course of conduct was not pursued for the purpose of preventing or detecting crime.

(5) The defender's course of conduct was not, in the circumstances, reasonable.

(6) The defender is unable or unwilling to desist from harassing the pursuer.

(7) Perpetual interdicts and non-harassment orders are necessary to prohibit the defender from continuing to harass and abuse the pursuer.

(8) It is necessary to attach a power of arrest to the perpetual interdicts.

ACCORDINGLY (1) Sustains the fourth, fifth and seventh pleas-in-law for the pursuer and (i) grants the pursuer's first crave and in terms thereof interdicts the defender from making, publishing or distributing by any means, false or defamatory statements about the pursuer and in particular concerning the submission by the pursuer of a child protection referral to social services in connection with the defender's children, VR, RR and IR (or any one or more of them) in terms of Glasgow City Council's Management Circular Number 57

concerning child protection in terms of section 8(5)(b)(i) of the Protection from Harassment Act 1997 ("the 1997 Act") and attaches a power or arrest for a period of three years thereto in terms of section 1 of the Protection from Abuse (Scotland) Act 2001 ("the 2001 Act"); (ii) grants the pursuer's second crave, as amended, and in terms thereof grants a non-harassment order prohibiting the defender from approaching the pursuer or writing to the pursuer or telephoning her for a period of three years in terms of section 8(5)(b)(ii) of the 1997 Act; (iii) grants the pursuer's third crave and in terms thereof, grants a non-harassment order prohibiting the defender from publishing or distributing by any means material calculated to cause alarm and distress to the pursuer for a period of three years in terms of section 8(5)(b)(ii) of the 1997 Act; (iv) grants the pursuer's fourth crave and in terms thereof interdicts the defender from molesting the pursuer by abusing her verbally, by threatening her, by placing her in a state of fear or alarm or distress in terms of section 8(5)(b)(i) of the 1997 Act and attaches a power of arrest for a period of three years thereto in terms of section 1 of the 2001 Act; (2) refuses to grant the pursuer's fifth crave as no longer insisted upon; (3) Repels the pleas in law for the defender and (4) grants expenses in favour of the pursuer on a client agent third party paying basis.

INTRODUCTION

[1] The pursuer is a former school head teacher. The defender is the parent of three children who formerly attended at the pursuer's school. In 2006, the pursuer submitted a Referral Form to Glasgow City Council Social Work Department. The Referral Form related to a disclosure made by the defender's eldest daughter that she had been assaulted by the defender.

[2] The pursuer seeks perpetual interdicts with a power of arrest and non-harassment orders against the defender. *Interim* interdicts were granted in 2006 and 2007. These remain extant. It is the pursuer's position that since the submission of the Referral Forms, the defender has harassed and threatened her and placed her in a state of fear and alarm. It is the pursuer's position that he continues to do so and that accordingly, the orders sought are necessary.

[3] The defender denies that he harassed and threatened the pursuer.

[4] Mr Crosbie, solicitor, appeared for the pursuer. The defender represented himself.

[5] The defender had lodged a counterclaim to the action. The defender is a vexatious litigant. By interlocutor of 22 May 2014 it was ordered that "the hearing and trying of the counterclaim should follow conclusion of the principal action and then only with the leave of a judge sitting in the Outer House on the Bills in the Court of Session". Accordingly, the proof before me was restricted to the principal action.

[6] After a diet of debate on 9 October 2015, many of the defender's averments were excluded from probation. That decision was upheld on appeal. At the outset of the proof, I explained to the defender that evidence on the matters excluded from probation would not be permitted.

[7] The defender's averments were limited to a denial of the pursuer's position. It became clear that the defender sought to advance a defence in terms of section 8(4)(b) and (c) of the 1997 Act. Put short, he intended to assert that his conduct, to the extent that any such conduct was admitted or found to be established, was "pursued for the purpose of preventing or detecting crime" or "was, in the particular circumstances, reasonable". There was no notice of this defence in his pleadings. However, it was perfectly plain from the history between the parties that the pursuer was aware that the defender considered his

actions to be reasonable. It was also perfectly plain that the defender had made a series of allegations against the pursuer, some of which were criminal in nature.

[8] I was mindful that the defender is a party litigant and that he did not have the benefit of legal advice for the purposes of preparing for the proof. I had regard to the serious nature of the orders sought by the pursuer and to the consequences for the defender if I were to grant them. I was mindful that the action had been on-going for over 10 years and that it was in the interests of both parties that the issues should be finally determined. Whilst the pursuer did not have fair notice of a defence in terms of section 8(4)(b) and (c) of the 1997 Act in the pleadings, the defender's position was plain from the history between the parties. Accordingly, I allowed the defender to lead evidence in support of a defence in terms of section 8(4)(b) and (c) of the 1997 Act.

EVIDENCE

[9] I have set out below a summary of the evidence led and my assessment of each witness.

Evidence for the Pursuer

[10] The pursuer and her solicitor, Mr Stephen gave evidence.

Mr Stephen

[11] Mr Stephen had been instructed to represent the pursuer. He did so until October 2016. He explained that at that stage, he became aware that he would require to act as a witness and accordingly he arranged for Mr Crosbie to represent the pursuer. He spoke to his attendance at various hearings to obtain *interim* interdicts, and to the pursuer's accounts,

as relayed to him, of the circumstances which gave rise to the need for such interdicts. He spoke to the repeated and persistent allegations the defender had made against the pursuer[1] and to the correspondence which had passed between himself and the defender before the action was raised. He spoke to the defender's mistaken perception that these proceedings were directed at his children.

[12] Mr Stephen spoke to his concern upon receipt of the defender's letter dated 4 February 2007 and the enclosed note addressed to the pursuer. He spoke to the steps he took to bring them to the pursuer's attention. He spoke of the pursuer's distress, anxiety and fear upon receiving the note, which she interpreted as a threat upon her life. He spoke to giving evidence at the subsequent criminal proceedings against the defender, to the outcome of those proceedings and to defender's unsuccessful appeal of his conviction. Mr Stephen explained that he had conducted the proof in relation to contempt proceedings arising out of the defender's handwritten entry in his son's homework diary and he referred the court to the findings and comments made by Sheriff Deutsch in those proceedings.

[13] Mr Stephen spoke of the circumstances in which he became aware of the defender's twitter feed and to his viewing the defender's tweets online. He explained why he was able to conclude that the tweets had been issued by the defender. He formed the view that the tweets posted by the defender were in breach of the *interim* interdicts already in place and he reluctantly brought them to the pursuer's attention. He spoke to the pursuer's alarm at reading the tweets. He referred in particular to a tweet dated 5 December 2014 in which the defender stated "*I am not impressed that our freedom of expression is attacked by a crazy woman*

[1] including allegations that (a) the pursuer had physically assaulted the defender's children; (b) that she was 'unstable or unbalanced'; (c) that she had lied; (d) that she had 'psychologically abused' his children and continued to do so by insisting upon her action; (e) that she had allowed other teachers under her control to behave inappropriately towards his children and (f) that she had 'covered up' child abuse.

who had serious questions to answer. Welcome all stalkers". He interpreted that as an "open invitation" to those who read the defender's tweet to engage in stalking the pursuer. He explained that notwithstanding the defender's continued breach of the interim interdicts, the pursuer did not wish to instigate another set of contempt proceedings and to face the defender in a further proof.

[14] He was referred during his evidence in chief to a substantial number of emails which he stated his firm had received from the defender from January 2015 to date in which the defender repeated the same allegations he had previously made about the pursuer. He explained that only a selection had been lodged by the pursuer but there were in fact many more. He explained that a number of these emails had been copied to the First Minister, various politicians, journalists, broadcasters, the Metropolitan Police and Scotland Yard. He spoke to the defender's desire to publically embarrass and defame the pursuer and intimidate her into withdrawing these proceedings. He noted in particular that in his email dated 11 June 2017, the defender (a) alleged that on 8 March 2007, the pursuer had shouted "vile racial abuse" at his family and followed him "shouting vile abuse at me and acting in a wholly inappropriate unacceptable and disorderly manner designed to intimidate harass and abuse my children and me"; (b) accused the pursuer of "following, stalking and lying in wait of my family and me from 14 December 2006 from 0900hrs to in or around 21 June 2007"; and (c) accused the pursuer of contacting the defender's female friends and making untruthful comments about him. Mr Stephen explained that none of these allegations had been made by the defender prior to 11 June 2017.

[15] Mr Stephen spoke to a perception on the part of the defender that his communications could circumvent the *interim* interdicts on the basis that they were not addressed directly to the defender and that they had been marked "without prejudice". He

spoke to being required to discuss the emails upon receipt with the pursuer. He spoke to the considerable anxiety and distress the content caused to her on each occasion and to her concern that the defender was seeking publicity for his allegations.

[16] Mr Stephen also spoke to the interdicts which he had required to obtain preventing the defender from making false and defamatory allegations against him personally. He explained that the defender has falsely accused him of covering up child abuse and has repeatedly referred to him as having committed perjury.

[17] During cross examination, it was repeatedly put to Mr Stephen *inter alia* that (a) either he or the pursuer had lied during these proceedings or during the criminal proceedings involving the defender; (b) that he and the pursuer were harassing the defender and his children by insisting on these proceedings; (c) that either he or the pursuer had unlawfully obtained copies of the Referral Form for the purposes of these proceedings; (d) that the pursuer had neglected the defender's children and had abused them; (e) that both he and the pursuer were engaged in a 'vendetta'; and (f) that both he and the pursuer were involved in a conspiracy to cover up child abuse. Mr Stephen denied each of these allegations. It was put to Mr Stephen that the emails and letters could be described as "a person defending themselves as a reasonable person" and as a "parent exercising his parent rights and responsibilities". Mr Stephen did not accept either proposition. Mr Stephen stated that he had made it clear in correspondence to the defender that the defender's actions constituted harassment of the pursuer. He stated "*I couldn't have put my position any clearer and it is entirely consistent with what I have said today*". It was put to Mr Stephen that no other parents had been served with interdict proceedings and that accordingly, the defender was being discriminated against. Mr Stephen accepted that the defender was the only parent against whom the pursuer had sought interdict but noted that the defender was the

only parent who had acted unreasonably. In response to a series of questions relating to the defender's children, and their being named in these proceedings, Mr Stephen stated that the defender's unreasonable behaviour was triggered by the pursuer's submission of the Referral Form and that was why the children's names were mentioned in the proceedings. The proceedings were not directed at the defender's children. It was put to Mr Stephen that there had been no police action as a result of the communications issued by the defender. Mr Stephen responded that the police had put measures in place to protect the pursuer and that each time the defender contacted the police, those measures were reviewed by the police. He stated that he "*shuddered to think of what the pursuer's life would have been like without the protection of interim interdicts*". He accepted the non-harassment order imposed on the defender had not been breached whilst it was extant. He accepted that there was no explicit threat of violence directed at the pursuer in the email correspondence issued by the defender. However, he stated "*I have no doubt that you will do everything within your power to make her life a misery, including by stalking her*".

[18] It was put it to Mr Stephen that during a telephone call between them, Mr Stephen had stated that he did not believe that there was any truth to the allegation that the defender had deliberately spilled paint near the pursuer's car. Mr Stephen responded "*I did not say that to you or anything vaguely similar to that. You are making that up*". It was put to Mr Stephen that the pursuer has claimed to be suffering from 'insanity' during the criminal proceedings involving the defender. Mr Stephen did not accept that. It was put to Mr Stephen that at the defender's criminal trial in relation to the letter and note of 4 February 2007, comparisons of other signatures had been put to him and that it could not be said that the defender had sent the letter. Mr Stephen stated "*there is no possibility the letter is a forgery; you've never challenged it as a forgery in the past*". Notwithstanding lengthy cross, Mr Stephen

was unmoveable in his conviction that the twitter account belonged to the defender and that the defender had been responsible for the tweets, stating "*I am in no doubt, it's your name, the [Twitter Feed] address, it described you as a piano tuner, it contains details relating to me and Ms McWilliams which are pertinent to this case and which are known only to you, what is said is consistent with language you have used in the past and I am therefore in no doubt that you wrote these*".

[19] I found Mr Stephen to be entirely reliable and credible. I am mindful that Mr Stephen had personally obtained an interdict against the defender. I am mindful of the serious nature of the allegations made by the defender against him. However, I am satisfied that Mr Stephen's evidence was unaffected by any personal views he may hold either of the defender or of the defender's conduct. Notwithstanding a prolix, hostile and lengthy cross examination, Mr Stephen's evidence was measured. It was consistent with the pursuer's evidence and with the documentary productions. At no point during his cross examination did he appear to contradict himself or make any concession on any matter of significance. He sought to answer all of the defender's questions fully and honestly. He spoke with confidence and with an impressive and detailed knowledge of the material aspects of the history of these proceedings. There was no reliable or credible evidence to support any of the numerous allegations put to Mr Stephen during cross examination in order to discredit him. Where Mr Stephen's evidence differed from that of the defender or the defender's witnesses, I have preferred Mr Stephen's evidence.

The Pursuer

[20] The pursuer spoke to the circumstances which led to her completion of the Referral Form. She explained that in terms of Management Circular 57 she had no discretion in

relation to whether to report a disclosure made by a child. Had she failed to report matters such as a child disclosing physical abuse to a member of her staff, she would have failed in the duty of care which she owed to the pupils under her charge. She spoke to the defender's reaction to the submission of the Referral Form; to his repeated attendance at the school demanding to know the contents of the form; to his confrontational and aggressive demeanour; to her being required to ask him to leave the premises; and to the defender then making allegations against the class teacher who had reported the matter to the pursuer. She spoke to the defender's challenging and confrontational behaviour at the school on 30 August 2006, to her need to have another member of staff present during any meeting with him, and to his aggressive conduct when he was asked to complete the required forms for his children's free school meals entitlement. She spoke to the defender's failure to desist from his unreasonable conduct and to the letter issued on behalf of the local education authority requiring him to do so (item 5/7). She spoke to her shock, outrage, disbelief and upset at sight of the defender's various letters of response, which including his demands for an apology, her resignation, compensation and the threat of negative publicity. She spoke to members of staff and other parents being concerned for her safety and the reputation of the school as a result of the defender's conduct. She explained that the defender chose to make her submission of the Referral Form public knowledge. She had not done so. She explained that parents had reported to her that the defender had told members of the community that she had been suspended and was due to be struck off by the General Teaching Council. She spoke to her unblemished teaching record which spanned 40 years.

[21] The pursuer spoke to her unsuccessful attempts (and those of others) to 'placate' the defender and to her decision to commence court proceedings. She spoke to the spillage of

paint by the defender near her car in the school grounds, which she perceived as being a deliberate act of intimidation.

[22] The pursuer recounted her fear and disbelief upon receipt of the letter and note of 4 February 2007 which she considered to be a clear threat upon her life. She explained that she had been contacted by police while she was at work. The police advised her not to return to her home until security measures had been put in place. Those measures remain in place. The police had attended at her home to review her security measures in 2014, 2015 and 2017. On each occasion, the defender had made further allegations about her to the police[2]. The police regarded the defender as "a viable on-going threat" to the pursuer.

[23] She spoke to the defender's handwritten note in his son's homework diary. She spoke to the investigation of the allegations that she had abused his daughter and neglected his son. She stated that the investigation found the allegations to be unfounded. She spoke to her involvement in the subsequent contempt of court proceedings. The pursuer regarded the allegation as a malicious fabrication which illustrated the defender's determination to ruin her reputation and frighten her.

[24] She spoke to the content of the tweets and explained why she held the belief that they had been authored by the defender. She spoke to the emails sent by the defender to Mr Stephen. She explained that the passage of time had not caused the defender to relent in his harassment of her. She described her repeated attendances at court (for the contempt proceedings, the criminal proceedings and this proof) as an 'ordeal', however, she explained that she felt she had required to protect her reputation against the defender's spurious

[2] The pursuer spoke to being advised by the police in 2015 that the defender had attended at a police office and insisted that the pursuer be charged with perjury adding "I know where she lives"; that the defender had attended at a police station in 2017 and had been challenging and confrontational in his demands for action against the pursuer. He had subsequently complained about the Inspector who dealt with him.

claims. She spoke to continuing to be horrified, deeply upset, fearful and alarmed by the defender's conduct. She explained that she had required to move schools to escape the defender's conduct. She spoke to her new school having received an anonymous complaint alleging that she was a 'child molester'. She explained that she knew immediately that the complaint had been made by the defender. The allegation was consistent with his previous accusations. She spoke of her fear, six years into retirement, of being contacted by the police or her solicitor with more correspondence, emails or tweets from the defender. She was of the opinion that unless she was granted the orders she sought, the defender would continue to harass and bully her until the day that she died.

[25] During cross examination, the defender repeatedly put various allegations to the pursuer, including allegations that (a) she had lied under oath; (b) that she had harassed and stalked the defender; (c) she had 'manufactured' the contents of the Referral Form; (d) that she had obtained a copy of the Referral Form unlawfully; (e) that she failed in her duties to the defender's children; (f) that she had alleged that the defender might perpetrate a 'Dunblane style atrocity' and that he had 'murdered his wife'. She was emphatic in her denial of each allegation. In particular, she stated that had the defender genuinely believed that his children had been maltreated at the school, he would have removed them. Instead, he had required to be persuaded by local authorities, local politicians and others to remove his children. He did not do so until some 2 years after he made allegations of abuse of his children by the pursuer and other members of staff. She explained that one of the parents at the school had reported that the defender suggested he sympathised with the perpetrator of the Dunblane atrocity. The pursuer had not made any such suggestion. She spoke to the various court actions which parents, staff and the Parent Teacher Association had required to raise or defend, as a result of the defender's conduct. The pursuer accepted that as far as

she was aware, the defender had not attended at her home, however, she was emphatic in her position that but for the protection of the *interim* interdicts, he would have done so.

[26] I take account of the fact that the parties have been adversaries in court proceedings for a period of over ten years and that the pursuer feels aggrieved by the defender's conduct. However, I am satisfied that the pursuer's evidence was not exaggerated or coloured by the acrimonious history between the parties. I found her to be an entirely reliable and credible witness whose evidence was supported by that of Mr Stephen's and was largely consistent with the documentary evidence before the court. She gave her evidence in a straightforward and honest manner. She was generally able to recall events with clarity. I formed the impression that she was doing her utmost to assist the court. Despite being subjected to hostile cross examination she did not demur from her evidence in chief, nor did she react in anything more than a measured and level headed manner, and with dignity, to the repeated accusations the defender made against her[3]. She was remarkably restrained. There was no reliable or credible evidence before the court to substantiate any of the defender's allegations against the pursuer. None of the attacks upon her credibility withstood even the barest scrutiny. Where the pursuer's evidence contradicted that of the defender or his witnesses, I have had little difficulty in rejecting their evidence and preferring the pursuer's.

Evidence for the Defender

[27] The defender, his daughter IR and Ms Ainsley O'Reilly gave evidence.

Ainsley O'Reilly

[28] Ainsley O'Reilly had a child who attended at the school for a period of 5 months

[3] The defender required to be repeatedly warned not to insult the pursuer during cross examination.

between August 2006 and December 2006. She stated that she had never witnessed the defender harass school staff nor threaten other parents. She agreed with the proposition that the pursuer had "an unhealthy interest" in the defender's family. She spoke of witnessing the pursuer walking away from the defender in a 'bizarre' fashion and to seeing the pursuer very angry[4]. She stated that she had not seen the pursuer in a state of fear or alarm. During cross examination, she accepted that she could only speak to the period in which her child had attended at the school. She accepted that she had met with the defender a few days before her evidence and that she had spoken to him by telephone. She denied that they had discussed her evidence, however she stated "*he asked if I remembered why I was coming to court and what I had witnessed*". She explained that she confirmed to the defender that she was attending to speak about a specific incident.

[29] I regret that I am unable to attach much, if any, weight to Ms O'Reilly's evidence. I regarded her evidence as partial, designed to assist the defender, rather than the court. Her evidence was both limited and of little relevance. The specific incident which she wished to speak to had been excluded from probation at a diet of debate. Before Ms O'Reilly was invited to give evidence, I explored the nature of her evidence with the defender and reminded the defender of the matters which had been excluded from probation. I also explained to Ms O'Reilly that she was not to speak to the specific incident which had been excluded. She stated "*there is no point in being here, then*". Notwithstanding the court's direction, the defender sought repeatedly to elicit the excluded evidence from Ms O'Reilly. Ms O'Reilly appeared very willing to oblige. Each time he was warned, the defender then asked an apparently innocuous question. His demeanour and facial expressions when he did so displayed clear encouragement to Ms O'Reilly to speak to the matters which had been

[4] Neither of these incidents were pled on record nor put to the pursuer during cross examination.

excluded. She sought to do so. It was readily apparent that Ms O'Reilly had been coached. It was readily apparent that she bore considerable ill-will towards the pursuer.

The Defender

[30] The defender had prepared a list of questions and answers which he took into the witness box. After copies of the list were made available to the court and to Mr Crosbie and following a discussion on the admissibility of certain questions, I invited the defender to lodge and adopt the document as his evidence in chief to expedite matters. He agreed to do so.

[31] The defender denied making any defamatory statements of the pursuer stating that he was simply repeating what had been reported to him by his children and by others. He denied that he intended to harass, molest or abuse the pursuer. He accused the local education authority and the pursuer of seeking to intimidate him and discriminate against him. He accused the pursuer of harassing him; of committing perjury; of following him, writing to him, making inappropriate advances to him; of abusing the power of arrest previously attached to the *interim* interdict; of continuing to harass him in court during the proof; of fabricating the contents of the Referral Form; of physically assaulting his eldest daughter in May 2006; of leaving his son alone in school corridors; and of circulating rumours about him. He insisted that his conduct was commensurate with a reasonable person seeking to prevent or detect crime. He stated that he was "*operating with due regard as required, under European, domestic and international law*". He stated that the emails he had sent to the pursuer's agents were sent to defend his family and to ascertain the truth. He denied having made any anonymous complaints about the pursuer. He denied deliberately spilling paint near the pursuer's car. He maintained that he had never threatened the pursuer with

violence and that the note of 4 February 2007 could not be construed as a 'death threat' as he had no power to condemn anyone to hell. He stated that the High Court decision (following the appeal of his conviction) was 'blasphemous', as it described the letter as a 'death threat'. He stated that on 8 March 2007, the pursuer had in fact attempted to attack him or his son in the playground, she had followed him in the playground and had shouted at him. He stated that if the police had attended at the pursuer's home, they had not done so to review her safety but rather because they were investigating her crimes and gathering intelligence.

[32] Under cross examination, the defender vehemently denied all aspects of the pursuer's case. In relation to his threats of negative publicity in his letter of 29 November 2006 (item 5/11), he stated "*the mission has been achieved, it's all over the media and the internet, the mission objective has been achieved*". He admitted that he had made complaints about the pursuer to the General Teaching Council (items 5/63 and 5/64). He appeared to deny that he had made a complaint to East Ayrshire Council however, he later appeared to admit that he had, stating that the complaint had been "*made in the public interest*" because he had been failed by other institutions. He maintained that the emails he had issued to the pursuer's solicitors (items 5/30 to 5/61 of process) were privileged communications. He stood by the content of, and thereby admitted sending, various further emails to the pursuer's agents (items 5/84 – 5/87, 5/91, 5/93, 5/94, 5/95). He accepted that he had copied journalist, broadcasters, politicians, and others into these emails. Various facebook postings were put to him (item 5/96 of process). He declined to say whether he was responsible for these[5].

[33] I accept that his children's welfare is a matter of significant concern to the defender and that he has mistakenly perceived these proceedings as some form of attack upon them.

---

[5] The facebook entries were allegedly posted during the course of the proof. The pursuer did not recall any witness to speak to them, accordingly, I have made no findings in relation to them.

I take account of the defender's strength of emotion in relation to all matters pertaining to the pursuer. However, I regret that it was, in my judgment, manifestly clear that the defender's evidence was entirely lacking in credibility. The defender's ability to distort the truth and to present fiction as fact was both unlimited and shameless. The ease with which he did so was astonishing. He displayed a blatant and wilful disregard for the truth. It appeared, throughout the proof, that his primary audience was the public gallery and the members of the press within it. While he sought to maintain an ostensibly polite manner, he was frequently argumentative, aggressive and confrontational, particularly during cross examination. When he addressed the bench, he was at times hostile, he frequently interrupted and attempted on numerous occasions to circumvent warnings from the bench by seeking to elicit excluded evidence, by alternative means. At times, his evidence was irrelevant and rambling.

[34] I have been unable to place any weight upon any part of his evidence. A very great deal could be said of the reasons why. I set out below some of the more significant reasons for that assessment:

(a) The defender steadfastly refused to concede that he had been declared a vexatious litigant in March 2012, notwithstanding that this is a matter of public record[6]; indeed it was apparent from the decision of the Inner House (item 5/81), that the defender had in fact represented himself throughout the proceedings at the instance of the Lord Advocate. Moreover, the defender referred witnesses to the opening comments of paragraph 67 of the Inner House decision and invited

[6] He refused to concede this matter both during his cross examination and in his examination in chief (question and answer 101, item 6/10(34)).

those witnesses to accept that the comments related to him[7]. His evidence lacked candour.

(b) He was extremely evasive in his response to any questions regarding the tweets (item 5/83): (i) he implored the pursuer's agent to produce confirmation from Twitter that the defender had authored the tweets; (ii) he stated that he did not use twitter; (iii) he then stated that he had no recollection of sending the tweets; (iv) he maintained that the content of the tweets were an entirely legitimate exercise of his freedom of expression and were illustrative of a father protecting his parental rights and responsibilities; (v) he maintained that if the content of the tweets was objectionable, Twitter would have removed them; and (vi) finally, when pressed, after a period of silence, he denied that he had authored them. His position was simply untenable.

(c) On the second day of his evidence, the defender entered the witness box with a notebook. He stated that he had used his notebook previously during evidence in chief. That statement was untrue[8].

---

[7] The opening comments of paragraph 67 were as follows: "We recognise at the outset that the respondent is a single parent looking after three young children, which is a considerable responsibility. We also accept that his children and their welfare are very important to him". Both Mr Stephen and the pursuer however referred to the next sentence which reads "Nevertheless we consider that in the course of his contact with the children's school, other parents, teachers, the local education authority, the social work department, the procurator fiscal and the police, and even his own friends, the respondent has responded to situations which he perceived to be unsatisfactory or objectionable by raising a multiplicity of writs, often without reasonable grounds . . ."

[8] The defender had entered the witness box on the first day of evidence, with a list of questions and answers which had not been lodged. I explained to the defender that it was not appropriate for him to have documents before him which had not been disclosed to the pursuer's agent. I explained that the court would also require sight of any documents he wished to refer to. Having due regard to the defender's status as a party litigant, I allowed him to use this list as a substitute for his evidence in chief and to lodge it as a production (item 6/10(34)), after an adjournment to allow it to be examined by Mr Crosbie and after I had heard submissions on the admissibility of certain questions in the list. I also arranged for the defender to be provided with paper to allow him to take notes as he wished during his evidence. He did not have his notebook before him during his evidence on the first day of the proof, the bar officer having removed everything but the list.

(d) A large number of the allegations he made against the pursuer, were no more than bold assertions, without any specification. They appeared to have been entirely manufactured.

(e) He appeared to deny that he had authored the letter and note of 4 February 2007 notwithstanding his conviction for breach of the peace. In his evidence in chief, he stated that he had no recollection of sending the letter or note and that if he had done so, he had acted 'inadvertently'[9]. Yet, during cross examination, he betrayed his position, referring to the signature on the note as 'my signature'. I note also that according to the decision of the High Court (item 5/78) in relation to the defender's appeal of his conviction, the defender had admitted to police officers that "it was possible that he had written the note" (see paragraph 5) and there was no suggestion that he denied doing so during the trial. The sheriff's finding that the defender had authored the letter and note did not form part of the defender's grounds of appeal against his conviction[10].

(f) He stated that in February 2015, the pursuer had attended at his home, made sexual advances to him and had left him with a note of her address. Had such an incident occurred, I find it inconceivable that the defender would not have referred to it in the many emails he issued to the pursuer's agents since 2015, in his tweets, in discussions with the police, in his pleadings and in his communications with journalists and broadcasters. Had such a note existed, the defender would undoubtedly have lodged it and referred to it during these proceedings or used it to seek recall of the *interim* interdicts. He did not do so. Indeed, during his cross examination of Mr Stephen, the defender put it to him that the parties had not seen each other in 11 years[11]. During cross examination of the pursuer, he put it to her that "there had been no direct contact" between

[9] Question and answer 83 and 84 of item 6/10(34) of process.

[10] It is not for this court to review the defender's conviction. His conviction has been upheld upon appeal. I refer to this chapter of the defender's evidence simply to explain my assessment of his credibility and reliability.

[11] He did so during a chapter of cross examination in which he sought to elicit from Mr Stephen the admission that the proceedings were not necessary.

the parties since 2008[12]. In his evidence in chief, the defender stated that he last saw the pursuer in March 2008[13]. I am satisfied that this chapter of the defender's evidence was entirely fabricated in the hope and expectation that it would be reported by the members of the press in the public gallery. It was designed to cause the pursuer embarrassment and upset[14].

(g) He claimed that after the incident in the playground on 8 March 2007, the police had provided him with "false paperwork" which he claimed the police had obtained from the pursuer. He referred to his arrest as an "unlawful abduction". He claimed that the paperwork was with his former solicitor. Again, I find it inconceivable that the defender would not have lodged any such document, had such a document indeed existed. Again, in my judgment, his evidence was entirely untrue.

(h) The defender invited the court to hold Mr Stephen in contempt of court. The defender stated during the administration of the oath, Mr Stephen had "laughed, grinned temporarily, lost composure, looked to the left and did not conduct himself in a proper manner". On several occasions, he accused individuals within the public gallery of acting inappropriately. The defender's perception of what occurred in court did not reflect reality. His readiness to misrepresent what took place in court, seriously called into question the reliability and credibility of his recall of past events.

IR

[35] IR, spoke to her attendance at the school. She stated that she had witnessed her brother sitting alone in school corridors, unsupervised. She stated that she had never seen

---

[12] Again, this question was put during a chapter of cross examination in which the defender sought to elicit from the pursuer an admission that the proceedings were not necessary.

[13] Question and answer 63 or item 6/10(34).

[14] Similarly during cross examination, the defender put it to the pursuer that she had made 'inappropriate advances to him' during a meeting in the school offices in 2006.

the defender operate a twitter account. She spoke of the incident on 8 March 2007 and gave her account of it. She stated that she had seen the pursuer being aggressive to the defender. She denied that the defender had spilled paint near the pursuer's car or at any time acted unreasonably. She answered 'yes' to a series of questions about the defender's good character and 'no' to a series of questions relating to whether the defender had caused the pursuer fear or alarm.

[36] During cross examination, she accepted that she had not given evidence at the criminal trial in relation to the incident of 8 March 2007. She accepted that she was not in the same class as her brother. It was put to her that she could not have witnessed him in corridors as she would have been in her class. She responded that she would have known if she walked through the corridors and saw him. She denied discussing her evidence with the defender.

[37] I regret that I formed the clear impression that IR's evidence was prepared and rehearsed. It was clear from the very outset of IR's evidence that the defender had a tight rein on what she was to say. I asked IR if she wished to take the oath. She confirmed that she did and I began to administer the oath. The defender interrupted and told her to affirm, which she then did. The defender appeared to put vague and general questions to IR, however, her answers were precise and instantaneous. By way of example, the defender asked "*has anyone contacted you lately?*". Her response was immediate and peculiar: "*yes, my mother. She is in Italy and she is alive*". The defender has maintained that the pursuer alleged that he had killed his wife. I took the exchange between IR and the defender to be a rehearsed rebuttal of that allegation. She was asked "*what happened when you were in Germany?*" Again her response was immediate: "*you were getting calls in Berlin just saying 'I'll see you in court' and then it would hang up*". She was asked "*how does your father answer the*

phone?". Her response, again immediate, was "*he puts it on loud speaker and puts the volume up*". She stated that the voice was that of a woman. I inferred from this chapter of evidence that the defender was seeking to establish that the pursuer was making these calls. He, however, did not speak to any such occurrence in his evidence, which preceded IR's evidence. I find it inconceivable that he would not have spoken to these calls, if indeed any such calls were in fact made at all. Finally, IR gave very clear and precise answers to questions relating to the incident at the playground including exactly where she and her brother had been standing, where the parties had been standing, who was in the playground, what had happened and whether the pursuer had been placed 'in a state of fear and alarm'. The defender did not tell her when the incident had taken place yet she appeared to know which incident he was referring to. She was six years old at the time. The defender had not led evidence from her at the criminal trial. I regret that I found this chapter of her evidence incredible. In my judgment, she appeared apologetic throughout her evidence and was looking to the defender for approval for her responses. I am unable to attach any weight to her evidence.

SUBMISSIONS

The Pursuer's Submissions

[38] Mr Crosbie addressed the court in detail on the reliability and credibility of each witness. He submitted that these proceedings were prompted by the defender's inappropriate, threatening and abusive behaviour in 2006 followed by a persistent, sustained course of conduct directed at the pursuer. He stated that it was noteworthy that the defender's conduct arose after the submission of the Referral Form by the pursuer. He submitted that the defender has continuously sought to transfer blame for his actions to the

pursuer. His conduct in court illustrated the considerable ill-will that he bore towards the pursuer and his intention to continue to harass her.

[39] Mr Crosbie submitted that the requirements of section 8(1) of the 1997 Act had been established. He submitted that no defence in terms of section 8(4)(b) had been made out. Had the defender sought to prevent or detect crime, he would have reported his concerns to the relevant authorities. He would not have sought publicity for his allegations. He was acting out of malice towards the pursuer. There was no basis in the evidence to support a conclusion that the defender had acted reasonably. He submitted that it was evident that perpetual interdicts with power of arrest and non-harassment orders were necessary.

[40] Mr Crosbie referred me to the decision of the Supreme Court in *Oceanbulk Shipping and Trading SA* v *TMT Asia Ltd* [2010] UKSC 44. He submitted that the defender's emails were not part of any negotiation genuinely aimed at settlement. The mere fact that his emails had been marked 'without prejudice' did not render them inadmissible.

[41] Finally, Mr Crosbie submitted that in the event the court granted the orders sought by the pursuer, expenses should be awarded in favour of the pursuer. He submitted that the defender's conduct throughout the proceedings justified an award of expenses on an agent client third party paying basis.

The Defender's Submissions

[42] On the final day of the proof, the defender made a series of motions, including a motion to adjourn to allow him further time to prepare his submissions and a motion to allow him to be recalled to give further evidence. He was very eager to give further evidence. I refused his motions. When I did so, he stated that he was suffering from chest pains. He again sought an adjournment. He stated that he wished to see his GP. As what

the defender was describing appeared to be a medical emergency, arrangements were made for the defender to be seen by paramedics and taken to hospital. He was discharged later that day. I assigned a continued diet the following day for submissions and arrangements were made for the interlocutor to be served upon him. The following day, the defender called the clerk of court and advised that he had seen his doctor that morning. He was advised that in the absence of a medical certificate, his attendance was necessary. No medical certificate, certifying the defender as unfit to attend court was provided. I allowed the hearing to proceed in his absence.

[43] Notwithstanding that the defender chose not to make any submissions[15], it was clear that the defender wished the court to find the pursuer's witnesses lacking in reliability and credibility and wished the court to prefer his evidence and that of his witnesses. His position regarding any allegations he made of the defender was, put shortly, that he had acted reasonably, had sought to protect himself and his children from what he saw as harassment by the pursuer and that his conduct was in furtherance of his attempts to prevent and detect crime. In relation to the emails he had issued to the pursuer's agents, it was his position that these were privileged communications. He maintained that he was at all times exercising his right to freedom of expression.

DISCUSSION

Are the emails addressed to the pursuer's agents admissible?

[44] I have little difficulty in concluding that the emails and correspondence addressed to

[15] The defender did lodge a list of authorities comprising a Wikipedia entry relating to "the Bohmermann affair" and a copy of the European Convention of Human Rights. I understood that he sought to argue that any interdicts or non-harassment orders constituted an unlawful infringement of his human rights.

the pursuer's agents (comprising items 5/11, 5/18, 5/21, 5/30-5/52, 5/54-5/61, 5/84, 5/85, 5/86-5/91, 5/93-5/95) are indeed admissible.

[45] In general terms, the scope and purpose of the "without prejudice rule" can be described as excluding "all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence" (per Lord Griffiths in *Rush & Tompkins Ltd* v *Greater London Council* [1989] AC 1280 at page 1299, quoted with approval recently by the Supreme Court in *Oceanbulk Shipping and Trading SA* v *TMT Asia Ltd and others* [2010] UKSC 44). It is the concessionary purpose of the correspondence rather than the expression "without prejudice" that attracts the privilege (*Daks Simpson Group* v *Kuiper 1997 SLT 689)*. The effect of the words "without prejudice" requires to be judged on the facts of each situation, which may include the terms of other correspondence and the issue to which the evidence is relevant (*Richardson* v *Quercus Ltd* SLT 596 per Lord Justice General Rodger at page 600). The "without prejudice rule" is not absolute; the rule does not apply to render inadmissible evidence of communications designed to act as "a cloak for perjury, blackmail or other unambiguous impropriety" (per Robert Walker LJ in *Unilever plc* v *Proctor & Gamble* [2000] 1 WLR 2436).

[46] In my judgment, there can be no doubt that the defender was seeking to exploit the term "without prejudice" and to use it to cloak his attempts to circumvent the terms of the interim interdicts granted against him. None of the defender's correspondence was aimed at any genuine attempt to negotiate settlement. A number of the defender's emails simply contain a list of unreasonable and unrealistic demands of the pursuer, including demands that she admits to perjury and to physically abusing the defender's eldest daughter. They contain lists of allegations against the pursuer. They contain entirely gratuitous insults such as references to the pursuer as "sick" (item 5/34), as a "liar and a serial perjurer" (item 5/46),

a "racist" (item 5/57), as "not right in the head" (item 5/84) and as having "bullied and discriminated against" the defender's family (item 5/35); they contain references to the pursuer's solicitor as an "arrogant nasty man" (item 5/35) as "unethical and dishonest" (item 5/39) and as "a cowardly thug-a rich bully boy" (item 5/48); they refer to judges as "corrupt" (item 5/36 and 5/86); and they make copious references to the defender's desire to generate negative publicity in relation to the pursuer. While the defender has not communicated directly with the pursuer in any of this correspondence, he was aware that the contents would require to be communicated to the pursuer by her solicitor. Moreover, the defender waived any right to claim privilege, if indeed he had such a right, in respect of a number of these emails when he chose to copy them to third parties, including journalists and broadcasters. It is clear that far from any genuine attempt to negotiate, the emails were calculated to cause, and did cause, fear and alarm to the pursuer.

Has the Defender Engaged in a Course of Conduct Amounting to Harassment?

[47] Having preferred the evidence of the pursuer and of Mr Stephen, I am satisfied that the defender's reaction to the submission of the Referral Form, his repeated aggressive and confrontational behaviour at the school, his letter and note of 4 February 2007, the spillage of paint near the pursuer's car, his attendance at the school on 8 March 2007, the entry in his son's homework diary, the anonymous complaint to East Ayrshire Council, the complaints to the General Teaching Council, his persistent attempts to have the police investigate the pursuer and the voluminous emails, letters and tweets he has authored, constitute a course of conduct linked by a common purpose – a desire to ruin the pursuer's reputation, threaten and abuse her and cause her fear, alarm and anxiety. The defender's words and acts have caused the pursuer fear, alarm and anxiety. The defender's course of conduct amounts to

harassment of the pursuer. By making baseless accusations and uttering gratuitous insults, the defender sought to exploit the privileged environment of the court to continue his course of conduct.

[48] I should add that I am satisfied, on a balance of probabilities, that the tweets were indeed authored by the defender for the following reasons: (a) the user name is the same name which appears in the defender's email address; (b) the twitter feed bears the name "Richard Russell" and refers correctly, to the defender's occupation of "piano tuner and technician"; (c) the tweets contained detailed accounts of orders granted by the court, the dates of upcoming hearings and repeated allegations which the defender had persistently made in correspondence and in his defences and counterclaim; (d) the tweets also referred to Mr Stephen in derogatory terms and made references to the orders he had obtained against the defender; (e) they refer specifically to the fact that copies of the tweets have been lodged at Glasgow Sheriff Court; (f) a number of the tweets represented the defender's reaction to emails received by him from Mr Stephen; and (g) the style and language mirrors that used by the defender in his emails.

Was the Defender's Conduct to Prevent or Detect Crime, or was it Reasonable?

[49] I am satisfied that the defender's position was entirely without merit.

[50] The Supreme Court has recently examined the terms of section 1(3)(a) of the 1997 Act (being the equivalent English provision to section 8(3)(a) of the 1997 Act). In *Hayes* v *Willoughby* [2013] UKSC 17, Lord Sumption JSC (which whom Lord Neuberger and Lord Wilson agreed) analysed the scope of the defence and concluded as follows (at paragraphs 14 and 15):

> "I do not doubt that in the context of section 1(3)(a) purpose is a subjective state of mind. But, in my opinion, the necessary control mechanism is to be found in the concept of rationality . . . . . Before an alleged harasser can be said to have had the purpose of preventing or detecting crime, he must have sufficiently applied his mind to the matter. He must have thought rationally about the material suggesting the possibility of criminality and formed the view that the conduct said to constitute harassment was appropriate for the purpose of preventing or detecting it. If he has done those things, then he has the relevant purpose. The court will not test his conclusions by reference to the view which a hypothetical reasonable man in his position would have formed. If on the other hand, he has not engaged in these minimum mental processes necessary to acquire the relevant state of mind, but proceeds anyway on the footing that he is acting to prevent or detect crime, then he acts irrationally. In that case, two consequences will follow. The first is that the law will not regard him as having had the relevant purpose at all. He has simply not taken the necessary steps to form one. The second is that the casual connection which section 1(3)(a) posits between the purpose of the alleged harasser and the conduct constituting harassment, will not exist."

[51] I do not accept that the defender genuinely believed that his purpose in pursuing the course of conduct complained of was to prevent or detect crime. His dominant purpose was, and continues to be, to inflict damage to the pursuer's reputation and to cause her fear and alarm, at any cost. That was evident in his responses during cross examination; "*the mission has been achieved, it's all over the media and the internet, the mission objective has been achieved*".

[52] Such is the ferocious nature of the antipathy which the defender bears towards the pursuer that he has no desire to reflect rationally upon his conduct. He has an obsessive need to secure a victory against her. He has not applied his mind to any objective assessment of the pursuer's conduct nor to the appropriateness of his own behaviour. During the contempt of court proceedings, the allegation that the pursuer had physically abused the defender's eldest daughter was found to be false and malicious. The police have refused to investigate any of the other alleged crimes reported by him. It would appear that when any of the defender's allegations are refuted, he simply makes fresh allegations

against the pursuer, which are unsubstantiated and entirely lacking in credibility. Neither his name calling nor his acts of intimidation were calculated to prevent or detect crime nor were they reasonable. They were entirely gratuitous. His conduct has been, and continues to be irrational, perverse and obsessive.

Necessity of Perpetual Interdicts, Non-Harassments Orders and a Power of Arrest

[53] I am satisfied that the pursuer is entitled to the perpetual interdicts and the non-harassment orders that she seeks and that such orders are necessary. I have considered whether each of the orders sought would have the effect of subjecting the defender to the same prohibitions in the perpetual interdicts and the non-harassment orders at the same time. I am satisfied that they do not[16]. I should add that I am satisfied that the interdicts and orders do not constitute an infringement of the defender's Article 10 rights. They are necessary to protect the pursuer's reputation and her rights.

[54] The defender has acted in breach of interdict and continues to do so. He has a criminal conviction and a finding of contempt of court. He has stated repeatedly that he will not abide by the terms of court orders. During cross examination, he stated "*no interdict will stop me repeating the allegations and I will never withdraw them*"; "*no interdict in this kingdom or this world will stop me saying that [the pursuer] is not right in the head*"; "*no order in the land will stop me expressing my lawful freedom of expression*".

[55] The defender made it clear throughout his cross examination that he has no respect for the authority of these courts. He took every opportunity to challenge prior decisions, which were not for this court to review, and to challenge the impartiality of the decision

[16] The pursuer no longer insisted upon her fifth crave.

makers. He continued to send a number of emails containing the same allegations and gratuitous insults during the course of the proof.

[56] In the circumstances, it is necessary to attach a power of arrest to the perpetual interdicts to protect the pursuer from the risk of abuse in breach of those interdicts. I shall attach a power of arrest for a period of three years, as sought by the pursuer. I shall also grant the non-harassment orders for a period of 3 years, as sought by the pursuer.

EXPENSES

[57] I was invited by the pursuer's agent to make an award of expenses in favour of the pursuer on an agent client third party paying basis. Mr Crosbie submitted that the defender's conduct had been unreasonable throughout the proof, had necessitated lengthy hearings and had caused delays.

[58] I have already referred to the defender's conduct during the proof before me. He sought repeatedly to lead evidence which had been excluded, he engaged in prolix and repetitive cross examination, he has made numerous unmeritorious and indeed incompetent motions throughout the proceedings and he sought to delay a final resolution of the proceedings by absenting himself. A list of the motions made during the course of the proof is attached as an appendix to this judgment. I have paid due regard to the defender's status as a party litigant. However, the defender's conduct of these proceedings was disgraceful and undoubtedly lengthened the proceedings unnecessarily. It is, in my judgment, entirely appropriate that he be found liable for the pursuer's expenses on an agent client third party paying basis.

DECISION

[59] Accordingly, I shall sustain the pursuer's fourth, fifth and seventh pleas in law and grant decree in terms of craves 1, 2 as amended, 3 as amended and 4. I shall repel the defender's pleas in law. I shall attach a power of arrest for a period of three years to the interdicts. I shall grant the expenses of the cause in favour of the pursuer on a client agent third party paying basis.

POSTSCRIPT

In view of the Defender's behaviour during this proof, it would have been entirely appropriate to consider contempt of court proceedings. The fact that I did not do so must not be misinterpreted as my condoning his behaviour.

These proceedings have been extant for over 10 years. In my judgment, it was in the interests of *both* parties, in the interests of justice, and in the interests of the efficient administration of court business, that the evidence be concluded and a judgment issued. It was for those reasons alone that I chose not to react to the defender's many provocations, beyond warning him in relation to his conduct, by limiting the scope of evidence and by limiting the duration of his examination and cross examination of witnesses.

There is *prima facie* evidence before me that the defender may have committed criminal offences. The evidence may warrant further investigation. Accordingly, I intend to submit a report for the Lord Advocate's consideration. That report will include copies of all of the emails, tweets and the alleged facebook postings authored by the defender and lodged in this process, together with copies of all emails authored by the defender and sent to this court.

Appendix 1

[1] On the first day of the proof, the defender moved the court to:

(a) prohibit Mr Stephen from giving evidence;
(b) allow an inventory of productions to be received although late (which was granted in respect of one item on the inventory);
(c) grant decree of dismissal or absolvitor together with expenses in favour of the defender;
(d) order that the pursuer be examined and detained under the Mental Health Act;
(e) allow a Minute of Amendment;
(f) allow the defender to add a plea in law in the following terms "the pursuer's case should be immediately dismissed because the defender and his children have done nothing more than report crime and other criminal acts perpetrated by the pursuer";
(g) take evidence from or interview the defender's son, RR, privately and in an undisclosed location;
(h) re-open the defender's counterclaim;
(i) remit the cause to the Court of Session to be tried by a civil jury of the defender's peers.
(j) amend the defender's address in the instance to 'no fixed abode, UK';

[2] In terms of (e), an earlier motion to allow the Minute of Amendment for the defender had been refused on 2 June 2017. In relation to (h), on 22 May 2014, Sheriff Mackenzie had ordered that "the hearing and trying of the counterclaim shall follow the conclusion of the principal action and then only with the leave of a judge sitting in the Outer House on the Bills in the Court of Session".

[3] Each of the motions was considered and refused. Leave to appeal was sought, considered and refused in relation to (c), (e), (f), (g), (h), (i) and (j). The defender asked the

court to note that he could consider judicial review proceedings in respect of the refusal to grant motion (i) and could thereby interrupt the proceedings.

[4] On day 2 of the proof the defender moved the court to hear the proof continuously and without interruption because of the press and public interest and having regard to his Article 6 rights. That motion was refused owing to the pressures upon the court diary.

[5] On day 3 of the proof, the defender moved the court to find Mr Stephen in contempt of court in relation to the allegedly disrespectful manner in which he had taken the oath. That motion was considered and refused.

[6] On day 4 of the proof, the defender moved the court to:

(a) find the Record, number 39 of process inaccurate because it did not contain particular averments (which averments had been excluded from probation);
(b) allow a Minute for Contempt to be lodged and to hold the pursuer, Mr Stephen, the Director of the Scottish Court Service or the Scottish Government in contempt; and thereafter to make various orders and grant various declarators in relation to *inter alia* the alleged acts of the Scottish Court Service, the Scottish Government and the Lord Advocate.

Each of these motions was considered and refused.

[7] On day 6 of the proof, the defender moved the court to:

(a) adjourn the diet of proof following the conclusion of the defender's evidence;
(b) recall the pursuer to be further cross-examined;

Each of these motions was considered and refused. Leave to appeal, in relation to the refusal of the motion to recall the pursuer, was also considered and refused.

[8] On day 7 of the proof, the defender moved the court to:

(a) allow an inventory of productions to be lodged consisting of a statement by his late mother and a statement by his son;
(b) allow the defender to lodge a 'minute of perjury' and to have the pursuer recalled to allow the minute to be put to her and to have her accept its terms;
(c) have the individuals seated in the public gallery identified.

Each of these motions was considered and refused.

[9] On day 8 of the proof, the defender moved the court to:

(a) recall the defender to allow him to provide further evidence to the court;
(b) grant decree of absolvitor with expenses in favour of the defender;
(c) discharge the diet of proof due to the absence of the remaining witness for the defender (none of whom had been cited);
(d) discharge the proof due to the defender's level of preparedness.

Each of these motions was considered and refused.