

SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY

AT AIRDRIE

[2026] SC AIR 3

AIR-F187-24

JUDGMENT OF SUMMARY SHERIFF MARIA KICINSKI

in the cause

CT

Pursuer

against

DT

Defender

Pursuer: Bedford, Fleming and Reid, Glasgow

Defender: Rankin, JC Hughes, Glasgow

AIRDRIE, 18 November 2025

The Sheriff, having resumed consideration of the cause,

FINDS IN FACT

1. Parties were married on 18 September 2015 following an arranged marriage in Pakistan by the parties' families.
2. There are three children of the marriage under the age of 16: ET, born [] 2019, FT, born [] 2020, and GT, born [] 2022.
3. The children of the marriage reside with the pursuer.
4. Parties separated on 7 May 2024 when the pursuer left the family home with the children.

5. The defender has not had any contact with the children since 7 May 2024.
6. The pursuer and the children live in the Sheriffdom of South Strathclyde, Dumfries and Galloway at an address unknown to the defender.
7. The defender engaged in abusive behaviour towards the children as part of his day-to-day parenting of them.
8. In early 2025 the defender pled guilty at Glasgow Sheriff Court to two charges of assault against the eldest child, ET. The events in the first charge took place on an occasion in April or May 2023 at the family home whereby the defender kicked ET on the buttocks. ET was aged 4 at the time. The events in the second charge took place again at the family home on an occasion between April and September 2022 whereby the defender threw liquid (a milk shake) over ET. ET was aged 3 at the time.
9. In May 2025 the defender was sentenced to a Community Payback Order with the requirement that he carry out 115 hours of unpaid work.
10. The defender minimises his abusive conduct and shows little insight into his behaviour.
11. ET, now aged 6, is happy living with the pursuer and does not want to see the defender, who he recalls as having hit both him and his younger brother a lot.

FINDS IN FACT AND LAW

1. That it is in the best interests of the children that they reside with the pursuer.
2. That it is in the best interests of the children that the defender should maintain personal relations and indirect contact with them;
3. That it is better for the children that an order for residence be made in favour of the pursuer rather than no order being made.

4. That is better for the children that an order for indirect contact be made in favour of the defender rather than no order being made at all.

ACCORDINGLY,

- (1) Sustains the pursuer's first plea in law and makes a residence order in terms of section 11(2)(c) of the Children (Scotland) Act 1995;
- (2) Sustains the defender's second plea in law to the extent of making an order for indirect contact;
- (3) Makes an order that the defender shall be entitled to exercise indirect contact with the children by means of an email three times per year, on 15th January, 15th May and 15th September, and on each of their birthdays, by means of an email to be sent to an email address to be set up by the pursuer for this purpose alone, and directs the pursuer to provide said emails to the children and, if the children choose to write back to the defender, to accommodate same and to send said emails from the children to the defender;
- (4) Finds no expenses due to or by either party.

NOTE

Introduction and background

[1] The pursuer seeks a residence order in terms of section 11(2)(c) of the Children (Scotland) Act 1995 in respect of the parties' three children, ET, FT and GT, who all reside with her. This is not opposed by the defender. The defender seeks an order for contact in terms of section 11(2)(d) of the above-mentioned Act. The pursuer opposes contact with the defender. Both parties have rights and responsibilities in respect of all three children.

[2] The court heard evidence in person evidence on 25 August 2025. Written submissions were lodged by parties before a hearing on submissions on 9 October 2025, following which the court made avizandum.

The evidence

[3] The pursuer gave evidence on her own behalf. The defender gave evidence on his own behalf as did his brother, MM. In addition a report by Fiona Carey, solicitor, Child Welfare Reporter, was lodged in process.

[4] I do not consider it helpful or necessary to narrate all the evidence in full. Instead, I shall set out and explain my assessment of it.

The evidence

The pursuer

[5] The pursuer gave evidence both by affidavit and orally. She described the defender as an abusive husband and parent throughout their marriage. She describes the defender as a largely disinterested parent who would get annoyed by the children engaging in standard child behaviour like making too much noise, and who would mock them, sometimes publicly, and that he would mock FT in particular, who has cerebral palsy. She gave evidence of specific incidents of abuse towards the children, two of which have been proved in a criminal court with the defender having pled guilty to two assaults upon the eldest child, ET. She provided a video, taken by her using her mobile phone, which recorded the events of the first charge in which the defender kicked ET on his buttocks when he was 4 years old. She also provided a photograph of ET covered in milkshake which the defender

had thrown over him and which formed charge 2 of the summary complaint and which happened when ET was aged 3.

[6] She gave evidence of further specific incidents of violence against the children and provided some further photographic evidence. More generally, she gave evidence of general violence towards the children, for example where ET wanted to play games on his father's phone he (the defender) would hit ET's hand with his sandal. She gave evidence that his harmful behaviour towards the children was frequent, deliberate and repeated.

[7] The pursuer gave evidence that the defender's abusive behaviour, particularly when the children were being harmed by him, caused her to flee the family home on 7 May 2024 when the defender was on holiday. She received significant support from Women's Aid after separation. She and the children still live within the sheriffdom but the defender does not know their address. While the tenor of the pursuer's evidence was that she too had suffered abuse at the hands of the defender, her affidavit and her evidence in court focussed on the harm she says he inflicted upon the children.

The defender

[8] The defender gave evidence that the arranged marriage started out on a difficult footing as the pursuer and her family had told the defender and his family lies about certain material matters including her age. His evidence was, however, that he put those matters behind him and moved forward into the marriage.

[9] He denied any domestic abuse of the pursuer. He also denied any physical or emotional abuse of the children save for the events to which he pled guilty. He gave evidence that he was heavily involved in the day-to-day care of the children when they all lived together in the family home. He gave examples of him looking after and supporting

the family and the pursuer personally when, for example, the pursuer had a difficult birth with FT. Far from being abusive to his wife, he actively encouraged her to find work in Scotland if that is what she wanted to do, which it turned out she didn't.

[10] The defender gave evidence that his going on holiday in May 2024 was preceded by a row between him and the pursuer. When he came back they were gone, and he has not seen them since. He gave evidence that the pursuer has made the whole thing up in order to get a "domestic abuse visa". On his account, the pursuer has made up the abuse allegations as a way to ensure she either gets or extends her visa as a result of her being in a domestically violent relationship.

[11] On the specific charges to which he pled guilty, the defender's position in respect of charge 1 (kicking ET in the buttocks) is that there was a mat on the floor and he was not hurt. In respect of both charges (the kick on the buttocks and him throwing a milkshake over ET) the defender says in his affidavit that both were as a result of parenting. When he gave evidence in person, he stated the incidents were two isolated incidents that were not repeated on any other occasion and were mistakes. Yet under cross examination the defender stated that the incident with the milkshake was as a result of ET running into him and the milkshake spilling on him. He did not throw it on purpose.

[12] In respect of the other specific incidents of abuse, the defender either denied them or where there was photographic evidence he provided an alternative explanation. For example, on an allegation that he unnecessarily and roughly dragged an upset FT through an airport, his evidence was that he tried his best to find a buggy for FT but could not, and the picture provided shows him holding a heavy bag himself while trying to support an unwilling child to walk, as might happen in any family during a long airport walk.

MM

[13] MM is the defender's brother. He gave evidence that the pursuer, defender and the two older children lived with him and his wife for an extended period of time. They kept themselves to themselves and were private people. MM did not see or hear any sign of abuse by the defender. The defender is a very good uncle to MM's own children, was more patient with his own children than MM is with his, and that MM has no concerns leaving his own children in the defender's care.

Child Welfare Report- ET's views

[14] Fiona Mclean, solicitor and Child Welfare Reporter, met ET, the eldest child, in May or June of this year at his school. He was age 6 at the time. ET told Ms Mclean that he was happy in his mum's house. He said this with a beaming smile. He said he wanted to continue living with his mum.

[15] When asked about his views on seeing his dad, his voice instantly rose several octaves and he said no. He said his dad hit him a lot. He also stated that his dad hit his younger brother. He said he would feel scared if he saw his dad again. Ms Mclean believes she had secured a clear flavour of the ET's views.

Discussion

[16] MM came across well at proof. However, his evidence is limited by the fact that he accepts that the family largely kept themselves to themselves and he was not present all the time with them. On his evidence, the abuse described by the pursuer could well have taken place away from the eyes and ears of MM.

[17] The pursuer gave largely short answers when giving evidence. She did not paint a vivid picture of the abusive conduct that she alleges took place. However, English is not her first language and she was giving evidence by Webex. Further, she has supported her account with evidence that was sufficient to found a criminal prosecution in respect of two incidents of assault upon the eldest child, ET.

[18] While not much specific detail of abuse against her was provided in either her affidavit or in court, it was clear throughout that her concern was the impact of the defender's behaviour on the children. On this matter I found her credible and reliable.

[19] During the pursuer's evidence I watched the video of the defender kicking ET in the buttocks. It is distressing footage. The child, then aged 4, is trying to get a remote control from his father and is in an almost crawling position. The defender stands up from where he is sitting and kicks ET in the buttocks and ET falls onto a mat. It is a proper kick. What struck me about the video is how otherwise normal the scene appeared to be. The family were sitting around the living room doing nothing exceptional. ET did something to frustrate his father, who stood up and gave him a full kick in the buttocks. If there had been something exceptional about the scene then it *might* have been easier to accept that this was a one-off incident. But the mundane nature of the events shown in the video, apart from the kick, tends to suggest the kick itself was not particularly exceptional within the family and lends support to the pursuer's account in this regard.

[20] The defender, like his brother, came across well at proof in terms of his demeanour, but in both his affidavit and certainly when giving evidence, he minimised the two convictions he has for assaulting ET. In fact, when it comes to his conviction for throwing a milkshake over ET, when giving evidence he departed from any suggestion it amounted to a crime at all. I was not impressed with the defender's evidence when it came to these two

convictions. He sought to minimise them, failed to take any real responsibility for them, and seemed more concerned that the pursuer had held the evidence in order to use them against him at a future date for the purpose of securing a visa and any state benefits that go with that. My assessment of those same facts is that they lend support to the evidence of the pursuer that he was generally violent towards the children when interacting with them on day-to-day matters, until the point where she felt she had no choice but to flee the family home with them.

[21] This assessment is further supported by the views of ET as expressed to the Child Welfare Reporter. The defender's position is that the pursuer has brainwashed ET to say these things, perhaps by showing him the video again and again. She has been planning this whole thing for years, according to him. I find this proposition lacking in credibility. Little evidence, other than assertion, was given in court about the route to securing a visa on the grounds asserted. Tellingly, the views of ET accord with what is seen in the footage which in turn, as outlined above, supports the wider account of the pursuer of the defender's generally abusive behaviour towards the children.

The applicable law

[22] The pursuer seeks an order for residence. The defender does not oppose this. The pursuer seeks an order for contact in terms of section 11(2)(d) of the Act. Section 11(7) of the Act sets out the matters to which the court must have regard when considering such an application:

- “(7) Subject to subsection (8) below, in considering whether or not to make an order under subsection 11 above and what order to make, the court –
 - (a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such orders unless it considers that

it would be better for the child that the order be made than that none should be made at all; and

- (b) taking account of the child's age and maturity, shall so far as practicable –
 - i. give him an opportunity to indicate whether he wishes to express his views;
 - ii. if he does so wish, give him an opportunity to express them; and
 - iii. have regard to such views as he may express.

(7A) In carrying out the duties imposed by subsection 7(a) above, the court shall have regard in particular to the matters mentioned in subsection (7B) below.

(7B) Those matters are –

- (a) the need to protect the child from –
 - i. any abuse; or
 - ii. the risk of any abuse, which affects, or might affect, the child;
- (b) the effect such abuse, or the risk of such abuse, might have on the child;
- (c) the ability of the person –
 - i. who has carried out abuse which affects or may affect the child; or
 - ii. who might carry out such abuse, to care for, or otherwise meet the needs of the child; and
- (d) the effect any abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has (or by virtue of an order under subsection (1), would have) those responsibilities.

(7C) In subsection (7B) above

'abuse' includes –

- (a) violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;
- (b) abuse of a person other than the child; and
- (c) domestic abuse;

'conduct' includes –

- (a) speech; and
- (b) presence in a specified place or area."

[23] The court also requires to consider whether it would be appropriate to make the order in respect that two persons would have to co-operate with one another as regards matters affecting the child (section 11(7D) of the 1995 Act).

[24] In the Inner House decision in *White v White* 2001 SC 689 Lord President Rodger made the following *obiter* comments (paragraph 21):

“the court must consider all the relevant material and decide what would be conducive to the child’s welfare. That is the paramount consideration. In carrying out that exercise the court should have regard to the general principle that it is conducive to the child’s welfare to maintain personal relations and direct contact with an absent parent. But the decision will depend upon the facts of the particular case and, if there is nothing in the relevant material on which the court, applying that general principle, could properly take the view that it would be in the interests of the child for the order to be granted, then the application must fail.”

[25] In *J v J* 2016 SC 835 the Inner House summarised the general principles to be derived from previous authorities (at paragraph 11):

“(1) In terms of section 11(7)(a) of the 1995 Act, the judge must treat the welfare of the child as the paramount consideration. The issue is – what is best for the child? ... The court must have regard to a number of specified matters, including the need to protect the child from any abuse (defined as including any conduct likely to cause distress), and the need for co-operation between the parents: section 11(7A-E). (2) Before refusing an application for parental contact, a careful balancing exercise must be carried out with a view to identifying whether there are weighty factors which make such a serious step necessary and justified in the paramount interests of the child (sometimes referred to as ‘exceptional circumstances’.) Reference can be made to *M v K* 2015 SLT 469 in the opinion of the court in paragraph 25. This approach is reflective of the general background of it almost always being conducive to the welfare of a child that parental contact is maintained. In [*NEDB v JEG* 2012 SC (UKSC) 293] at paragraph 14 Lord Reed explained that there must be ‘a reasonable basis’ for a decision to refuse such an application.”

Application of the law to the established facts – the balancing exercise

[26] Having considered all of the evidence, the submissions, and the Child Welfare Report, having regard to the welfare of ET, FT and GT as the paramount consideration and having taken into account the matters set out in section 11(7) of the Children (Scotland) Act 1995, I am not satisfied that it is in their best interests to make an order for direct contact. I am satisfied that the defender behaved in a generally abusive manner towards the children on a routine basis. Abuse against his children has been proved in a criminal court. The

views expressed by ET are not determinative but I must take them into account. They support, and are themselves supported by, the video evidence and the evidence of the pursuer.

[27] Against that background, section 11(7B) requires me to have regard to the need to protect the children from abuse or any risk of abuse, the effect such abuse might have on the children, and the ability of the person who has carried out that abuse to meet the needs to the child. The defender has shown no insight into his behaviour toward the children. Instead he has sought to minimise the two incidents to which he pled guilty, and has otherwise placed blame on the pursuer for using the evidence she obtained for her own ends.

[28] I also have to consider the ability of parties to cooperate in matters affecting the children. The possibility of any contact with the defender causes alarm to the pursuer. The pursuer fled from the family home and received significant support from woman's aid. The defender does not know where she and the children live.

[29] Taking a holistic approach, I conclude that it is not in the children's best interests that I make an order for direct contact with the defender. Quite apart from the considerations in the preceding paragraphs, it is difficult to see how the practical hurdles could be overcome in this case in a way that allows for direct contact.

[30] However, in light of the general proposition that it is better for children to have contact with an absent parent, I probed with the pursuer's agent whether the pursuer had any opposition to indirect contact. This would allow an avenue for contact to remain open. The pursuer's agent submitted that she had no instructions to oppose letterbox contact and proposed that if the court were to grant letterbox contact then a bespoke email address could be set up for that purpose.

Decision

Accordingly,

- (1) Sustains the pursuer's first plea in law and makes a residence order in terms of section 11(2)(c) of the Children (Scotland) Act 1995;
- (2) Sustains the defender's second plea in law to the extent of making an order for indirect contact;
- (3) Makes an order that the defender shall be entitled to exercise indirect contact with the children by means of an email three times per year, on 15th January, 15th May and 15th September, and on each of their birthdays, by means of an email to be sent to an email address to be set up by the pursuer for this purpose alone, and directs the pursuer to provide said emails to the children and, if the children choose to write back to the defender, to accommodate same and to send said emails from the children to the defender;
- (4) Finds no expenses due to or by either party.