



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 90

F6/25

OPINION OF LADY TAIT

In the cause

PSC

Pursuer

against

NS

Defender

Pursuer: McAlpine KC, Donnachie, advocate; Burness Paul LLP

Defender: Clark KC; SKO Family Law Specialists

30 September 2025

Introduction

[1] The disputed issues are with which parent the parties' children should reside or in which proportions of time between the two parents; and whether the pursuer should be entitled to remove the children from Scotland to the United States of America ("the US").

[2] The parties married in 2006 in the US and separated on 4 December 2024. On that date the defender advised the pursuer that she wished to separate. There are three children of the parties' marriage: two sons who are FSC ("F") aged 12 (born in 2012), OCC ("O") aged 10 (born in 2014) and one daughter who is IVC ("I") aged 7 (born in 2017). The pursuer is a dual UK and US citizen. When the parties met, he worked in the creative industries.

The defender is a German national who also holds a US Permanent Resident Card (a Green Card). She is a specialist medical consultant.

[3] The parties resided in the US from 2008. The children were born in the US. They resided there until 2024 when they and the parties travelled to Scotland. At the date of proof, each party rented a property in the same town in Scotland. The boys reside with the pursuer and the child I resides between the parties.

[4] The disputed issues at proof were the parties' respective roles in caring for the children in the US; the circumstances, purpose and duration of the parties' coming to Scotland; the pursuer's conduct towards the defender and to the children, in particular towards the child O; the defender's immigration status and ability to return to live and work in the US; and the children's views and whether they are genuinely held.

The proof

[5] Given the pursuer's conclusion for relocation to the US, an expedited procedure was ordered. Four days were initially assigned for proof but by the pre-proof hearing, parties had identified that further days were required. In the event, I heard evidence over 11 days. Affidavits were lodged for all witnesses other than skilled witnesses. The affidavits and reports of skilled witnesses were adopted and principally formed the witnesses' evidence in chief. Of the pursuer's witnesses, all were cross-examined other than JW and WM who were available for cross-examination. Of the defender's witnesses, the defender and the skilled witnesses with the exception of Diana Baxter were cross-examined. The other witnesses were available for cross-examination.

The applicable law

[6] The orders sought by the pursuer are in terms of section 11(2)(c) and (e) and by the defender in terms of section 11(2)(c) of the Children (Scotland) Act 1995 (“the 1995 Act”)

which provide as follows:

“(2) The court may make such order under subsection (1) above as it thinks fit; and without prejudice to the generality of that subsection may in particular so make any of the following orders—

...

- (c) an order regulating the arrangements as to—
 - (i) with whom; or
 - (ii) if with different persons alternately or periodically, with whom during what periods,
 a child under the age of sixteen years is to live (any such order being known as a ‘residence order’);

...
- (e) an order regulating any specific question which has arisen, or may arise, in connection with any of the matters mentioned in paragraphs (a) to (d) of subsection (1) of this section (any such order being known as a ‘specific issue order’);”

[7] The test to be applied by the court where any order under section 11 is sought is set out in section 11(7) which provides:

“... in considering whether or not to make an order under subsection (1) 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 order 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.”

[8] In terms of section 11(7A) in carrying out the duties imposed by subsection 7(a)

above the court is directed to have regard to the matters set out in subsections 7B to 7E

which provide:

“(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 a person—
 - (i) who has carried out abuse which affects or might 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.

(7D) Where—

- (a) the court is considering making an order under subsection (1) above; and
 - (b) in pursuance of the order two or more relevant persons would have to co-operate with one another as respects matters affecting the child,
- the court shall consider whether it would be appropriate to make the order.

(7E) In subsection (7D) above, ‘relevant person’, in relation to a child, means—

- (a) a person having parental responsibilities or parental rights in respect of the child; or
- (b) where a parent of the child does not have parental responsibilities or parental rights in respect of the child, a parent of the child.”

[9] Where both parents hold parental responsibilities and rights as in the present case, the removal of a child who is habitually resident here from the United Kingdom is unlawful other than with a court order where the other parent does not consent – section 2(3) of the 1995 Act. The legislation requires parents to have regard to the other parent’s views in reaching any major decision in relation to parental responsibilities and rights – section 6 of the 1995 Act.

[10] There was no dispute between counsel as to the applicable law. Decisions of the Extra Division in *M v M* 2012 SLT 428 and *Donaldson v Donaldson* 2014 Fam LR 126 clarify that in this jurisdiction the welfare and best interests of the child or children concerned are paramount, “and fall to be judged without any preconceived leaning in favour of the rights and interests of others” (*M v M* per Lord Emslie at para [9]). In particular, there is no presumption in favour of any particular factor (*Donaldson v Donaldson* per Lady Smith at para [27]). The court does not adopt any checklist approach and cases of this type are so fact sensitive that it is only the particular circumstances of the dispute and the relevant children that must be carefully scrutinised – *GL v JL* 2017 Fam LR 54; *MCB v NMF* 2018 SCLR 660.

[11] In applying the welfare principle to any section 11 application, the court may require to consider both short and long-term considerations, advantages and disadvantages. Where long-term considerations support an order that would be to the children’s benefit, it may be granted even if it might result in some short-term upset or disadvantage – *J v J* 2004 Fam LR 20, at paragraph 13.

[12] The importance of the views of the children is emphasised by the incorporation into domestic law of the UNCRC by virtue of the United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Act 2024 and Article 12 of the Convention itself.

Agreed facts

[13] In addition to the agreed facts set out in the Introduction above, the following facts were agreed in a Joint Minute of Admissions, number 16 of process.

[14] The parties and the children resided together in the US until 17 July 2024 when the pursuer and children F and O travelled to Scotland. The defender applied for, and was granted, a partner visa to enable her to come to and reside in the UK. The defender and

child I travelled to Scotland on 9 September 2024. On 10 September 2024 the pursuer returned to the US. The defender and the children returned to the US on 16 October 2024 for the school October holidays. The defender and children F and I then returned to Scotland on 26 October 2024. The child O remained in the US with the pursuer. Both the pursuer and O returned to Scotland on 9 November 2024. On 18 November 2024 the defender returned to the US to collect the two family dogs. She returned to Scotland, with the dogs, on 29 November 2024. On 29 November 2024 the parties and all three children were present in Scotland. The pursuer was in England on 3 and 4 December 2024.

[15] The children attended school in the US. The boys attended school from August 2020 until they arrived in Scotland. The child I attended kindergarten in 2023/24. The children all enjoyed extra-curricular activities whilst living in the US. The child O commenced school in Scotland on 19 August 2024. The child F commenced school in Scotland on 20 August 2024. The child I commenced school in Scotland on 11 September 2024. Following the parties' separation, the parties agreed to share the task of walking the children O and I to school.

[16] The pursuer resides at the address in the instance which is a three bedroom flat. The defender resides at the address in the instance. The former matrimonial home in the US is still owned by the parties.

[17] Following the parties' separation, the boys refused to reside with the defender.

[18] The defender is a German national. On 10 January 2025, she received notice from the Home Office that her partner visa allowing her to reside in the UK was cancelled following the parties' separation and it would expire on 11 March 2025. On 7 March 2025, the defender applied for indefinite leave to remain in the UK.

[19] When residing in the US the defender worked as a specialist medical consultant. She commenced employment in the same specialty in Scotland on 1 April 2025 on a 6 month

contract. By the second tranche of proof days, the defender had secured a permanent contract.

Pursuer's case

(i) Evidence of the pursuer

Family life in the US

[20] The pursuer is aged 58. He spoke to a happy and settled family life in the US and one which had evolved in response to the parties' respective careers and the care needs of the children. Until around 2016/2017, the pursuer worked in the creative industries, undertaking projects in the US and on occasions in the UK. He travelled for work for extended periods in 2011 and 2012. Between 2012 and 2015, the pursuer was away from the family home for 4 to 5 days per fortnight for work. He spent 3 months in the UK for work in 2016. The parties employed a number of nannies. From around 2016, the pursuer chose to prioritise being involved in the children's lives over his career.

[21] The parties owned two lakeside homes as well as the family home in the city. From 2014, the pursuer was engaged in renovating the properties. He divided his time between the city and lakeside homes to work on renovations. His schedule was flexible between the children's needs and the renovations. From 2015 the family spent most weekends and holidays at one of the lakeside homes.

[22] In early 2020 the family moved from their home in the city to live at their lakeside home, preferring to be based there in anticipation of the Covid-19 pandemic. The other lakeside property was rented through Airbnb.

[23] From 2017, the pursuer assumed the role of primary carer of the children. He trained and supervised nannies who assisted while he completed renovations. He took over looking

after the children full time from March 2020. He started coaching soccer in 2021 and was a ski instructor. He was active in all aspects of the children's lives. Each of the three children keenly participated in the sports and outdoor activities which the area offered: mountain biking, camping, hiking, canoeing, soccer and skiing. They were happy at school; had many friends and were progressing well educationally.

[24] The defender was very career focussed, highly ambitious and her career progressed quickly. She held senior posts at a teaching hospital and published widely. The pursuer portrayed the defender's role in the children's care as limited because of her absences for work. She continued in her position in the city after the family moved to live in the lakeside property. Her professional role was demanding; she required to undertake a lengthy return journey between home and the city and her shift pattern dictated that she stay over for a significant part of each week. She was based in the city for work often 3 days but sometimes 5 days per week.

[25] The defender's relationship with the children was loving but a little colder due to her frequent absences. From 2022 or 2023, the boys started to hit and hurt the defender. The defender was described as a "top down manger" which the boys resented. The pursuer's approach to parenting was more considerate of them.

The move to Scotland

[26] The defender first mentioned a move to Europe in 2018 after a trip to Germany. The purpose was for the defender to be closer to her family and European culture. Denmark was considered but not proceeded with. The defender next raised the issue in February 2023. The pursuer resisted the suggestion to allow the child F to graduate from elementary school and asked that any move be considered in 2024. The defender had

become cold towards the pursuer. The parties attended a number of sessions of marriage counselling from 2019 until February 2024. The pursuer wanted to do whatever made the defender happy. After consistent pressure from the defender, the pursuer relented in October 2023 and agreed to a trial move to Scotland for one academic year. In August 2022, the parties had taken a road trip in Scotland. The defender decided that the family was going to live in Scotland. She thought that working conditions were good in the NHS. The family had a scouting visit to Scotland in December 2023. The main teaching hospital in the area indicated that prospects would be good for the defender. The parties did not move to Scotland because of free tertiary education for the children.

[27] The children were reluctant to move to Scotland which they made clear to both parents. They were upset at the prospect of leaving the US, their friends and clubs. The child O was particularly upset. The pursuer worked hard to support the children and to encourage them to think that the move would be positive. He told the children that they would try for 1 year and if they did not like it, they would come home. The defender did little talking with the children. They had agreed to come back to the US for holidays. They were all clear that this was a trial move to see how it went. The children started to accept that it would happen in 2024 but still were not happy.

[28] The defender behaved in a way which suggested she was planning a separation. She sought consent for her to travel internationally alone with the children; she wanted to pack everything from the lakeside house and, in particular, sentimental belongings; she arranged to fly alone with the children to Scotland and booked the children into soccer camps in Scotland when the pursuer had planned to take the boys to Yellowstone. The child O was furious about missing Yellowstone and that his opinion was not heard.

The separation and thereafter

[29] Increasingly the parties' relationship was breaking down and the pursuer did not trust the defender's motives. The rejection of the defender's visa application in June 2024 caused much stress. The defender was cold and intent on provoking and criticising the pursuer. On an occasion in November 2024, the pursuer lost his temper. He had hoped that Scotland would change their relationship for the better but it had not. It was just the same: criticism and toxicity. He felt all the toll of the previous 6 months come to a head. He cried out "fucking bitch". He was humiliated. It is a small flat and the children heard him. Under his breath he said the word "cunt" and left the house. The children did not hear that. He hated that he lost his temper, that he said the words he said and truly regretted this. His normal response was to run from conflict.

[30] On 4 December 2024, the defender told the pursuer of her decision to separate when he was in England. The defender told the children of the decision on the same date when the pursuer was not present for the children and before the parties had agreed how to tell the children. Each child said that the defender told them that the pursuer wanted to separate, using the words "you divorced mum". The defender lacked empathy for the children's feelings. She announced her intention to separate very shortly before the birthdays of the children O and I and shortly before Christmas. The defender intended to move with the children into a larger rented house while the pursuer remained in the smaller rented flat. The boys refused to live with the defender and insisted on remaining with the pursuer. The child O had night terrors and wanted to sleep in the pursuer's bed. The child I feared that the defender may get lonely and thought she should live with the defender.

[31] The post-separation situation was highly stressful. A number of intense conflicts took place within the family. The child O called the defender a Nazi. The child F sprayed

deodorant and shaving foam on a bathroom mirror using an expletive about the defender.

On 14 January 2025, during an upsetting incident the child O swore at the defender and the child F kicked the defender's jewellery box around. On 21 April 2025, the defender entered the rented flat to see the child O who was ill. An argument ensued and the pursuer accused the defender of sounding like a neighbour who was thought to be unstable.

The children's response to life in Scotland and relationship with defender

[32] The children, especially the boys, have struggled emotionally following the move to Scotland. The child F has struggled academically. The children O and I are doing well academically. The boys show apathy for school and activities in Scotland. They have each expressed suicidal ideation. They are undertaking therapy. Neither child had professional support prior to the move.

[33] The boys are resentful about how negative the move has transpired to be. They have had a difficult relationship with the defender for some time. They have acted violently and aggressively to the defender, kicking and punching her. They disliked the way the defender spoke to them. The child O would have "a red mist" towards the defender. Their attitude has worsened since September 2024. The defender became arrogant, self-centred and wanted things done her way. The children noticed and it strained their relationship. The boys felt that they had no voice in Scotland. In contrast, the pursuer listened to them. The boys reacted against the defender with verbal abuse and fury. There was a "pressure cooker" environment in Scotland. The defender's refusal to allow the children to return to the US for Christmas and Easter had a significant impact on the boys. The defender does not acknowledge the children's wishes to return to the US.

[34] The pursuer has not alienated the children. He has positively encouraged them to engage with the defender. He admonishes the boys for swearing at the defender and speaking disrespectfully about and to the defender. The children did not swear before living in Scotland. The pursuer has encouraged the child F to speak to the defender. The defender has not followed through sufficiently. The defender and child F met at an ice cream shop on 12 May 2025 after which the child was distressed. In seeking to blame the pursuer for her relationship with the children, the defender underestimates her own role in the deterioration of the relationship.

[35] The pursuer has not encouraged the children to have disdain for Scotland. He has encouraged their integration and friendship groups. He has become actively involved in coaching in the area.

[36] Under cross-examination, the pursuer was undisturbed that he had not sought to influence the children in their views about Scotland, any return to the US and their attitude towards the defender. He had neither behaved towards nor spoken inappropriately about the defender in the children's presence. He had admonished the children if they were in any way disrespectful of the pursuer.

Allegations of abuse

[37] The pursuer denies the defender's allegations of abusive behaviour towards her and the child O. He was never contacted by police. He never hit the children. He did not act with malice by contacting the Home Office about the defender's spousal visa following separation although he did think that the defender acted fraudulently to get the visa. The pursuer denies financial abuse in circumstances where he had always been responsible for

the parties' finances, where the defender was not interested and the parties trusted each other. The defender retains her income in its entirety.

[38] The pursuer refuted any suggestion of the defender as intimidated. On the contrary, she was extremely confident in her dealings with the pursuer. It was the defender who persuaded the pursuer to give up the family's idyllic life in the US to come to Scotland. Despite her solicitor's correspondence that there should be no direct communication, the defender communicated directly with the pursuer. For a period after the separation, the parties had remained convivial, communicating regularly and working a shared calendar. The pursuer encouraged communication between the children and the defender.

Future care arrangements

[39] The pursuer seeks orders for the children to reside with him and for them to return to the US. The family home and car have been retained. There would be no change to the children's principal residence. The house is ready to be returned to and was never packed up. Life would resume as it was: the children will be accepted back into their favoured schools; their sports clubs, scouts group and the after school club have kept places for them. The children would return like conquering heroes. The pursuer will have health insurance for himself and the children. He has an offer to resume his role as a ski instructor. He will have an income through the Airbnb rental of the second lakeside property and anticipates working for the after school club. He intends to train as a primary school teacher with flexible and excellent benefits. He will work part-time while training to ensure a sufficient income. The separation has had a devastating impact on the pursuer's health but his health will improve on return to the US. The pursuer described the US as offering friends and a support network; good job prospects; a good living and income to allow him to build a

pension. In Scotland, the pursuer will have limited employment opportunities and no support network.

[40] The pursuer would continue to encourage the children's relationship with the defender, depending on what the defender chooses to do. In the pursuer's view, the defender is actively taking steps which will see her lose her Green Card so she could not reside in the US. If so, that would not stop her travelling to the US on a tourist visa to see the children, or the children coming to see her wherever she chooses to live. The pursuer would help facilitate that in any way he usefully could, as he has done to date. There would also be telephone and video calls as on the pursuer and children's trip in April 2025. He and the defender have been able to sort out arrangements for the children since separation. The pursuer has always encouraged the defender's relationship with the children in the face of the adversity of the past year and the children's resistance. The pursuer believes a return to the US would be the first step to a better relationship between the defender and the children, as the children would feel their voices had been heard and respected. Based on the comparison of the children's life, presentation and success in the US compared to their life in Scotland, it is in the children's best interests to return and that is their expressed view.

[41] During cross-examination, it was put to the pursuer that his role with the children was much more limited in respect that he travelled extensively when in the creative industries and would spend long periods renovating the two properties when the family was still based in the city. Further, the pursuer was cross-examined about his contention that the defender was regularly absent because of work commitments. He was shown letters written by the defender to her employers requesting a reduction in working hours to 80% in July 2014 and to 60% in July 2020. He was shown a family diary which recorded

the defender's work days. He held to his position that he was the primary carer of the children.

[42] The pursuer's health has deteriorated in Scotland and he takes medication for anxiety, hypertension and high blood pressure. His mental health is shot. The extension of court proceedings into August has taken him to breaking point, both mentally and financially. The parties' savings are exhausted which has added to the stress of remaining in Scotland. He has been unable to continue with therapy sessions. He has had to stop all children's activities such as swimming lessons, therapy sessions and summer camps. He is heavily in debt.

[43] The pursuer has accepted a place on a teacher residency programme, allowing him to work and train to be an elementary, that is primary, school teacher in the US. He will receive a USD \$38,000 cost-of-living stipend while he completes the primary school certification. The residency requires him to teach for 3 days a week under the mentorship of an experienced teacher. He can work a further 2 days each week as a substitute teacher for additional pay. He has been selected to teach 6th Grade. The placement is within the same location as the family home in the US. Since 1 July 2025, the pursuer has been undertaking online classes twice per week from 16.30 to 21.00 California time. On graduation from the programme in May 2026, the pursuer will be employed full-time as a primary school teacher, with benefits, holidays and work hours that mirror the children's schedules. The pursuer was expected to start teaching on 20 August 2025. He has been given grace to await the court's decision. He has been requested to return by 7 September at the very latest. If he misses too many hours, he will fall too far behind and not be able to complete the course and to graduate.

[44] The children have continued to express a view that they want to go back to the US and have significantly hardened their views. Since January, and perhaps wrongly, the pursuer tried to give the children assurance that a decision would be made by the end of the summer. On 4 June 2025, the pursuer learned that the child F was planning to go to the defender's house to "beat her up". The pursuer explained that any violence is unacceptable, and they must never hurt the defender. The child O has become more withdrawn and often refuses to leave the house. He has become isolated. The child I has shown the biggest shift in her views since May 2025. She has started to express more anger towards the defender and calls her unfavourable names from Harry Potter. The defender persists in leaving notes for the boys in their shoes. She has no awareness of how difficult it becomes as the boys get quite angry. On 22 July 2025, the pursuer allowed the boys to go to the defender's house. The child F wanted to ask her to allow them to go home to the US and to collect some of his belongings. The boys told the defender they never wanted to live in Scotland, that the 1 year trial was up and she needed to let them go home. The pursuer is concerned the boys feel under pressure to fix their situation.

[45] The pursuer would prefer not to speak to the defender and only communicate by verifiable and trackable means. If they were able to communicate without fear of false accusations, things might improve for them and the children. Under cross-examination, the pursuer accepted that he did not respond to the defender if she greeted him in the children's presence. That arose from being told by the defender's solicitors not to communicate with the defender.

(ii) *Evidence of the pursuer's other witnesses*

[46] The pursuer led the following witnesses: LM and SA (the pursuer's friends), JD (principal of the children's school in the US), JR (a parent in the US), RD (manager at the local soccer club, the pursuer's friend and parties' neighbour), JM (the parties' neighbour) and JK (the pursuer's friend and parties' neighbour). Each witness had sworn an affidavit which they adopted as part of their evidence and each was subject to cross-examination.

[47] A further two witnesses, JW (Executive Director of the after school club) and WM (Faculty/Fitness Education Centre Director and friend of the pursuer) swore affidavits. They were not required for cross-examination.

[48] LM is a consultant within the creative industries and has been a friend of the pursuer from before the parties' marriage. Notwithstanding that she has lived in England while the parties lived in the US, she and the pursuer maintained regular contact and their respective families spent time together when in the other's country. Their contact increased following the parties' move to Scotland and is now daily. She spoke to the pursuer spending 3 month stints in the UK before the children were born for work. The pursuer's career became untenable having a young family and so in 2018 he gave up his career to accommodate caring for the children full-time. From then, she was clear that the pursuer was the children's primary carer; taking the children to and from school and involved in all of their activities, including soccer and skiing. In contrast, the defender worked in the city, staying overnight at the hospital and working a lot. The pursuer was said to have a great support network in the US and to be well integrated in the community. The witness' impression was based on regular telephone calls with the pursuer and FaceTime calls with him and the children.

[49] She described the children as very happy, well mannered, energetic and well adjusted. The child O is thoughtful and LM witnessed real strains in his relationship with the defender since the separation. The child F was said to be going through the stresses and strains of entering adolescence. She spoke of the close relationship between the pursuer and the children and of the pursuer's patience, selflessness and energy in meeting the children's needs, especially after the separation. The pursuer empowered the children to do things. She spoke of the close bond between the child I and the defender and had no reason to suspect that the defender is not a good mother. However, after the separation LM observed that the child I could detach from the defender to allow her to spend time with the pursuer and her brothers. The child I was said to be not very interested in a telephone call with the defender and happy to be with the pursuer and her brothers without the defender. The boys did not want telephone contact with the defender. They seemed uncurious about the defender when the child I was in contact with the defender. The child O spoke unkindly of the defender. The pursuer reprimanded him for such behaviour and encouraged F and O to speak nicely of her. LM had not witnessed the pursuer say anything bad about the defender in the children's presence.

[50] The children O and I both spoke about returning to the US, to missing friends and activities there.

[51] The witness was aware of the defender's allegations of the pursuer behaving in an abusive manner towards her and towards the children. She had not observed any such conduct nor the slightest anger and described the allegation as preposterous. The children were said to adore the pursuer, constantly talking to him and asking questions. The pursuer was described as exceedingly calm. LM would not admit to any possibility that the pursuer behaved in that way.

[52] She expressed considerable surprise at the parties' intended travel to Scotland given that the children were happy and settled in the US. Despite her questioning of the pursuer, she could not discern any clear plan or purpose for such a move. She knew that the pursuer did not want to move and believed he was acquiescing to the defender's career path. She understood that the children did not want to move to Scotland.

[53] LM was critical of the defender in terms of when she decided to separate and the proximity to the children's birthdays and Christmas.

[54] Under cross-examination, the witness agreed that she had observed a close, warm and loving relationship between the defender and the children over many years but sought to qualify that observation by stating that she was living in the UK. She disputed that her use of language in her affidavit was partisan in support of the pursuer. She did accept that she did not know the defender's side of the story. Further, she accepted that her classification of the pursuer as the children's principal carer should have been confined to the later stages of the children's lives and was not throughout their lives. She accepted that the pursuer lived away for work purposes after the boys were born; that he worked in the UK after the child F was born and that was while the defender lived in the city with the children.

[55] SA is a wildlife biologist and veterinarian who lives in Canada. He and the pursuer have been friends since childhood. He knows the defender well although has only met her in person a handful of times. Their respective families kept in touch by video calls. Currently, the witness and the pursuer speak weekly. The parties' relationship seemed happy enough when he and his wife visited the parties on two occasions during 2021 and 2022.

[56] The witness' understanding of the parties' move to Scotland was that the primary reason was to allow the defender to move closer to Europe. He understood the move to be temporary and to trial living in Scotland. Were it not to work out, the parties would return to the US. The move was an experiment and there was no indication they were shutting down their lives in the US. His understanding was from discussions with both parties.

[57] The pursuer had convinced the children to move because it was temporary. The pursuer made it clear to the witness that the children were unhappy about the move.

[58] SA described an idyllic life in the US: a small community into which the family was integrated; the children engaged in lots of sports and the pursuer was a soccer coach and ski instructor. Over the past 10 years, the pursuer became a full-time father and his life was geared to the children. After the move to the lakeside property, the pursuer became the children's primary carer. It was difficult to schedule time to speak to the pursuer because of his childcare commitments.

[59] SA relayed his understanding of the pursuer's role in caring for the children since the separation and how the pursuer engages the children in activities. He encouraged the child I into horse riding. The witness' knowledge is based on regular telephone calls with the pursuer. He expanded that the pursuer would have lots of support were he to return with the children to the US. The pursuer wants to become a teacher.

[60] SA's evidence was that the children's life in the US was incomparable to their life in Scotland. The children had flourished in the US: excelling at school with lots of friends and outdoor activities. The children played soccer, skied, went hiking, fishing, biking, camping and canoeing. The weather and environment are better in the US than in Scotland.

[61] Under cross-examination, he accepted that he had not lived in proximity to the pursuer since 1991 and that his involvement since 1991 was largely remote. He agreed that

he and his wife had themselves considered a move to Scotland. Asked about any direct discussions with the defender, he stated that he did not recall discussing the move with the defender. Any discussions were with the pursuer. He accepted that he had never visited the children in Scotland and had not spoken to the defender since the separation. Any knowledge of the children's lives in Scotland came through the pursuer. When it was suggested that the pursuer's perspective may be coloured by his desire to return to the US and that he was not in a position to evaluate, he responded that his evidence was based on a number of personal experiences: of growing up and going to school in the UK; travelling in Scotland; being familiar with the area and what is available to children in the UK. His affidavit was wholehearted and personally informed. Pressed on whether he had a current in-depth understanding of schooling in Scotland, he responded that he did of the position in England. Asked whether his perspective of any support network in the US came from the pursuer and that he had no direct knowledge, he said it was what he was told previously by the parties.

[62] JD is the Principal of the Elementary School in the US where all three children attended. The boys attended from August 2020 and the child O from August 2022. The school offers a variety of specialised academic programmes and is dedicated to fostering an educational environment which encourages intellectual growth and success. The children were described as caring for everyone and inclusive. They were model pupils, happy, polite, raised well and with a lot of parental involvement. The children were sporty and excelled academically. They enjoyed school life with their friends. They were "ingrained" in the local community.

[63] The principal described the family as being positively involved with the school. He saw the pursuer most of the time at school but did see the defender too. The pursuer was

the main drop off person and picking them up from after school club. The defender was frequently in attendance at school events and took a close interest in the children's schooling and development. The witness did not see any evidence of the children having a poor parental relationship or any issue in their interaction with their parents.

[64] The principal spoke to the boys about their move. The child F seemed upset and said he was "a little excited but really bummed". The child O was "bummed" too and said he would be back in the summer. If the children were to relocate, it was a good time for the child F to relocate as he was transitioning to middle school.

[65] Places are available for the children O and I at the Elementary School and also for the child F at Middle School. The children would be welcomed back and everything possible done to support their transition.

[66] The pursuer has spoken to the principal about becoming a teacher.

[67] JR is a senior environmental land use planner. Her daughter and the child I became best friends in kindergarten and she first met the pursuer in 2023 through kindergarten and as he was her son's soccer coach. The majority of the time play dates were organised through the pursuer. JR understood the pursuer to be the primary carer as the defender had a very involved career, worked out of town and would be gone for most of the week. The pursuer did the vast majority of school pick-ups. The family was very "ingrained" in the community and the pursuer was doing much work with soccer clubs and coaching.

[68] The witness described the children O and I as very well behaved and happy. The child O in particular had a lot of friends.

[69] In around May 2024, she learned that the family was moving to Scotland as the child I had told her daughter in secret. The defender later referred to the witness knowing through the children and asked her not to tell anyone. The defender explained that she

wanted to move closer to her family and that they were going to keep the house to see how they were getting on in Scotland in around a year's time and then decide if they should sell or rent the house. If they did not enjoy Scotland, they would have the house to come back to. The defender also said that the pursuer and children did not want to move but were willing to give it a shot for her. She understood from her conversations with each of the parties that it was a possibility that they would return back from Scotland.

[70] The child I was initially excited about the move but was also very sad about leaving her friends and her school. It was a particularly difficult time for her when the pursuer and her brothers moved to Scotland while the defender awaited her visa. She was sad to be apart from them.

[71] The pursuer interacted with the children on the sports teams in a positive and encouraging way.

[72] JR observed the children to be close to both parents. The pursuer had a great relationship with the children and was very close to them. The child I spoke a lot about the pursuer.

[73] From November 2024, she observed that the child I's excitement had worn off and the child said she did not like it in Scotland and that her school was boring. The child seemed to be missing her friends and the US.

[74] Were the pursuer and children to return to the US, there would be many people to support him.

[75] Under cross-examination, the witness accepted that any observations were restricted to the family's time at the lakeside property from March 2020. She did not know the detail of the defender's work schedule such as the defender worked 60% or three shifts per week nor that the defender left at 4am to drive to the city for work. The defender also arranged

playdates and was involved in communications with the witness. JR understood that the children were not permitted to share their move and the defender was anxious that the news would be revealed before the pursuer authorised the children to share the news. She observed a close and loving relationship between the defender and the child I.

[76] JM has known the pursuer as a neighbour since the family's move to the lakeside property. He described the pursuer as highly involved with the children, doing the majority of school pick-ups and drop offs. He had long stints of being the primary caregiver when the defender was away working. He was always at each school event and actively involved in the children's activities. The defender was gone for work a handful of days each week. The pursuer had a good support system in their small community.

[77] Discussions around the parties' move were vague but he thought it was maybe a trial as the pursuer said they were keeping their two properties.

[78] During cross-examination, senior counsel explored the depth of the witness' friendship with the family and how much they socialised. While not best friends, JM's evidence was that they did some bicycle rides together and did get together socially. They were neighbourhood friends with their respective children going to the same school. He spoke to the pursuer more, man to man. He knew that the defender worked in the city and that she was away probably 3 days per week. Play dates were mostly arranged between the defender and the witness' wife. The defender was said often to be at school events but not all events.

[79] RD is a neighbour and friend of the pursuer. They first met in autumn 2022 when the pursuer became her son's soccer coach. The pursuer asked her to join him and she became a manager for the team. They became good friends. She saw the pursuer and

children several times per week and spoke almost every day. She, the pursuer and children would go mountain biking. She also went on hikes and was friends with the defender.

[80] She said the defender would usually be gone during the week and she worked random days. She was usually away 2 to 4 days. She worked random weekends. The pursuer did around 80% of the school runs and arrangements for the children's activities and the defender did around 20%.

[81] The child O has said to the witness' son that he wants to come home and does not like Scotland. He seemed very sad. He told her in October 2024 that he did not like Scotland; he never sees the sun and he misses the US. He told her before the move that it would only be temporary. The child O was distraught that they were moving.

[82] The defender told the witness that it was always the plan to move after 10 years in the US. The pursuer said that the defender had picked Scotland. She understood from the pursuer that it was a trial move and that was how it was sold to the children. They were not going to sell the house nor to rent it to allow them to come back for holidays to see friends. They were moving to support the defender.

[83] The pursuer has a calm and collected voice which puts children at ease.

[84] The children had a very happy life in the US and had lots of friends. Were they to return she would offer any support required including with drop offs and any childcare.

[85] Under cross-examination, the witness agreed that the children had a close and loving relationship with the defender in the US. The defender was attentive and loving to them. The witness was asked about being very critical of the defender, saying that she was not letting the children be happy. It was suggested to her that she had not spoken to the defender since the separation. RD responded that she had reached out through WhatsApp. She agreed it was fair that she had no information from the defender for the basis of the

defender's decision-making in December 2024. The pursuer had shared the allegations of domestic abuse which had been very shocking. She agreed that her perspective of shock and criticism was very much directed by information received from the pursuer. She repeated that when she spoke to the children, they did not like Scotland.

[86] During re-examination, the witness stated that she had most recently texted the defender on 30 March 2025 after the separation. The defender had messaged her on WhatsApp to see if they were available for spring break to bring the children home for the break. RD explained that the allegations of domestic abuse were shocking to her because the pursuer was softly spoken; he was her son's coach and he was not one to raise his voice; he was very good with children and a very kind man; and she had not known him to be angry or violent.

[87] JK is a retired teacher, friend and neighbour of the pursuer. They first met in 2015 when the pursuer was looking to remodel the lakeside property. The pursuer was making the property liveable before the family moved there. Later, he assisted the pursuer with the project over a number of summers. He treated the children as if his own grandchildren. The defender would also visit the witness and his wife. He thought they were a perfect young family.

[88] The witness spoke to the advantages of his home town as a mountain and lakeside community with opportunities for skiing, water sports, hiking and providing excellent schooling.

[89] He expressly had nothing negative to say about the defender but knew the predominant parent to be the pursuer. The defender seemed to be the breadwinner and the pursuer's job was to raise the children correctly. The pursuer was an extremely loving father. He never struck them nor got angry with them. He spoke to them kindly. The

pursuer was actively involved in the children's activities and well integrated in the community. The children were so happy in the US.

[90] The pursuer told the witness that the defender wanted to move to Scotland so they were going to give it a try. The defender wanted to be closer to her parents and for the children to spend time with them. The move had been sold to the children as a trial move, as an adventure. The witness spoke to the defender before the separation and everything sounded wonderful. They were renting a place close to the children's school.

[91] During cross-examination, he confirmed that he had observed the defender with the children and described each of the parties as an excellent parent without question. The children were excellent as a result. He had not discussed the move to Scotland with the defender. His information from the pursuer was that the move was on a trial basis and the final decision would be made in the Spring.

[92] JW is the Executive Director of the after school club and a friend and colleague of the pursuer. The club offers after school care which the children attended. She confirmed that they would be able to re-join the club were they to return to the US. Both the pursuer and the children were well-integrated into the community. There was not a role at the club to which the pursuer could return at the date of swearing the affidavit of May 2025. Were a vacancy to arise, an application from the pursuer would be welcomed.

[93] JW's impression was that the children had a very good relationship with the pursuer. Through working with the pursuer at the club, she was aware that the pursuer did the majority of caring for the children while the defender was working away. She saw both parties collect the children from the club.

[94] The pursuer told the witness that the family's move to Scotland was as the defender wanted to move closer to her family. Her impression was that the duration of their return to Europe was uncertain.

[95] WM is a friend of the pursuer. He spoke to the pursuer's very good relationship with the children and measured that in terms of their happiness in the pursuer's presence. He assessed that the children have been taught to be good people and attributed that to the pursuer's love, care and confidence in his communication with them. The children thrived in the US. The pursuer did the vast majority of the school collections. He arranged the play dates. The witness saw the defender at some of the games and doing the school collection a few times. The pursuer had a lot of friends and community support in the US.

[96] The witness was told that the move to Scotland was because the defender wanted to be closer to her family. The pursuer was not sure whether the move was permanent or not. The child F's demeanour suggested that he did not want to leave.

Defender's case

(i) Evidence of the defender

Family life in the US

[97] The defender is aged 50. She does not consider that it is in the best interests of the children in the long-term to return to the US to live with the pursuer. She wants them to remain in Scotland.

[98] In the summer of 2023, the defender started a "gratefulness journal". She had developed a sense of confusion and sense that something was wrong in the last years of her relationship with the pursuer. She referred to this diary in preparing her affidavit.

[99] She had agreed with the pursuer when they moved to the US that they would move for 5 to 7 years and that if they had children, they would not want the children to go to school in the US as the reputation of their education system was not the best. After the birth of the child F, the defender realised that being a mother was important to her and she reduced her working hours to 80% of full-time with guaranteed Fridays off from July 2014. From summer 2020 onwards, she worked at 60% with Fridays off in an otherwise irregular schedule. While the family lived in the city, the pursuer was more frequently away than present: working on the renovation of one of their houses in another city, working there on creative projects or having paid work mainly in the UK. She described herself as “a single parent with weekend support”. The parties employed nannies to look after the children when the defender was at work because the pursuer was typically not there during the week. Once renovation work started on the lakeside properties, the pursuer was mainly there. The family spent many weekends at the lakeside and on many Sunday evenings the defender drove the children back to the city with the pursuer staying at the lakeside. Following the birth of the children, the pursuer was increasingly reluctant to be away for long periods of time and his career focus shifted to renovating the houses and later to increasing engagement with the soccer community and then ski instruction at the lakeside. When they had no full-time nannies, the defender requested time off work to accommodate any time the pursuer was away due to his schedule. The pursuer loved the nature which was around the family at the lakeside but it was difficult for her as she could not work where she lived and had a long commute. Following the pandemic, the pursuer often stated that he “single-handedly brought the kids through the pandemic” notwithstanding that the defender had reduced her work commitment to 60% from July 2020. She was home 5 out of 7 days to care for the children while the pursuer did creative projects or renovations. Every

work schedule of 4 weeks looked different and it was very random apart from Fridays off. The pursuer asked the defender not to work weekends during the ski season. That meant that she had to make up these weekend shifts later in the spring. The drive to the city was just under 2 hours. She would usually leave in the mornings at 4.45am. She would then set off at the end of her workday to drive back to the lakeside property. When the defender returned from work, the pursuer would state that he wanted to have a break and be “off the clock.” The children relied on the defender for the day-to-day things.

[100] While in the US, the defender had a close and loving relationship with all three children. Each of the children sought the defender out to be close physically to her and to show her their love and affection. The child F would telephone the defender when she was at work in the city. The defender and children engaged variously in making smoothies, playing Subbuteo, reading together and making makeshift camps. The children struggled with their behaviour at times. The defender wanted to support the children in the best way possible. The child F had a period of time when he would physically lash out at her. This resulted most likely from his opposition to parenting decisions. He was able to express that he was feeling very torn inside. He was distressed when saying that he did not want to act the way he did. The defender spoke to his teacher who organised the school counsellor to have a meeting with the child F. The child O also had outbursts of anger, at times directed towards the defender. He hit her with a bottle on the arm.

Decision to leave the US

[101] In November 2016, following the election of President Trump, the pursuer said that they should move back to Europe. Talks about moving back to Europe fizzled out when the defender became pregnant with the child I. During summer 2018, the family took a 6 week

trip to Europe. Being back in Europe made the defender feel increasingly homesick and keen to move back to Europe. By that stage, the children were aged 5, 3 and a few months old. The defender communicated that she really wanted to move back to Europe. The pursuer was open to the idea but not keen to move to Germany. The defender was also hesitant to move to Germany given reported working conditions for doctors in her specialty in Germany. The parties contemplated Denmark as an option. The defender arranged to visit the four hospitals in Denmark which offer her specialty at the beginning of 2019. The pursuer voiced he would prefer to live in Copenhagen and spoke to his agent, telling her about the likely move and his renewed availability for work. The job opportunities for the defender were poorer in Copenhagen and the plans to move stalled. With the pandemic in 2020, any thoughts about moving were put on hold.

[102] In summer 2022, the family took a trip to Scotland. They felt it could be a great place for the family to live. Both parties could imagine living there. They spoke to local people who praised it as a place to raise children and spoke of the good schools. The defender gave herself an ultimatum to follow up on the move to the UK by end January 2023 in time for the next school year in the summer of 2023. The pursuer was appalled that the defender raised the matter as he had just come out of the pandemic, found a career and found a community at their lakeside home. The defender was devastated by his disregard for her wishes and the promise they had made. The parties started seeing a marriage counsellor again. The defender was puzzled that the pursuer wanted to delay the move as he had said that universities in Scotland are free if a child moves there prior to their 12th birthday. The pursuer had wanted them to take advantage of that benefit. In October 2023, following couple counselling, the pursuer agreed to move in summer 2024. The family visited Scotland again in December 2023 to look at houses and to investigate schools. The defender

visited the nearby teaching hospital. The defender understood that it would be a permanent move out of the US and the trip was to familiarise the children with where they would be living. To her it was never a trial move. While she did not think that doors ever really close and Scotland might not be “[their] final destination” moving out of the US was not a trial. It was something that had, for a long time, been a very important topic of discussion in their relationship. The pursuer sent links to the defender for houses for sale in Scotland. The pursuer packed a minimum amount to be shipped as he wanted to retrieve things once they had an unfurnished and bigger place. Towards the end of September 2024, the parties agreed to rent the defender’s current home which would take dogs. Bringing the dogs to Scotland was always part of the plan. They would have been able to find trusted house sitters to take care of their dogs and lakeside house if they had intended to return. The landlord for the flat in Scotland was not happy to accommodate the dogs.

[103] In October 2023, the pursuer talked to the children about the move to Scotland without consulting the defender and when the parties were not even in the early stages of planning. The pursuer seemed to have stressed they moved because of her wanting to move and because her parents were getting older. The children have since claimed that the defender only thinks about herself. The defender saw the family staying in Scotland until the children leave school. She understands that the pursuer said to the children that they would always have the option of returning to the US if it were not to work out. To the defender, this was an attempt to reassure them and make the transition easier. It is very different to saying this move was a trial. While in the US, the children were understandably nervous about the move. There were some fears and concerns particularly about leaving friends. Nevertheless, there was some excitement, too, particularly as they saw the UK as the land of football. In the past, they had enjoyed trips to the UK and remembered fondly

how they could have more independence. The move was made harder as the pursuer requested that they stay silent on this issue outside the home.

[104] The defender resigned her position at the teaching hospital after working there for almost 14 years. If they had been moving for a trial period, she might have decided to remain on the “books” at the hospital. She could have taken unpaid leave for a year which would have made a return much easier. If they had then decided to stay for good in Scotland, she could have resigned to find employment in Scotland. To uphold a medical licence, an annual fee must be paid and continued medical education (“CME”) undertaken. The hospital would pay the fees for their employees, and the defender is not sure whether her payment has since lapsed. She has not participated in any CME between the end of June 2024 and starting new employment in Scotland in April 2025. When they decided to move the pursuer said that he would return to the US over the winter to pass the second level of his ski instructor training. He thought that would assist with gaining employment in Scotland. Health insurance is a big concern in the US. When the defender resigned, she lost health insurance cover.

[105] The defender was confident that she would be employed in Scotland once she arrived. She was appointed to a fixed term (6 month) consultant’s post from 1 April 2025 and to a full-time post with effect from 1 September 2025.

[106] The transition from the US to Scotland was very chaotic and it impacted the parties’ relationship and the defender’s relationship with the children. For the children, there was constant coming and going since the arrival in Scotland. It would be very difficult for the children to feel settled. It made such a big change for the children particularly hard. That has been compounded by the pursuer not supporting them in the transition. Before the move to Scotland the plans and arrangements for summer 2024 were chaotic around the

pursuer's changing position about a possible road trip to Yellowstone, his references to divorce and to not travelling to Scotland. The wait for the visa and then for the passport took its toll on the parties' relationship. It was incredibly stressful. The pursuer became increasingly frustrated with the delay as he wanted to be back in the US and the defender wanted to be in Scotland. The pursuer blamed the defender for the delay. It must have been evident to the children that the pursuer was stressed, unhappy and blamed the defender. The defender's communication with the boys deteriorated. She sensed a lot of anger and frustration, and it became obvious that they did not want to talk to her on FaceTime any longer. When the defender and child I arrived in Scotland, the children seemed excited to be reunited. Nevertheless, they soon showed signs of being stressed. There was a lot of conflict in the flat. The boys were on edge, unhappy and tense. They had emotional outbursts. Despite tense and stressful interactions, they also had very nice moments particularly when the pursuer was away: taking the children I and O to a local castle and rolling around on the lawn; the child F would come home once a week to have lunch with the defender at home or at a café; the child O would lie close to the defender on his bed reading out loud and holding her hand. The child O was increasingly suffering from headaches. The behaviour on occasions of the boys prompted the defender to discuss therapy which they rejected. The defender was encouraged to speak to a counsellor. The children had been stressed in the US because the pursuer had hit them and treated the defender badly. The uncertainty from the defender being unable to be with them for a while impacted them. The defender believes that the pursuer blamed her for all the perceived problems and was particularly negative. It was not surprising that such a big move may not be welcomed with open arms by the children and it was not emotionally straight forward.

[107] The defender told the pursuer on 4 December 2024 of her intention to separate. She did not think that a separation would have come as a surprise to him. He regularly talked about divorcing during their marriage. They had had problems for a long time. In February 2024, the defender had a “penny-drop” moment. She could finally see that the pursuer was incredibly sensitive to any criticism and became easily dysregulated leading to frightening emotional outbursts which led to verbal attacks and physical attacks on the children. The defender wondered if there was a way to navigate the abuse and set healthy boundaries. It was emotionally hard to come to terms with the abuse. She still struggles to accept that the pursuer’s behaviour was abusive. However, things did not improve. By November 2024, the abuse was even more frequent. When the defender was in the US in November 2024, she knew that she had to separate and talked to Scottish Women’s Aid for advice. They advised to let the pursuer know of her intention to separate when he was not physically around. The days between her arrival back with the dogs and the pursuer going to England were toxic. It confirmed her decision to separate as soon as she could safely. Her intention had been to wait until after the children’s birthdays and Christmas. However, she was so desperate to get out of the relationship that she separated shortly before the child I’s birthday and close to Christmas. The pursuer asked the defender to speak to the children and tell them about the separation. The defender made sure not to put any blame on the pursuer because she was the one who had made the decision. She explained that the last months had been very hard and that she could not continue to live like this.

[108] Immediately on separation, the pursuer said that the options were to be in the US, Scotland or England. He wanted the children to be part of that decision but also that he wanted to take them back to the US over Christmas 2024 so that they were settled before starting school there in 2025. The defender was alarmed by the speed with which the

pursuer wanted to create another significant change for the children to deal with. The defender was afraid that he would take the children without her consent and sent their passports to her solicitors.

[109] When the parties moved originally to the US, the defender obtained a Green Card which allowed her to live and work there. Standing the current advice of immigration lawyers, she would not feel comfortable turning up at the airport and handing over her Green Card. She understands that she is very likely to be questioned at the border. In order to get entry, she would likely have to argue that she had not left her life in the US which she could not do without being dishonest. She has a job in the UK and indefinite leave to remain. She gave up her life in the US when they came to Scotland as a family. She had no intention to continue living in the US.

Allegations of domestic abuse and abuse against the children

[110] The pursuer's behaviour towards the defender includes being demeaning, belittling, name calling, cold shouldering, gaslighting, manipulating, angry outbursts, threatening behaviour, physical assaults on the children, distancing her from friends and family, trying to control to whom she speaks, and limiting her access to money and transportation. The pursuer swears at her very frequently and he has done so in front of the children. On 17 November 2024, he called her vulgar names, using expletives in earshot of the children. He has labelled the children "idiots" and told the child I that he did not like her "bad personality". He criticised the children's friends. The pursuer has never physically hurt the defender. He has behaved aggressively and intimidatingly towards her. His anger has been so frightening that the defender has feared for her and the children's wellbeing. He has repeatedly questioned the defender's ability to be a parent in front of the children.

[111] In May 2024, the child F was participating in a soccer tournament. While the family shared a motel room, the pursuer kicked the child O in the stomach and kicked him while lying on the floor, even as the defender pleaded with him to stop. The other two children witnessed the incident. The pursuer really laid into the child O. Everyone was in bed to go to sleep. The child O was tired and grumpy and started to obsess about the fact that he could not get into the defender's telephone. He was kicking and hitting the defender. She tried to talk to the child and understand why he was so upset. He started to annoy the child F who was trying to sleep. After about 10 minutes, the pursuer lost it. He smacked the child O on his back. The child turned around to face the pursuer and got out in front of the bed. The pursuer then kicked him in the legs and then kicked him with his foot in the stomach. The defender pleaded with the pursuer to stop it. The child was sobbing and curling back up in the bed. The pursuer had got back into bed but got up again and grabbed the child under the arms from behind and yelled at him "you sleep with mom" and hurled him face down onto the bed and then picked him up again and hurled him a little further onto the bed. The pursuer was berating the child and saying that he would not let him get in the way of the tournament. Eventually the child O crawled off the bed and lay down on the floor in between the window and the bed, next to one of the dogs. The defender felt paralysed with shock. When the child was lying on the floor, the pursuer got up again, went over to him and kicked him while he was on the floor. The defender cradled the child and kept saying "sorry"; that he did not deserve what had been done to him; and that it was not his fault. She apologised that she could not protect him. In the end the child did come into bed and she felt his stomach as she was worried he might have an internal injury and wanted to make sure his abdomen remained soft. In the morning, the child F said to the pursuer that he should "go easier on [O]". The pursuer responded that child O had been

misbehaving. The defender went to a friend's house where she telephoned the police. She visited the Family Justice Centre in the city at the start of June 2024 to get guidance. On 3 June 2024, she telephoned Child Protection Services. Ultimately the pursuer's behaviour was labelled as "shitty parenting". There was a previous incident on 30 April 2024 when the pursuer kicked the child O in the legs and punched him in the sides. The defender telephoned the local sheriffs' office in the middle of the night. There were various other occasions when the pursuer gave the boys a "smack around the head" even though the defender had asked him to stop. The child O blamed himself for being kicked and after the May 2024 incident told the defender that he was getting used to it. The defender telephoned her sister to get advice prior to her first telephone call to the police. She decided not to press charges as she was worried the situation might escalate further and she understood that the children would be interviewed. She feared how this would shape their relationship and believes that they have a right to love the pursuer. The pursuer has threatened to hit the child I when driving. He has hit the boys on numerous occasions. They have witnessed the pursuer's verbal abuse of her.

[112] Since the separation the relationship with the boys has taken an even graver turn. Both children refuse to have any meaningful contact with her and refuse to stay with her. They avoid eye contact, turn away from her when she speaks to them, do not allow physical contact, and are clearly uncomfortable being in her presence or engaging in conversation. They have thrown away presents from her and rejected presents from her extended family.

[113] The pursuer reinforces and amplifies negative thoughts and emotions that the children have about the move and about the defender. Since arriving in Scotland, he has "blamed" her solely for the move and making the children unhappy. He claims that the defender manipulated him into moving here; that he just moved to make her happy; that

she is arrogant and just thinks about herself. He does so in the children's presence. He is disparaging of Scottish children and unfavourably compares Scottish activities to those in the US. He encourages and prompts the children to express that they would like to go back to the US. The defender understands that the children miss aspects of life in the US. She sees the role of the pursuer and herself as parents to try to help the children through these feelings. They have not been allowed to settle in Scotland or to give it a chance. The pursuer has brought the children into the fight rather than shielding them from it until the court decides.

[114] The parties tried to co-ordinate childcare by email exchange but the pursuer brought up aspects in front of the children which led to unpleasant exchanges. The defender's solicitor said that all communication should go through them. Since then the pursuer not only maintains an angry demeanour in her presence but he has also become close to mute.

[115] The children have referred to the defender using expletives and called her a "Nazi Bitch". They refer to her going to court and that she will lose everything. The child O communicates with her via a raised middle finger.

[116] The defender is willing to do whatever it takes to repair her relationship with the children. She believes that a move back to the US will not miraculously solve the situation. Although the children clearly dislike the defender as the reason they have not been able to return, she has seen and heard the pursuer undermine her in front of the children and fears this would continue even if they were back in the US. The defender has written the children occasional messages, trying hard not to overwhelm them. She greets them in a friendly way and asks about their lives even though they decline to answer. The parties have a shared care arrangement with the child I. The child I is sometimes a bit dysregulated when she first arrives but she quickly calms down and they have a nice time together. However, she too

has expressed anger towards the defender, has broken the defender's things and occasionally expressed a desire to be at the pursuer's house. Overall, these moments are becoming less frequent. The defender believes that there should be a shared care arrangement for the boys as well in the future.

[117] The defender has had two scheduled conversations with the child F who has wanted to talk to her about her reasons for wanting to move to Scotland. The most recent conversation was on 12 May 2025. The child told her that he missed the US and his friends. He told her that her intention had been to divorce the pursuer and trap them in Scotland. When the defender asked the child questions about the friends he missed, he became overwhelmed and upset. The child F was in weekly online sessions with a therapist until after the first days of proof in May 2025. The child O has been receiving support in a group setting at school. The school suggested that he start individual sessions outside of school to offer him support throughout the summer holidays. The child I has had individual support at school. The defender has a counsellor whom she meets virtually approximately once a week. The defender understands that she has to be a constant presence of warm, positive and shining light that allows the children to come to her.

Life in Scotland

[118] There is a great reputation for schools in Scotland. The parties had shared the sentiment that they did not want the children to be educated in the US.

[119] Gun violence is a huge issue in the US which does not exist in the same way in Scotland. The defender would like the children to grow up in a country where there is less focus on individual success but rather on overall wellbeing of the society. Her family is another concern. Her parents are now in their 80s. Further, several recent summers in the

US were impacted by very bad air quality due to wildfires. The impact can last for weeks and influences all activities and necessitate wearing masks outside. The air quality in Scotland is better in comparison.

[120] Their location in Scotland offers a childhood of freedom and exploration. The defender loves that the children can go to school by themselves and walk to football and tennis. The children F and I have been introduced to tennis since coming to Scotland. The leisure centre is an 11 minutes' walk from the defender's house and offers swimming, a gym, badminton, basketball, pickleball and exercise classes. There is an outdoor swimming pool. There is a harbour with a sandy beach, sailing, sea cadets and paddle boarding. In August 2024, the pursuer enquired about the family joining the local yacht club and becoming involved, and how the children could learn to sail. He made reference to the parties' sailing abilities. There is mountain biking in the area and hiking. Skiing might not be as good and close as in the US but several of the defender's colleagues go skiing frequently. The children are learning independence. They can go to the shops by themselves and spend their pocket money. The child F has had a trip to the nearby city with his friends to go out for dinner even although he is aged 12. The defender and the child I have explored rock pools. They have visited seal colonies. The child I enjoys the bird colonies and loves the nearby beach. They have visited local castles and have started exploring trails on their bikes.

[121] The defender's rented house has ample accommodation as a family home with bedrooms for each of the children and play areas. It is in a very family friendly neighbourhood. There are a lot of families with children the same age. The child O was excited to move to the house prior to the separation as he knows several children in the area.

[122] The children have all made good friends since arriving in Scotland. They were well-liked and popular children in the US and it is not surprising that they have managed to adapt well to new groups of friends. The child O has been meeting four friends every Friday to go to the pool play session. Afterwards, they walk the short distance to the house of one of the friends to have pizza. The child O has integrated very well. The child I has made several friends. The child F has a group of school friends.

Return to the US

[123] If the children return to the US, it will be very different because the parties have separated. The defender may be unable to join the children because of her immigration position. The boys are presently rejecting her and verbalise that is because she has not allowed them to go back to the US. If not able to be close to them long-term, the chances of healing their relationship are likely exceedingly slim. Time, care and professional input is needed to rebuild their relationship. She worries how further separation from her will impact them long-term. She is very worried about what will happen to the children if they stay with the pursuer whom she considers to be abusive. The child F has said that he wants to go back because everything there was “perfect”. It clearly was not. He witnessed abuse of the defender and his brother and received verbal insults from the pursuer.

[124] Assuming that she could return to the US and assuming that she was entitled to work, the defender would require to investigate a job at the teaching hospital where she was employed. When they lived in the lakeside property, she commuted which was a big commitment and was difficult being away from home. The local hospital is relatively small and had been reluctant to employ the defender without her being board examined in the US.

[125] The children seem to retain good friendships in the US. The defender hopes that they will continue to nurture those friendships as they get older. She has tried to help them retain their friendships.

[126] The defender applied for indefinite leave to remain based on domestic abuse. Her application was granted on 15 June 2025. She can remain in the UK indefinitely. She has accepted a position as a substantive (permanent) consultant in her specialist field at a teaching hospital. Her working hours support the current shared care arrangement for the child I. If the pursuer will not agree to the children visiting the defender in the UK, that could limit their ability to see her to the 6 weeks of vacation she has annually. Currently there is a shared care arrangement in relation to the child I which has worked fairly well. The child enjoys spending time with both parents and seeing her brothers.

[127] The defender is concerned that the pursuer is implying to the children that a move back to the US is certain. She questions the impact on the children now and after a decision is reached. The child F has stopped his usual therapy as the pursuer had agreed with the child that he only need attend until the proof dates in May 2025. On 22 July 2025, the boys came to the defender's house. They were angry and throwing accusations at her: that she must be happy that the court case is taking so long; it is taking so long because she has accused the pursuer of all sorts of things like "child abuse"; and the child F asked her not to appeal if the pursuer wins. Whatever way the decision goes, the defender will do whatever is in the children's best interests and work hard to maintain her relationship with them. However, she is however very worried that the pursuer will not promote the relationship between the children and her. If the children were returned to the US, she would not be able physically to see them as regularly as at present. It is important for the children to have their mother in their life and to have her as a positive role model. She counteracts the

toxicity and abuse from the pursuer and they need to know she will protect them. All she wants out of this court action is for the children to have a chance to heal and be happy and safe.

(ii) Evidence of the defender's other witnesses

[128] The defender's witnesses were as follows: AS (the defender's sister), BC, MC, RC and MJ (the pursuer's siblings and brother in law respectively), LA and MM (the parties' neighbours), CS (the defender's friend), EH (the defender's colleague and friend) and KM (a parent in Scotland). Each witness had sworn an affidavit. They were not required for cross-examination.

[129] AS is the defender's sister. She is a mathematics professor and lives in Germany. She last saw the parties with the children in February 2023 and last saw the defender and children in December 2023. She saw the parties together a few times in the course of their marriage. She has had regular contact by telephone, video call and electronic messages. She thought the parties' relationship was not unusual and put any unkind comments by the pursuer down to stress. Her impression was that the pursuer did not appreciate contact with the defender's family including her parents. She was aware from the defender in early 2018 that they planned to travel to Denmark and Scotland to have a look at potential new places to live. She learned from the defender of difficulties in the parties' marriage and that they attended marriage counselling.

[130] The defender and her sister had more regular contact from March 2024 when the defender shared details about the pursuer's behaviour. The defender disclosed to her sister that the pursuer had hit the child O and that she had contacted the police but did not want the children to be interviewed. The child O had said he would get used to the violence. The

defender sounded shocked, sad and helpless. The defender described the pursuer swearing and belittling her in the children's presence on a family trip in April 2024. The witness' impression was that the defender was working hard on running the family and having a relationship with the pursuer in the children's interests and their move to Europe. The defender shared a second incident of the pursuer being violent to the child O in May or early June 2024. The defender worried about the child's wellbeing. On one occasion, the defender feared that the pursuer may return home in an angry state but the pursuer had stayed at a motel. The witness understood that the pursuer wanted to leave the US in 2016 but that later a return to Europe appeared to be a source of conflict between the parties.

[131] The defender's sister learned of the proposed move to Scotland in early November 2023. She met with the defender and children in Cardiff before the parties and children visited Scotland. During the Cardiff meeting, the children seemed to be neutral to positive about the move. They were curious and at the same time cautious. The defender and the children displayed a happy and loving relationship by their physical closeness and interactions.

[132] During the summer of 2024, the defender spoke to her sister about divorce as the pursuer's behaviour worsened. The defender described a very good time with the children F and I in Scotland when the pursuer was in the US. When the child O returned to Scotland from the US with the pursuer, he seemed off balance, dissatisfied and hit out at her and his siblings.

[133] BC, MC, RC and MJ are the pursuer's siblings and brother in law respectively. They are estranged from the pursuer. They have had limited contact with the parties and children. At a family funeral in 2021, the witness MJ observed the defender to be withdrawn and timid whereas the pursuer was an overbearing and forceful character. The witnesses MJ

and BC spoke to the pursuer's father's concern and upset about the pursuer's bad temper and the way he spoke to the defender. The witness BC described the pursuer speaking abruptly to the defender. In around February 2025, the defender disclosed to the witness BC that the pursuer had hit one of the children.

[134] LA was a neighbour of the parties in the US and has known the family for 8 years. She was aware from early conversation with the defender that the family planned to live in the US for 5 to 7 years and then to return to Europe. The witness had regular contact with the children as a family friend. She describes them as good, clever and well-mannered children. All three children loved each of their parents. The defender took time to talk to the children when they were angry or upset. Her relationship with the children was wonderful, loving and patient. The pursuer was a good parent too. Both parties engaged the children in fun activities. The defender clumped her work shifts together over a few days so she would have more time at home with the family. The witness observed many good interactions between the boys and the defender. There were no difficulties in their relationship. The parties had seemed happy. The pursuer was perhaps pushy or bossy. The defender had been in a road accident while driving the family in their pick-up truck. The pursuer talked about it repeatedly in front of the children saying, "you know your mum crashed the truck".

[135] MM was a neighbour of the parties in the US. She has known the defender for about 9 years and they became friends. Her daughter is friends with the child I. She spoke to the defender being gentle and thoughtful in the way she spoke to and cared for the children. Both parties were involved with the children and with their activities. In the 6 months before the move to Scotland, the pursuer would take off randomly, leaving the pursuer to handle everything. The pursuer had been abrupt in one communication with the witness

about not sharing princess themed items with the child I. After that, the boys told the witness they were not allowed to go to her home. Following upon the parties' separation, the child I said, "Mommy is imprisoning us. She threw our passports away."

[136] EH is a medical doctor and was a former colleague of the defender in the US. She and the defender are friends. The witness recalled the pursuer being sarcastic towards the defender. She spent time regularly with the defender and children before the pandemic. The pursuer was away more than he was at home and the defender was the primary carer. The defender was very engaged and loving with the children.

[137] From 2024, the defender became concerned for her safety and the children's safety. She left a box of belongings at the witness' house and asked the witness to keep safe recordings chronicling the pursuer's behaviour. The defender told the witness about the pursuer kicking the child O. The defender was upset about it and had contacted child protection services.

[138] CS met the defender 10 years ago through the children. The witness' family visited the parties at their lakeside home on four occasions, including overnight stays. The defender was loving, gentle, responsive and engaging with the children. She created magical moments for the children. She showed patience and spoke to the children to help them deal with their emotions. The pursuer enjoyed activities with the children like skiing and soccer. The pursuer had a lot of freedom and the defender had a lot of responsibilities. Tensions between the boys developed and the defender did her best to help them with their dynamics and to help them to control their emotions.

[139] The pursuer put the defender down. He was disparaging about German people and said that the defender was uptight. He was mean-spirited to the defender and promoted himself. The defender reported to the witness that the pursuer called the defender vulgar

and degrading names. The defender was distressed on the telephone while recounting the pursuer had kicked the child O.

[140] The parties openly discussed their concerns about life in the US and it was part of the conversation that they were planning to go back to Europe at some point. The defender hoped that they would move to Scotland as a couple.

[141] KM is a teacher and a parent of children in the same classes as the children F and I in Scotland. She observes the defender's attempts to interact with the child O at the school gate. The child O looks angry. He scowls at the defender and will not engage. The witness has observed the child I responding spontaneously towards the defender; the child was delighted to see her and gave her a hug.

Evidence on alleged domestic abuse

[142] Dr Hannah Jones is a forensic psychologist. She was instructed on behalf of the defender to provide a report considering the impact on the defender of the parties' interactions during the marriage as referred to in the summons and defences. Her report is based upon the information contained in the letter of instruction, the clinical assessment of the defender (interview and psychometrics) and case papers provided as listed in the Appendix. The report is dated 23 April 2025 and is number 7/9 of process. The assessment was undertaken remotely and Dr Jones did not have any concerns about the impact of this on the assessment process.

[143] Within her assessment the defender detailed chronic emotional abuse perpetrated by the pursuer towards her and the children, significant physical abuse perpetrated by him towards the child O in particular, and restrictions placed on her financial freedoms. Within this context, she described "extreme" efforts by the pursuer to damage her relationship with

the children through the use of derogatory commentary in their presence, negative framing of contextual situations (including the move to Scotland), and indirect reinforcement of her inadequacies. She described a sense that the children are aware of which allegiances to choose in an attempt to safeguard themselves. In Dr Jones' opinion, the defender would currently meet the criteria for an Adjustment Disorder with associated depressive symptoms. She suggests that this is primarily as a result of the defender's separation from her children and rupture in their relationship. The impact of the relationship with the pursuer additionally contributes to her symptomology.

[144] Dr Simon Petrie is a chartered clinical psychologist. He was instructed on behalf of the pursuer to undertake a desktop review of Dr Jones' report, analysing and commenting upon its content, and specifically providing his expert views upon Dr Jones' experience, qualifications, methodology used and conclusions reached. His report is dated 22 May 2025 and is number 6/117 of process.

[145] Dr Petrie accepted that Dr Jones is adequately qualified and experienced to be able to offer her expert views in this case. He expressed the opinion that in her assessment of the defender, Dr Jones used an inadequate methodology and process of investigation in reaching her conclusions. This weakens the overall findings of her assessment. Specifically, Dr Jones carried out a single remote clinical interview in conjunction with a review of case information and administration of several different psychometric measures. He accepts that remote clinical interviews are not unusual in the legal context. However, within her report she provides no information about the time, date, duration or mode of interview. She provides only very limited information regarding the defender's clinical presentation. She provides no information regarding the defender's credibility, whether she considered her to be genuine or reliable, or whether there was any evidence of exaggeration, manipulation or

falsification of information during the clinical interview – or indeed how she approached her interview to mitigate any such factors. Dr Petrie would consider all of this information invaluable in reaching any kind of clinical diagnosis in such a case. Further, in carrying out an assessment within such a complex set of family circumstances, Dr Petrie would consider it essential to default to a face-to-face clinical interview where possible (which will always yield the best quality information), or to utilise multiple clinical interviews and multi-method assessments where this is not possible. Dr Jones did not interview the pursuer, considering this to be outside the remit of her assessment. In addition, Dr Jones would appear not to have considered or taken into account the views of the children in reaching any of her conclusions. In Dr Petrie's opinion the above factors weaken Dr Jones's conclusions.

[146] Further Dr Jones has not reviewed the defender's medical records or any other independent medical information relating to her. He would consider it essential to seek further independent sources of information as part of a multi-method assessment, to help clarify the validity and reliability of the information yielded from a single clinical interview. Dr Jones has also utilised various psychometric measures within her assessment, however she provides no further information about how and when this was done, nor measures used to ensure the validity and reliability of the information yielded. In Dr Petrie's opinion the above factors further weaken Dr Jones's conclusions.

[147] While Dr Jones refers to the diagnostic criteria for an Adjustment Disorder, including that the associated symptoms and distress "may significantly impair one's functioning", she fails to provide any information about how or to what extent the defender's functioning has been affected by her symptoms. Within her report Dr Jones has not provided information

on the onset, duration or severity of the defender's Adjustment Disorder, nor upon prognosis or treatment options.

[148] Dr Petrie concludes that Dr Jones' assessment does not have a strong basis for accepting the defender's account of the behaviour of the pursuer as correct and for concluding that the defender has developed the clinical signs and symptoms of an Adjustment Disorder related to chronic abuse perpetrated by the pursuer towards her and her children during their marriage.

[149] Dr Jones responded to Dr Petrie's criticisms by email dated 25 May 2025 which is number 7/108 of process. She clarified that her remit was to report the defender's account of the relationship and, if found to be accurate, how this could be conceptualised. It is the disruption of the defender's relationship with her children which is most significantly contributing towards the development of significant psychological distress and a related Adjustment Disorder. There is a wealth of evidence which supports remote psychological assessment and treatment via video conferencing technology as being robust. She was not instructed to assess the family and would not accept such instruction as assessment of the children would be beyond her professional expertise. Dr Jones' findings are based on a combination of psychometric testing, the defender's self-report within a structured clinical interview and a review of the underlying case material. This is entirely standard practice within psychological assessment. Dr Jones did not consider that the defender was feigning or exaggerating symptoms within either clinical interview or psychometric testing. Rather, the defender was somewhat reluctant to consider her own psychological vulnerability and appeared to find it challenging to describe or discuss her own emotional experience or the impact of the relationship with the pursuer on herself specifically.

Evidence on the defender's immigration status

[150] The pursuer led two witnesses with expertise in immigration law. Katie Newbury is a qualified solicitor and partner at Kingsley Napley LLP where she specialises in UK immigration law. She adopted her Opinion dated 28 April 2025, number 6/47 of process, as part of her evidence. Christi Jackson is an attorney at law admitted in the State of Texas who advises on all aspects of US immigration law. She is a partner and head of the US practice at Laura Divine Immigration in London. She adopted her Opinion dated 28 April 2025, number 6/48 of process, as part of her evidence. Each witness was instructed to provide an opinion on the defender's immigration status in the UK and in the US respectively.

[151] Each witness was provided with the following facts in addition to the agreed facts set out above. In brief those are that the defender is a German citizen; she holds a US Permanent Resident Card (Green Card); she was granted entry clearance to the UK as the pursuer's partner on 2 September 2024; she indicated her intention to separate from the pursuer on 4 December 2024; following upon separation, the pursuer notified the Home Office of the marriage breakdown; the defender was notified on 10 January 2025 that her visa was cancelled so that it would expire on 11 March 2025. On 7 March 2025, the defender made an application for indefinite leave to remain ("ILR") on the basis of domestic abuse.

Katie Newbury

[152] Ms Newbury was instructed to address the defender's UK immigration status and any limitations it may bring in terms of a return to the US if the relocation of the children were granted; and/or whether there would be any limitations to her spending time in the US if the relocation were granted and she chose to live in the UK; and any consequences to her UK immigration status as a result of doing so (whether or not ILR is granted).

[153] During the period that the defender's application to remain was pending, she could not leave the UK and travel to the US without losing the ability to obtain ILR. Once granted ILR, she would have significantly more freedom to travel. She could spend time in the US and would only lose her ILR in the event that she had a continuous absence from the UK of 2 years or more. In these circumstances, ILR would automatically lapse. In such an event, it would be possible to make an application as a returning resident and ask for ILR to be reinstated. As such, if granted ILR, the defender would be free to spend time in the US as long as she continued to return to the UK at least once every 2 years.

[154] Separately, Ms Newbury gave evidence that the pursuer as the defender's sponsor was not under a duty to notify the Home Office of any change of circumstances but could choose to do so. The defender was required to notify the Home Office of a relationship breakdown.

Christi Jackson

[155] Ms Jackson was instructed to address the US immigration status of the defender and any limitations that may bring in terms of (i) a return to the US, if relocation of the children were granted; including the defender's ability to return to live and work in the US on the basis that she last visited there in November 2024 and/or (ii) whether there would be any limitations to the defender spending time in the US if the relocation were granted and she chose to continue to live in the UK (and as a result gave up her Green Card status and was reliant on ESTA entry to the US).

[156] Firstly, Ms Jackson addressed the defender's current US immigration status. In respect that the defender has not filed Form I-407 with the Department of Homeland Security so as formally to relinquish her US permanent residence, she remains a lawful

permanent resident (“LPR”) of the US. Any duration of absence can be viewed as an abandonment of permanent resident status if the intent on departure was to abandon. However, in practice, only a prolonged absence would trigger questioning upon return to the US. Were the defender to remain outside the US for more than 1 year, her Green Card would no longer serve as a valid entry document. In such a case, the defender would require to apply for an SB-1 Returning Resident Visa. Ms Jackson’s evidence was that generally that would be a viable option within 2 years of departure from the US but only if the defender can demonstrate that the prolonged absence was beyond her control. In Ms Jackson’s opinion, it was unlikely, but not impossible, that this would be approved.

[157] The defender moved to the UK on 9 September 2024 and last visited the US in November 2024. It was said to be highly likely, though not guaranteed, that if she were to return to the US before September 2025, and possibly even November 2025, that she would be admitted as a permanent resident without issue. She may be heavily questioned about her absence but provided that she was able satisfactorily to convince the Customs and Border Protection officer (“CBP officer”) that her intent was never to abandon her US residency, she should be admitted. Were the officers not to believe that her absence was temporary, they could request that she sign an I-407 abandonment form or could refer her to an immigration court by issuing a Notice to Appear. If the latter were to happen, she would require to remain in the US until her court date which could be many months or longer than a year. If the former were to happen, she would no longer be a permanent resident.

[158] Ms Jackson addressed maintenance of LPR status in greater detail. As noted above, returning LPR may typically present their Green Card when re-entering the US as long as their absence abroad has not exceeded 1 year. Whether an individual has maintained their permanent resident status after a temporary absence depends on their intent and the specific

circumstances surrounding their absence. Immigration officers will assess several objective criteria to determine the individual's intent, including:

- the length of absence from the US;
- the purpose of departure;
- whether a return date was set at the time of departure;
- employment factors, such as whether the individual worked for a US or foreign employer and whether the employment was temporary or permanent;
- whether the individual continued to file US tax returns as a resident (using Form 1040);
- the maintenance of ties to the US, such as ownership of property, bank accounts, or credit cards, and a valid driver's licence; and
- the location of family members, particularly whether the children are attending school in the US.

[159] Ms Jackson stated that merely returning to the US once per year for brief periods does not automatically guarantee that permanent residence is maintained. An immigration officer could still conclude, based on the specific facts of the case, that the individual has abandoned their permanent resident status. In this scenario, they would be asked to sign Form I-407 or be referred to the immigration court.

[160] Were the defender to anticipate being outside the US for an extended period (longer than 1 year) a re-entry permit (Form I-131) application should be filed. That must be submitted whilst in the US and, if requested, the applicant would be required to attend a biometrics appointment several weeks after submission. Processing times are generally over 1 year, and frequent travel to the US whilst the application is in process is generally recommended. Upon approval, the re-entry permit facilitates re-entry by affirming the US

government's acceptance of the individual's absence as temporary. A re-entry permit is typically issued for 2 years, however, after a number of approvals (often only two or three) for the 2-year period, re-entry permits can be issued for 1-year increments and may be subject to increasing scrutiny regarding the individual's intent to maintain LPR status.

[161] Ms Jackson's further evidence was that to maintain LPR status during extended absences abroad, the defender should take the following steps:

- maintain a residential address and property in the US;
- retain US bank accounts, credit cards, and driver's licence;
- continue filing US tax returns as a resident;
- if employed abroad, secure documentation explaining the temporary nature and duration of the assignment; and
- apply for a re-entry permit, if appropriate, after returning to the US before September 2025.

[162] Should the defender abandon her LPR status by proactively filing Form I-407, she should still be able to make short visits to the US on the Visa Waiver Program (ESTA). She should wait until the I-407 has been confirmed before proceeding with ESTA. An individual who wishes to travel to the US on the Visa Waiver Program must obtain a valid ESTA approval online before travel. Travel to the US as a visitor on ESTA allows individuals to enter the US for up to 90 days on each entry (at the discretion of the CBP officer) to engage in tourism, family visits, medical treatment, or to engage in non-productive business activities such as attending meetings or conferences. The traveller may not work in the US, even if for a foreign employer.

[163] Although a traveller may be admitted to the US for 90 days on ESTA, the timing and even the entry is always at the discretion of the CBP officer. Misuse of the ESTA program,

such as repeated, prolonged visits with short gaps in between, will generally flag to an officer that a person is spending too much time in the US and thus likely engaging in activities that are inconsistent with that of a visitor.

[164] Were the defender to abandon her Green Card involuntarily by being encouraged to file Form I-407 by a CBP officer after a prolonged absence, she may not be eligible for ESTA. This would depend on the actions taken at the border by the officer when she signs Form I-407. If she signs Form I-407 but the officer still admits her to the US (that is waiving the requirement for a visa or ESTA), then she should be able to obtain an ESTA in advance of her next trip (although approval is never guaranteed). If the officer does not admit her to the US after she signs Form I-407, this would be considered a denial of entry which will lead to denial of ESTA. If the ESTA is denied, the defender would need to seek a B-1/B-2 visitor visa from the US Embassy or Consulate in her home country or country of residence. The standard of review for B-1/B-2 visa applications is higher than ESTA, thus having US citizen children in the US may lead to a denial of the application on the basis that the Consular officer believes she intends to relocate permanently to the US.

[165] Ms Jackson concluded that the defender's ability to maintain her permanent residence status in the US is dependent on her intent and actions during her absence. Were she not to relinquish her Green Card and were she to return to the US within a year, her permanent residency is likely to be upheld. However, if her absence exceeds 1 year, she would need to apply for an SB-1 Returning Resident Visa or proactively apply for a re-entry permit before the 1 year absence. Additionally, should she decide to abandon the Green Card, she should do so proactively so that she is more likely to preserve her ability to travel to the US on ESTA.

[166] The defender led David Rugendorf as an expert in US immigration law. He was admitted to the State Bar of California in 1990, has practised in immigration law for 31 years and is a partner at Mitchell Silberberg & Knupp LLP. He adopted his Opinions dated 28 April, 19 May and 13 August 2025, numbers 7/11, 7/107 and 7/112 of process, as part of his evidence. Diana Baxter produced an Opinion dated 20 May 2025 which is number 7/106 of process. She is a partner at Wesley Gryk Solicitors LLP, a firm which deals exclusively with matters relating to UK immigration and nationality law. She was not required for cross-examination.

[167] Mr Rugendorf was asked to comment upon the report produced by the pursuer's immigration law expert, Christi Jackson. He did so in number 7/107 of process and declared them to be in agreement for the most part although there were a few points where they were not in accord.

- (i) He considered it misleading to assert that as the defender has not filed Form I-407 formally to relinquish her US permanent residence, she remains a LPR of the US. The filing of an I-407 abandonment request is not necessary to demonstrate the intent to abandon US permanent residence. It is the other actions taken by the defender that trigger abandonment: (1) she left her position at the teaching hospital after 14 years of employment there; (2) she applied for a UK partner visa and a CBP officer reviewing her passport would see that visa; (3) she applied for indefinite leave to remain in the UK; (4) she accepted a position at a Scottish hospital as a consultant; and (5) she visited the US in November 2024, for the primary purpose of collecting the parties' dogs and relocating them to the UK. Accordingly, it would not be accurate to say "if [the defender] really wanted to abandon her US LPR status, she would have

filed a Form I-407 at or around the time she relocated to the UK," because in reality, it does not work that way. Many individuals form the intent to abandon US residence, and act upon that intent, but do not file the Form I-407 unless and until confronted by authorities. That the defender has not yet filed the I-407 does not mean that she has retained her US permanent residence. Upon her next attempt to re-enter the US, CBP officers, after questioning, very possibly may encourage her to file the Form I-407. If the officers' inquiry leads them to believe she abandoned her status but she refuses to complete the Form I-407, the officers will refer her to an immigration judge who would review the facts and make the abandonment determination. Presentation of a Green Card at a port of entry is an assertion from the bearer that they maintain permanent resident status. It would be a material misrepresentation of status and misuse of immigration documents to present a Green Card knowing that they no longer had their primary home in the US. Should the defender next enter the US on or after 27 November 2025, she will have reached the 1-year point, and be found to have *per se* abandoned her LPR status.

- (ii) Mr Rugendorf agrees that "any duration of absence can be viewed as an abandonment of permanent resident status if the intent on departure was to abandon." He disagrees with Ms Jackson that "in practice, only a prolonged absence would trigger questioning upon return to the US." It is not an accurate statement of current CBP practice. While it is true that the longer one is absent the more likely it is that one will be questioned, since the Trump Administration took over in January 2025, CBP officers have become aggressive in encouraging individuals to file Forms I-407 voluntarily to abandon their

Green Cards. This has been true even in situations where the time spent outside the US was shorter than 6 months. Given the length of time the defender has been absent, the likelihood she will be questioned is almost assured. Any inquiry will lead the officers to make a finding that she has abandoned her status, whether she agrees to sign an I-407 or wishes to contest it in immigration court.

- (iii) Ms Jackson's position on the defender applying for an SB-1 returning resident visa is that it is unlikely (but not impossible) that it would be approved.

Mr Rugendorf considered that it is not a viable option. The defender's absence from the US was completely voluntary, and within her control. Her application for leave to remain in the UK, with its restrictions against leaving the UK while it is pending, is not appropriately considered a circumstance beyond her control, because (1) she voluntarily applied for leave to remain and (2) she formed the intent to leave the US and move to the UK long before she filed for this leave to remain. It is not a situation where she always has had the intent to return to the US to live and that she retains this intent. Accordingly, her filing for an SB-1 would not be consistent with her true intent and the factual circumstances which surround it. SB-1 returning resident visas are rarely approved in any circumstance as Ms Jackson acknowledges.

- (iv) Mr Rugendorf agrees with Ms Jackson that:

"merely returning to the US once per year for brief periods does not automatically guarantee that permanent residence is maintained. An immigration officer could still conclude, based on the specific facts of the case, that the individual has abandoned their permanent resident status. In this scenario, they would be asked to sign Form I-407 or be referred to immigration court."

- (v) Ms Jackson stated that if the defender:

“anticipates being outside the US for an extended period - longer than one year - a re-entry permit (Form I-131) application should be filed with USCIS. This must be submitted whilst in the US and, if requested, the applicant would be required to attend a biometrics appointment several weeks after submission... and frequent travel to the US whilst the application is in process is generally recommended.”

Mr Rugendorf does not believe it is viable because the defender is already abroad, and the re-entry permit must be filed while physically present in the US. Not only must it be filed while in the US but the applicant must wait possibly several months for a fingerprinting appointment in the US. In other words, it is too late for this option now. As Ms Jackson acknowledges these applications take a long time to be reviewed and they are low priority. Even if approved, they are not a good long-term solution. Perhaps the first request for a 2 year absence would be approved without pulling the Green Card, but a second or subsequent re-entry permit is very unlikely to be approved.

- (vi) If the defender is able to enter on an ESTA, she will no doubt have problems if she uses it repeatedly. There is no *per se* limitation on the amount of entries on an ESTA but the CBP will review her travel activity, and if they believe she is abusing it, they may revoke her authorisation. It is not just the number of entries that the officers review but also the length of stay. If she stays in the US for too long, they may think she is working illegally in the US. The ESTA is not a good solution for someone who wishes to visit the US often, with lengthy periods of stay. Eventually, the ESTA holder would “wear out her welcome.”
- (vii) It cannot be taken for granted that the defender would be approved for an ESTA after abandoning her Green Card. The position is the same with a

B-1/B-2 (visitor) visa if the ESTA is denied. When someone from an ESTA country (UK and Germany are both ESTA countries) applies for a B-1/B-2, it raises the question of why would someone apply for a visitor visa (B-1/B-2) unless an ESTA is unavailable. If the ESTA is unavailable, that means something has gone wrong somewhere. Also, if the defender's US citizen children are in the US, she may not be allowed in using either the ESTA or the B-1/B-2 visa because, in such a situation, the officer may believe she has immigrant intent, that is intent to relocate permanently to the US.

(viii) Mr Rugendorf considers Ms Jackson to be too optimistic in stating "if she does not relinquish her Green Card and returns to the US within a year, her permanent residency is likely to be upheld." It cannot be known what will happen at re-entry. At this point, with her lengthy absence, the defender is highly likely to be subject to a thorough questioning on her residence circumstances. If and when that happens, she risks losing her permanent resident status, and as a result, there is only so much an ESTA or a visitor visa can do for her if her intent is to visit the US periodically to see her children. The defender will be unlikely to be admitted on her Green Card without incident. The prospects for that grow increasingly unlikely as time passes - as if she has not done enough already to demonstrate her intent to abandon her US residence.

[168] Mr Rugendorf addressed future immigration options assuming that the defender's Green Card is no longer valid and she seeks to return to the US. Other types of non-immigrant visas exist but most require an employer sponsor. The most common type is the H-1B which is usually valid for up to 3 years, with an extension available for another

3 years. In addition to the H-1B visa listed above, there is the O-1 visa for individuals with extraordinary ability. It is available for up to 3 years, and there is no aggregate limit on the total duration of stay. It should be noted that almost all employment-based visas require a job offer in advance of applying for the visa. It is possible, however, to apply for an employment-based green card without a job offer, if the applicant can demonstrate extraordinary ability, similar to an O-1 visa but at an even higher standard.

[169] Mr Rugendorf was asked what effect, if any, the Home Office's grant of ILR would have on the defender's US permanent resident (Green Card) status. In his opinion, it has no direct effect on her US permanent resident status. CBP officers may examine her German passport, where they may discover a stamp or notation indicating the grant of ILR status. The officers may ask the defender if she has been granted permission to remain in the UK on an indefinite basis. She will be required to answer truthfully. Officers may use that as one factor, among others, to refer her to the immigration court for Green Card rescission proceedings, or to pressure her to abandon her US permanent resident status.

[170] Ms Baxter was instructed to provide an Opinion in respect of the following: (i) the source and status of any obligation upon the partner or sponsor to report a separation to the Home Office and the effect of such a report; and (ii) from a UK immigration perspective, the constraints, if any, on the defender's freedom to, travel, work and live outwith the UK, should her application (or any subsequent application) to remain in the UK be granted.

[171] As far as Ms Baxter was aware, there is no legal obligation upon the partner of a person on a partner visa to report a separation to the Home Office. However, the gov.uk website incorrectly suggests otherwise. Upon receiving a report of the breakdown of a relationship, the Home Office must consider cancelling a person's permission on the basis that they no longer meet the requirements under which they were granted permission to

enter. This is not a mandatory ground for cancellation, rather cancellation is discretionary and subject to published guidance.

[172] The defender's application for ILR having been successful, the defender can remain residing permanently in the UK without making future immigration applications. She could be outside of the UK for up to 2 years without her ILR lapsing. If she left the UK for more than 2 years, then her ILR would lapse. It would only be possible for her to resume ILR if she could satisfy the requirements of Appendix Returning Resident (or any future requirements, should the Rules change by this time), including that she has "maintained strong ties to the UK" during her absence. However, if the defender is granted ILR and wishes to apply to naturalise as a British citizen at the earliest opportunity then she would also need to limit her absences from the UK and, in the event of a divorce, demonstrate an intention to make the UK her principal home.

Children's views

[173] By interlocutor dated 13 February 2025 Dr Katherine Edward, Chartered Clinical Psychologist, was appointed to undertake enquiries and report to the court, with regards to the children on the following matters:

- i. the views of each child about where they currently live;
- ii the views of each child about contact they currently have with each of their parents;
- iii the views of each child about residing with the pursuer (i) in the US or (ii) in Scotland and the contact they would like to have with the defender in either scenario;

- iv the views of each child about residing with the defender (i) in the US and (ii) in Scotland and the contact they would like to have with the pursuer in either scenario;
- v whether she considered each child's views were independently their own or were, to any extent, the result of influence, and if the product of influence, what she considered the nature and extent of that influence to be.

[174] By interlocutor dated 16 April 2025, the court invited Dr Edward to respond to the points raised in the report produced by Dr Hessel Willemsen, Clinical Psychologist, dated 14 April 2025 as soon as practicable.

[175] Dr Edward prepared a report dated 12 March 2025 and second report dated 23 April 2025, numbers 11 and 48 of process. The information upon which the first report was based was gained from interviews with each child at their school on 5 March 2025. The purpose of Dr Edward's visit was explained to the children as to understand how they felt about things and what they wanted to have happen. Each child was encouraged to express their own views and not those of others. Dr Edward guided the conversation to ensure all the aspects of the remit were covered but also allowed as much as possible the direction of the discussion to be led by the child. She distilled the children's views into responses to each of the five questions which constituted her remit. Within her interview with each child, she presented them with a decision grid which set out the four living options (US against Scotland; with the defender against with the pursuer) so that she could be clear of their preferences and ensure that they explored all options.

[176] It is important to reflect fully the views of each of the children as expressed to Dr Edward.

*The child F**Views about where he currently lives*

[177] The child F clearly preferred to live where he is residing now with the pursuer as opposed to living with the defender. That said, he would much prefer to live in the US. He was consistently negative about his experience of leaving the US and his experience of living in Scotland. F does not enjoy living in Scotland and does not wish that situation to continue. He does not feel that he has access to the activities he enjoys, he misses his friends, and there is a strong sense with F that he felt more “welcome” and accepted in the US than he has experienced since his move to Scotland. F can speak about having made some friends at school and that it is comparatively easier now than it was when they first moved. However, he expressed a strong preference for his school in the US.

Views about contact he currently has with each parent

[178] The child F has only minimal contact with the defender, interacting very briefly around school and residential pickups. F does not wish more contact or time with the defender. He is strongly opposed to that option. F is happy with residing solely with the pursuer and would not want that option to change for him.

Response to decision grid outlining potential living options (rated 1 to 4 in order of preference)

- Option 1 (best) = US with the pursuer
- Option 2 = Scotland with the pursuer
- Option 3 = US with the defender
- Option 4 (worst) = Scotland with the defender.

Views about residing with the pursuer in the US or in Scotland and the contact he would like to have with the defender in either scenario

[179] Living with the pursuer in the US would, very clearly and definitively, be F's favoured option for the future. He does not wish to remain in the UK, and does not enjoy the experience of living in Scotland. He misses his life in the US significantly. If F was not able to live with the pursuer in the US he would wish to live with the pursuer in Scotland. This would not be his preferred option as he is strongly motivated towards a return to the US, however, this relates to F's very strongly held view that he does not wish to live with the defender. If living with the pursuer in the US, F has a sense that contact with the defender would be encouraged by the pursuer to take place. F did present some openness to seeing the defender in that scenario and he does present a balanced account of being unsure right now how he would feel about that as he cannot focus on options beyond a return to the US at the moment. F was not closed to the possibility of contact with the defender in that scenario and in his narratives there was a strong sense that that would be the most likely scenario in which his relationship with the defender could be repaired. F was not opposed to the option of the defender returning to the US which may indicate some openness to better relations with her in that scenario. If he cannot return to the US with the pursuer F's next preferred option would be to remain in the UK with him. This indicates the strength of his opposition to living with the defender, given how much he would like to return to the US. In the scenario of remaining in the UK, F would prefer to move to England with the pursuer where he hopes that he would prefer the lifestyle compared to Scotland. He believes the pursuer would also prefer this option. Were he to remain in Scotland living with the pursuer, F has no desire at this time for contact with the defender. It is possible that

that might change over time, however, there is no evidence that F would be open to that as the primary drivers of his anger towards her would be maintained in that scenario.

Views about residing with the defender in the US and in Scotland and the contact he would like to have with the pursuer in either scenario

[180] The child F strongly and consistently presented the view that living with the defender in Scotland would be his worst case scenario. There was a very clear sense that he would resist this option fully. Despite his strong desire and motivation to return to the US, F presented the possibility of doing so with the defender as a less desirable option for him than remaining in the UK with the pursuer. F would clearly wish a high level of contact with the pursuer in any scenario in which he was living with the defender, based on his primary desire to be resident with the pursuer.

Whether F's views are independently his own or are, to any extent, the result of influence, and if the product of influence, the nature and extent of that influence

[181] The child F was very thoughtful and presented as quite mature for his age through the discussion. At times, he was clearly holding back tears and upset when talking about what he missed about the US and his experience of relocating. There were no aspects of F's presentation that were incongruent to his discussion. He spoke openly and there were no aspects of his narrative that presented as rehearsed or coached. For F there is a very strong sense that he was unhappy leaving the US and that in that environment he has access to all the aspects of life that he enjoys. F misses his friends, his leisure pursuits, and a sense of belonging that he enjoyed in the US. F presents as having been willing to try the move to the UK because he was encouraged by the pursuer to do so and there was a sense of a

temporary trial period. The fact that the defender expressed a wish to separate from the pursuer shortly after the move had significant impact both on F's ability to integrate and accept living in Scotland, and his attitude towards the defender. F is exceptionally angry at the defender at the current time. This is due to his unhappiness with the family separation and the move to the UK, as he regards her as responsible for the negative factors in his life. There is also some aspects of events since the separation that have exacerbated these feelings, such as the division of housing and F's perception that the defender has not allowed specific return trips to the US. F expressed a desire to revisit the US as soon as possible even if only on holiday. F is very clearly allied to the pursuer and this presents as a consequence of F feeling so angry with the defender for events and outcomes, and also a sense that the pursuer has shared F's negative experience. F understands that the pursuer does not enjoy life in Scotland but it was not Dr Edward's assessment that this factor has significantly influenced F's view beyond the impact of his own experience. F is aware of the pursuer being upset by the separation. Dr Edward expects this has solidified F's resistance to the defender but could not suggest this is the sole cause of it. Rather, the fact that F's lived experiences of leaving life in US and then life in Scotland have failed to meet any of his expectations has been the primary driver in F's views. F would clearly wish his siblings to return to the US with him but it was not evident that this factor was a "dealbreaker" with regard to his preferred option of wishing to move back. It would, however, be very difficult for F if that were the case. Dr Edward did not gain any sense that F was opposed to the child I holding different views from him, or her spending time with the defender while he remains opposed to it. F is aware that he and the child O share views. It was not Dr Edward's impression that F has been actively influenced against the defender in a negative fashion. F relates that the pursuer has discussed him retaining contact with the

defender if they moved to the US and feels that would be encouraged. Dr Edward has no doubt that his perception of their shared experience more effectively allies F to the pursuer but could not suggest that there is evidence that F is presenting views, opinions or preferred outcomes that he does not genuinely hold.

The child O

Views about where he currently lives

[182] The child O was not positive about his experience of living in Scotland although he is happy with the situation where he lives with the pursuer. O spoke at length about the specific activities he enjoys that he was able to do in the US that are not open to him here. He spoke of his sadness about leaving the US and moving to Scotland. Whilst opposed to living in Scotland overall, O was clear that if here he would prefer the situation he currently has of living with the pursuer and the child F rather than any alternative that involved shared care with the defender. O can speak about having made some friends at school in Scotland and that it is comparatively easier than it was when they first moved, however, he expressed a strong preference for his school in the US.

Views about contact he currently has with each parent

[183] The child O has very limited time with the defender, generally seeing her only during the walk to school. During this time he states he does not interact with her. O expressed no desire for an increase in contact with the defender at this time. He would not wish a change to the current situation where he resides solely in the care of the pursuer.

Response to decision grid outlining potential living options (rated 1 to 4 in order of preference)

- Option 1 (best) = US with the pursuer
- Option 2 = Scotland with the pursuer
- Option 3 = US with the defender
- Option 4 (worst) = Scotland with the defender

Views about residing with the pursuer in the US or in Scotland and the contact he would like to have with the defender in either scenario

[184] The child O was very clear that residing with the pursuer in the US would be his preferred option by quite a significant margin. If that is not an option, O would prefer to live with the pursuer in Scotland than in any location with the defender. O expressed that a wish of his would be to not see the defender again. He did not express interest in seeing the defender if he relocated to America with the pursuer nor a change to the current minimal contact situation in Scotland.

Views about residing with the defender in the US and in Scotland and the contact he would like to have with the pursuer in either scenario

[185] The child O was opposed to any option that involved him living with the defender, certainly in comparison to residing with the pursuer. When encouraged to rate options, O felt that living with the defender in America would not be as bad as living with her in Scotland but he remained notably resistant to that option in general. O would clearly wish a high level of contact with the pursuer in any scenario in which he was living with the defender, based on his primary desire to be resident with the pursuer.

Whether O's views are independently his own or are, to any extent, the result of influence, and if the product of influence, the nature and extent of that influence

[186] Throughout his time with Dr Edward, O presented as primarily sad but with a strong undercurrent of anger about his living situation. He spoke openly and there were no aspects of his narrative that seemed rehearsed or coached. O's presentation was congruent to the conversation throughout. O was clear that he did not want to leave the US and in his view all aspects of his life were better in that environment. He spoke of being very sad about the move and also of having a sense that this was a trial period rather than necessarily permanent move. O was clearly very negatively impacted by the parental split. He is of the view that the choice was the defender's which does not assist his relationship with her. O speaks very negatively of the defender, even in comparison to the child F's narrative. He relates this to his view that the defender has caused the life factors that he experiences so negatively, namely the relocation and the separation. There is a strong narrative from O involving the pursuer actively encouraging him to retain a relationship with the defender, and discouraging him from speaking about her as negatively as he did in his interview. O is aware of the pursuer preferring to live in the US and that he was sad about the separation, however, Dr Edward could not suggest that this is a primary driver behind O's own wishes or his views. Largely O appears to feel that he was given the sense the relocation would or could be temporary, and that they would remain together as a family. These were the protective factors that allowed him to tolerate the move. O is now impacted by anger that these factors changed so dramatically. O does not express any desire for the family to reunite, as can be age appropriate in these scenarios, and this suggests that O's primary concern is to return to the US rather than to a previous living situation that involved the defender. Again in this way O is greatly impacted by his anger towards the defender. O

holds a lot of anger towards the defender in relation to his perception that she does not allow him to return to the US even for a vacation. He spoke of wanting to go there at Easter and his expectation that she would not allow this. There is some sense in talking to O that he feels that if the defender was less resistant to the things he most wants to do this could improve, even if not repair, their relationship. O would clearly wish both his siblings to return to the US with him and can identify that any other scenario would make him unhappy. Whilst well aware of the view of his brother and the pursuer, it was not Dr Edward's impression that O has been actively influenced against the defender in an overtly negative fashion. She suspected that if the family separation had not taken place and the residence in Scotland had been maintained, O would have presented with difficulty regarding this outcome in any circumstance. As it is, events have solidified the negative views O has held about the move and ongoing events are not assisting him to view the situation more positively.

The child I

Views about where she currently lives

[187] The child I appears more settled in her living situation than her brothers. She spoke of some minor and age appropriate irritations at school but generally appears to enjoy the environment. She appears to manage the process of living between her parents relatively well, although it is clear she is greatly saddened by the parental separation. She can identify positives in her home environment with each parent. She is coping with living separately from her brothers at times during the week, although openly expressed that she misses the pursuer and her brothers at times. Animals, and proximity to them, is a significant motivator for I and she can speak of how that positively impacts her time at the homes of

both parents. When asked what she would change about her situation, other than wishes related to animals, she only indicated that she would like to be able to go on a holiday to the US soon because she misses her friends and some animals there. She appears to have been more open and positive about the move to Scotland than either of her brothers, and as such has integrated more effectively into life in Scotland and is more able to identify some positives it might bring.

Views about contact she currently has with each parent

[188] The child I presents as relatively happy with her situation of splitting her week between both parents and did not express any immediate desire to change that. She can acknowledge being angry at the defender at times about the amount of time she gets with the pursuer as she misses the pursuer and her brothers at times. She did explicitly state that at times the defender does not let her see the pursuer at the weekends when she would like to, particularly so they can go horse riding together. As such, if the current situation were maintained it appears that she would wish more time with the pursuer than is currently available to her.

Response to decision grid outlining potential living options (rated 1 to 4 in order of preference)

- Option 1 (best) = US with the pursuer
- Option 2 = Scotland with the defender (things remaining as they are)
- Option 3 = Scotland with the pursuer
- Option 4 (worst) = US with the defender

Views about residing with the pursuer in the US or in Scotland and the contact she would like to have with the defender in either scenario

[189] When placed in a position of choice the child I acknowledged that it is a hard decision for her but she would rather live in the US than Scotland. She could identify aspects of her life there that she prefers to Scotland but she is not as rejecting of life here as her brothers are. Whilst she is very keen to vacation in the US, when asked her preference she would rather live in the US than live in the UK and visit the US on holiday. When given a decision grid of potential options she suggested that living in Scotland with the pursuer only would not be preferable to living in Scotland as she does now with a shared care arrangement. She did present a view in interview that she would be happy only to see the pursuer, however, Dr Edward believed that her narrative about her current situation suggests that in reality she would prefer to have access to both parents, and would most likely want some contact with the defender in any scenario where she was living with the pursuer.

Views about residing with the defender in the US and in Scotland and the contact she would like to have with the pursuer in either scenario

[190] For the child I the worst case scenario would be to return to the US with the defender. She relates this both to her understanding that the defender would not want to return to the US, and also some sense of anger and resentment towards the defender regarding the separation. Staying in Scotland but residing with the defender solely was something that she struggled to consider, as she associated remaining in Scotland and residing with the defender as a continuation of the shared care situation now. She did feel that a continuation of her current situation would be the second best option for her.

However, she would not like a situation where her brothers return to the US with the pursuer and she remains in Scotland with the defender. In that situation she would wish to relocate with her siblings and the pursuer and no longer reside with the defender. She was resistant to the concept of not seeing the pursuer if she was resident with the defender in either country. There is a strong sense that that would be a negative option for her and she would benefit from contact with the pursuer in a scenario where she was resident with the defender in either location.

Whether I's views are independently her own or are, to any extent, the result of influence, and if the product of influence, the nature and extent of that influence

[191] The child I's demeanour was chatty and relatively upbeat throughout her conversation with Dr Edward. None of her responses were incongruent to her presentation and for her age she presented as thoughtful in response to the questions posed. She spoke openly and there were no aspects of her narrative that seemed rehearsed or coached. She has been very notably impacted by the separation of her parents and can speak of the sadness this has caused. There is a sense that this has negatively impacted her relationship with the defender but not to the extent that she does not want contact with her. She is much more measured in her views about her situation than her brothers, and whilst she expresses some preference for the pursuer, this has not escalated to the point of rejecting the defender, despite the behaviour of her brothers. This suggests to Dr Edward that the pursuer is actively supporting her relationship with the defender as in the current dynamics it would not be possible for her to retain her relationship with the defender without that support, particularly given her exposure to her brothers' resistance to contact. She expressed a wish to be able to holiday in the US and some understanding of a situation where the children's

passports are held by the defender. Exploring this with her gave a sense that she has gained aspects of the narrative around this from both parents, and this is not something that only one party is speaking about. Her strongest wish would be for her parents not to divorce, which is age appropriate. Her understanding that the separation was something the defender, but not the pursuer, wanted does impact her level of positivity towards the defender which is somewhat inevitable. She would not want to live in a separate country from her brothers or in a scenario that did not allow regular contact. She has a sense of what both her parents want but there was no evidence that she has been manipulated in her views by either parent. There is a reliable sense of the child I being able to express her own views and of a child trying to process the family separation to the best of her ability, whilst retaining relationships with both parents.

[192] Dr Hessel Willemsen is a Clinical Psychologist who is specialised in child and family psychology as well as adult psychology. He has given expert evidence regularly in the English courts. He was instructed on behalf of the defender to consider Dr Edward's report, together with certain court documents and to provide his comments on the report, its methodology and conclusions. Specifically he was referred to the final part of Dr Edward's remit, that is whether she considered the children's views are independently their own or are, to any extent, the result of influence, and if the product of influence, what she considered the nature and extent of that influence to be. Dr Willemsen produced a report dated 14 April 2025 and an Addendum dated 22 May 2025 which are numbers 7/10 and 7/106 of process. He did not conduct any interviews in preparation of the reports.

[193] Dr Willemsen noted the complex history and significant factual dispute. It is complicated because the move to Scotland was relatively recent and there is considerable uncertainty at present. He stressed that he kept in mind the parties' competing narratives

and that there is as yet no settled factual matrix. He expressed the view that the rejection of the defender by the boys may relate to the children's loss of their life in the US and the loss of the parental couple. The children may see the pursuer as the primary carer who may wish to move back to the US, as they wish to do. They may reject the defender because they feel they moved to Scotland against their wishes, knowing the move was her preference. They may reject the defender because they experienced the pursuer as degrading her and because he is or was tolerating the children's rejection of her.

[194] Dr Willemsen concluded that there were considerable possible influences on the children that would have needed to be addressed when considering the children's views (and essentially the wishes and feelings upon which such views rest). He listed these as: the loss of the parental couple and the loss of a shared home life following the parties' separation; the possibility the pursuer is the primary carer and the children are attached to him as their main carer; allegations of domestic violence; allegations of alienating behaviour; parental conflict; and the child O's mental health. These may contribute to an understanding that the children's views were influenced, perhaps particularly in light of, and when attempting to understand, the boys' rejection of their mother. These environmental factors could potentially imply that the children are used by the respective parent to advance that parent's agenda. If, hypothetically, there would be findings of alienation or of domestic violence, then the children suffered emotional abuse, which in turn may have influenced their feelings about the respective parent. These factors were not, on the face of reading Dr Edward's report, addressed. Accordingly in Dr Willemsen's view, the report, as it stands, may not assist the court because the possible influences on the children's views were not adequately analysed. It is not possible to answer any question in respect of influence fully without also seeing the parties.

[195] Further, in terms of methodology, to understand the views of the children, where there are allegations and cross-allegations, and the possibility that the parent's agenda and motivation adversely affect the wishes and feelings of the child, it is ordinary practice to see the children individually, with their parents, and the parents individually, to attempt to understand the dynamics in the family. The assessment should focus on whether the views of the children are for any reason attributable to being caught up in the conflict between the parents, such that they adapt their views. The children's motivation for changing their views is based on feelings of fear that their needs might not be met should they challenge the parent's agenda. They then adapt their views to satisfy either of the parents. The assessment should also address whether other factors, such as the loss of the parental couple, or the conflict between the parents, is too painful to process. When losses are too painful, children may seek to be close to one parent and reject the other, so as not to have to feel the tension of the parental conflict and the accompanying losses.

[196] In her second report, Dr Edward responded to the points raised in Dr Willemsen's report. While aware of the assertion of the pursuer malignly influencing the children, she drew no evidence from interview with the children that they had heard the pursuer speaking of the defender in a specifically degrading manner. She agreed that the boys do not appear to have worked through their loss with regards to the separation. She understands the assertion has been made that their behaviour towards the defender is evidence of "active alienation" and agrees that the boys are alienated from the defender. She notes, however, that resistance to contact with a parent cannot be assumed to be evidence of "active" alienation in and of itself, particularly when other systemic and contextual factors may provide what the children might see as reasonable cause for rejection of the parent. She cannot state to the court that she has evidence that the situation in this

case is the result of “active alienation” perpetrated by the pursuer, as opposed to being the consequence of the children’s experience of relocation followed by separation which has complicated and compounded their sense of loss and significant anger towards the defender. Whilst the possibility of “active alienation” exists she could not suggest to the court that she gained evidence that this was the primary cause of the children’s current responses.

[197] The aim of the interviews was to explore the questions in the court’s remit. The parties may have very differing accounts of past events which may include assertions of domestic violence. There was no indication of concern of that type within any of the interviews carried out with the children. Had there been, this would have impacted upon Dr Edward’s formulation of the basis of the children’s views and that would have been clarified within her report. Whilst it is entirely possible there are factors which have influenced a child that are not apparent in clinical interview, it would not be appropriate to assume the existence of disputed factors as causal to a child’s view without gaining evidence of same directly from the accounts or presentation of the children. Dr Edward would not see it as ordinary methodology, given the court’s remit, to interview the children with a parent. This would create a complex contextual dynamic that would be expected to impact upon the account provided by the child, and be counterproductive to the purpose. Nor would she seek to interview the parties in a remit such as this, as their views were not an aspect of the situation she was tasked to explore. If it had been apparent that the children were presenting views solely to satisfy one parent, or were fearful of changing views, she would have made that explicitly clear in her report. The boys’ difficulty in processing their loss (of parental relationship and prior lived situation) was considered and is presented as a causal factor in the report with regard to their views.

[198] While it is possible to hypothesise as to causal factors for the children's stated views as has been presented by Dr Willemsen, Dr Edward's understanding was that the court sought her clinical opinion as to the factors that were evident in influencing the children as drawn directly from her assessment and experience of taking their views. There was no evidence gained that the alternative hypotheses outlined by Dr Willemsen would be more appropriate explanations of the views the children presented than the causal factors she outlined within her report. Had there been, she would have clearly identified this to be the case. She would not suggest that it is possible to gain absolute assurance that all causal factors have been identified. It is also not uncommon for psychologists to disagree as to the causal factors.

[199] In his Addendum report, Dr Willemsen expanded upon his earlier report. If the defender's allegations against the pursuer were proven, the children may express opinions aligned to the pursuer to avoid his aggression and to avoid being exposed to tensions and abuse between the parents. It is, then, difficult to know what weight to put on their assertions that they are disturbed by the move to Scotland and the breakdown of their parents' marriage, because they may state their views to align with the pursuer and not speak about the anxieties that relate to tensions between their parents and between them and the pursuer. The development of the alignment does not require "active alienation" or the pursuer's coaching. "Children caught between warring parents are not infrequently faced with a dreadful dilemma: whether to be honest or to be loyal when questioned" (Weir, 2011). When focusing on the children's expressed views only, there is a risk, when there are allegations of domestic abuse, such as are made in this case, that the children's adaptive behaviour, and the consequences of that behaviour, is not acknowledged.

[200] During cross-examination, Dr Edward agreed that if the court accepts the defender's account of what took place in the motel bedroom in May 2024 that would constitute a significant assault on the child O by the pursuer and it would be highly damaging to the child. The child could harbour fear and anxiety of the incident being repeated if he expressed opposition to the pursuer. It may impact on the child's ability to resist alignment with the pursuer. Dr Edward said that it was possible that the child may be encouraged to identify with the pursuer's aggression and negativity. She agreed that if the child suffered such abuse, it would place a different hue on the child's presentation to her. If the incident occurred in the presence of the other children, it would be highly damaging for them to witness and would affect their sense of security. She agreed that if the abuse had occurred, the child O's presentation of extreme rejection of the defender might be suggestive of a psychological wound in the child, and that such circumstances would be worthy of further detailed investigation. It may cause them to align to the pursuer's wishes and to reject the defender. Further, Dr Edward agreed that influence of a child does not need to be by rehearsing with or coaching a child. Influence can be active, overt, covert or an aspect of the systemic dynamic around the child. She advised that therapeutic work may be required to assist the boys to make sense of their experience although this ought not to be done in circumstances of uncertainty regarding their future. The severing of the relationship with the defender could be damaging for the children and it will be optimal to find a way to restore the relationship as best as can be achieved. Dr Edward accepted that this was particularly important where there had previously been a high quality relationship with the defender.

[201] In re-examination, Dr Edward again acknowledged the possibility of therapeutic intervention but not while the proof was proceeding and there was uncertainty. The

children may require or benefit from such intervention once it has been determined where they will live.

Admissibility of evidence

[202] I heard certain evidence from Dr Hannah Jones under reservation. It related to Child and Mother Sabotage (“CAMS”). The pursuer’s objection is insisted upon under reference to *Kennedy v Cordia* 2016 SC (UKSC) 59 at para [44] in respect that there is not a reliable body of knowledge or evidence to underpin the expert’s evidence. The use of the term CAMS derives from one article from 2023 which was not produced. In examination in chief, Dr Jones stated that CAMS is a relatively new term which is still being explored with no significant publication evidence for it albeit the authors (of the article) are experts in the wider field and international experts.

[203] In response, I was invited to repel the objection principally on the basis of the witness’ expertise. The objection was not directed at the witness’ wider expertise but whether there is a reliable body of knowledge or experience to underpin the expert’s evidence specifically in relation to CAMS. As noted in *Kennedy supra* at [55]:

“In many cases where the subject-matter of the proposed expert evidence is within a recognised scientific discipline, it will be easy for the court to be satisfied about the reliability of the relevant body of knowledge. There is more difficulty where the science or body of knowledge is not widely recognised.”

It is not disputed that CAMS is the subject of only relatively recent academic research. I will sustain the objection.

Discussion

[204] Ultimately I have to determine what is in the children's best interests. I am mindful that the welfare of each child is the paramount consideration, that I must not make an order unless it would be better for each child that the order be made than not and that, taking account of the children's ages and maturity, I must have regard to any views of the children. I must also have regard to the factors in section 11(7A) to (7E) of the 1995 Act as set out above, if applicable on the facts. Specifically, in determining the pursuer's conclusion for relocation I must not regard the rights and interests of either party as determinative.

[205] I have set out the evidence led in detail, including competing expert evidence in relation to the children's views, the defender's psychological presentation and the defender's immigration status. Considerable evidence was led about each party's role in caring for the children while in the US and until the parties' separation on 4 December 2024. Much of that focussed on which parent was the primary carer of the children. I deal relatively briefly with this chapter of evidence as the key issues are the children's views; whether the pursuer has behaved abusively to the children and separately to the defender; on what basis the defender can return to the US; and the relative benefits of the children returning to their previous home town as opposed to remaining in Scotland where they have lived since July 2024 in the case of the boys and since September 2024 in the case of the child I.

[206] Evidence was led from family members, friends, neighbours and the children's school principal. I take no issue with the credibility and reliability of any of these witnesses. Certain of the defender's witnesses were aware of tensions within the family and spoke to a return to Europe having been a topic for some time. The school principal and the witnesses who knew the family from their lakeside home described committed parents; happy and

active children; a family engaged in the community; and children thriving at school. None of these witnesses, including the school principal, referred to any signs of children living in a family environment marked by abuse. Certain of the pursuer's witnesses spoke to the defender's absences from home for work and their understanding that any move to Scotland would be a trial.

[207] In relation to the parties' respective child care roles, I am satisfied that from March 2020 when the family moved to their lakeside home, both parents were actively involved in and committed to the children's lives while managing their work schedules and roles in the community. The defender was working 60% of full time and at some distance from the family home necessitating a lengthy commute and absence from the family for several days at a time. Her work pattern was uneven and so there were weeks when she was absent for longer than others. The children attended after school club and nannies were occasionally employed. The pursuer was reluctant to accept that the family diary appeared to show that the defender's work days were fewer than asserted by him. He held to the view that the defender may travel the day before rather than on the morning of work and may not return until the day following any work shift. My impression was the pursuer sought to maximise his role in the children's care while minimising the defender's role. The defender spoke to retaining responsibility for most of the organisation of the children's lives and to the pursuer wanting to be "off the clock" immediately on her return from work. It assists little in this case to determine who was the primary carer.

[208] Dr Edward's report makes clear that the children want to live with the pursuer and to return to the US. That is the preferred option of each of the three children. The boys do not want contact with the defender and are extremely angry at her. The child O currently admits of no possibility of repairing his relationship with the defender. Dr Edward detected

some slight possibility that the child F may be receptive to contact in the event of his return to the US and significantly that he reported to her that the pursuer has discussed him retaining contact with the defender if they moved to the US and the child feels that would be encouraged. The child I's views are less absolute. She would not like a situation where her brothers return to the US with the pursuer and she remains in Scotland with the defender. In that situation she would wish to relocate with her siblings and the pursuer and no longer reside with the defender. While she did present a view in interview that she would be happy only to see the pursuer, Dr Edward believed that her narrative about her current situation suggests that in reality she would prefer to have access to both parents, and would most likely want some contact with the defender in any scenario where she was living with the pursuer.

[209] Dr Edward carefully explained her approach to taking the children's views given the court's remit. Dr Willemsen expressed the opinion that the confines of Dr Edward's remit mean that her report may not assist the court because the possible influences on the children's views were not adequately analysed. In short, without an exploration of any exposure of the children to abuse, the children's expressed views could not be properly understood. During cross-examination, the defender's specific allegation of a physical attack by the pursuer on the child O was put to Dr Edward. Dr Edward agreed that if the child O suffered abuse, it could place a different hue on his presentation to her. If the abuse occurred in the other children's presence, it could cause them to align with the pursuer's wishes. She agreed that if the abuse had occurred, the child O's presentation of extreme rejection of the defender might be suggestive of a psychological wound in the child, and that such circumstances would be worthy of further detailed investigation. I have no difficulty in accepting Dr Edward's evidence in its entirety. I have no concern about the manner in

which she undertook the remit. Her response to the impact of any physical assault upon the child O was considered and reasoned. It becomes then important to determine the abuse allegations.

[210] The defender's evidence has been set out in detail above. The pursuer denies abusive behaviour of the children and of the defender. In relation to the motel room incident, the pursuer's account was careful to confine his conduct to frustration and anger at the child, pulling him from the bed and telling him to sleep on the floor. His actions were framed in terms of the defender not being able to calm the child O and as necessary to protect the defender. Importantly, the pursuer rejected the defender's position that he repeatedly kicked the child O, causing him considerable distress and that in the presence of the other children. The pursuer conceded that it was not perfect parenting and said he was regretful.

[211] Senior counsel for the pursuer urged upon the court that there was a single source of evidence for the abuse allegations, namely the defender. Although the defender claims to have contacted police and child protection services shortly after the alleged physical abuse of the child O, there is no evidence of any such reports to the authorities. The defender's witness EH refers to recordings but they have not been produced. The pursuer, it was submitted, would be unlikely to allow the children to have support and therapy outwith their home were there a possibility of disclosure of such abuse. Further, there was nothing evident to any third parties in the US to indicate abuse of the children or wider domestic abuse. On the contrary, the evidence led from their close-knit community was of happy and thriving children who were excelling at school.

[212] I found the defender to be a credible and reliable witness. In relation to the alleged incident in the motel room in May 2024, I found her evidence to be compelling. She gave a

detailed and specific account of what took place in terms of the child O's increasingly frustrated behaviour, the rising tension to the point of the pursuer's intervention and each separate episode of that intervention. She was fearful that someone would hear the pursuer's shouting. She recounted her disbelief and helplessness and conveyed a real sense of shock in the bedroom. Further, she described the child O's reaction, her attempts to comfort him, to apologise to him and to check him physically for any internal injuries. The defender's distress at recalling the incident and throughout her evidence when speaking to any abuse of the children seemed to me both genuine and spontaneous.

[213] It is correct that no-one other than the defender spoke to the sustained conduct of the pursuer in the motel room in May 2024 or to the earlier physical assault on the child O in April 2024. The pursuer denied any such incident in April 2024. However, the credibility and reliability of the defender's account is supported by the evidence of a number of witnesses to whom the defender spoke following the physical attacks. Her sister (the witness AS) spoke to the defender's disclosure that the pursuer had hit the child O and that she had contacted the police but did not want the children to be interviewed. The defender had shared a second incident of the pursuer being violent to the child O in May or early June 2024. During spring or summer 2024, the defender reported to AS that the child O had said he would get used to the violence. The defender had sounded shocked, sad and helpless. The witness EH recalled the defender telling her about the pursuer kicking the child O. The defender was upset about it and had contacted child protection services. The witness CS gave evidence that the defender was distressed on the telephone while recounting that the pursuer had kicked the child O.

[214] The defender described a wider pattern of abuse involving the earlier physical attack of the child O in April 2024, smacking the boys on the head, threatening to hit the child I and

speaking inappropriately to all three children. She spoke to a pattern of the pursuer speaking abusively to her, belittling her and becoming enraged. The pursuer left the home in a rage on a number of occasions, mostly in the US. The impact of the pursuer's behaviour in the US and the defender's growing fear for her safety and the children's safety is supported by the evidence of the witnesses AS and EH. The witness LA, who otherwise described both parties' favourably, observed the pursuer being repeatedly disparaging of the defender to the children about the car accident. Albeit not in the recent past, the witnesses MJ and BC speak to the pursuer's father's upset and concern at witnessing the pursuer treating the defender harshly after one of the children ran onto a busy road. While the pursuer's father has since died and so his evidence cannot be tested, the pursuer accepted that his father had spoken to him. I accept that there is no record of any reports to police or social work in the US nor of the recordings kept by the witness EH. Nonetheless I accept the defender's evidence that she made contact with these agencies and later with Scottish Women's Aid in November 2024.

[215] The pursuer was adamant in his denial of any controlling or abusive behaviour whether in the US or in Scotland except on limited occasions. He would remove himself from any conflict with the defender by leaving the home in the short-term. The defender described one occasion in Scotland in November 2024 when the pursuer swore at her, using vulgar and degrading language in the children's presence before leaving in a rage. The pursuer accepted that he had lost his temper and used the language claimed. He described a fraught domestic situation and having been criticised and provoked by the defender. The defender described the children being subdued in the aftermath of the outburst and the child O asking about divorce. I reject the pursuer's assertion that the worst obscenity was under his breath and not audible to the children.

[216] I am satisfied that the pursuer has been physically abusive to the boys. The incident in May 2024 involved a definite kick to the child's abdomen as part of a repeated attack with intervals between the different episodes of the attack. While that incident stands out in its seriousness, I do not agree with the contention on behalf of the pursuer that it is an isolated and now somewhat historical incident.

[217] I also accept the defender's evidence that the pursuer has been verbally abusive towards her, belittling of her, swearing at her and aggressive on occasions. I am not persuaded that he has exercised financial control where the evidence led was in the context of post-separation negotiations between solicitors.

[218] I am satisfied then that on the evidence the factors in section 11(7A) to (7E) of the 1995 Act are engaged. I must have regard to the need to protect the children from any abuse or the risk of any abuse, which affects, or might affect, them; the effect such abuse, or the risk of such abuse, might have on them; the ability of the pursuer to care for, or otherwise meet the needs of, the children; and 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 children by the defender. In the event that any order would require the parties to co-operate with one another, I have to consider whether such an order would be appropriate.

[219] Before addressing the obvious tension between the children's expressed views and the need to protect the children from the risk of abuse, it is important to consider the position of the child I. While her preferred option is to reside in the US with the pursuer, I am satisfied on the evidence that the shared care arrangement which has operated since December 2024 has been in her best interests. She has maintained a relationship with both parents and has benefitted from what each parent has to offer. I am mindful of Dr Edward's assessment that such an arrangement could only be sustained with the support of the

pursuer but I am not persuaded by the pursuer's supplementary evidence during the August proof dates that the most dramatic change in the children's attitudes was seen in the child I and exemplified by her using unfavourable names to describe the defender. I prefer the defender's evidence which was more balanced. The defender accepted that the child could be angry on arrival to her home and had to be given space but she would settle and be loving. The evidence of the mutual affection between the child and defender while in Scotland is spoken to by the defender's witness KM. Further, the evidence points to the child I having made friends, enjoying activities and being more accepting of Scotland generally. She has a continuing and beneficial relationship with the defender. I must have regard to the importance of that relationship when assessing her best interests.

[220] Much of the evidence led was about the relative merits and demerits of the children's lives in the US and in Scotland. I heard evidence about the circumstances in which the family came to Scotland and each party's intention around the move. It is unquestionable that for the children, their American lives were characterised by strong friendships, enjoyment of school and an excellent array of outdoor activities. The pursuer's evidence is that his rental property in Scotland provides barely adequate accommodation; the children are not thriving at school or in their sporting activities; and their social lives are poorer. The defender's evidence is that the children are forming new friendships in Scotland. They have undertaken activities in Scotland such as football, horse-riding and tennis but their enthusiasm does not match their love of football and the great outdoors as when in the US. While the children O and I are doing well academically, the child F has struggled at school. I observe that he has moved from a primary to secondary school environment as well as from the American to Scottish school system. The most concerning aspect of the case is that the boys have expressed suicidal ideation in Scotland. They have had some support through

school and therapists but any therapy has stopped because the child F did not want to continue and because of financial constraints. The child I has accessed some support at school from May 2025. I appreciate that the boys are currently not well disposed to the activities which Scotland offers but it is clear from the defender's evidence that there are many outdoor activities for them to enjoy. To his credit, the pursuer has sought to support engagement with football by helping with coaching and he has explored options around sailing and horse-riding.

[221] This is perhaps not a typical relocation case as what is sought is for the children to return to their American home and not to an untried destination. It is less about the relative merits of the two locations given the parties researched and considered together schooling, activities and opportunities in Scotland. It is more about the children's previously settled lives in the US, their current wishes and the response, in particular of the boys, to Scotland. The parties undertook two visits to Scotland, the second of which was a scouting or orientation visit. They agreed to move to live in Scotland. I pause to acknowledge the conflict between the parties as to whether the move was a long-term move or one conditional on its success or one for a trial period of 1 year. On balance, I prefer the defender's evidence that the move was expected to be for the longer term in that she resigned her established, well remunerated and successful consultant's post. She did so in circumstances where she was the principal earner for the family. It would have been open to her to seek a year's sabbatical were the move a trial. Further, she had explored consultant post opportunities with the NHS in Scotland, having earlier investigated opportunities in Denmark. In contrast, the pursuer led evidence of the parties' two homes in the US being retained and the main home being "untouched" in the sense that the furniture and many belongings remain there. The parties were agreed that it was their intention to return to the

US for holidays and that the pursuer would return separately to complete his ski instructor's certificate. I do accept that the pursuer characterised the move to the children as flexible as a means to reassure them. That approach was not endorsed by the defender.

[222] As noted above, the pursuer described the family's life in the US as extremely happy. He did so in contrast to their family life in Scotland. However, both parties' evidence disclosed difficulties in family life some time before any move to Europe was contemplated. The parties attended marriage counselling from 2019. On a number of occasions, the pursuer left the family home after a dispute with the defender and stayed in temporary accommodation overnight. The boys had become physically aggressive towards the defender, kicking and hitting her. Even on the pursuer's evidence, while living in the US there were stresses in family life. The position is more complex than the move to Scotland and the separation being the root causes of difficulties within the family.

[223] Having found that the boys have been exposed to physical abuse and the three children exposed to the pursuer's angry and demeaning behaviour to the defender, I have to consider how to protect the children from the risk of continuing abuse and to consider protective factors. Having found that the child I benefits from a relationship with both parents, I have to consider how these relationships can be maintained. I conclude that the defender's significant involvement in the children's care will provide a protective factor and will ensure a continuing relationship with the child I. With therapeutic intervention, any restoration of the boys' relationship with the defender is more likely if they are in the same place. The evidence led does not support the defender's ability to return to live in the US immediately or in the short-term.

[224] Ultimately, the difference in evidence between the US immigration law experts is one of emphasis. Christy Jackson was somewhat more optimistic that the defender may not be

questioned by officials at the border. She relies upon a return within 12 months and the defender persuading border officials that her intention was never to abandon her US residency. The defender's position is precisely that her absence from the US was intended to be permanent. That is consistent with her resignation of her employment in the US, her permanent appointment to a consultant's post in Scotland and her application for ILR in the UK. I have set out fully the other potential routes to enter the US. I understand that it is conceded on behalf of the pursuer that if the defender cannot enter the US on her Green Card, the only immediate means of entry is on an ESTA which limits any stay to 90 days albeit subsequent applications can be made. Any other likely routes will not be immediate and will be subject to determination by the US authorities which will be likely to take at least a year or longer. Any application related to the defender's employment would require her to have employment in the US. Were I to make an order which relies upon the defender being in the US, it is unlikely that the defender would be able to live in the US other than for 90 day periods and repeated visits would be likely to arouse suspicion.

[225] I understand that the children's clearly expressed views are they want to return to the US. It is very difficult not to give effect to them. I have considered their views seriously. However, I have to balance their views with the need to protect them from the risk of abuse and with ensuring that the child I can maintain a relationship with the defender. While the boys' presentation is more immediately concerning, it is important not to underestimate that the defender has had a significant role in the child I's life and that role continues. The defender had a no less significant role in the boys' lives until December 2024. I consider that it will not be beneficial for the child I if the current shared care arrangement is replaced by holiday contact and indirect contact. I do not consider that it is in the boys' interests in the longer term to have no relationship with the defender or for there be no attempt at

therapeutic intervention to repair the relationship. I am mindful of Dr Edward's evidence that the best attempt at repair may be for the children to be allowed to return to the US. However, Dr Edward also acknowledged the likely need for therapeutic intervention once the outcome of these proceedings is known. She acknowledged that the children's presentation and assessment of their views may be more complex in the event that a physical assault of the child O is established. Therapeutic work may be required to assist the boys make sense of their experience. In Dr Edward's opinion the severing of their relationship with the defender could be damaging for the children and it will be optimal to find a way to restore the relationship as best as can be achieved. She accepted that this was particularly important where there had been a high quality relationship with the defender.

[226] I hope that the parties' priority will be to arrange the support and therapy for the boys which has been considered necessary for some time.

[227] On balance, I conclude that it is better for the children to benefit from a relationship with both parents where the defender will be a protective factor than to return to live in the US with the pursuer. Notwithstanding the pursuer's abusive behaviour, in particular his physical abuse of the child O, there was no submission that the pursuer should have no role in the children's care.

[228] In all of the circumstances, it is not in the children's best interests to reside in the sole care of the pursuer and to return to reside in the US without the protective involvement of the defender. It is in the children's best interests for both parents to be involved in their care, as they were until December 2024, allowing the defender to safeguard them. An order for the children to reside between the homes of both parents is in their best interests. The current shared care arrangement for the child I will continue. I acknowledge that the boys

are unlikely to participate in a shared care arrangement without therapeutic intervention.

Both parties acknowledged Dr Edward's evidence about the likely need for intervention.

[229] I have carefully considered the ability of the parties to co-operate as I must do in terms of section 11(7D). Albeit imperfectly at times, they have operated a shared care arrangement for the child I and can be expected to do so for all three children in the children's best interests.

[230] I regret that I cannot do what the children want me to do. I do not dismiss their wishes. I have had to balance their wishes with keeping them safe and allowing them to access the care of both parents.

Disposal

[231] In light of the conclusions I have reached, I will sustain the defender's first, second and fifth pleas-in-law and repel the pursuer's first, second and fourth pleas-in-law, the effect of which is that I refuse a residence order in the pursuer's favour and a specific issue order entitling the pursuer to remove the children from Scotland to live in the US. I make a residence order for the children to reside equally between the parties.

[232] I reserve meantime all questions of expenses.