

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT FORFAR

[2025] SC FOR 77

FFR-F120-25

JUDGMENT OF SHERIFF MARK THORLEY

in the cause

MARK BRUCE

Pursuer

against

NICOLA DAWN COLLINS

Defender

Pursuer: Mackintosh and Party

Defender: Robb and Party

Forfar 25 August 2025

The sheriff, having resumed consideration of the cause, finds in fact:

[1] The parties are not married. There are two children of the parties' relationship, namely LCB, born 20 October 2017, and JKB, born 6 September 2019.

[2] The pursuer is 30 years of age and the defender 37 years of age. They met whilst the defender was at university at Aberdeen, some 18 years ago.

[3] The relationship ended in January 2025. The parties at that time were living at 7 Kingfisher Place, Kingennie, Angus, DD5 3JZ. The pursuer owns that property individually. The parties have continued to reside in that property along with the children, LCB and JKB.

[4] LCB is 7 years of age and about to enter Primary 3. JKB is 5 years of age and is due to enter Primary 1 of school.

[5] The defender is a primary school teacher. She commenced working at Masterton Primary School in August 2018 and is going to work full-time there with effect from August 2025. The pursuer runs his own businesses, one of which provides services to the construction industry and the other rental housing.

[6] Both children have been brought up exclusively at the property at 7 Kingfisher Place, Kingennie Angus, and have attended the local primary school and nursery at Mattocks Primary School and Mattocks Primary School Nursery.

[7] The defender's parents live in Dunfermline. They have a large five-bedroomed property, which can accommodate the children and the defender living there.

[8] The defender's parents have had a significant involvement with the children, in particular during the children's earlier years.

[9] Masterton Primary School, where the defender works, is in Dunfermline and is close to where the defender's parents reside.

[10] The children are currently enrolled in Primary 3 and Primary 1 of Mattocks Primary School in Angus, but also have places available in Primary 3 and Primary 1 at Masterton Primary School in Dunfermline.

[11] The distance between the property at 7 Kingfisher Place, Angus and the defender's parents' address in Dunfermline is approximately 53 miles and takes an hour or thereby to drive in a car.

[12] The defender owns two buy-to-let properties in the Dundee/Monifieth area, which have been acquired through the pursuer's business. The defender is unable to live in either of those properties.

[13] The defender was working 3 days a week at Masterton Primary School from August 2018. In February 2025, her job-share went off sick and she commenced working

4 days a week, from Tuesday to Friday each week. The defender continued to look after the children on a Monday. When she goes full-time at Masterton Primary School in August 2025, her hours of work will be from 8.30am until 4.00/4.30pm. She can accommodate taking the children to Masterton Primary School in the morning and collecting them at the end of the day.

[14] The defender's opportunities to work full-time as a primary school teacher are limited. There are few permanent opportunities. The defender is unable to obtain employment in the Angus area. The defender is unable to purchase a property in the Angus area.

[15] The pursuer has significantly more flexibility in his working day than the defender. The pursuer is in a significantly better financial position than the defender.

[16] Both children undertake activities in the Angus area, but there are equally opportunities for the children to undertake such activities in Dunfermline. The defender has a close network of family and friends in Dunfermline.

[17] The accommodation at 7 Kingfisher Place, Kingennie Angus is more than adequate for the children to live in as is the defender's parents house.

[18] The purpose of the defender moving to Dunfermline is to secure full-time employment at Masterton Primary School. She would live with her parents to begin with, until she was able to secure a mortgage to purchase a property of her own in the same locality.

[19] The pursuer has financial means available to him to purchase or rent further property.

[20] The children are likely to have a significantly restricted relationship with the defender if they were to remain in Angus. It is in their best interests to maintain that

relationship and the only practical way for this to take place is for them to move to Dunfermline.

[21] The defender has offered the pursuer a significant amount of care of the children were they to move to Dunfermline and the pursuer has both the flexibility in his work and the financial means to ensure that he could share a significant amount of care of the children, which otherwise would not happen if the children remained in Angus.

[22] A move to Dunfermline would further secure the children's relationship with their maternal grandparents with whom they already have a close bond.

[23] The children would move to a school where the defender is working thereby limiting the amount of wrap around care needed to look after the children on a daily basis.

[24] The children would still enjoy at least the same amount of extra curricular activities in Dunfermline as they do in Angus.

[25] Hereby finds in facts and law that it is in the best interests of the children to move to Masterton Primary School; Therefore refuses the pursuer's fourth crave for specific issue order for the children to attend Mattocks Primary School and upholds the defender's third crave for the children to attend Masterton Primary School; Repels the pursuer's sixth plea-in-law and upholds the defender's fifth plea-in-law;

Thereafter, assigns a virtual hearing to discuss arrangements for care of the children for both parties.

Introduction

[26] This is a case which involves two children, LCB and JKB. They currently live in Angus and they are both due to attend Mattocks Primary School in August 2025. LCB is

currently at the school and is about to enter Primary 3 and JKB would be attending in Primary 1.

[27] Prior to the evidential hearing, a report was prepared by a local member of the bar. It had been agreed between the parties, however, that the children should not be consulted on a potential relocation to Dunfermline and move to a different school, pending the outcome of a hearing which took place on 8 August 2025.

[28] I heard evidence on 8 August 2025.

[29] Prior to the hearing, the pursuer had provided an affidavit and a supplementary affidavit. The defender had provided an affidavit, a supplementary affidavit and there was an affidavit from the defender's father.

[30] The pursuer gave evidence, as did the defender and her father.

[31] I was invited to deal solely with the competing specific issues of the pursuer for the children to attend Mattocks Primary School and remain in Angus and the defender for the children to attend Masterton Primary School in Dunfermline and thereby live in Dunfermline

Background

[32] Much of the evidence which I heard and which had been documented in Affidavits was agreed.

[33] The pursuer is 30 years of age and the defender 37. They met whilst the defender was at university in Aberdeen and the pursuer was working. They engaged in a relationship. They began to live together in a house owned by the pursuer and built on land bought by the pursuer at Kingennie in Angus. They moved into the house in August 2016. LCB was born on 20 October 2017 and JKB on 6 September 2019.

[34] The defender is a school teacher. She returned to work from maternity leave at Masterton Primary School in Dunfermline in August 2018, working 3 days a week. The pursuer is a very successful businessman, running various companies, which include a property company, together also with a company providing services to the construction industry.

[35] The defender's parents live in Dunfermline. Following upon the children's collective births, the defender's parents have been significantly involved in assisting in care arrangements.

[36] The defender commenced working 4 days a week at Masterton Primary school in February 2025, from Tuesday to Friday. She has now been offered a permanent 5 day a week contract.

[37] Jobs in the teaching industry are not easy to come by. Jobs are largely offered internally. She would find it extremely difficult to move out of Fife.

[38] The parties separated in January 2025, but have continued to effectively live in the same property since that time. They have shared the care of the children, particularly across the summer holidays.

[39] The defender owns two properties in the Angus area, but these are properties that are buy-to-lets and are clearly tenanted. They were purchased through the pursuer's businesses. She has no alternative accommodation in Angus.

[40] The concerns that she has are that she has accepted the job in Dunfermline. She wants to go and live at her parents' house. Her parents have a substantial new build property, which has five bedrooms and which her children are well used to because they have clearly stayed there at various points in time. She wants the children to attend the same school as her, namely Masterton Primary School.

[41] Her working hours at school would be 8.30am until 4.00/4.30pm Monday to Friday. She could take the children to school at 8.30am and then arrange to pick them up at the end of the school day.

[42] Prior to the school holidays, the pursuer did not work on a Monday, so looked after the children then. On a Tuesday, she went to work in Dunfermline and the pursuer dropped the children at school and then collected them from a childminder at 5.30pm. On a Wednesday, the pursuer dropped the children off at school at 8.30am and again picked them up from the childminder at 5.30pm. On a Thursday, the pursuer dropped the children at school, but the defender picked them up and on a Friday the pursuer dropped off the children and picked them up again. On Saturday and Sunday they shared care of the children.

[43] The distance between the parties' current home and the proposed school address is 52 miles. On any view, it would take an hour by car between the two destinations.

[44] The pursuer wants the children to go to Mattocks Primary School. LCB is currently going into Primary 3 at that school. JKB is about to start in Primary 1. They have only ever lived in the house at Kingennie, 7 Kingfisher Place. They know no other accommodation. They have various classes and activities around that area.

[45] The defender has indicated that she could arrange for similar activities in the Dunfermline area.

[46] The pursuer does appear to be more flexible with his employment. He also clearly has much greater financial means than the defender.

[47] The argument put forward by the pursuer is that the children are well-settled and that nothing has really been said to establish that it would be in the best interests of the children to move to Dunfermline. The pursuer is willing to be flexible about contact

arrangements for the defender. He would be offering alternate weekends, together with a Wednesday night during the week. The difficulty is how that arrangement would work in practice, without the children being involved in significant amounts of travel.

[48] The defender wants the children to come to live with her in Dunfermline.

Essentially, if they did not do that, then she would be restricted to alternate weekends contact with the children.

[49] Her argument is that the pursuer is in a much easier position to be able to move to Fife. He could work from there. She is absolutely restricted in what she can do. She cannot get a job elsewhere. She needs to work full-time now that the parties have separated. There really is no alternative.

The pursuer's submission

[50] Ms Mackintosh for the pursuer indicated that this was, in terms of the Children (Scotland) Act 1995, effectively a "relocation". The defender was seeking to relocate the children from their current residence in Angus to Dunfermline.

[51] The pursuer was seeking an order under Section 11(2)(e) of the Children (Scotland) Act 1995 to attend Mattocks Primary School, Wellbank in Angus. The defender correspondingly was seeking a similar order but for the children to attend school in Dunfermline.

[52] In terms of paragraph 11(7)(a) of the 1995 Act, the court

"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".

[53] I was referred by the pursuer's agent to the cases of *M v M* 2012 SLT 428 and *S v S* 2012 Fam LR 32.

[54] As was noted in the case of *M v M*, page 441 (b),

“what matters, in this as in any other case, is that the welfare of the children must at all times be the paramount consideration, and that the wishes and interests of either parent must receive no greater weight than they truly deserve in the circumstances”

[55] It was for the defender to demonstrate that the proposed move, and the making of a specific issue order, were justified from the perspective of the children’s best interests. No such order should be made unless shown to be better for the children than the making of no order at all.

[56] In the case of *S v S*, the pursuer highlighted again that where there may be no strict legal onus of proof in cases (“of relocation”), there was an evidential onus on the party seeking to “relocate”.

[57] The pursuer asserted that the defender had to show that there is a positive benefit to the children in the order under Section 11(2)(e) being granted. The pursuer was clear that the children were well-settled in their current lives. The defender had not provided any “discernible benefit”. There were very few, if any, positive matters put forward by the defender. Some were hypothetical. The defender’s housing situation would be temporary. She herself has minimised the move for the children. The pursuer would facilitate and extend the time that the defender could have care of the children.

[58] It is the defender who has chosen to live elsewhere. She could work in her new job and the children remain in their current environment. This remains the least disruptive option.

The defender’s submissions

[59] The defender sought the court to grant the specific issue order in terms of crave 3.

[60] There has been a change of the parties' circumstances, and the defender has got a full-time job in Dunfermline, at the school which the children would be in attendance at. The relationship between the parties is over. The defender can no longer live in the former "family home".

[61] The defender has historically played a greater role as a parent.

[62] She herself is the only parent offering concrete proposals in relation to ongoing contact. She is offering three out of five weekends. It was only on the day of the proof that the pursuer made an offer. That offer is alternate weekends.

[63] The pursuer can work flexibly in a way that the defender cannot. The defender is not married. She needs to work. It is an unavoidable change.

[64] The pursuer's businesses still come first.

[65] She cannot continue to live in Angus.

[66] If the children were to stay in Angus, the defender would only get contact with the children each fortnight.

[67] The move is in the best interests of the children.

Decision

[68] I was invited in this case to deal with the issue of whether the specific issue for the children to "relocate" to a school in Dunfermline, or to attend the school in Angus, should be made. I appreciate that in the case of *M v M* there was a certain criticism made about the parties asking the sheriff in that case to defer any operative ruling on future contact until a later date. However, in this case, I will acknowledge that, whatever the outcome of the case, both parties will continue to have significant care of the children.

[69] In applying the tests contained within Section 11(7) of the 1995 Act, I have regard to the following factors.

1) The defender's reason to move

The parties' relationship came to an end in January 2025. They have continued (on one view) to reside together in the family home in Angus. LCB is at school at Mattocks Primary School in Angus and is due to enter into Primary 3. JKB has been attending the nursery school at Mattocks Primary School and is about to enter into Primary 1.

The family home is owned by the pursuer. The defender, although she owns two buy-to-let properties in the Angus area, only has acquired these properties through the pursuer's business activities. She has no accommodation in the Angus area to move into.

She is currently working as a teacher at Masterton Primary School in Dunfermline 4 days a week. She is due to commence full-time work from Monday to Friday each week, 8.30am until 4.00/4.30pm from August 2025. She has been working in Masterton Primary School three days a week from August 2018.

She cannot obtain employment in the Angus area. Jobs in primary school teaching are difficult to obtain. She wants to work full-time.

Unlike the case of *M v M*, where the proposed move was by a party there to engage in another relationship, the motivation for the defender here has a sound basis.

2) Accommodation available

The defender's proposal is to live with her parents in Dunfermline. They have a five-bedroomed newbuild property in Dunfermline. The pursuer's home is equally adequate for the children. It is a house built for the pursuer. It is the only house that the children have currently known in terms of living in. The children have, however, attended the defender's parents' house on a regular basis. The defender's parents have looked after the children, particularly when they were much younger, and provided support for the defender.

Although it is the defender's intention to purchase her own property in Dunfermline, she cannot do so until she has obtained a mortgage. That may come following upon her permanent contract that she has now.

On the basis of the current accommodations available to both parties and for the children, both are equally appropriate.

3) Schooling

There was little evidence led in connection with the respective schools.

Masterton Primary School is a bigger school. I was advised that there are 400 pupils there, as opposed to Mattocks Primary School, where there are about 70. At Mattocks Primary School there are composite classes of mixed years. At Masterton Primary School there are dedicated year classes.

However, the numbers of children in the class are approximately the same.

Beyond that, there was little evidence, apart from that the defender is herself a schoolteacher in the primary school at Masterton.

For LCB, this would constitute a move of school, as she is about to enter Primary 3. For JKB, he has attended the nursery at Mattocks Primary School and is due to enter Primary 1.

A potential change of school for any child would have an unsettling effect, but the positive benefit for the children attending at Masterton Primary School is that the defender will be present there.

4) Care arrangements around school

If the children were attending at Masterton Primary School, then the defender would take the children to school for 8.30am and pick them up at the end of the school day. This may, of course, involve some after-school care. For the pursuer, the arrangements up until the end of the school term in June 2025 were that the pursuer was not involved with school on a Monday because the defender was not working. On a Tuesday, the pursuer dropped at school and collected from a childminder at 5.30pm, on a Wednesday the position was the same. On a Thursday, the pursuer dropped at school but the defender picked the children up from school. On a Friday, the pursuer dropped the children at school and collected them.

The advantage for the children would appear to be that, if the children were with the defender at school, she would be able to drop them at school each day and pick them up.

In addition, she has the availability of her parents, who have been significantly involved. That is not to say that the children have not enjoyed being with the childminder.

5) Care arrangements generally

If the children were to live with the defender in Dunfermline, then she has already offered that the children could be with their father for three weekends out of five and in addition have one night during the week. That would be in addition to holidays being shared equally and nightly video calls.

The pursuer, at proof, indicated that he would offer the defender every second weekend plus an evening during the week. What he would really like is that the parties shared care of the children equally.

Standing the pursuer's greater flexibility in work, it would be much easier for the pursuer to make arrangements either to come to Dunfermline to pick up the children at an earlier time or indeed potentially look at accommodation in the Fife area. The defender is constrained by her hours of work. If she does not finish until 4.00/4.30pm, and has to travel to Angus, then it is difficult to see how an arrangement could be made that is workable.

Obviously, one of the keys here is that it would be preferable, from the children's perspective (whatever arrangement is to be put in place), that their amount of travel time is restricted.

The key also is that the children have the benefit of spending as much time with each parent as possible.

The current arrangements across the summer have effectively been that the parties would share week about. Up until that point, the parties were effectively living in the same house. The arrangement then was for the defender to have the children on a Monday and a Thursday. The pursuer had

the children on a Tuesday and a Wednesday. Weekends were shared. That arrangement, going forward, is clearly unworkable standing what is going to be the parties' geographical differences.

6) The children's views

Although a Child Welfare Reporter was invited to take the children's views, parties were agreed that taking the views of the children when they were unaware of what was going on in the background would be unhelpful. The parties were of the view that the more logical and child-focussed approach was for a decision to be made and then the children to be advised. Accordingly, there are no views of the children available.

7) Children's extracurricular activities

I was advised that LCB is attending dance classes locally. JKB is interested in football and is at a local club. Clearly the children will want to continue with their activities.

Evidence was led to confirm that these activities for both the children are available in the Dunfermline area.

8) Ability of the parents to move

As has been narrated, the defender, if she wants to work, can only do so in Dunfermline. She has no alternative. The parties' relationship has broken down. She cannot continue to live in the former family home. Her intention is to live with her parents (and the children) in Dunfermline.

The pursuer is a successful businessman. He has a company which owns a considerable number of properties. It is acknowledged that he has a house in which the parties have lived in Angus. It appears he has the financial ability to be able to buy/rent elsewhere, which would potentially allow the parties to share care of the children. His work is significantly more flexible than that of the defender.

Conclusions

[70] This is not a straightforward case. Both parties acknowledge that the other parent is an equally good carer for the children. The children do have a settled life in Angus.

[71] I have to take into account the best interests of the children as being the paramount consideration here.

[72] I have taken into account the welfare of the children as the paramount consideration and am of the view that an order should be made for the children to “relocate” to Dunfermline and to Masterton Primary School.

[73] The reasons why an order would be better than none at all are as follows:

- a. That it is best for the children that they have a full relationship with both parents. The defender can no longer live with the pursuer. She has no alternative accommodation but that in Dunfermline and indeed her job is in Dunfermline, she cannot get a job elsewhere. The working hours of the defender are timetabled. The pursuer has significantly more flexibility. He is in a position to be able to either travel or himself find suitable alternative accommodation (something which the defender simply is not).

- b. The children are both young and indeed JKB has not started school as yet.
Certainly, so far as JKB is concerned, he will be entering into Primary 1, with all the associated issues that arise with a child entering primary school.
- c. The defender is herself a primary school teacher at Masterton Primary School.
She can accommodate taking the children to school and picking them up.
- d. The children will begin by living at their maternal grandparents' house, a house they know well, with grandparents that they know equally well.
- e. The children have a good relationship with both parents. That needs to be encouraged. If the children remained in Angus at school there, they would inevitably lose a significant part of their relationship with their mother. That is not in their interests. The welfare of the children dictates that they maintain as much as possible of a shared care arrangement with both parents.
- f. The status quo in this case is changing no matter what. The defender's reasons to move are entirely valid. This is not an attempt simply to affect the relationship with the other parent.
- g. It is in the best interests of those children to move to Dunfermline and to Masterton Primary School.

Further Orders

[74] I was invited to fix a further hearing to deal with care arrangements post the decision on "relocation" which I will do.