SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES AND GALLOWAY
AT AIRDRIE

[2026] SC AIR 119

AIR-A253-23

JUDGMENT OF SHERIFF ANTHONY MCGLENNAN

in the cause

MRS GREEN and MR GREEN

Pursuers

against

MR WHITE and MS BROWN

Defenders

Pursuers: Thompson
Defenders: McLean

Airdrie, 10 November 2026

[1] Mr and Mrs Green are a married couple. They reside together at [ADDRESS REDACTED]. They jointly pursued this action. They did so against Mr White and Ms Brown, who reside at [ADDRESS REDACTED]. The defenders have a teenage son, who resides with them. The houses of the parties are not attached, but they share a common driveway at the front, after which the properties are separated by a boundary fence. Both properties have back gardens. The boundary fence does not currently run to the end of those back gardens.

[2] The action raised had three substantive craves. The first sought interdict against both defenders. They were to be prohibited from "..contacting, approaching, harassing and intimidating the pursuers; from damaging her property; or from causing a nuisance to the

pursuer or her husband Mr Green". As per the third crave I was asked to attach a power of arrest to that interdict. The second crave sought that the defenders be ordained to implement their obligations "as ordered" by the court on 18 January 2023 in relation to a separate action between the parties.

[3] All three of the craves were defended. The matter thereafter made its way to proof. Affidavits were ordered to stand as evidence in chief. Evidence was duly received from all four parties. The Greens also led evidence from a Mrs Gold and a Mr Black. Notwithstanding the use of written evidence, it nevertheless took 5 court days in May and June of this year to complete the proof. Thereafter on 30 July 2026, submissions were heard.

[4] As the parties are well aware, the judgment which follows has used pseudonyms for the parties. The true names of pursuers are not Mr and Mrs Green, similarly the true names of the defenders are not Mr White and Ms Brown respectively. Mrs Gold is also a pseudonym, as is Mr Black. The parties' addresses have been redacted, likewise the reference of the previous court action. All of these anonymisation devices are employed to protect the identity of the teenage son of Mr White and Ms Brown, who is referred to in relation to one of the wrongs complained of in the action.

Background

[5] The parties have been in dispute for several years. As foreshadowed, this is not the first time in which matters have reached court. Previously, in 2019, an action was raised by the Greens against Mr White and Ms Brown. It was allocated the court reference AIR-XXX-19. The dispute related to use of a common driveway, misuse of close circuit television and audio recording equipment, and harassment. The action settled on 18 January 2023, when authority was interponed to a joint minute.

[6] Any hopes that relations between the neighbours would thereafter be harmonious proved misplaced.

Overview of parties' positions

The pursuers' position upon the first and third craves

[7] Since the conclusion of the previous action, and over a period of years, both defenders have engaged in a course of harassing and intimidating conduct towards them. Separately they have caused nuisance. Interdict was necessary to arrest these wrongs. Without the same they would continue.

[8] The order of January 2023 which settled the previous action included a series of undertakings by the parties. Both defenders had failed to adhere to their undertaking not to harass or intimidate the pursuers. As such the test for attaching a power of arrest to the interdict was met.

The defenders' position upon the first crave

[9] None of the actions averred upon by the pursuers were wrongs committed by either defender. Most were actions which had not been carried out by either. Others were actions which did not amount to harassment, intimidation, or nuisance. Interdict should not be granted.

The pursuers' position upon the second crave

[10] The defenders' undertakings included reinstatement of a boundary fence. The fence which the defenders had thereafter erected did not amount to a reinstatement as required by the order of court

The defenders' position upon the second crave

[11] The defenders had implemented their undertakings in relation to the boundary fence.

Summary of disputed evidence

Overview

[12] The record contained 110 articles of condescendence. The first three contained averments which addressed the second crave. The remainder dealt with the interdict sought. The vast majority of the answers to those articles denied the pursuers' averments without any further explanation. Emblematic of that approach, the joint minute of admissions extended only to the parties being neighbours and the undertakings having been given to the court, as aforesaid, in 2023

The first crave

The pursuers' evidence

[13] The conduct complained of was averred to have occurred from 26 January 2023 (days after the conclusion of the previous action) until late October 2025. Comprehensive affidavits from the pursuers were lodged and were adopted in parole evidence. Affidavits were sworn by Mrs Gold and Mr Black and likewise adopted in oral evidence. Mrs Green was taken in parole evidence for more than 2 court days. Much of this time spent was spent giving evidence in chief, notwithstanding the reliance on a detailed affidavit. She was shown and commented upon video images which had been taken by her and her husband. These were mostly prayed in aid of the pursuers' crave for interdict. Nearly 200 clips were

lodged, and a large percentage were examined with Mrs Green. The parole evidence of Mr Green and Mrs Gold and Mr Black was far shorter.

The defenders' evidence

[14] The defenders' affidavits were much less detailed than those lodged by the pursuers. They were also objected to. The point raised was that large parts of the affidavits were taken up by accounts of conduct and events which were not on record. Photographic and video clips productions lodged by the defenders, considerably fewer in number than those lodged by the pursuers, were similarly objected to. By consensus this evidence, and related parole evidence given upon these points, was received and heard under reservation of consideration of its relevancy. The parole evidence, in distillation, and as aforesaid, denied all of the averred wrongs.

The second crave

The pursuers' evidence

[15] In terms of crave two, the pursuers' submission asked that I ordain implement of the defenders' obligations ordered by court interlocutor of 18 January 2023. The third article of condescendence, the pursuers' evidence and, later, the pursuers' closing submissions specified the extent to which implementation was sought. It was restricted to reinstatement of the boundary fence. It was conceded that a fence had been erected by the defenders as required by the order of January 2023. Crucially however the fence erected failed to amount to a reinstatement, as was required. It did not extend to the pursuers' fence at the rear of their property. There was also a sizeable gap between the ground level and the lowest point of the fence.

The defenders' evidence

[16] The defenders' closing submission was that it was "unnecessary" to grant the craves. Within that it was maintained that they had erected a boundary fence in compliance with the court's order. The fence had been built as specified by the 2023 order. It reached 6 feet. It extended as far as a point marked by a surveyor as being where the parties' gardens ended. The affidavits of both defenders made those points in brief terms. Mr White augmented that position in parole evidence. The pursuers in fact sought that the fence extend onto land that was in fact owned by the local authority. That was the view of the surveyor. As such the fence could not have been built beyond the point where it now rests.

Decision

The applicable law

Implement of an undertaking

[17] The pursuers sought that the defenders be ordained to implement their obligations in terms of the undertakings given to the court on 18 January 20233. Such an order is available to be made. A sheriff has an inherent power to compel observance of the orders of the court (MacPhail *Sheriff Court Practice* 4th Edition at paragraph 2.11). The defenders did not gainsay that this was so.

[18] The status of the order as the recording of an undertaking is however significant. Breach of an undertaking may be punished as a contempt of court (*Graham* v *Robert Younger Limited* 1955 JC 58). The terms of the undertaking are therefore key. The undertaker is bound at pain of criminal sanction to do that which has been undertaken. Equally the party

who has solemnly made that undertaking cannot be held to carry out anything out with its terms. It is not possible to innovate upon the undertaking made or go beyond it.

Interdict

[19] As is trite, interdict is a remedy against a wrong in violation of a party's rights, available where the wrong is in the course of being committed or where there is reasonable ground for apprehending that a wrong is intended to be committed (Robinson *The Law of Interdict*, page 1, *Inverurie Magistrates* v *Sorrie* 1956 SC 175, at page 179). Interdict requires the offending party, so to speak, to have been personally responsible for the acts complained. Where however parties commit the acts together interdict may be obtained against all involved - if so cited (*Robinson* supra at page 11).

[20] Given the nature of interdict and that it can be, and often is, granted in perpetuity, there must be careful consideration of whether it should be granted;

> "…. not to be given except for urgent reasons, and even then not as a matter of right, but only in the exercise of a sound judicial discretion. If granted at all it must be in terms so plain that he who runs may read. The responsibility of making it so lies upon the party asking the interdict, and the Court is not called upon to relieve him of that responsibility. He may be allowed to amend his prayer, but if interdict cannot be granted in accordance with the original or amended prayer it cannot be granted at all" (*The School Board of the Parish of Kelso* v *George Duncan Hunter*1874 2 R 228, Lord Deas at page 232)".

[21] Exercise of that judicial discretion therefore requires, where the issue arises, the court to consider whether the purported wrong is trivial to the point of incurring the application of *de minimis non curat lex*. However where a delict is committed deliberately, interdict should be available even if the likely damage is minimal (*Bonnier Media Limited* v *Smith* 2003 SC 36 at paragraph 31). Interdict may be granted against nuisance, that including "..whatever is noxious or unsafe or renders life uncomfortable…..whatever is intolerable or

offensive to individuals in their dwellinghouses, or inconsistent with the comfort of life" (*Robinson* page 45 and *Bell's Principles* paragraph 974). Encroachment upon land may likewise be interdicted. Encroachment is distinct from trespass it involves the permanent usurping of a portion of another's land, although where the trespass onto land is for a considerable, but temporary, period and has injurious effect upon the landowner then encroachment is made out (*Brown* v *Lee Construction Limited* 1977 SLT notes 61).

[22] To the latter point of Lord Deas in the extract from *The School Board of the Parish of Kelso* above, it is not for the court to innovate upon the interdict craved. In this action I was, at closing submission, asked to do by the pursuers. Even had the evidence justified such an approach it was not within my power to do so.

[23] As always, of course, the burden of proof lies on the pursuer to establish upon the balance of probabilities that interdict should be granted.

Power of arrest

[24] The legal test for attaching a power of arrest to the interdict sought by the pursuers is set out at section 1 (2) (c) of the Protection from Abuse (Scotland) Act 2001; the court must attach a power of arrest to the interdict if satisfied that is necessary to protect the applicant from a risk of abuse in breach of the interdict.

Ruling on the objection

[25] In large measure the defender's affidavits and productions attended themselves to alleged conduct by the defenders. Part of the parole evidence of the defenders did likewise. These events were not included in the answers. As previously accounted the taking of this evidence was prefaced by objection but received under reservation. As advanced by the

pursuers' solicitor I agree that the evidence offended against the principle, trite in Scots Law, that the action fell to be adjudicated only upon the matters specified in parties' pleadings. The submission of the defenders' solicitors that the evidence fell to be admitted because it related to matters which the parties were able to speak to, is, I am afraid, nothing to the point. If they had wished that evidence to be available to be adjudicated upon it should have been pled. Accordingly, where the evidence of the defenders transgressed by reason of not being represented in the pleadings, I ruled it to be admissible and did not take it into account.

[26] I make two observations. First, even had the events struck at been included in answers I doubt that they would have been relevant. Certainly, the evidence would be of collateral events. They could not have had bearing upon whether or not the defenders had carried out the acts they were averred to be responsible for. Nor, if established would they be readily perceived as bearing upon credibility and reliability of the pursuers' evidence. Second, the point made by the pursuers transpired to have application to their own case.

Assessment of parties' positions

The defenders' case

[27] I have elected to commence my analyses of parties' respective positions with analysis of the defenders' case. I do so as the approach taken therein resulted in the case being essentially assessed upon the question of whether the pursuers had in fact and law established that the craves should be granted, with little being presented by way of a contrary position.

Assessment of evidence

[28] In overview, the defenders' evidence in chief largely failed to address in any meaningful way the averments of the pursuers relating to their case - in particular the interdict sought. Parole evidence did not improve matters in any material way. In essence what was presented was that the pursuers' case was being put to the test.

[29] Ms Brown's affidavit did address, very briefly and in broad terms, her position that the undertaking concerning the fence had been complied with. Quoad the first crave it barely touched upon the many events averred upon by the pursuers' pleadings. In parole evidence she adopted her affidavit but was not further examined by her solicitor. In cross-examination various events contained in the pursuers' averments were put to her. Her evidence in this regard, brief as it was, amounted to denial either that the event had happened at all, or that it was being correctly characterised as wrongful behaviour.

[30] The evidence of Mr White followed almost exactly the same approach. In cross-examination however he was taken to the events in the pursuers' averments in more detailed. At more length he adopted the same stance as Ms Brown.

[31] It was difficult to obtain any certain impression of the credibility and reliability of Ms Brown's evidence. Her written evidence was almost entirely irrelevant as therefore was her parole evidence in chief. Her cross examination was brief. Notwithstanding that, the information provided was not given in a way, with appropriate detail and obvious cogency, that allowed me to take a positive view of her account. There was a sense of simply adopting a blanket denial stance echoing the manner in which the defenders' answers had been pled.

[32] The written evidence and parole evidence-in-chief of Mr White was largely subject to the same deficiencies. In chief he was, in the main, taken to productions which I have held

to be irrelevant and inadmissible. He was however cross examined more extensively than his partner. That allowed me a better opportunity to assess his credibility and reliability. I regret that I did not find much of what was said in denial to be credible or reliable. He was at times evasive and at other time glib in his responses. There was with him also a sense of adopting a blanket denial approach.

The pursuers' case

Crave one

[33] The pursuers' closing written submissions explained that the crave for interdict was supported by evidence which I was asked to view in *cumulo* and as a course of conduct. Therefore, the argument went, whilst certain events relied upon might be viewed as trivial complaints, examined in the context of an accumulation of such behaviour, they readily justified interdict. As aforementioned, the written submissions also asked me to innovate on the terms of the interdict craved by way of further specification. The innovation was that the order for interdict be in the following terms:

> "(a) contacting, approaching, harassing or intimidating the pursuers;
> (b) damaging or encroaching upon the pursuers' property at [ADDRESS REDACTED]
> (c) causing a nuisance to the pursuers by encroaching upon or blocking full access to the common driveway between [ADDRESS REDACTED] and [ADDRESS REDACTED]
> (d) flooding or otherwise vandalising the pursuers' property at [ADDRESS REDACTED];
> (e) making rude gestures towards the pursuers"

As accounted previously I was not prepared to do so

[34] Alongside those submissions the pursuers' solicitor lodged proposed findings in fact. They were 119 in number. Almost all identified a separate event or piece of behaviour. Very much the majority were concerned only with the crave for interdict. This task must have

taken no little time particularly as it came with annotation which directed me to the source of the evidence which was maintained to support the finding. Its lodging was both commendable and helpful. However, I noted that some proposed findings related to events which were not accounted in the pleadings. This included; placing balloons on the boundary fence; blowing dog hair under the gap in the fence onto the pursuers' property; spraying a yellow line on the ground; and throwing a dead mouse and a dead rat on to the pursuers' land. There was no objection to that evidence, perhaps because it was thought that there was a catch all averment at article of condescendence 110. I was not persuaded this averment allowed me to make findings in fact related to these events. I also took the view that the balloon and dog hair incident, even in the context of the way I was asked to consider the evidence overall, were too trivial, whether viewed in isolation or in combination with other events, to be considered as justifying interdict - *de minimis non curat lex*.

[35] Separately I also noted that in any event the evidence that defenders had thrown dead vermin onto the pursuers' property was restricted to the carcasses being found. There was no evidence which identified the person(s) who had thrown them. The same issue, an absence of evidence relating to the perpetration of the act complained of, applied to evidence of events that did feature in averments; black paint thrown against the pursuers' property; white paint thrown against the pursuers' property; a brick thrown smashing the pursuers' conservatory windows; and a camera on the boundary fence peering into the pursuer's land. These were obviously serious matters, some very serious. The issue also applied to; Mr White purportedly deliberately noisily returning bins to his house following refuse collection; and an incident whereby a piece of bread was thrown over the fence into the pursuers' land. Those two events however I also considered to be *de minimis non curat*

lex. Regardless of seriousness, in each of these instances the evidence did not identify either or both defenders as having committed the acts. Rather all that was explained was that the act had been committed. The pursuers' solicitor artfully sought to identify by way of exclusion. This exercise rested on two tranches of evidence. Firstly, that supporting that the projectiles (the paint, the brick, the bread) had come from the direction of the defenders' house. I accepted that. Secondly, and thereafter, that the composition of the defenders' household and evidence that the pursuers' security cameras did not pick up any person entering their property at the material times excluded anyone but the defenders as being the perpetrators. That proposition was not one which I was prepared to infer from the evidence received. It did not tell me whether one or other of the defenders was responsible for these acts. Nor did it tell me that both had engaged, or one had engaged in the act and one had assisted. There was another person in the defenders' household, the defenders' teenage son. Mr White, whilst also denying any involvement, had denied that his son could be involved in these acts. Whether that was sufficient to exclude him is not a matter that required adjudicated. Upon the hypothesis the defenders' son was excluded as a perpetrator, I was still left without evidence of who carried out the acts. Mr White could have done so, and Ms Brown been uninvolved, or vice versa, or they could both been involved. However, there was no evidence to say if any was correct. Further this was not a case where I was able to make a finding on the basis that there was a pool of perpetrators and that the pool consisted only of Mr White and Ms Brown, nor was the pursuers' case pled or presented in that way.

[36] To consider that an act supported the grant of interdict against a party I would have to find that the person had committed the act. In these instances, I could not do so.

[37] A separate issue related to evidence pertaining to the averments that false allegations had been made by the defenders to the police. Firstly, where that allegation was made against both defenders there was no evidence of whether one or other or both had made the complaint to the police. Secondly the evidence presented the usual difficulties which attend to seeking to establish an act essentially collateral to the action. I was not satisfied that on the limited evidence of the pursuers and their hearsay evidence of the investigating police officers' comments I could conclude that the allegations were false. Nor that there was evidence that what was reported was deliberately and maliciously reported

[38] More generally I regret I could not accept the evidence of the pursuers as credible and reliable on all matters. Certainly, I found their evidence preferable to the evidence of the defenders. However, I also found that an enmity had developed between the pursuers and the defenders such that it had affected the evidence given. There was tendency from both pursuers; to overstate; to perceive actions as being harassment where objectively that did not seem to be the case; and to attribute conduct to the defenders when that conclusion was based only upon personal belief. In particular, I found that the evidence of the wrongs asserted to have been conducted by Ms Brown was not evidence I could accept. One aspect being that it was not supported by supported an evidential source other than the pursuers. There was support from other sources for some, although as said not all, of the actions attributed by the Greens to Mr White. Principally this came from the video images shown, but also from evidence from Mrs Gold. I should add for completeness that Mr Black's evidence was unhelpful, relating to the alleged flying of drones which was not a finding I was asked to make, nor a matter on record.

[39] In light of these assessments, I arrived at the view that over the period referred to in the pleadings, Mr White had;

- repeatedly made offensive hand gestures towards the pursuers;
- made a sexualised and offensive tongue gesture to the pursuers;
- repeatedly and protractedly stared into the pursuers' property from a position on the boundary fence;
- repeatedly gratuitously sounded his car horn when bringing his car into the driveway in a manner designed to annoy and harass the pursuers; and
- repeatedly deliberately allowed water from a water pipe or hose in the defenders' garden to flow into the pursuers' garden.

[40] Some further explanatory notes on my findings concerning Mr White. I rejected his position that his hand position was the product of "trigger finger". It did not fit with the images I saw. His evidence on that matter gave the impression of being contrived. I also rejected his explanation that the sounding of the car horn in the driveway was merely a sign to Ms Brown and his son that he had returned home with takeaway meals for the family. There was no logical reason to do so when he was a few yards only away from his door. The audio on the moving images I saw of the incident clearly established that the horn was sounded loudly and repeatedly. I had little doubt he did so to annoy the pursuers.

[41] With regard to the water flowing from a hose or pipe was repeatedly shown in video images and I was left in little doubt that the action was taken deliberately. The person leaving the water on was not identified in the footage, but parole evidence from Mr White accepting that it was he who used the pipe or hose from which the water flowed created sufficient inference that I found that it was he who had perpetrated this act. I was not however satisfied by the evidence, such as it was, that the action had caused damage.

[42] A considerable amount of evidence was devoted to images of Mr White placing bins and parking his car in a manner designed to obstruct the pursuers when leaving their drive. The cars shown on the video images were on the public road and I was not satisfied that he had parked his cars in a way that substantially obstructed the pursuers or was designed to do so, or to otherwise harass or annoy. There was no assertion placing bins on the pavement, as was seen in the video images, was anything other than the normal practice. Nor that they had been placed there out with the usual collection days. Their placement position on the pavement did not substantially obstruct the pursuers' use of the driveway.

[43] I was satisfied that the conduct I found Mr White to have engaged in amounted to harassment and intimidation. That he had also caused nuisance. The acts were sometimes carried out with only one of the pursuers in the immediate vicinity, but they were clearly directed at both. The findings on the acts required to reflect that.

[44] The repeated nature of Mr White's behaviour towards the pursuers satisfied me that unless interdicted from doing so, he would continue to act in these ways. I was satisfied that interdict should be granted against him in those regards.

[45] I was not however satisfied on the evidence that he should be prohibited from contacting or approaching the pursuers or from damaging their property. On the latter point of damage, I also noted that portion of the crave seeking prohibition upon the same was restricted to "her property". This must have meant Mrs Green only. However, the evidence related to damage of property was of damage to property that was presented as being jointly owned.

[46] More significantly for the reasons given upon its paucity and quality, I was not satisfied on the evidence that there should be interdict granted against Ms Brown at all.

Crave two

[47] Whilst the pursuers' second crave left open the prospect that they sought for all of the defenders' undertakings to be fulfilled, the third article of condescendence made it clear that what was being sought was restricted to deficiencies of the fence. The closing written submission refined that I was asked to " ..implement the obligations ordered by the court interlocutor of 18 January 2023, to reinstate a boundary fence commencing from ground level and running to join the Pursuers' rear fence". This motion did not replicate the words of the undertaking in that it required the fence to run "to the end of the parties' respective gardens". I perceived that the submission nonetheless asked for that order to be implemented as was – it would not be possible to implement anything else.

[48] It was conceded by Mr White that the fence did not run to the end of the parties' respective gardens. He also accepted that that there was a gap at ground level. Both were in any event obvious from video images shown during evidence. The defenders' answer to the pursuers' third article of condescendence addressed those issues or at least sought to do so. The averment that the pursuers had refused to allow the defenders access to complete the fence I took to explain the failure of the fence to run to the end of the gardens. The averment that the pursuers had removed boards from the fence, I took to refer to the gap at the bottom of the fence. As said, Mr White's affidavit asserted that in February 2023 a fence had been built at the rear of his garden in line with where surveyors had placed a marker of the end of the property. Ms Brown affidavit made the same assertion using exactly the same words. In parole evidence Mr White introduced information that land at the rear was local authority property. He appeared to accept the existence of the gap in the fence accepting that ad hoc measures such as breeze blocks had been used to plug it so to speak. The pled case was therefore not developed in evidence.

[49] The order of 18 January 2023 commences by recording that it follows an undertaking by Mr White and Ms Brown to reinstate a boundary fence. It goes on to specify that the fence required to; be a minimum of six feet in height; start from an identified point; proceed along a specified line; and terminate at the end of the parties' respective gardens. I dismissed Mr White's stance that the order in effect asked the defenders to erect a fence on land that belonged to the local authority. Likewise, the prospect that the pursuers frustrated the fence being completed to the rear. Similarly, that the pursuers had somehow sabotaged the fence by removing boards from the fence.

[50] In rejecting that evidence, I noted that the defenders' pleadings admitted that correspondence had been received from the pursuers' solicitors raising issues with the fence they had erected. That being so it was an inherently unlikely prospect that they would prevent the defenders from completing the fence, or remove boards that reduced its effectiveness. Mr White's position relative to local authority ownership was not contained in the defenders' affidavits. Title deeds and plans, which might have served to confirm this position were not lodged. I was readily satisfied that the boundary fence required to be extended to run to the end of parties' respective gardens so that the order of 18 January 2023 could be met.

[51] The gap at ground level of the fence was variously described in evidence. Two inches according to Mr White. Two feet according to the pursuers' submissions. I had the opportunity to examine many images of the gap in the videos shown. The gap varied in height along the length of the fence, it was certainly greater at points than two inches, whether it reached two feet I am uncertain. It was however in my finding substantial. The order did not state a requirement that the fence to be erected without a gap at its bottom. As accounted undertakings to a court should be clear and should not be interpreted to place

more of a burden upon the undertaker than is expressly stated. However, the words should also be attributed their normal and every day meaning. This was an order for reinstatement of a fence. It would be absurd to consider that a fence is properly erected, and reinstatement achieved, where its construction left a substantial gap between the ground level and the first plank of the fence. For the order for reinstatement to be complied with, the gap requires to be covered by fencing.

[52] In coming to that determination, I also accepted evidence that the previous fence had been only four feet in height. As such to that extent the order of 18 January 2023 required a fence that differed from its predecessor. I did not consider that this negated the obligation to reinstate a fence. All that this requirement amounted to was an explicit and specified agreed variation between the fence as was and the fence that was to be erected per the order for reinstatement.

[53] Implementation of the order of 18 January 2023 requires that the existence of the gap in the fence at the ground level be rectified by the defenders. I did not receive any submission on when that such rectification should be completed by. I am satisfied that the supervisory power I have over implementation of the court's previous order is such that I am able to set out the date by which implementation must take place. There will be organisation required to make the arrangement to have the work carried out. Expense also. Ms Brown works, but Mr White does not. The time period used in the order of 18 January 2023 is unrealistic in the circumstances I find to exist now. Instead, the works should be carried out by no later than four months from the day of the issuing of the final interlocutor in this action, that will be the interlocutor ruling on expenses of the cause**.**

[54] There are other directions that also requires to be made as part of my supervisory power. They deal with the prospect that access to the pursuers' property may be needed to

comply with the order for implement. They take account of the obvious friction between the parties and seek to ensure that this order does not in itself lead to further dispute. With these ex proprio motu directions issued, it would be highly unfortunate, to say the least, if the implementation of this order for implementation did then result in further court action.

Crave three

[55] The undertakings provided by the parties on 18 January 2023 included that they would not harass abuse or intimidate each other. Clearly, I have found that Mr White did harass and intimidate his neighbours in breach of that undertaking. I have set out the gravity of a breach of an undertaking. This is not an action for contempt of court, but the incidental fact that in harassing and intimidating the pursuers Mr White also breached his undertaking is significant. It informs my decision on the likelihood that he will comply with the interdict. There is in my finding a substantial risk that such abuse will continue in breach of the interdict, as such I will attach a power of arrest. Given the period over which his conduct took place the duration should be for a period of 3 years.

Expenses

[56] The issue of expenses is nuanced. The pursuers have succeeded only in part. In most regards against Mr White, but only in one regard against Ms Brown. I have assigned a hearing upon expenses, if the issue is agreed in advance the sheriff clerk should be notified.

Findings in fact

The parties

1. Mr and Mrs Green reside together at [ADDRESS REDACTED].

2. Mr White and Ms Brown reside together at [ADDRESS REDACTED]. Their teenage son resides with them

3. Both properties are in the territory of Airdrie Sheriff Court.

4. The properties of the parties are not joined but are neighbouring properties.

5. The properties share a common driveway but are otherwise separated by a boundary fence. ".

The action AIR-XXX-19

6. Mr and Mrs Green previously raised a court action at Airdrie Sheriff Court. The action was given the court reference AIR-XXX-19 and related to use of a common driveway, misuse of close circuit television and audio recording equipment, and harassment

7. The action resolved following authority being interponed to a joint minute. Mr and Mrs Green's craves, and Mr White and Ms Brown's craves in counterclaim were both dismissed. Parties' respective pleas-in-law were repelled.

8. The parties provided undertakings to the court which were contained in the joint minute.

9. The orders and undertakings were recorded in an interlocutor of 18 January 2023 ("the Order").

10. The defenders' undertakings to the court included that they would

> "(Reinstate) a boundary fence being a minimum of six feet in height starting from the point marked in white bisecting the parties' respective driveways and running to the end of the parties' respective gardens whereby the said boundary fence shall bisect the boundary twenty-six inches to the west of the pursuers' garden shed at the point of the shed where a nail is protruding; and that the said fence will be erected within eight weeks of the date of the last signature hereon; with the cost of the said fence to be borne by the Defenders".

11. All parties provided an undertaking to the court that they would:

> "(Refrain) from harassing abusing or intimidating each other or their immediate family members; or use any recording device be it audio and/or visual to record data of the other parties or their partners or any data recording the curtilage of the other parties respective properties".

12. All parties also provided an undertaking to the court that they would: "(Refrain) from making any malicious allegations to any third party agency concerning the other parties' conduct".

The boundary fence erected by the defenders

13. A boundary fence was erected by the Mr White and Ms Brown within the 8-week period specified by the Order.

14. The boundary fence erected by Mr White and Ms Brown did not, and still does not, run to the end of the parties' respective gardens.

15. The boundary fence was erected with a substantial gap between the ground level and the first planks of the fence. That gap remains.

16. The pursuers have previously written to the defenders seeking remedy of the deficiencies in the fence identified in the findings in fact above.

17. The defenders currently refuse to remedy the said deficiencies.

The conduct of Mr Whitte towards the pursuers

18. Between and including 26 January 2023 and late October 2025 Mr White directed the following acts against the pursuers:

a) He repeatedly made offensive hand gestures towards the pursuers.

b) He made a sexualised and offensive tongue gesture to the pursuers.

c) He repeatedly and protractedly stared into the pursuers' property from a position on the boundary fence.

d) He repeatedly gratuitously sounded his car horn when bringing his car into the driveway.

e) He repeatedly deliberately allowed water from a water pipe or hose in the defenders' garden to flow into the pursuers' garden.

Findings in fact and law

1. The boundary fence erected by Mr White and Ms Brown failed to comply with the Order in that it did not run, and still does not run, to the end of the parties' respective gardens.

2. The boundary fence erected by Mr White and Ms Brown failed to comply with Order in that it had, and still has, a substantial gap between the ground level and the first planks of the fence.

3. This court has an inherent power to compel observance of the Order and to order implementation of the Order where it has not been observed.

4. The actions of Mr White in repeatedly making offensive hand gestures towards the pursuers, making a sexualised and offensive tongue gesture to the pursuers, and repeatedly and protractedly staring into the pursuers' property from a position on the boundary fence, each amounted to harassment and intimidation of the pursuers.

5. The actions of Mr White in repeatedly gratuitously sounded his car horn when bringing his car into the driveway, and repeatedly deliberately allowing water from a water pipe or hose in the defenders' garden to flow into the pursuers' garden were actions causing nuisance to the pursuers.

6. All of these actions were wrongs in violation of the pursuers' rights.

7. Unless interdicted Mr White will continue to act in these or other ways in violation of the pursuers' rights.

8. Mr White having breached his undertaking in the Order not to harass or intimidate the pursuers there is a substantial risk that he will continue to do so in breach of the interdict granted in the present action.

Order of the court

1. Sustains the pursuers' first plea-in-law quoad the first defender to the limited extent of the interdict hereinafter granted;

2. Repels the pursuers' first plea-in-law quoad the second defender;

3. Sustains the pursuers' second plea-in-law;

4. Sustains the pursuers' third plea-in-law quoad the first defender;

5. Repels the pursuers' third plea-in-law quoad the second defender;

6. Grants decree against the first defender in terms of crave one in part, and thereafter interdicts the first defender, Mr White from harassing and intimidating and causing a nuisance to the pursuers Mrs Green and Mr Green; and quoad crave three attaches a power of arrest to said interdict for a period of three years from the date of issuing of this interlocutor;

7. Dismisses crave one quoad the second defender;

8. Grants decree in terms of crave two, and ordains the defenders to implement the court's interlocutor of 18 January 2023 in the action bearing court reference AIR-XXX-19 in the following regards;

a. the boundary fence referred to in the interlocutor of 18 January 2023 must be extended in length so that it runs to the end of the parties' respective gardens;

b. the gap between the ground level and the first planks of the said boundary fence must be filled by further planks of fencing; and ex proprio motu Directs that

c. the above implementation must be completed by no later than 4 months from the date of the final interlocutor in the present action being issued; and ex proprio motu further Directs

d. the pursuers must permit the defenders or tradespersons instructed by them reasonable access to their property for the sole purpose of carrying out the implementation ordered by this court upon access being requested as follows;

i. access must only be sought where it is necessary to carry out the implementation;

ii. the defenders must provide the pursuers with no less than 72 hours' notice that access is sought and provide details of; why the access is necessary; the person or persons who will be require access and where within the pursuers' property they will be working; and an estimate of how long they will be working upon the pursuers' property;

iii. access may be denied by the pursuers, but this should be for good reason, including that the request is genuinely unreasonable, or that access is not possible on the date contained in the request;

iv. notification that permission is given or refused must be provided by the pursuers to the defenders no later than 24 hours following receipt of notification that access is sought;

v. failure by the pursuers to respond to a request for access is a denial of access without good reason unless it is shown that the pursuers did not receive the request;

vi. the pursuers' notification must contain, where access is permitted, any conditions applied to the permission of access, and where access is denied the reasons for access being refused;

vii. any conditions attached to permitted access must be reasonable;

viii. the defenders or tradespersons instructed by the defenders must not enter the pursuers' property to carry out implementation without the pursuers' permission;

ix. the defenders or tradespersons instructed by the defenders must not remain upon the pursuers' property any longer than is necessary to complete the necessary works;

9. Continues consideration of the expenses of the cause to a hearing upon expenses;

10. Directs that written submissions and authorities be lodged and exchanged no later than one week prior to the assigned expenses hearing;