SHERIFF APPEAL COURT

[2026] SAC (Civ) 1
KIL-B140-24
KIL-B141-24

Sheriff Principal N A Ross
Appeal Sheriff W A Sheehan
Appeal Sheriff L Nicolson

OPINION OF THE COURT

in

appeals under section 163(1)(a)(i) of the Children's Hearings (Scotland) Act 2011

delivered by APPEAL SHERIFF WENDY SHEEHAN

in the cause

AB

Appellant

against

LOCALITY REPORTER MANAGER, KILMARNOCK

Respondent

RE: THE CHILDREN CD AND EF

Appellant: Party
Respondent: Flannigan; Scottish Children's Reporter Administration

6 January 2026

[1] Applications were made by the reporter, to the sheriff at Kilmarnock Sheriff Court in respect of the appellant's daughters CD and EF under section 93(2)(a) of the Children's Hearings (Scotland) Act 2011, for determination of whether grounds of referral (which had not been accepted by the appellant at a children's hearing) were established.

[2] The ground of referral contained in the application in relation to EF was that in terms of section 67(2)(b), a Schedule 1 offence, namely repeated assaults, had been committed in respect of her. The ground of referral contained in the application in relation to CD was in terms of section 67(2)(c) that she has, or is likely to have, a close connection with a person who has committed a Schedule 1 offence.

[3] The applications proceeded to proof over 3 days. The sheriff found grounds of referral to be established in relation to EF having found statements of fact 1-4 inclusive to have been proved in relation to her and finding that these constituted:

> "an offence against [EF] in that [the appellant] has wilfully ill-treated her in a manner likely to cause her unnecessary suffering or injury to her health. This is an offence in terms of Schedule 1(2) of the Criminal Procedure (Scotland) Act 1995, more specifically an offence under section 12 of the Children and Young Persons (Scotland) Act 1937".

A joint minute was lodged accepting that the child EF had a close connection with the appellant. Accordingly, the corresponding ground of referral in terms of section 67(2)(c) was also established in relation to her. The appellant appeals against these determinations.

[4] Section 163(9) of the 2011 Act provides that an appeal under that section may be made; (a) on a point of law, or (b) in respect of any procedural irregularity. The relevant procedure is governed by rule 3.59 of the Act of Sederunt (Child Care and Maintenance Rules) 1997, which provides that:

> "An application to the sheriff to state a case for the purposes of an appeal shall specify the point of law upon which the appeal is to proceed or the procedural irregularity, as the case may be".

Specification of the point of law or procedural irregularity is mandatory. A stated case requires to contain specific and relevant questions which focus upon the alleged error of law or procedural irregularity.

[5] The first issue which arose in this appeal was that the questions posed by counsel in the appellant's application for a stated case failed to comply with rule 3.59. No point of law or procedural irregularity was specified. The sheriff was placed in the invidious position of requiring to state a case within the required 21 day period in circumstances where the appellant entirely failed to identify any specific legal point or procedural irregularity. The questions posed were not in proper form and were not within the scope of a competent appeal in terms of section 163(9) of the 2011 Act. In an effort to focus matters, rather than refuse to state a case or return the application to the appellant for amendment, the sheriff endeavoured to reframe the appellant's questions in a more coherent format. A hearing on adjustments took place. The appellant proposed no adjustments.

Drafting an application for a stated case

[6] The law on stated cases is quite clear and was not observed by counsel who signed the application for the stated case. The content of the application is governed by rule 3.59 and thereafter, in relation to the final stated case:

> "(7) The stated case signed by the sheriff shall include-
> (a) questions of law, framed by him, arising from the points of law stated by the parties and such other questions of law as he may consider appropriate;
> …
> (c) a note of the procedural irregularity averred by the parties and any questions of law or other issue which he considers arise therefrom, as the case may be."

[7] What that requires is long-established. *Drummond* v *Hunter* 1948 JC 109 stated:

> "If a legal issue is to be raised, it ought to be properly raised by a question defining the issue precisely. Unless this rule is followed, there is no real guarantee that a point taken in this Court was a live point in the lower Court … There are two obvious advantages in adhering to this rule. First, the Judge called on to state a case can do so in the light of the issue raised, and second, the issue is properly focussed for the consideration of this Court" (per L J-C Thomson at p113).

[8] In *R* v *Grant* 2000 SLT 372 the Extra Division applied *Drummond*, noting that:

> "Despite their different context, these observations seem to us to be of fundamental importance where stated cases are sought in relation to a finding that grounds of referral have been established"

[9] In *C* v *Miller* 2003 SLT 1379 the Inner House found it necessary to emphasise the nature of an appeal under section 51(11) of the 1995 Act:

> "… the basis of such an appeal must be either an issue on a point of law, or one arising from an irregularity … What is perfectly clear, but has unfortunately been frequently overlooked, as it was in this case, is that such an appeal as this cannot involve a general review of the decisions of fact made by the sheriff." (per L Osborne, delivering the Opinion of the Court, at para [79]).

[10] The court in *C* v *Miller*, by reference to Lord President Emslie in *Melon* v *Hector Powe Ltd* 1980 SC 188 set out what is necessary for grounds of appeal:

> "The law is clear that where it cannot be shown that the tribunal of original jurisdiction has either misdirected itself in law, entertained the wrong issue, or proceeded upon a misapprehension or misconstruction of the evidence, or taken into account matters which were irrelevant to its decision, or has reached a decision so extravagant that no reasonable tribunal properly directing itself on the law could have arrived at, then its decision is not open to successful attack."

[11] The court in *C* v *Miller* noted that:

> "it is essential that specific and relevant questions must be posed in the case in order to focus the error or errors of law which it is contended have been made by the sheriff. This court has required to emphasise that point on numerous occasions." (para [80])

> "Our approach to this matter is no arid formalism, but an insistence that, if questions of law are to be ventilated before this court, we must be furnished with the relevant factual material relating to them, which the court of first instance can do only if proper notice is given to it of the point to be raised, in the form of a specific question for inclusion in the stated case." (at para [87]).

[12] These points were emphasised, if that were necessary, in *Cunningham* v *M* 2005 SLT (Sh Ct) 73 (Sh Prin Macphail); *JB and BJ* v *Authority Reporter* (unreported, 26 March 2014, Sh Prin Stephen) and *S* v *Local Authority Manager* [2014] Fam LR 109 (Ex Div).

[13] In the present case, the application commenced with: "On the evidence before me, did I err in finding facts 2, 3, 4 within the statement of grounds proved?." There were,

however, only two controversial factual grounds (2 and 3) which led to a conclusion in fact and law (4). The application was therefore, in function, exactly the same as the question "On the whole facts of the case was the sheriff entitled to hold the grounds of referral established?" which was condemned in *R* v *Grant*.

[14] That question invited review, not appeal. It was not focused on any source of evidence and did not identify any perceived shortcoming of the evidence. It did not identify any error. It presented the sheriff with the task, without qualification or limit, of addressing every piece of evidence. It demanded a full-scale review of all of the evidence which could possibly have a bearing on the question 4, together with an explanation of assessment both in fact and law.

[15] The sheriff, against the deadline of 21 days under rule 3.59(3), had no terms of reference under which to draft a stated case. The result ran to 49 pages and 238 paragraphs, setting out in detail every piece of evidence, the sheriff having to guess which aspect was under scrutiny. The sheriff is to be commended for producing a thorough, careful and fully-reasoned document within a short timescale. It will have taken a considerable amount of resource to produce on time. The appellant proposed no adjustment. In the event, most of the sheriff's effort, care and time were wasted, because no stateable grounds were ever presented.

[16] Quite apart from the waste of judicial resource, the effect was to equip the appellant to appear as party litigant to present her appeal. She did so in the apparent belief that she had sound grounds for appeal. We have required to refuse the appeal, for reasons set out below. The application for the stated case did not comply with rule 3.59. It did not "specify the point of law upon which the appeal is to proceed or the procedural irregularity, as the case may be.". It did not contain "points of law stated by the parties" or any "note of the

procedural irregularity averred by the parties". As a result, this application for a stated case was not competent. In our view, and on the basis of the clear statements set out above, the sheriff would have been justified in requiring further specification of the grounds for application, and in the absence thereof, to refuse to state a case. No justification can be found in the fact that this was an appeal in a children's referral case. The grounds of appeal are the same for any other appeal, and are set out in *Melon* above. The best interests of the child do not provide a basis for appeal. In any event it is not axiomatically in the best interests of the child to delay a final decision in the case.

Submissions for the appellant

[17] Recognising that the appellant was by then a party litigant, we heard her submissions. She submitted that the sheriff had failed to properly address the reliability and credibility of the children's evidence given by way of joint investigative interviews on 27 February 2024 and 15 March 2024. Those interviews with the children, and with EF in particular, had failed to make reasonable adjustments or to take account of her neurodivergence and previous trauma.

[18] Secondly, the court should have considered that the absence of a medical examination of EF undermined the reliability and credibility of her allegations. A joint minute was lodged in which *inter alia* it was agreed that during the period between 5 February 2024 and 28 February 2024, no physical injuries were observed on EF's body by any education, social work or medical professional who had contact with her.

[19] Thirdly the court failed to consider the information contained in documentation recovered by way of specification of documents by the appellant's agent comprising

documents from South Hampshire Council, Barnardos and an organisation called "Yellow Door."

[20] Fourthly, the court failed to accord due weight to an affidavit sworn by the appellant's husband, who was the children's primary carer at the material time.

[21] Fifthly, the appellant and her husband did not give evidence at proof as a result of legal advice tendered that they should avoid incriminating themselves when police inquiries regarding possible criminal charges were ongoing.

Submissions for the respondent

[22] The respondent made submissions in relation to the absence of specific grounds of appeal. Further, in relation to the grounds as presented, these were no more than a review of the facts, and showed no error. The sheriff had found an ill-treatment offence established in terms of section 12 of the 1937 Act, and the evidence supported such a finding.

Decision

[23] None of the appellant's submission were related to the stated case. They amounted to no more than a dispute with the sheriff's findings, and an offer of further submission about reliability of evidence, and what alternative findings should have been made. These points should have been made to the sheriff, not the appeal court. It is too late to introduce this material on appeal.

[24] In relation to the appellant's first point, the appellant was legally represented at first instance. The police officer who undertook the SCIM interviews with the children, was subject to cross examination by the appellant's counsel regarding her experience and methodology. She answered questions specifically regarding her trauma informed

approach and her considerable experience in this area. Her evidence was that discussions with staff at EF's school (where the interviews were held) identified no relevant neurodivergence, special needs or reasonable adjustments which required to be made. EF had not been referred for any assessment, and was not assessed by teaching staff to exhibit any neurodiversity. The sheriff addressed this evidence at paragraph 224 of her stated case. The appellant did not cross-examine either child. The allegations made by the children in the joint investigative interviews were consistent with the hearsay evidence of other professionals to whom the children had made allegations on other occasions. No challenge was taken to the admissibility or weight to be attached to this evidence. The sheriff set out in detail at paragraphs 216 - 227 of both stated cases her careful assessment of the evidence. She was entitled to find that evidence to be credible and reliable.

[25] On the second point, the sheriff found statement of fact (2) to be established on the basis that "On a regular basis until 28th February 2024, [the appellant] assaulted [EF] by smacking her or hitting her with a wooden spoon which hurt her." This constituted repeated assaults, albeit that no bodily injury was sustained. The respondent's submission that "bodily injury" could be construed as including situations where a child was hurt but no physical injury was apparent, was rejected by the sheriff. Against this context, the absence of a medical examination of EF had no bearing on the sheriff's assessment of EF's reliability and credibility.

[26] On the third ground, the relevant records were recovered by way of the appellant's agents' specification of documents granted by the court on 23 January 2025 but were not lodged in process and were not founded upon at proof.

[27] On the fourth ground, the husband's affidavit was in fact withdrawn by the appellant's counsel, as recorded in the interlocutor of 25 June 2025, which also recorded that

the court was invited to "disregard" the content of the affidavit. It was not before the court at proof.

[28] Fifthly, in relation to non-incrimination, the respondent accepted that this had been the situation but clarified that no motion was made at first instance either to adjourn the diet of proof pending completion of police inquiries, and no attempt was made to procure an assurance from the Crown that any evidence given in these proceedings would not be relied upon in any subsequent prosecution either of the appellant or her husband. Whilst not prefaced in the application for a stated case or any note of argument, none of the foregoing submissions were persuasive or identified any error of law or procedural irregularity.

[29] Accordingly, we must answer the first question posed in the stated case in the affirmative.

[30] The second question posed by the sheriff was:

> "Did I err in law in finding that the conduct in supporting facts 2, 3 and 4 amounted to commission of the offence of wilful ill-treatment contrary to s.12 of the Children and Young Persons (Scotland) Act 1937."

This is effectively an amalgam of the questions 3, 4 and 5 in the appellant's application for a stated case. No submissions were made by the appellant in relation to this question. The sheriff set out her application of the law to her findings in fact at paragraphs 229 - 231 of her stated case. This question falls to be answered in the negative.

[31] Given the determination of the first two questions, we did not require to address the third question posed by the sheriff.

[32] We refuse this appeal. Section 163(10) of the 2011 Act requires this court to remit the cause to the sheriff with such directions as are required. A direction to the principal reporter to arrange a children's hearing was given by the sheriff once the grounds of referral were established at first instance in terms of section 108(2) of the 2011 Act. A hearing has already

been held resulting in the imposition of a Compulsory Supervision Order. Accordingly, nothing further is required of the sheriff at this juncture.

[33] We find no expenses due to or by either party in respect of this appeal.