SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY
AT AIRDRIE

[2026] SC AIR 30

AIR-F390-23

JUDGMENT OF SUMMARY SHERIFF W M D MERCER

in the cause

AJ

Pursuer

against

CF

First Defender

and

MM

Second Defender

Pursuer: McIntosh; McIntosh McCann
First Defender: Armstrong, adv; Thompson Family Law
Second Defender: Donnelly; Livingstone Brown

AIRDRIE, 20 February 2026

The sheriff, having resumed consideration of the cause

FINDS IN FACT

1. The pursuer is AJ who resides at [address]. She is MM's mother, M's grandmother. She has other grandchildren. JM is her daughter, TM is her husband and GA is her brother-in-law.

2. The first defender is CF who resides at [address]. She is M's natural mother. EF and JF are her mother and father respectively. JM Jr is her son.

3. The second defender is MM who resides at [address]. At the time the action was raised he was an inmate at HMP Edinburgh. He is M's natural father. JM is his sister.

4. CF and MM were formerly in a relationship and have one child, M, who was born on [date of birth]. CF and MM both have full parental responsibilities and parental rights in respect of M. Their relationship began in December 2017.

5. Since separation M has lived with CF at her home with her other children. CF is supported by her parents and sisters.

6. MM was involved in M's care from birth but received a custodial sentence when he was 3 months old then went "on the run" from authorities for a period. Contact was sporadic.

7. When at liberty, and before contact ceased, MM assisted in M's care to varying degrees. In particular he assisted when CF was busy with her professional studies or when working part-time at weekends.

8. At times MM was a good parent and positive role model.

9. CF, MM and M shared some good times together as a family.

10. AJ has been involved in caring for M, including overnight, for example when CF and MM were late in returning from a holiday in Turkey after being banned from their return flights.

11. CF and MM's relationship was a volatile one. It deteriorated particularly after M was born.

12. MM was physically and psychologically abusive of CF on occasions further to those which feature in his schedule of previous convictions.

13. MM kicked CF in her bedroom breaking her ankle. This was witnessed by JM Jr.

14. MM has sent threatening texts to CF. He attempts to downplay them. One reads:

> "Al fuckin burn ye … yer a fat waste a life … Am gonai end up murdering you yan fat slag … am gonai smash your head in … your fuckon dead an smashing that phone".

15. He ascribes this offending to drink, drugs and a toxic relationship.

16. MM styles himself as "peacemaker" in his relationship with CF. He was not.

17. Several witnesses praised MM's care of M, which they had witnessed first-hand.

18. Both regularly engaged in the problematic abuse of drink and drugs. Their lifestyles were at times chaotic. Relatives expressed concerns and at times had to look after M. Drink was a particular concern.

19. AJ contacted social work and police about this. In addition, she reported CF to her to UWS and the NHS alleging she had stolen morphine. This was formally investigated and the report was found to be malicious. It is. AJ made this complaint in an attempt to harm CF's career. AJ stands by her claims.

20. M enjoyed spending time with other young family members such as his cousins.

21. JM contacted social services when alienated from CF. She also sent e-mails to CF's employers detailing things she considered inappropriate or which had occurred.

22. AJ has offered to facilitate handovers.

23. AJ's family is involved in crime, something which she denies. Drugs were recovered in her home in 2015. Her husband TM was imprisoned for 4 years for being in concern in the supply of cocaine and cannabis. MM is involved in the drugs trade.

24. On 23 January 2019 two gunmen shot MM outside AJ's home. Their intention was to kill him. They were subsequently convicted of his attempted murder and received lengthy custodial sentences. MM had received five "Osman warnings".

25. That said there have been no further incidents of this nature since then. CF and M lived with AJ at her home for a time following the shooting.

26. M's first day at school was 16 August 2023. MM retained M the night before and took him to school. He did so because he felt he had bought his uniform and was entitled to take him to school. There had been no such agreement with CF.

27. CF found this very upsetting and considered it the final straw in the operation of contact. Contact has not operated since 16 August 2023.

28. MM subsequently pleaded guilty to engaging in a course of criminal behaviour, namely:

> "(i) on 8 May 2023 strike [CF] on the head with a mobile phone to her injury, shout at her and utter derogatory remarks towards her; (ii) on 27 June 2023 strike her on the head with the back of your hand, threaten to damage her laptop, seize hold of her by the arm, throw her onto a bed and restrain her there and strike her on the body with a car key to her injury; (iii) between 13 August 2023 and 16 August 2023, both dates inclusive, fail to return her child into her care despite having arranged to do so and post derogatory remarks about her on social media; (iv) on 19 August 2023 send her abusive messages and threaten to electronically monitor her movements"

29. MM had been remanded in custody and on 28 August 2024 received a backdated sentence the effect of which was his immediate release.

30. MM has 22 further previous convictions. Fifteen are summary and relate to various offences. Three are at sheriff and jury level and comprise assault to injury with a blunt object; possession of an axe; and domestic assault to injury. In 2012 he received an extended sentence of 7 years 3 months (of which the custodial element was 5 years 3 months) for assault to severe injury, permanent disfigurement, permanent injury and attempted murder using a bottle. Of the 22 offences four are domestically-aggravated, 13 were committed whilst he was on bail and five involve reaches of special conditions of bail.

31. MM was also made subject to a 10-year non harassment order imposing protective conditions in respect of CF.

32. Following the cessation of contact CF's motor cars started being damaged. Tyres were slashed. In January 2024 a flare was thrown under her car, destroying it. In November 2024 another car was set alight, destroying it.

33. MM was responsible (by either directly perpetrating or instructing) said damage to, and destruction of, CF's motor vehicles.

34. During the proof an allegation of criminal conduct was made by CF about MM. The proof was sisted pending a custody summary trial. MM was acquitted and the proof concluded.

35. M was sober whilst an inmate at HMP Edinburgh. He has received support from Cocaine Anonymous. He has worked to rehabilitate himself. Having a relationship with M is a motivating factor in this. He is also now employed. He says he is teetotal. He has a new partner and a new baby.

36. CF remains terrified of MM.

37. M's is currently settled and is thriving. He is now more outgoing although he remains a nervous child. Some of his schoolwork has suffered. He bites his nails and has eczema.

38. M's current view is that he does not want contact with either AJ or MM. This is a change from previously expressed views. He is frightened (more scared than annoyed) of MM.

39. The child welfare reporter, who took these views, opines that this view is genuinely held but that M is well aware of CF's view on the topic.

40. AJ and MM do genuinely want to see M. They still feel a bond for him. They do not seek contact solely as a means of being in CF's presence or intimidating her.

41. Neither AJ nor MM has played any role in M's life since contact ceased.

42. Were the court to make an award of contact to one of AJ or MM but not the other, it is likely that the party awarded contact would permit the other to become involved. AJ and MM effectively act as a team.

FINDS IN FACT AND LAW

1. That it is in M's best interests that an order be made providing that he shall reside with the first defender; and that it is better for him that a residence order is made rather than no order being made at all.

2. That it is not M's best interests that either the pursuer or the second defender should maintain personal relations and direct contact with him; and that it is better for him that no such order be made at all.

3. That it is in M's best interests that the pursuer and the second defender be permitted infrequent indirect contact with him; and that it is better for him that such an order is made rather than no order being made at all.

ACCORDINGLY

Sustains the pursuer's first plea-in-law to the limited extent of making the indirect contact order specified below;

Sustains the first defender's third plea-in-law; and repels her first and second pleas-in-law;

Sustains the second defender's plea-in-law to the limited extent of making the indirect contact order specified below.

MAKES

An order whereby M shall reside with the first defender, CF: and further an order whereby the pursuer and the second defender shall send a separate letter or card to M twice a year, namely during the first week in July and at Christmas; said letter may contain one photograph; and should be sent to the address identified by CF's solicitors to them; it then being passed unopened to M to do with what he wishes;

Thereafter FINDS no expenses due to or by either party.

NOTE

Introduction and background

[1] This action relates to a young boy M who is, at the time this judgment is issued, 7 years old. The pursuer, his maternal grandmother "AJ" craves a contact order; the first defender, his mother "CF" craves a residence order and the second defender, his father "MM" seeks a contact order. The pursuer was represented by Ms McIntosh, the first defender by Ms Armstrong, advocate and the second defender by Ms Donnelly.

Procedural history

[2] The action was raised in November 2023. By Interlocutor dated 12 April 2024 the court made an interim residence order in favour of CF and in the event a final residence order was not disputed. Proof on the remaining craves was ultimately assigned for 19 November 2024. On 26 September 2024 CF's solicitor withdrew from acting. On

7 November 2024 new agents appeared for CF and the diet of proof was adjourned until 13 January 2025.

Preliminary matters

[3] Various preliminary and "housekeeping" matters were dealt with before evidence was commenced. In particular, objection was taken to the admissibility of certain parts of the affidavits of JM Jr and another witness who was ultimately not called. Having heard submissions I excluded as inadmissible certain parts of JM Jr's affidavits; and for simplicity the court prepared a redacted affidavit which was used.

The evidence

[4] The court heard evidence in person over various days throughout 2025 followed by submissions by WebEx. AJ gave evidence. JM (her mother), TM (her husband) and GA (her brother-in-law) gave evidence on her behalf. MM gave evidence. JM (above, his sister), GA (above), SB and TC (both neighbours) gave evidence on his behalf. CF gave evidence. JM Jr (her son), EF (her mother) and JF (her father) gave evidence on her behalf. All swore affidavits which they adopted and expanded upon in oral evidence. Two child welfare reports by LG, solicitor, were lodged in process. These contain M's views. The court made avizandum.

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

Evidence heard under reservation

[6] In the course of the proof, objections were made by various parties and I allowed the evidence to be heard under reservation of issues of relevancy. In the event no party even addressed any of the objections. I now repel all objections on the basis that the information contained therein added to the complex picture I had to determine what was in M's best interests. For the avoidance of doubt none of the evidence so admitted had any significant effect on my decision.

M's views

[7] The reporter took M's views in both her original (April 2024) and supplementary (June 2025) reports. His up-to-date view is that he does not wish to see either AJ or MM.

Submissions

Pursuer's submissions

[8] The pursuer seeks an order for residential contact on alternative weeks from Friday to Monday, *esto* any other form of contact. She had a close and loving relationship with M, with regular and consistent contact from his birth until August 2023, even after parties' separation. She cared for M when parties were socialising and specifically in 2022 when they failed to return on time from holiday. She also facilitated MM's residential and non-residential contact with M at her house. She continued contact with M when MM was in prison or on the run because she and CF still spoke. There were Christmas and birthday dinners at her house. Photographs vouch happy family occasions. Her evidence about level of contact should be preferred to that of CF. She thought parties had agreed that MM could keep M the night before school, but agreed that he should not have done so contrary to CF's

wishes. Parties always got on well with CF. The evidence of JM, MM, TM and GA was credible and reliable and supportive of her claim.

[9] By contrast CF was hostile, flippant, dismissive, inconsistent and unreliable. She deliberately minimised the extent of AJ's role with M. The court should prefer the pursuer's witnesses. No weight should be attached to her evidence about AJ's drink or drug use. She admitted in cross-examination she did not want to say anything positive about AJ or MM. She was not cross-examined on AJ's ongoing harassment of her, there being parties at AJ's house every weekend, that AJ was a well-known drug dealer, that AJ was violent unpredictable and dangerous, that AJ had a disregard for law and order, what was the subject of a number of criminal investigations, AJ ridiculing her on social media, AJ being abusive to her and AJ consuming drugs and alcohol weekly to excess. No weight can be given to this untested evidence. AJ had reported CF's methadone theft because it was true. CF did not criticise AJ's care of M and there was no evidence of any incident with her since M was born. Much of CF's parents' evidence was not tested in cross and no weight can be attached to it. Photographs produced by MM demonstrate AJ exercising contact and being very much part of a close and loving family. He had said AJ saw M regularly every week and had his own bedroom at her home. She would take M to let parties go on holiday. There was ongoing contact when MM was in prison. He is credible and reliable.

[10] AJ had raised proceedings 3 months after contact terminated. Until then CF had permitted contact between MM and M despite his history. CF had always been aware of TM's 2016 conviction and had allowed residential contact. This shows no genuine concern for M being at her property. In April 2024 M told the child welfare reporter that he likes going to her house, playing there and particularly liked when his cousins came over; and he told her he might like to see AJ if CF said it was okay with her. AJ facilitates M's contact

with family members and is a protective factor for him. She was critical of both parties ending of contact. No weight should be attached M's views in the supplementary child welfare report as these indicated manipulation and influence. CF is determined that neither AJ nor MM will have any contact with M and will do anything she can to stop it. M's views as reported are contrary to his well-being. There is no evidence of any issue or incident between AJ and M. M would enjoy contact with her. It is in his best interests to have a relationship with his extended paternal family. Contact in any form would be welcomed, even in a contact centre. AJ would exercise contact outwith the presence of MM or supervise contact between him and M.

Second defender's submissions

[11] MM is credible and reliable. He gave evidence in a straightforward way despite lengthy and challenging cross-examination. He was candid about previous problems and acknowledged offending, drug and alcohol abuse accepting his behaviour was not always as it should have been. He admitted some of his prior conduct was unacceptable yet spoke of his love for M since his moment of birth, something spoken to by JM. A large part of his evidence about rehabilitation was not meaningfully challenged. CF's attempts in this regard belie her bitter and negative attitude and the fact she is not objective. His lifestyle changes are supported by various documents and prove his dedication to rehab. He spoke to various happy family events prior to August 2023 in which M looks very happy. M's first day at school was not a traumatic experience and does not merit contact being stopped. He accepted some messages in the aftermath were inappropriate but explained it was distressing for him. He fully accepted and regretted these. He never had any intention of removing M from CF and messages do not amount to threats of harm. Part of what he

pleaded guilty to was events of that day. Notwithstanding this he retains parental responsibilities and parental rights. He was remanded in custody for around a year and denied all contact notwithstanding efforts to try to secure contact through court action. Had it not been for his keeping M that night contact would have carried on. Other witnesses supported his version of events. JM was an impressive witness and GA spoke of his bond with M and exercising residential contact. SB described MM as a very caring and attentive father. TC spoke positively of MM but was critical of CF as a heavy drinker. She in particular was clear that MM was not indoors when CF fell and broke her ankle. By contrast CF's evidence was incredible and unreliable, for example the fact she would not even contemplate MM having changed. Her comments were coloured by bitterness and changed her evidence without compunction showing it to be patently untrue. Her evidence about MM having set light to her car was untrue as when challenged she suggested it was him or his father. Her allegations were malicious. Without an alibi MM would have been remanded again. He was recently acquitted of further allegations by CF following a summary trial. He is fully aware of the import of the non-harassment order and the consequences of any breach. He will not act in a manner contrary to it and this is therefore a protective order which can reassure the court. He has moved on to a new relationship and has a very young daughter. His motivation is to have a bond with his son. CF's allegation that MM broke her leg has been inconsistent throughout. CF's position on record is that MM attacked and kicked her in front of family members who did nothing to intervene. That was not put to them. MM 's position is entirely consistent with that of TC. CF would make no concessions about anything positive about MM's relationship with M including contact at AJ's home. She gives him no credit. Her presentation and demeanour could be said to be atypical, the only time she was distressed in court was when MM wanted to leave during

chapters of her evidence he found difficult. Her father was more open-minded than her. JM Jr spoke of the good MM. The court can take comfort that with rehab, work and a new baby contact can be positive.

[12] Family life was in operation right up until M's first day of school and since then MM has been trying to find a way for their relationship to resume. He and AJ were realistic about the extent of contact which could operate at this stage. He explained that he mistakenly knocked M onto the floor, something M reported to the child welfare reporter. The supplementary report is more negative. M has been influenced and there is nothing in evidence about the finding of a gun. The court should take account of influence on M whose view should be factored in but are not determinative, especially given his age. It is clear that M has no knowledge of MM's current circumstances including his rehabilitation. M will not know that he has a half-sibling. This would all be to his benefit. While MM fully accepts the seriousness of his past behaviour the court can be confident that there would not be interaction between CF and MM during contact. Numerous others have offered to help including CF's mother who would bring M to contact. He is drug and alcohol free for over 2 years and in a stable relationship. He has demonstrated insight and responsibility and consistent rehab. Contact could be in a contact centre or otherwise supervised. Removing any direct interaction between parties would comply with the non-harassment order and provide a high level of safeguarding CF. Supervised contact would be safe and proportionate but ultimately MM would accept any level of contact to get his foot in the door and rebuild his relationship with his son.

First defender's submissions

[13] The first defender lodged written submissions totalling 22 pages which I summarise as follows. There is a degree of undisputed background. Neither AJ nor MM should be permitted to have contact with M. AJ and JM maliciously contacted CF's employers intending to cause her as much harm as possible, possibly in anticipation of this action. Her denial of being involved in the drug trade is incredible. AJ exaggerates the contact she had with M. AJ was involved in M not being returned to CF prior to school. Why did she not question this at the time? CF provided properly for M and her other children. She was naturally upset when she attended the school. M must have been confused. AJ cannot be trusted to prioritise M's needs and interests. She is self-centred, not child-centred, and will always protect MM. She downplayed his violence towards CF and denied ever having seen injuries on her. This despite his being imprisoned and on a 10-year non-harassment order.

[14] JM Jr spoke to MM kicking CF, and separately the improvement since he left their lives. MM is physically and psychologically abusive, some of which took place near children. The level of his abuse is deeply alarming. Reference was made to his using terms such as "Al fuckin burn ye … yer a fat waste a life … Am gonai end up murdering you yan fat slag … am gonai smash your head in … your fuckon dead an smashing that phone". MM wanted to recommence his relationship with CF in August 2023 and kept M when she refused. By contrast, CF has emphasised that her children come first and that she prioritises their safety. The repeated use of the word "burn" suggests that MM was responsible for her cars being set alight. EF and JF are credible and reliable. GA's evidence about contact stopping when MM went to prison supports CF, namely that there were long periods without contact. AJ's contact was also erratic although there were occasional family

excursions involving CF. Any suggestion by AJ or MM of a routine of contact is incorrect. EF's evidence highlights AJ as untruthful, she only ever looked after M very occasionally.

[15] Parental cooperation is impossible and would have a negative impact upon M, also inevitably affecting CF and her interaction with her own children. There is a sound basis upon which to conclude that contact with AJ or MM is not in M's best interests. Overall CF is a truthful and reliable witness. M is currently safe happy and thriving with CF. He is afraid of MM and does not want any contact with him or AJ. His contact with them has been limited. There is an established *status quo* which should not be disturbed. There has been no contact for 2 years which raises several factors. MM has not addressed his addiction and lifestyle issues. The suggestion of parental influence poses many questions, here putting CF in an impossible position. Neither AJ nor MM are able to prioritise M's needs and cannot recognise what is in his best interests. Their actions illustrate that. Neither will bring any positive value to M's life. CF's concerns are rational and it is little wonder that M presented as anxious to the child welfare reporter. CF is terrified of MM who has engaged in a course of highly manipulative and abusive conduct towards her together with ongoing harassment. The evidence of CF and her witnesses should be preferred. The child welfare report also supports CF's position. Even supported contact would open potential for MM to find out where CF lives and what school M attends.

Assessment of the witnesses

[16] I begin with the observation, not uncommon in family actions, that there was a high degree of animosity between on the one hand AJ and MM and on the other hand CF. This manifested itself throughout the proof as a whole, including whilst giving evidence and in

certain incidents said to have taken place either when I was off the bench or around the courthouse. Most witnesses fell firmly into one camp or the other.

[17] I accept that there were times when **AJ** looked after M and to an extent facilitated contact at her home. She and CF had a better (or less bad) relationship than others and this kept some channel of communication open. I accept the thrust of her criticism that CF was disinclined to say anything positive about her or MM. I also accept that she is motivated as a grandmother to see MM. Much less impressive her formally alleging that CF stole morphine which was clearly calculated to be as damaging as possible to CF. She placed herself firmly behind MM saying he encouraged contact between CF and M. The only criticism of her MM she was prepared to accept was his keeping M the night before he started school, something which in evidence she said had been agreed. She accepted MM's previous convictions but went so far as to suggest that it was CF, not MM, who was the abusive one in their relationship. This is not credible. She minimised the very real attempt on MM's life – "wannabe gangsters" – and denied that her family was closely related to crime. So closely allied are her interests to those of MM that I doubt that she would prevent him from exercising contact should an award be made solely in her favour. Generally I was not impressed by her evidence.

[18] **JM** was more outspoken than AJ in criticising CF's lifestyle although she did acknowledge MM's drinking as well. She accepted both had hectic lifestyles. She too had contacted social services and CF's employers, illustrating the strength of her feeling. There was something of a tension between her evidence that on one hand that she had never seen any injuries on CF and on the other hand recommending to CF that she contact police were she to be abused, particularly as she claimed never to have seen MM be aggressive. And in

her second cross-examination she said that CF had told her she (CF) was responsible, not MM. She has not seen M for some time. She was a partial witness.

[19] **TM** was candid enough at the outset to accept his dislike of CF, which he said was mutual. His assessment that AJ was more forgiving of her was somewhat hollow. I gained the impression that he sought to present MM's rehabilitation in the best possible light. He of course had to acknowledge his own past offending. He was a partial witness.

[20] **GA** spoke to AJ's "brilliant" relationship with M, their bond and his never having any concerns about them together. However there are significant gaps in his knowledge - for example about MM's previous convictions although he did acknowledge his past difficulty with drink and drugs. This witness added little to the mix.

[21] From the outset **MM** characterised himself as peacemaker, a role which I frankly doubt. He acknowledged past offending but had little option when faced with his previous convictions. It may well be that he cared to a greater or lesser extent for M when CF was studying or working. If so, that is to his credit. But his keeping M the night before school smacks of a sense of entitlement even though he had parental responsibilities and parental rights. I am prepared to accept his professed love for M and that that could be a motivation to rehabilitate himself. There was some vouching (from HMP Edinburgh and Cocaine Anonymous) of his being drug and alcohol free but it is difficult to assess how far that would be reflected within this complex family dynamic. I was not at all convinced by his minimising the attempt on his life being the result of simply arguing with the wrong people in prison. I doubt that repeated "Osman Warnings" are lightly given. I do not accept his denial of involvement in the drugs trade either. He denied any responsibility for either personally perpetrating or instructing others to damage CF's cars although the timings, starting shortly after their separation, is deeply suspicious. He was very critical of CF,

denied being abusive throughout their relationship and specifically denied breaking her ankle. His denial that some messages were threatening was not convincing.

[22] As a neighbour **SB** is more independent and her evidence confirmed parties' volatile relationship. She spoke positively of MM but knows little about his present circumstances. I did not take much from this witness.

[23] Similarly, **TC** was a neighbour not a relative. She has some relevant professional expertise. She talked of MM being an attentive parent when M was a toddler and that M was happy, well-presented and clean. She accepted both parties were heavy drinkers. One aspect I was less persuaded about was her evidence that MM would walk away when parties argued, but that said I cannot easily identify a reason for her to fabricate that. She stood up well to cross-examination and I accept that she was not paid to give evidence. Importantly her evidence was that she observed MM outside the house at the time of hearing a bang inside, this presumably being when CF was said to have broken her ankle on the stairs.

[24] **CF** has been the victim of domestic offending by MM. Her antagonism towards him was clear. She was absolutely sure that he was responsible for damage to her cars and was determined to criticise AJ and MM as violent, unpredictable and dangerous people. She clearly saw M's first day at school as a hugely important event of which she had been robbed; this was the final straw. She was clear that MM kicked her in the ankle in her bedroom resulting in a spiral fracture. That she was unclear about some timings is understandable due to the passage of time. She accepted under cross-examination that at some points MM had been a positive role model and good father. Her description of him forcing her to write to his solicitor was consistent with a theme of abusive or controlling

behaviour. I can understand why she does not accept that he has rehabilitated and fears that MM's lifestyle will rub off on M.

[25] I now make some observations about CF's demeanour. At several times during proof she was making noises and pulling faces from where she was seated. When giving evidence she was assured to the point of being garrulous often answering questions before they were finished. At one stage questions in the form of simple "yes or no" answers were necessary. There were several monologues. Some of her language was exaggerated, using terms such as "murder". She came over as an exceptionally strong, at times combative, personality.

[26] Although young, I thought **JM Jr** came across as mature and fluent and was impressed by him. He was careful and measured, perhaps surprisingly so for a young person stuck in a dreadful family dynamic. He was clear that MM had kicked CF in her bedroom. But I must bear in mind that the police ruled out his previous statement that he had seen MM damaging CF's car.

[27] **EF** was supportive of her daughter, sometimes using quite stringent language. Her position differed from MM as to who did a lot of the babysitting. What struck me was the limits of her evidence. She had had very limited exposure to AJ (meeting maybe two or three times) and much of her evidence came from what CF told her. Also, she has not seen M since before August 2023.

[28] **JF** was broadly supportive of his daughter. He emphasised that although there was no suggestion of harm to M personally the concern would be the negative influence upon him. He acknowledged that meetings with AJ were always civil and without incident, that some of what he said was surmise, and he relied a lot upon what CF had told him. He was realistic that were contact to operate it would have to do so in a contact centre.

[29] Both EF and JF came across well. She was a pleasant, slightly world-weary, person who accepted that she and her husband kept themselves to themselves. She was careful to answer the questions she was asked and appeared honest. He came across as a fair individual, measured in what he said and did not give the impression of enmity towards others. To his credit he was not keen on speculating. Both are credible and reliable.

Disputed issues of fact

[30] The following paragraphs identify and determine the principal disputed issues of fact which I consider relevant to determining the issues in this proof.

MM's abusive conduct towards CF

[31] I am satisfied, on a balance of probabilities, that MM has perpetrated domestic abuse upon CF. To a degree that is evidenced by his schedule of previous convictions. In addition to that I am satisfied that he was physically and psychologically abusive on occasions not reflected in his previous convictions. I am satisfied that this was a theme throughout their relationship although the evidence also shows that there were good times shared by CF, MM and M. It would be incorrect to categorise their relationship as entirely one of abuse.

MM having a firearm

[32] Although not part of the pleadings this was raised in submissions by Ms Armstrong. I am not satisfied, on a balance of probabilities, that I can safely make any finding about MM being in possession of a firearm. The only evidence, which was untested, came from M and that falls way short of what is required to make such a significant finding in fact.

AJ's family's involvement in crime

[33] I am satisfied, on a balance of probabilities, that AJ's family was involved in crime. MM, her son, has previous convictions including attempted murder, albeit dating from 2012. Her husband was convicted of serious drugs offences. She herself has not been convicted of any crime.

Responsibility for damage to / destruction of CF's motor vehicles

[34] I am satisfied, on a balance of probabilities, that MM was responsible for (by either directly perpetrating or instructing) for the damage to, then destruction of, CF's motor vehicles. I acknowledge that there was no direct evidence in support of this finding, and it does not fall within the conduct which comprises MM's previous convictions. Three significant factors however exist. First, MM has a strong motive, whether in response to being denied contact by CF or if, as suggested, he wanted to rekindle his relationship with her, which she rebuffed. Second, the timing is significant, these events starting after CF told MM she was going to take him to court. Third is his reference to "burn", a very specific threat. All three, taken together, persuade me that he was responsible for either perpetrating or instructing this conduct. There was however insufficient evidence to make a finding as to whether M was in CF's car shortly before an attack.

The attempt on MM's life

[35] I am satisfied, on a balance of probabilities, that the attempt on MM's life was real and that the intention of the perpetrators was to murder MM. In my opinion this is unlikely to be a result of simply disagreeing with other prisoners, albeit I note that he has a previous conviction for attempted murder. The passage of time since then diminishes the likelihood

that the events are related although that cannot be ruled out. Equally it may be consistent with my finding of his involvement in the drugs trade. Whatever the reason for the shooting, I do not accept AJ's view that these were "wannabe gangsters".

The extent to which various parties cared for M

[36] It is difficult to quantify the extent to which M's wider family looked after him especially given the fluidity which at times characterised CF and MM's relationship. I am satisfied, on a balance of probabilities, that a range of M's wider family members (in particular his grandparents) looked after him between his birth and contact being ceased. But I am unable to go further to quantify that or allocate particular times or patterns to particular individuals or groups.

Responsibility for CF's leg / ankle being broken

[37] I am satisfied, on a balance of probabilities, that MM kicked CF in her bedroom breaking her ankle. CF's position on record is that MM kicked her in front of family members (plural) who did nothing to intervene. She says she only broke her leg once, when MM kicked her in her bedroom. This is supported by JM Jr whose evidence was that MM kicked CF in her bedroom, albeit that no other family members were present. By contrast TC's evidence was that she observed MM outside the house at the same time she heard a bang insider, probably from CF falling downstairs. I accept CF's version of accounts which is supported, by JM Jr whose evidence I consider credible and reliable on that point. As I have said, he came across well. I do not doubt TC's credibility at all, particularly as she is an independent witness, but on this point I think she is mistaken as to how much can be taken from what she heard and saw.

The applicable law

[38] There was no dispute as to the applicable law. All parties were legally represented, so I do not repeat it at length. All statutes referred to can be accessed via the legislation.gov.uk web site. In brief therefore this action falls to be determined pursuant to the provisions of section 11(7) of the Children (Scotland) Act 1995, namely the welfare principle, the no order principle and the views of the child. In addition, the court must consider the abuse provisions (ss 11(7A) - (7C)) and the cooperation provisions (ss 11(7D) and (7E)). The general principle is that it is conducive to a child's welfare to maintain personal relations and direct contact with an absent parent, but that decision will ultimately depend upon the facts of the particular case. There must be a "reasonable basis" for a conclusion that contact would not be in a child's best interests. Ultimately the question is "What is best for the child?"

Applying that law to the facts of this case: the balancing exercise

[39] Front and centre of the balancing exercise must be the child's views whenever, as here, it is practicable to obtain them. These are in no way determinative, and appropriate weight must be given to them considering a number of factors. M's views have changed in the time between the reports. He expresses his later views in forthright, absolute terms. He says he is frightened (more scared than annoyed) of MM. He refers to a firearm. There is some evidence of CF saying that AJ and MM were mean and abusive to him, perhaps feeding the submission that he may have been subjected to some degree to influence.
I conclude that I have before me the views of a very young child caught up in a very adult war. I can place some, but not much weight on M's views. He is still very young. He is not

aware of the considerable and complex background to this dispute. He has not seen either AJ or MM for a long time so might naturally be wary of seeing them (although he does clearly remember them).

[40] Next are a number of general considerations applicable in most cases. First, I consider it objectively reasonable for a parent with parental responsibilities and parental rights and who previously lived with a child to seek to exercise contact with him (in the case of MM) or to have a residence order in their favour (in the case of CF). I consider the crave by M's grandmother AJ to be objectively reasonable as well. Second, I have found that AJ and MM do genuinely want to see M. Neither opposes an award of residence in CF's favour so they do recognise her role as M's primary carer. Third, the court in *White* identified the general principle that it is conducive to the child's welfare to maintain personal relations and direct contact with an absent parent. Fourth, that may be said to apply also to that parent's wider family. Fifth, it would in theory be possible for direct contact to operate and this is discussed below. Sixth, the effect of making any direct contact order would be to put in place an arrangement which M has said he does not want. Seventh, the practical effect of refusal of craves for contact on M would be to maintain the *status quo* where he appears to be doing well. But from AJ and MM's point of view it would be to prolong their having no contact with M.

[41] What of independent input? The court has the benefit of two child welfare reports from a respected and experienced reporter. They are typically thorough. Key parts of her original report include:

- No contact orders should be made in favour of AJ or MM until his home circumstances and convictions for violence are established;
- The court should be assured that contact between AJ and M is safe;

- Only then could contact take place, in a contact centre;
- That conclusion is heavily caveated, with concerns raised about AJ involving MM in contact sessions;
- There should be no contact order in favour of MM; and
- There should be an interim residence order in favour of CF.

Although factually matters have moved on from since the report was prepared the context it provides and the analysis it includes carries weight.

[42] Her supplementary report's conclusions are significant and bear repeating in full:

> "The Reporter believes that M is honest and credible in his articulation of his wishes in respect of the application for contact by Pursuer and Second Defender. The Reporter would describe M as extremely anxious, however, and his presentation with the eczema and nail biting would support that view. The Reporter believes that M's view is genuinely held, but M is well aware of his mother's view on the topic and is well able to articulate her view. If his own view was manipulated by his mother whether explicitly or implicitly, that is a matter for the Court having heard the evidence of the parties. M's latest account of why he does not want to see either Pursuer or Second named Defender is not a reason he had given before and there is a definite change from his original stance to the Reporter.
>
> However, the Reporter is concerned that this wee boy is right in the middle of the acrimony of both parties and would ask that the Court consider reminding the parties that the only person suffering from this battle is a wee boy whose anxiety is palpable and who has become the focus of the adults' attitude to each other. Both parties should remember that this wee boy will grow up and his attitudes towards each party may change markedly – for the moment, what the parties have achieved between them is an anxious nervous wee boy and that anxiety may have an effect on his development both now and in the future."

[43] There has been abuse of CF in terms of section 11(7C) of the Act and the court requires to take account of the effect of that abuse on CF in terms of section 11(7B)(d). The prospect of seeing MM is one which terrifies CF. She has been subjected to criminal conduct, to the extent that the court made a lengthy non-harassment order protecting her. An allegation of further offending by MM during this proof ended in an acquittal. That said, CF and MM no longer reside together. Neither AJ nor MM seek contact solely as a means of

being in CF's presence or intimidating her. Were the court to make an order for direct contact, it would in practice require drop off and pick up to be carefully choreographed involving independent friends or family members. In theory, that could be managed. Given his views and reported anxieties it is a clear inference that direct contact would be very difficult for M. He is anxious even with the status quo. Were direct contact to take place in a contact centre the risk of any abuse of CF would be reduced. Indirect contact would further still reduce the risk. But CF is opposed to any form of contact the effect of which would be to bring AJ and/or MM back into her or M's lives.

[44] The need to protect M from any abuse (or the risk of any abuse) which affects, or might affect him, together with the effect of such abuse (or risk of such abuse) might have on M are matters to which I must also have regard. The possible risk posed to M by AJ and MM are also matters to which I have had regard. There is no evidence, or even suggestion, that either has perpetrated any form of abuse upon M. (There was concern expressed about his being in a car shortly before it was set on fire but I have made no finding to that effect.) No serious challenge was made to either AJ or MM's ability to care for M's needs. Rather the concerns expressed were inappropriate parenting choices described variously as "the negative influence upon him", his being "corrupted" or that "MM's lifestyle will rub off on him." This risk is a factor to which I have regard but does not in itself argue against contact, especially indirect contact.

[45] AJ and MM both say they still feel a bond for M and I accept that. At present this is not reciprocated by M, for whatever reason. It should also be noted that it is a long time since either AJ or MM saw M: a very long time in M's young life.

[46] As will be apparent neither AJ nor CF nor MM emerges from this proof in a good light. This is a classic example of parties focussing on themselves and allowing their hatred

for one another to become the focus, rather than what is in M's best interests. Each must bear part of the blame for the position in which they, and more importantly M, find themselves.

[47] The one point which was not disputed was a final award of residence in favour of CF. I shall make such an order which reflects the long-running position and status quo. It is also in line with M's wishes.

[48] Taking a holistic approach to the question of direct contact several factors are common to both AJ and MM. The strong picture presented at proof was of a mother and son effectively operating as a single unit. Although they were clear in submitting separate and distinct claims for contact I regret to say that I have no confidence that they would act independently of one another were one awarded contact but not the other. I consider that the boundaries of even a well-defined award of direct contact would immediately be tested and treated as porous. This is despite assurances to the contrary. Neither has played a role in his life since contact was ceased. Significant lifestyle issues exist as regards both. Others factors are individual. AJ has attempted, without success, to damage CF's career. MM continues to portray himself as the victim, minimising his previous convictions, which are significant and some of which directly involve CF. The extent to which self-reported and only generally vouched rehabilitation translates into MM being a changed man is something only time will tell. The court must have regard to the non-harassment order. True, various options for collection / handover by family members or others was explored. But again, I have no confidence that AJ and MM would remain detached from that process. The cooperation provisions argue strongly that any award of direct contact is appropriate. It would involve M in the ongoing war between AJ and MM; and CF, something of which M will hopefully be unaware at present. He is well settled. His anxiety argues strongly against

disturbing the status quo. Finally, I observe that refusal of direct contact is consistent with M's current wishes. I conclude that to reinstate direct contact at this stage between AJ and/or MM with M would be contrary to his paramount interests; and that it is better that I make no such order.

[49] That leaves the issue of indirect contact which I view differently. Not without hesitation, I have concluded that it is in M's best interests that AJ and MM be permitted to exercise infrequent, indirect contact with him and that it is better that I make such an order than making no such order at all. As a starting point M remembers both AJ and MM, albeit that his memories are old and may be clouded through time. The notion that they could be airbrushed out of his life would undoubtedly suit CF, but I think that neither realistic nor in his best interests. As he becomes older and friends talk more about families I think it is better for him to know something about, and literally have an up-to-date picture of them, so he remains in control and any decision-making is better informed on his part. As he ages he will start to have more of his own mind. My aim in making an order for indirect contact is to keep some form of contact "ticking over" until there is a material change in circumstances.

[50] What of the practicalities? I have in mind both AJ and MM being permitted to send a card or letter, enclosing one up to date photograph of themselves twice a year to M, via a third party's address nominated by CF and communicated to AJ and MM via their solicitors. That approach minimises the risk of further abuse and retains CF's address as confidential. The frequency I have selected is twice a year. M's birthday is in early November, so to keep things spaced out I shall allow contact to be made at a 6-monthly interval, namely the first week in July every year and again at Christmas.

[51] The effect of this order upon AJ and MM will indeed further extend, perhaps significantly, the period of no direct contact with M. They are largely the authors of that situation. For what it is worth I do not think this is a case where a change of views by M could be jump-started by imposing direct contact on him, his being currently settled, although still anxious. Finally, I acknowledge that this is superficially inconsistent with his views but I do think it in his best interests.

Decision

[52] Accordingly I shall sustain the pursuer's first plea-in-law to the limited extent of making the indirect contact order specified below; sustain the first defender's third plea-in-law; and repels her first and second pleas-in-law; sustain the second defender's plea-in-law to the extent of making the indirect contact order specified below. Thereafter I shall make orders whereby M shall reside with the first defender, CF: and further an order whereby the pursuer and the second defender shall send a separate letter or card to M twice a year, namely during the first week in July and at Christmas; said letter may contain one photograph; and should be sent to the address identified by AJ and MM's solicitors to them; it then being passed unopened to M to do with it what he wants.