SHERIFF APPEAL COURT

[2026] SAC (Civ) 67

Sheriff Principal N A Ross

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL N A ROSS

in the appeal in the cause

by

RK

Pursuer and Respondent

against

PB

Defender and Appellant

Defender and Appellant: McEwan, advocate
Pursuer and Respondent: Party

14 October 2026

[1] The appellant seeks to challenge the decision of the sheriff to award contact with the parties' children. The sheriff heard proof and submissions on residence and contact, and issued a judgment dated 22 June 2026. Having indicated that she proposed to separate the principle of contact from the mechanics thereof, in accordance with *LRK* v *AG* [2019] SAC (Civ) 33, she found that contact with the respondent should be permitted in principle. The sheriff continued consideration of the respondent's crave for contact to a child welfare hearing on 27 July 2026, for the purpose of further submission and consideration of how best to communicate the decision to the children. By interlocutor of 27 July 2026 the court dealt

with expenses, allowed an unopposed amendment of the pleadings to separate the questions of contact and mechanisms of contact, and sustained the resulting crave, that it was in the best interests of the children that a contact order in favour of the respondent be granted. The interlocutor continued consideration of the crave for contact to another date. There was accordingly no interlocutor identifying contact times, dates, intervals or other necessary details which would be capable of enforcement.

[2] The appellant proceeded directly to raise the present appeal against the interlocutor of 27 July 2026, claiming the sheriff erred in converting a contested litigation into a child welfare hearing. The sheriff had not issued an interlocutor dealing with the question of contact. On the merits the appellant identified that the sheriff had erred in awarding contact.

[3] This appeal was therefore raised to challenge the principle of contact, but before any award of contact had been made. No permission was sought for the appeal. The matter was put out for a preliminary hearing on the question of competency. Section 110 of the Courts Reform (Scotland) Act 2014 permits appeal without permission in the circumstances set out in section 110(1). These include appealing a decision of a sheriff "constituting final judgment in civil proceedings", and also, amongst other exceptions, against a "decision of a sheriff in civil proceedings…(v) allowing, refusing or limiting the mode of proof". The position of the appellant was that either the sheriff's interlocutor of 27 July was a final judgment, or alternatively that it amounted to a decision allowing, refusing or limiting the mode of proof.

Submissions for the appellant

[4] Counsel submitted that the policy behind the 2014 Act was to preclude appeals until final judgment unless the interlocutor was of material importance, or would affect the status quo of the parties (*Macphail*: Sheriff Court Practice (4th Edition) para 18.27). The purpose could not be to preclude appeals where there had been a full determination after proof. These were unusual circumstances. The sheriff had heard a full proof. She had subsequently separated the questions into two issues – principle and implementation. The principle of contact was one of the primary issues.

[5] Counsel placed considerable reliance on *LRK* v *AG* [2019] SAC (Civ) 33. In that action this court had found competent an appeal against an interlocutor which had adjourned a proof part-heard but which had proceeded to find one party entitled to contact on designated occasions. No leave to appeal had apparently been sought. The appeal court recognised that in cases involving children a single determination was not always possible, and that a decision in principle might be separated from a decision in implement of that principle. The court had made clear that, if a decision in principle had been made, then a party could "of right" challenge that decision by appeal. To decide otherwise would result in condoning a procedure which thwarted the right of appeal and deprived the appellant of a remedy.

[6] As an alternative position, the effect of the interlocutor had been to restrict and limit the mode of proof by insisting that further procedure be limited to a non-evidential child welfare hearing. It was not competent to turn a proof into a child welfare hearing (*K* v *K* [2018] SAC (Civ) 24). The sheriff had made a determination on all but the crave for contact, but in continuing the matter for a child welfare hearing had in essence converted a contested

litigation into a hearing, albeit retrospectively. She had not decided one of the contested issues at proof.

Submissions for the respondent

[7] The respondent, who has been a party litigant throughout, opposed the appeal as incompetent. He pointed to the terms of section 110. The sheriff had not made a final judgment and had not granted permission to appeal. The sheriff had intended parties to discuss contact. The appellant's fallback position was contradictory, because it accepted that there was no final judgement. He sought that the case be remitted back to the sheriff for final disposal.

Decision

[8] This appeal is premature. It is not against a final interlocutor. No permission was sought or granted. It is not properly categorised as a decision allowing, refusing or limiting the mode of proof. Accordingly it falls to be dismissed.

[9] Counsel presented this as an unusual situation, where a decision in principle to award contact had been made, but where no award had yet been made to implement that principle and which could be enforced by either party. I do not accept that this is an unusual situation, and for the reasons explained and endorsed by this court in *LRK* (above), namely the separation of decision in principle and decision in implement, it is a disposal which is not infrequent. The mechanics of contact frequently involve only pragmatic and practical considerations, quite different from the considerations underpinning the award itself. It is, against that background, relevant that counsel was unable to locate any authority which directly dealt with that commonplace situation.

[10] In relation to the reference to the policy underlying section 110, it is a considerable benefit to both parties and court that appeals are not presented until the matter has been fully resolved at first instance. It does not follow that the appellant has been deprived of a remedy. In answer to counsel's question about what the appellant can do to challenge the award, the remedy is evident – either await the specific award implementing contact, or apply to the sheriff for permission to appeal.

[11] *LRK* does not assist the appellant. It was decided following a decision by a sheriff to make a decision on contact prior to the conclusion of the proof. There was a question of competency as to whether the sheriff, having heard evidence and submissions, but not having issued a judgment, was entitled to proceed to impose contact arrangements at a child welfare hearing. The sheriff issued interlocutors on the same date he heard submissions, and did not issue a judgment setting out findings in fact and conclusions. This court found that the sheriff had not made a decision in principle. Counsel placed particular reliance on the following:

> "If the decision is that 'in principle' there should be contact…the opposing party is entitled to know why and, if so advised, have the opportunity, as of right, to challenge such a conclusion by conventional methods of appeal."

[12] In context, this passage does not open the door to appeal immediately upon a decision in principle having been made. Rather, it requires that the disappointed party should have, of right, a judgment capable of being appealed. The sheriff had made a decision without issuing a judgment, depriving the parties of explanation, understanding or an appealable final decision.

[13] That is far different from the present position. The parties have a full understanding of the evidence, the decision and the reasons for the decision. They lack only the discussion of the mechanism of contact. They hold a judgment which will form the basis for appeal

once it becomes final. It will be final once the principle of contact is implemented. Moreover, awaiting a final disposal removes the possibility of requiring separate appeals on principle and on the nature and level of contact.

[14] The appellant's secondary position, that the decision in fact regulated the mode of proof, does not withstand scrutiny. The sheriff did not, contrary to the appellant's submission, convert a contested litigation into a child welfare hearing post-proof. The proof was heard and concluded. A judgment was issued. There was and is no further proof to be held, retrospectively or otherwise, and therefore no decision was or could be made which regulated the mode of proof. The child welfare hearing will not require proof. It will, however, be based on the evidence heard, on the facts found, and on the reasoning given in the decision. The hearing represents a deferral for further submission, not a refusal or failure to provide a reasoned decision. Such procedure is frequently desirable, for the reasons set out in *LRK*. The decision will allow implementation of the principle already established. The result will be capable, as a final judgment, of being appealed.

Disposal

[15] This appeal is premature and does not meet the requirements of section 110 of the 2014 Act. It will be dismissed. Parties agreed that, whatever the outcome, no award of expenses should be made to or by either party, and that will be reflected in the interlocutor.