SHERIFF APPEAL COURT

[2017] SAC (Civ) 38
AIR-AD23-16

Sheriff Principal M M Stephen QC
Sheriff Principal M W Lewis
Appeal Sheriff N A Ross

OPINION OF THE COURT

delivered by APPEAL SHERIFF ROSS

in appeal by

NORTH LANARKSHIRE COUNCIL

Petitioner/Appellant

against

KR

Respondent

Petitioner/Appellant: Scott QC, Cartwright; Ledingham Chalmers LLP
Respondent: K Campbell QC, Gilchrist; Moss & Kelly Solicitors

15 December 2017

[1] Pamela (not her real name) is a four year-old child who is presently in foster care. The appellant raised proceedings under section 80 of the Adoption and Children (Scotland) Act 2007 for a permanence order with authority to adopt. The sheriff heard proof, following which he refused to make a permanence order. The appellant challenges that judgement.

[2] The respondent KR is Pamela's mother, the only person who presently has parental responsibilities and rights. She is 26 years old. She is vulnerable and open to exploitation. She has Asperger's Syndrome, an autistic spectrum disorder. She was in a controlling and abusive relationship with Pamela's father. She forms inappropriate relationships and has

led, at times, a chaotic life including homelessness. She struggles to cope with Pamela's physical and emotional needs. The appellant's social work department has had concerns since learning of KR's pregnancy about her ability to cope, and Pamela's name was entered on their Child Protection Register pre-birth.

[3] Pamela resided with foster carers from birth, with KR's consent, until she was three months old. A parenting assessment was carried out involving a high level of professional support. One-to-one support was found to be most effective. After some delay due to KR forming a short-lived but concerning relationship with a male, the social work department decided in late 2013 to rehabilitate Pamela home to her care. KR received substantial support in relation to all aspects of child care and domestic administration.

[4] KR required prompting to clean her house and attend to her own personal hygiene. She did not recognise cues from Pamela relating to cleaning and feeding. She showed an inability to recognise risk. She failed to seek medical treatment and other assistance when required. She required prompting and assistance in relation to everyday tasks. In early 2014 KR's house was in such a poor condition that Pamela was briefly removed while the house was cleaned. In March 2014 KR invited an unknown male to the house for sex. Pamela was removed, but returned after further discussions. KR did not appreciate these or other risks to Pamela.

[5] In May 2014 KR travelled with Pamela to London. She presented herself to social workers there as homeless and requiring support. She was reported missing in Scotland. She had no money. Pamela's welfare was at considerable risk. KR stated that she had gone because she found the appellant's intervention overwhelming and overly intrusive. Following this, the appellant applied for and obtained a child protection order ("CPO") in May 2014. It provided for Pamela to be cared for by her grandparents. Grounds of referral

were established in July 2014 on the basis that Pamela was likely to suffer unnecessarily or her health or development be seriously impaired due to lack of parental care.

[6] A safeguarder was appointed in July 2014, and reported that rehabilitation was not an option and that contact should be reduced. A CPO was made in August 2014 with a condition of residence with foster carers. The appellant's social work department agreed in August 2014 that adoption would be pursued. Pamela still resides with foster carers, and was linked with prospective adopters in March 2016, with whom she now lives. KR has one hour of supervised contact per month.

[7] Following evidence at proof, the court found that notwithstanding her difficulties, KR is capable of change, and has demonstrated improvements in her personal administration. She is very committed to Pamela and has a deep affection for her.

[8] KR was assessed by a psychiatrist in 2013. She was found to have good insight into her difficulties, and few diagnostic signs of Asperger's Syndrome, whether as a result of a mild condition or from learning to deal with the condition. It was noted that while she might struggle with childcare, she had a good support network and some prior experience of childcare. She does not have a learning disability.

[9] In September 2014 KR contacted, on her own initiative, a parenting course run by an experienced clinical psychologist, Dr Puckering. Dr Puckering has 40 years' experience and a particular interest in very early parent and child relationships. KR attended a 14 week course ("Mellow Parenting") run by Dr Puckering. She demonstrated very high commitment. The course included parenting workshops and video feedbacks. KR made positive changes in her abilities. Mellow Parenting represents a more intensive approach to parenting skills than that offered to KR by the appellant's social work department.

[10] KR had a very poor relationship with some of the social workers dealing with her. One particular worker was uniformly critical of her and at times unsympathetic. This significantly hampered the effectiveness of the work done with KR by the social work department. It was the reason she gave for going to London.

[11] Dr Puckering requested the social work department that KR be allowed to bring Pamela to Mellow Parenting classes. They refused. The social work department believed that Dr Puckering could introduce nothing new. They had already decided to apply for a permanence order. Dr Puckering attended a "looked after and accommodated" review in December 2014. The review did not support Dr Puckering's request.

[12] KR sought an early review of the children's hearing, causing further delay, which resulted in the social work department changing the permanence plan in April 2015 to include authority to adopt.

[13] In April 2015 the children's hearing requested an independent parenting assessment, which was completed in June 2015 by Dr Marshall, a clinical psychologist. He concluded that KR is sensitive and kind, but impulsive and there are significant risks to Pamela in the event of her being returned. He found KR was unable to retain and consistently apply parenting skills to keep Pamela safe.

[14] During this period KR continued to form concerning relationships with unknown males, and was being exploited for possible fraudulent activity. Her domestic administration was extremely poor. She was deemed in August 2015 to be an adult at risk. In all she has had six adult protection referrals. She engaged well with social workers dealing with her, and as a result of her level of engagement the decision was taken in July 2016 that she was no longer an adult at risk.

[15] She continues to show lack of awareness of risk to Pamela in various household situations. She is, however, highly committed to contact, and prepares thoroughly for visits. She has made efforts to promote the culture of the prospective adopters. At the time of proof, KR was taking care of her personal administration and her house is neat and tidy. She receives help from the appellant's social work department, who as a department have at all material times taken her disability into account.

[16] Pamela is living with her prospective adopters, is well looked after and provided and cared for, and is thriving in a stable environment. She has lived in five separate households, including with KR and grandparents. At proof, she was almost four years old. Should adoption take place, the adopters do not want direct contact by KR. At contact, Pamela is generally not very demonstrative, but at times she is, and has run across to greet KR with a cuddle. If Pamela were to be returned to KR's care, at least at present, her residence is likely to be seriously detrimental to Pamela's welfare.

[17] However, the sheriff reached the conclusion, following evidence, that KR's engagement with the Mellow Parenting course showed that she was capable of change, and that it had not been shown that permanence was necessary in Pamela's interests. We comment on this in more detail below. His last finding in fact is:

> "There was however room for further intervention before a decision on permanence was taken and that remains the case. It has therefore not been established that the making of a permanence order with or without authority to adopt is necessary."

The Appeal

[18] Senior counsel for the appellants summarised all the grounds as leading to a single proposition that the sheriff had failed to take into account relevant considerations. She did not seek to interfere with the findings in fact, except the last finding which contains the

sheriff's conclusion. The complaint is not about the sheriff's evaluation of the evidence in so far as he has done this, but in relation to a gap in his reasoning. She submitted that he failed to reach a decision on Pamela's welfare based on all the relevant circumstances.

[19] Counsel gave examples of where this gap may lie. The sheriff had not explained where Pamela would live or who would exercise parental responsibilities and rights. He had apparently not taken into account his findings that Pamela was thriving in a stable environment, that a child needs and deserves a stable family unit, and that the children's hearing had reported in June 2016 that she needed to find a settled family and not be kept in the foster care system. He had not addressed the effect on Pamela of the uncertainty over her status, or the nature of any benefit she may derive from a relationship with KR. He had not considered what further intervention was now practical, and had not explained why keeping Pamela in foster care was in her best interests, having regard to the proper evaluation relating to her welfare.

[20] In our opinion this criticism of the sheriff's judgement is misconceived. We return to this below.

The Application of the Legal Requirements

[21] The mechanism and principles of the 2007 Act have received recent and detailed discussion at the highest levels. In relation to permanence orders, the Supreme Court discussed these in *West Lothian Council* v *B* 2017 SLT 319. The Supreme Court discussed applications to adopt in *S* v *L* 2013 SC (UKSC) 20. In submission reference was also made to *TW* v *Aberdeenshire Council* 2013 SC 108; *In re B (A child)* [2013] 1 WLR 1911; *In re B-S (Adoption Order: Leave to Oppose)* [2014] 1 WLR 563; *City of Edinburgh Council* v *RO and RD* [2016] SAC (Civ) 15; *Osborne* v *Matthan* 1998 SC 682; and *Fife Council, Petitioner* 2016 SC 169.

[22] Two critical tests are imposed by section 84 of the 2007 Act (*West Lothian Council* v *B* approving *R* v *Stirling Council* [2016] CSIH 36). The first is the threshold test, which must be addressed and satisfied before the second can be considered. If satisfied, then the second test is that the court must consider that it would be better for the child that the order should be made than that it should not be made (sec 84(3)). In assessing whether to make a permanence order and, if so, what provisions the order should make, the court must (sec 84(4)) regard the need to safeguard and promote the welfare of the child throughout childhood as the paramount consideration. The welfare of the child is paramount.

[23] A fundamental element in a child's welfare is her relationship with her parent:

> "It seems to me to be inherent in section 1(1) [*of the Children Act 1989, re 'the welfare of the child as the paramount consideration'*] that a care order should be a last resort, because the interests of a child would self-evidently require her relationship with her natural parents to be maintained unless no other course was possible in her interests…" (per Lord Neuberger in *In re B (A child));*
>
> "Nevertheless, it is quite clear that the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do." (per Baroness Hale, in *In re B (A child)).*

[24] As the overall approach of the sheriff is not under appeal, we will not restate at greater length the established criteria for determining whether permanence orders should be granted. For a recent treatment of these principles by this court, we refer to paragraphs [7] and [8] of *City of Edinburgh Council* v *RO and RD* (above).

The Sheriff's Reasoning and Findings

[25] In the present appeal, the sheriff's overall application of the law is not challenged. *West Lothian Council* v *B,* above, discusses the mechanism to be applied by the sheriff. It is not disputed that he carried out this task by reference to the correct tests. Similarly, his

reasoning is not challenged, but is said to have failed to take certain factors into account. His findings of fact are not challenged, but he is said to have given insufficient weight to certain facts.

[26] In brief summary, the first issue for the sheriff was to consider whether the threshold test for making such an order has been met (2007 Act sec 84(5)(c)) which here involved considering whether Pamela's residence with her mother is, or is likely to be, seriously detrimental to Pamela's welfare. The sheriff found that this test was satisfied. Next, the court required to consider whether it would be better for Pamela that the permanence order be made than that it should not be made (sec 84(3)). The sheriff concluded that the evidence did not support such a conclusion. In considering both tests, the paramount consideration was the need to safeguard and promote the welfare of Pamela throughout her childhood. The sheriff applied those tests. Article 8 of ECHR requires careful consideration of existing family ties, and such ties may be severed only in very exceptional circumstances. Everything must be done to preserve personal relations, to nurture the family ties where appropriate. It is not enough to show that a child might benefit from an alternative environment. The sheriff recognised and applied those principles.

[27] Senior counsel for the appellant submitted that she did not intend to seek deletion of any of the findings in fact, other than the last in which a conclusion was drawn. Her approach was to describe there as being a "gap" in the sheriff's reasoning which vitiated his conclusions.

[28] Before considering the grounds of appeal, it is important to focus on the reason for the sheriff's judgement that the grounds for making a permanence order were not made out. The sheriff considered, after a full review of the evidence, that the threshold test was passed.

As things presently stand, Pamela's residence with KR is or is likely to be seriously detrimental to the welfare of Pamela. That assessment is not disputed by either party.

[29] The sheriff recognised that, once the threshold test was satisfied, he should only proceed to make an order if it was necessary to do so in order to protect the interests of the child, namely that "nothing else will do". His decision was that, on the evidence, this test was not met.

[30] The sheriff clearly indicates where the appellant's case founders. Following a careful evaluation of all the evidence led, he accepted Dr Puckering's evidence (paragraph [38]) which he describes as follows:

> "Dr Puckering described [KR's] relationship with Social Work as thorny and positively antagonistic. Dr Puckering did not consider it a therapeutic relationship. She described Social Workers at meetings as stony faced and very harsh and without any understanding that [KR] is a young woman with a disability. Dr Puckering described [KR's] engagement with Mellow Parenting as excellent…[39] When describing [KR's] relationship with Social Work Dr Puckering said the capacity for it to be a supportive and therapeutic relationship was not there. She described [KR's] relationship with [one social worker] in particular as hostile, quite judgemental, quite harsh, rigid and unforgiving. She stressed the importance of a good relationship with those providing support for that support to be effective. This struck me as an obvious point. [40] I accept Dr Puckering's assessment of [KR's] relationship with Social Work…Equally, in my view [that social worker] in her evidence adopted an unduly critical approach to [KR]… [41] There have undoubtedly been problems with contact… Many of [that social worker's] criticisms seemed to me however to be very harsh."

[31] He proceeded to consider whether an order should be made. In doing so, he accepted Dr Puckering's view, supported by the other evidence, that (paragraph [68]) the social work department:

> "did not wish to co-operate with her as they had already decided on permanence…this decision not to co-operate with Dr Puckering was to my mind pivotal."

[32] The sheriff's conclusion leaves no doubt about how these difficulties can be resolved. The solution is to work with KR in the manner described by Dr Puckering. That would allow an informed judgement to be made as to whether Pamela's relationship with her mother should be severed by the granting of a similar order on a future occasion.

Discussion of Grounds of Appeal

[33] Senior counsel for the petitioner submitted that the sheriff had failed to consider all the relevant circumstances of the child, and had omitted some "very obvious questions". Before addressing this, we note the fundamental conclusion by the sheriff that it was not proved that severing the relationship with KR was necessary to protect Pamela's interests, because KR was capable of change. The grounds of appeal do not recognise this, and seek to reduce this finding merely to an element of the welfare test, which the sheriff has failed to "balance". It suggests that the severing of the bond with a parent is outweighed by other more minor factors, for example where Pamela might live. We note, however, that the case law makes clear that severing the relationship with the child is only to be done where necessary and nothing else will do. The sheriff found that the petitioner failed to produce evidence sufficient to satisfy this high test. The sheriff describes this failure as "pivotal". In our view he was both entitled and obliged, having taken that view of the evidence, to refuse the order.

[34] In developing her submissions, senior counsel presented six questions which the sheriff had not addressed, and which in her submission invalidated the decision.

[35] The first question which the sheriff had failed to consider was where Pamela would live in the foreseeable future. She submitted that Pamela could not live with KR, and she cannot now be adopted. The prospective adopters did not volunteer as foster carers, but

expected to be able to commit to Pamela and bring her up as her own. We reject this ground. First, it does nothing to address the finding that the link between KR and Pamela could be preserved. Second, the practical arrangements for Pamela in the event of refusal was not a matter which was recorded by the sheriff as having been explored in evidence, and counsel made no reference to such evidence in submission. She proposed no alternative finding in fact, and did not challenge any relevant existing finding in fact. We therefore have no basis to say that the sheriff had such evidence before him, or made any error. Third, it elevates the logistical difficulty of Pamela's arrangements ahead of the principle of retaining her family link with KR. It amounts, in effect, to a submission that the sheriff had no rational alternative but to grant the permanence order, because the petitioner had assumed that the order would be made and had made no contingency plan. The sheriff found (see para [81] of the judgement) that the petitioner had assumed the order would be granted and had encouraged the adoptive parents to make that assumption too. In fact, there is no reason, and no evidence that we can identify, for the sheriff to decide that Pamela's living arrangements after the hearing need be any different to those immediately before the hearing. We do not accept that this has been shown to be a problem which cannot be addressed in the same way that all practical issues relating to Pamela have been addressed to date. There is no evidence to the contrary available to us.

[36] The second question identified by counsel was who would discharge parental responsibilities and exercise parental rights. We reject this ground, for similar reasons to the foregoing ground. There is no evidence to decide that the existing arrangements cannot continue to apply until either Pamela is rehabilitated to the care of KR (should KR show sufficient improvement for that purpose) or a successful permanence order application made (should efforts to rehabilitate be shown to have been fairly tried and failed). Pamela's

arrangements will continue unchanged in the meantime. No responsible authority would, we presume, omit to make such a contingency plan.

[37] The third question was the effect on Pamela of uncertainty over her status. We reject this ground. Pamela is four years old. She has no direct understanding of these proceedings. The petitioner's current arrangements will continue until either of the events referred to above. If there is a suggestion that Pamela's expectations may have been unfairly raised, this is not sufficient to displace the "necessity" test for severing her relationship with KR, and is in any event directly attributable to the petitioner's own actings.

[38] The fourth question is a failure to consider the nature of the benefit Pamela may derive from a relationship with her natural mother. We reject this ground. It inverts the presumption that the interests of the child would "self-evidently require her relationship with her natural parents to be maintained" unless no other course was possible in her interests, requiring the petitioner to explore and attempt alternative solutions (per Lord Neuberger in *In re B*, quoted above) and that the court should start from the least interventionist approach (S v L per Lord Reed at para 123). The sheriff has carried out a detailed and carefully-balanced assessment of that relationship. He is clear that the local authority could and ought to have done more by way of supportive intervention in Pamela's relationship with her mother and that the evidential lacuna in that regard lies with the appellant (see findings in fact 56 to 58 and 83).

[39] Fifth, senior counsel submitted that the sheriff has failed to consider the report from the children's hearing. We reject this ground. The sheriff has a duty to consider a report from the children's hearing "providing advice about the circumstances to which the review relates" (Children's Hearings (Scotland) Act 2011, sections 141(4) and 131(2)(c)(i)). Here, the relevant report dated 6 June 2016 advised that the children's hearing supported the

application on the basis that there has been no evidence that [KR] has managed to make the changes needed to keep [Pamela], or herself, safe" and that a settled, normal family life "looks unlikely to happen in the near future with [KR]." The hearing considered it important that Pamela "find a settled family and not be kept in the foster system any longer". It is plain that this view was reached on the assumption that rehabilitation to KR's care cannot ever happen. It is equally plain that the sheriff, exercising his statutory function of hearing detailed evidence, has concluded that this assumption cannot be supported on the existing evidence. That erroneous assumption by the children's hearing vitiates their conclusion, which cannot (presently) be justified. Far from ignoring this report, the sheriff has had exactly these issues in mind throughout his judgement. As he states:

> "I am deeply conscious of the fact that although just under 4 years old Pamela has lived in 5 different family environments so far. She needs and deserves a stable family unit. I have therefore not reached this decision lightly…"

His judgement, in our view, properly explains and justifies his decision.

[40] The sixth ground is that the sheriff has failed to consider what further intervention is now practical. We reject this ground. It is based on the petitioner's submission that "KR is not in any event likely to cooperate with the petitioner". This appears an almost wilful refusal to contemplate the clear import of the sheriff's judgement. That judgement points to an obvious course of action, namely to support KR in a reference to the Mellow Parenting course (or similar resource), and to change their approach to KR from "hostile, quite judgemental, quite harsh, rigid and unforgiving" (judgement para [39]) to one that will meet KR's reasonable needs. It remains to be seen whether such a resource will in fact be successful, but the sheriff has accepted that there are material prospects of success. His judgement in that respect is not challenged.

[41] Senior counsel went on to submit that the sheriff appeared to have misapplied the test of necessity, and had failed to take a holistic approach to Pamela's welfare. She founded on the discussion of necessity in *S* v *L* by Lord Reed, discussing necessity in the context of proportionality, and submitted that necessity was always subject to the paramountcy of the best interests of the child.

[42] We reject this ground. We do not accept that, viewed fairly, that the sheriff has failed to have regard to Pamela's welfare as the paramount consideration, or that his reference to necessity was any different to that discussed by Lord Neuberger and Baroness Hale in *In re B (A child)*, already quoted above. While necessity was in that case being discussed in relation to the needs of a democratic society, and not specifically the context of the test to be applied, the court went on to discuss the principles which applied. That discussion concludes:

> "As was said in *In re C and B* [2001] 1 FLR 611, para 34, "Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child"

[43] The sheriff did consider and apply the test of "overriding necessity" in the sense of "nothing else will do" to promote Pamela's welfare, and not in the wider, more systemic sense of the type contended for by senior counsel. He explains this at paragraphs [72], [76], and [77] of his judgement.

[44] Senior counsel also made reference to the requirement to make a "global, holistic evaluation" of the child's circumstances *(In re B-S (Children) (Adoption Order: Leave to Oppose)* [2014] 1 WLR 563 at paragraph [41]) in support of her submission that the sheriff had failed to address Pamela's whole circumstances. We agree that a holistic approach is required, but

can detect no failure by the sheriff in this regard. His findings and conclusions are clear. While the case of *In re B-S (Children)* described the requirement for global holistic evaluation as crucial, it was not in our view an invitation to find artificial appeal points through identifying minor or irrelevant omissions. The authorities make clear that the sheriff's judgement must be read in the light of the findings in fact and the note as a whole (*Fife Council v M* at [54]); the test is whether the sheriff's findings are adequate for their purpose (*West Lothian Council*); the judgement is not to be read as if it was a conveyancing exercise (*City of Edinburgh Council* v *RO and RD*); what is important is the effect of the sheriff's judgement as a whole (*City of Edinburgh Council* v *RO and RD*). In our view the appellant's list of demerits does not adequately identify any gap in the sheriff's understanding, or his treatment, of Pamela's circumstances or the appropriate steps to be taken. Read fairly, it is clear that the sheriff has taken such a holistic approach.

[45] In the light of the sheriff's conclusions, none of these six features identified above can be regarded as sufficiently material to vitiate the sheriff's exercise or conclusions. It is clear from the sheriff's lengthy, painstaking and careful judgement, read as a whole, that he has conducted the holistic, global evaluation which is required, against the correct legal tests. He has found a fundamental element not to have been satisfied. His reasoning, and evaluation, was appropriate for the exercise he was conducting. The petitioner has failed to establish their case.

[46] In our view the present appeal amounts to little more than finding points of criticism, while failing to meet, far less disturb, the clear and rational conclusions of the judgement. In our view senior counsel's approach is misconceived. It is not an approach encouraged by the authorities.

Decision and Observations

[47] We were invited to quash the sheriff's decision and to make a permanence order. We decline to do so. The appellant has not presented adequate or rational grounds for overturning the sheriff's findings in fact, or his conclusions. In any event, we are not asked to overturn his finding that KR is capable of change (finding 57) or that there is room for further rehabilitation (finding 58), and do not have any factual basis to do so. We would accordingly be unable to make such an order in any event.

[48] This court has recently made general observations, in the case of *City of Edinburgh Council* v *RO and RD*, on the general duties incumbent on social workers. These remain valid. The petitioner's social work department must apply the relevant statutory provisions in the 2007 Act, but in doing so:

> "…it is insufficient for them simply to ask the question: "What is in the best interests of the child?" – the paramount consideration (2007 Act, sections 14(3) and 84(4)). They must also take into account the other statutory provisions and, crucially, the jurisprudence which has developed since the Act came into force. Accordingly, in their day to day work they must repeatedly ask themselves such questions as: "What is the minimum intervention we should make in the life of this child?", and the essential subsidiary question: "What else could we do to avoid a more drastic form of order such as adoption?" It would be an understandable reaction for a social worker to decide that the safety first approach is to sever the relationship between the child and the parent… But that would be a breach of duty and, from the particular perspective of a court, a gross failure to apply the law… [4] We are troubled that in this case and in others which come before the courts the social workers decide to go down one path and appear unwilling to keep under continual review the objective of preserving personal relations between parents and children…especially where options short of adoption would be sufficient intervention in family life."

[49] It appears to us that we are in a similar situation again. The sheriff states:

> "[81] It became apparent during the course of the proof that once a decision to seek this order had been made and the child placed with [prospective adopters] the petitioner's social work department proceeded as if the granting of this application were a foregone conclusion. With, as I understand it, the approval of the petitioner's social work department, [the prospective adopters] have encouraged Pamela to refer

> to them as mummy and daddy. I was told in evidence that was so that Pamela would appreciate that this was a different sort of placement…It seemed to me that no thought had been given by the petitioner's social work department to the possibility that this application might be refused and to the effect on Pamela of all of this were the application to be refused. I suggest that the petitioners take a good look at their current procedures. These applications are certainly not a rubber stamping exercise…those involved at social work should throughout the process be asking themselves 'what if I am wrong?'."

[50] We agree with that approach, and commend it to social work practitioners for future proceedings. Regrettably, the petitioner has deployed scarce resources on this appeal, when such resources would have been better directed to addressing the central issue of whether rebuilding and preservation of family ties can be achieved in Pamela's interests.

[51] We refuse the appeal.

[52] Parties agreed that no award of expenses should be made, and therefore we find no expenses due to or by either party.