



SHERIFF APPEAL COURT

**[2019] SAC (Civ) 2
STI-AD15-18**

Sheriff Principal I Abercrombie QC
Sheriff Principal D Murray
Appeal Sheriff N Ross

OPINION OF THE COURT

delivered by APPEAL SHERIFF N A ROSS

in appeal by

LG

Respondent and Appellant

against

STIRLING COUNCIL

Petitioner and Respondent

**Respondent and Appellant: Cartwright; Balfour + Manson LLP
Petitioner and Respondent: Sharpe; Stirling Council**

24 January 2019

[1] “A” is a one year-old child who has been subject to compulsory measures of care since birth. The petitioner seeks a permanence order with authority for A to be adopted. The sheriff granted their petition on 13 September 2018.

[2] The appellant is A’s birth mother. She did not participate in the proceedings before the sheriff. She did not lodge a form of response to the petition. She did not attend the preliminary hearing in the sheriff court. She appeals the decision on the basis that the sheriff was “deprived” of her evidence. A revised note of appeal was refused. The submissions on appeal focused on whether the sheriff had sufficient material, in the absence of the

appellant, to make findings in fact which satisfied the threshold test, and which justified the granting of the petition.

The appellant's participation

[3] The appellant did not participate at any stage of the sheriff court proceedings. She attributed this to having suffered a serious assault and being afraid to enter the area to consult with solicitors. She claimed to be in ill health. These claims were not vouched. The respondent lodged a report from the allocated social worker which gave a detailed account of the appellant's history of drug and alcohol abuse and domestic violence dating from prior to A's birth. The appellant missed a total of 15 of 16 scheduled pre-natal hospital appointments in relation to A. She had a history of mental health problems. She has four older children, all of whom have been removed from her care. She and her partner had been found in possession of a knife and a baseball bat. She abused drugs during the pregnancy with A, and at birth the child A required treatment for substance withdrawal. Although there were some positive subsequent engagements with supervised contacts, the appellant's attendance then deteriorated. The appellant's partner died of a drug overdose. The appellant relapsed into drug misuse. She formed another relationship involving drug abuse and domestic abuse. The last time the appellant exercised contact with A was 5 October 2017. By early 2018 she had withdrawn from all supports. She was aware as early as April 2018 of the respondent's proposals to seek a permanence order with authority for adoption, but did not engage further. The appellant told the reporter that she was aware that "she wished for the child to have the best possible outcome which would not be achieved in her care". The sheriff has supplied a note in which he records that the appellant told the social worker that adoption was the best option for the child, but gave contrary information to the curator *ad*

litem that she intended to oppose the application, while accepting that she had not offered consistent care to A due to relapse into drug misuse.

[4] The sheriff was obliged, in the absence of a form of response, either to dispose of the case or make such other order as he considered appropriate (Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009 rule 35(1)(a)), including granting the petition if sufficient material permitted him to find that the tests in section 84 of the Adoption and Children (Scotland) Act 2007 were satisfied. He duly granted the petition. We consider that he had sufficient material to justify granting the petition, and are not persuaded that he erred in his decision to do so.

[5] The absence of any appearance or evidence from the appellant was, in these circumstances, entirely attributable to her own failures. The social work report narrates that she did not attend children's hearings or LAAC reviews even after she knew of the respondent's intention to seek the present orders. She had the benefit of a support worker who did attend. She did not provide any evidence to the court that she was unable to attend hearings. No sufficient reason was advanced for her failure to submit a response form or to instruct appearance before the sheriff. The absence of engagement with the court process was consistent with her chaotic lifestyle. At best, she had stated an intention to oppose the application, but had contradicted that view and in any event had not entered appearance. Her history showed occasional efforts to engage which quickly lapsed into failures. There was no material before the sheriff which showed, far less vouched, that this pattern of occasional effort and relapse had come to an end. No vouching was tendered on appeal.

[6] The sheriff was faced with no engagement by the appellant in the petition process, no explanation for her not engaging, and the evidence of the social worker that the appellant knew about the proceedings and had said she would not oppose the application.

[7] In these circumstances, the sheriff made no error in deciding that the application should proceed in the absence of the appellant. Indeed, he was entitled to regard the appellant's position as entirely consistent with her history of lack of engagement with appointments and supports relating to A's welfare.

The sufficiency of material

[8] The sheriff records that a curator was appointed. The sheriff had regard to the respondent's social work report dated 3 August 2018 and the report by the curator dated 5 September 2018. He has provided a note in which he comments on the cyclical aspects to the child welfare concerns, a pattern of the respondent having failed to engage with supports and care plans in relation to all four of her elder children, and the resulting inability to have any of these children in her care for any sustained period of time. The concerns about substance and alcohol misuse, abusive domestic relationships and child protection and welfare indicators in relation to child A had all been present with her older children. The appellant had not been able to break the cycle. Even though she had recently engaged well with her drug worker, her lifestyle continued to be chaotic.

[9] In submission, counsel sought to criticise the sheriff's decision making on the grounds that the reports to which he had regard had contained the opinions of the reporters. It was submitted that he had thereby relied on the reporters' opinions, not the facts of the case. The facts were that the appellant had recently engaged well, was showing signs of improvement, and the sheriff could not be satisfied that parental inability to care for A would be likely to continue.

[10] We do not regard this submission as representing any fair summary of the material before the sheriff. Counsel did not discuss the content of the social work report in any detail.

This social work report contains a lengthy 11-page recital of the history of the appellant and her inadequate engagement with professional supports, as shown by the petitioners' records in relation to the child A and her older four children, all of whom had been removed from her care. None of that information was said to be wrong or misleading. The curator's report was based on an interview with the appellant, the social worker and team manager, the foster carer for A and the appellant's community alcohol and drug service worker. The appellant confirmed to the curator the series of events set out in the social work report.

[11] The sheriff therefore had available all the material facts relating to the appellant's recent history and the history of the present application. The appellant had been given, and did not take, the opportunity to make representations, which was entirely consistent with her historical behaviour. There was ample material within the two reports on which to find that the statutory tests were satisfied. The sheriff's findings were based on the facts related to him, and did not depend on the opinion of any third party. That the material contains an opinion by a third party does not support the submission made by counsel. It is entirely legitimate for a reporter to make recommendations based on their investigation of the facts.

[12] Counsel for the respondent described the facts relied on in the appellant's submission, principally relating to an alleged improvement justifying a refusal of the petition, as highly selective. We regard that submission as evidently correct.

The statutory test

[13] Counsel did not identify any error in the application of the statutory tests. No such error is evident on reading the sheriff's note. No ground of appeal arises.

Disposal

[14] We refuse the appeal.