

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT FORFAR

[2022] SC FOR 19

FFR-F110-21

JUDGMENT OF SHERIFF JILLIAN MARTIN-BROWN

in the cause

KM

Pursuer

against

DM

Defender

**Pursuer: Mackinnon (Sol); Lindsays
Defender: Sym (Sol); Bruce & Company**

Forfar, 18 May 2022

Introduction

[1] In this case the pursuer, who is the mother of L, sought a specific issue order to allow her to relocate to the Republic of Ireland with him. The defender, who is the father of L, opposed the making of that order.

Procedural History

[2] Evidence was led from five witnesses on 25 March 2022 by WebEx:

1. KM, mother of L, pursuer.
2. TM, maternal aunt of L.
3. DM, father of L, defender.
4. CM, paternal grandmother of L.
5. LR, paternal aunt of L.

[3] Written submissions were lodged with the court and oral submissions were heard on 5 May 2022.

Background facts and circumstances

[4] The pursuer sought: (i) a residence order; and (ii) a specific issue order authorising her to remove her child, L, from the United Kingdom in order that she could relocate to the Republic of Ireland with him. Failing that, she sought: (iii) a specific issue order authorising her to remove L for holidays outwith the UK for a maximum aggregate of 6 weeks per calendar year or for such other period of time as the court deemed appropriate.

[5] The defender had initially sought a residence order but that was not insisted upon. It was not disputed that L should reside with the pursuer. What was in dispute was where that residence should be and the defender's position was that it should be in Scotland. The defender was agreeable to the pursuer taking L to the Republic of Ireland for up to 6 weeks per year.

[6] L was born in 2019. At the time of the proof he was 3 years old and both parties were agreed that he was too young to understand proceedings or express a view.

Pursuer's case

(i) Evidence of the pursuer

[7] The pursuer was 32 years old. She swore an affidavit dated 1 February 2022, which she adopted and elaborated upon in oral evidence. She was employed as an Occupational Therapist. She was in a relationship with the defender for 6 years. They were engaged and planned to marry in Ireland in June 2021, but separated in March 2020.

[8] Prior to becoming pregnant, the pursuer and defender had several verbal conversations regarding relocation to the Republic of Ireland as a family. Following the birth of their son, the pursuer felt she had no physical or emotional family support in Scotland and her desire to return to the Republic of Ireland grew. The defender did not agree.

[9] Since L's birth, the defender had demonstrated an inability to put L's needs before his own. The defender volunteered for extra hours on Saturday mornings, limiting his time at home with L and the pursuer. The pursuer had provided for all L's care needs in addition to recovering from an emergency caesarean section.

[10] The pursuer regularly FaceTimed her family in Ireland for support and felt alone, isolated and exhausted. The defender flew abroad with friends while L was 12 weeks old. By July 2019, the pursuer was diagnosed with postpartum depression and started on medication. The defender did not support that treatment. The pursuer also sought support via a private therapist. The defender did not support that treatment. In March 2020 with the impending lockdown, the pursuer feared being in lockdown with the defender and decided to leave the family home.

[11] Since moving out of the family home, the defender had made life difficult for the pursuer. Arguments ensued over the furnishings in the family home and L's routine. The pursuer sought support from Women's Aid from November 2020 until approximately April 2021. Communication between the parties was poor. The defender often entered the pursuer's apartment without permission to demand L say goodbye to him. He was often late dropping off L.

[12] The pursuer wanted to relocate to the Republic of Ireland with L because she believed they would both have a better standard and quality of life. She had a large

extended family there and wished to live closer to them for physical, social and emotional support. The pursuer also had friends there of a similar age who had children within L's age and range of development.

[13] On relocating, the pursuer would share accommodation in her family home until she obtained her own home. Her father had a plot of land for her to build a family home for them both. That would be a vast improvement on her current rented two bedroom apartment. L would have access to vast landscape and gardens to play and develop. Ample schooling and health services were available in the area and L had secured a primary school placement. L's maternal grandmother was available to offer childcare support while the pursuer was working, reducing the need for L to attend private childcare. He would have access to clubs and facilities. The pursuer was in a position to continue being the primary financial provider for L in light of her savings and anticipated earnings as a qualified occupational therapist.

[14] The pursuer felt she was always very polite to all of the defender's family and involved L in family events. However, the defender's father had on several occasions expressed racist views that Irish people were stupid and had on one occasion made a derogatory comment about her weight when she came home from hospital with L. Though the comments were sometimes made in a playful tone, she did not have a great relationship with the defender's father.

[15] Notwithstanding the issues outlined above, the pursuer actively supported maintaining a relationship between L and the defender. There were three airports available for travel to the Republic of Ireland. She would support L travelling to Scotland twice a year. The pursuer was willing to travel to Scotland with L for one week during the Easter holidays depending on the primary school calendar and again in July or August for 2 weeks,

totalling 3 weeks. The defender would have the freedom to choose his additional 3 weeks with L in the Republic of Ireland, as long as they coincided with the primary school calendar.

[16] Outside of those 6 weeks, she would agree to the defender travelling to the Republic of Ireland for pre-arranged weekends. She would also offer twice weekly FaceTime/Skype sessions lasting 30 minutes. The length and frequency could increase with L's age. She would also agree to any requests from L to call his father outwith scheduled times.

[17] In cross examination, the pursuer accepted that relocation would reduce the contact that L had with his father, but indicated that she saw the 2 hours per day that L spent with his father from 3.30pm until 5.30pm from Monday to Thursday in week 1 as an "extension of childcare" and regarded that time as "playdates rather than parenting". While she had reduced her hours on her return to work after maternity leave, she did not believe the defender had made any attempt to change his working hours. Though the defender used annual leave to spend time with L in week 2, she felt that had been done in a back handed manner to gain extra contact in advance of the court hearing.

[18] In cross examination, the pursuer accepted that L would have contact with children his own age at nursery in Scotland. Childcare facilities were similar in both countries. The amenities in both areas were similar. She also accepted that the text messages (pursuer's second inventory of productions) showed the defender had been willing to pay more money to the pursuer than was subsequently assessed as due by the Child Maintenance Service (half of the childminder's fees) and that they had been able to make arrangements for attending hospital appointments for L. She accepted that on occasion both parties were late for handovers.

(ii) Evidence of the pursuer's other witnesses

[19] TM swore an affidavit dated 1 February 2022, which she adopted and elaborated upon in oral evidence. She was L's maternal aunt and the pursuer's sister. She was employed as a Child Protection Social Worker in Dublin.

[20] TM gave evidence about how life would be for the pursuer and L if they were able to relocate to the Republic of Ireland. Their parents would provide a four-bedroom, two bathroom, two sitting-room house on a farm with acres of land and a substantial sized garden for L to play in. There were numerous services in the nearby town that could meet L's needs. There was an extensive network of family living in the area. Being surrounded by family and children his own age range would help with L's sense of confidence and independence. Their parents and TM herself were in a financial position to support the pursuer and L if required.

[21] TM gave evidence about supporting her sister in her communication difficulties with the defender and witnessing her in a distressed state as a result of those difficulties.

[22] LA affidavit dated 9 February 2022 was agreed between the parties and she did not give oral evidence. She was employed as Team Leader in Occupational Therapy. She confirmed that the pursuer had the necessary skills for registration with Corus, the equivalent of the Health Professions Council in the Republic of Ireland, responsible for the professional regulation of occupational therapists.

Defender's Case

(i) Evidence of the defender

[23] The defender was 33 years old. He swore an affidavit dated 8 March 2022, which he adopted and elaborated upon in oral evidence. He was employed as an HGV mechanic on a

fortnightly rota. He exercised contact with L from 15:30 – 17:30 Monday to Thursday and from 15:30 Friday until 09:00 Monday in week 1, and on Friday of week 2 from 15:30–17:30. He paid the mortgage on the former family home and child maintenance.

[24] The defender explained that the pursuer came to Scotland when she started university in Edinburgh over 10 years ago. She had talked in the past about relocating to the Republic of Ireland but he was not willing to do so. He had indicated he might be willing to relocate when they retired but not before then.

[25] The pursuer had a good career in Scotland and her family visited her regularly. After L was born, she suffered from postnatal depression. The defender had tried to support her. The pursuer declined help from the defender's family.

[26] Following their separation, arrangements were put in place for contact with L. There had been a settled pattern of contact for some time. The defender had a close relationship with L and considered himself to be a very involved Dad. L also had contact with the defender's extended family. L had a life in Scotland and both his parents lived in the same town, which had all the facilities L would need.

[27] If L were to live in the Republic of Ireland, it would be very difficult for the defender to see him. The defender got 33 days' holiday per year plus statutory days. The cost of travelling to and from a rural part of the Republic of Ireland, given the flights available, would make it very difficult to retain a proper relationship with L. It was in L's best interests to remain living in Scotland to enable both of his parents to play a full part in his life.

[28] The defender accepted that verbal communication with the pursuer had been difficult at times. He denied walking into her apartment without permission.

[29] The defender had taken some annual leave which he had carried over from the previous year in order to spend more time with L in week 2. It was not for tactical advantage. It had led to a court order regulating contact, which worked perfectly around his shifts. He worked a Saturday morning every few weeks on a rota and was contractually obliged to do so.

[30] In cross examination, the defender maintained that he was worried if L went to the Republic of Ireland that he would never see him again because the pursuer was hesitant about his involvement in L's life. He described the area of intended relocation as behind the times, with a dangerous country road, no Netflix, no infrastructure, no NHS, no mixed schooling and a dangerous wall near the pursuer's family's house.

ii. Evidence of the defender's other witnesses

[31] CM was sworn an affidavit dated 8 March 2022, which she adopted and elaborated upon in oral evidence. She was employed as a Domestic. She was L's paternal grandmother.

[32] She indicated that the defender was heavily involved in L's life. During week 1 when the defender had a lot of contact with L, he usually brought L to her house. He had started working on Saturday mornings to get extra money because he found himself stretched financially. L would come to her house in the morning and the defender would come to collect him afterwards.

[33] The pursuer had suffered from postnatal depression but she did not want support. The pursuer had never been particularly close to her family but there had never been a falling out. She appreciated that the pursuer might feel isolated in Scotland with her family

in the Republic of Ireland, but did not think relocation would be to L's benefit. She had not heard her husband make racist or derogatory comments towards the pursuer.

[34] LR swore an affidavit dated 11 March 2022, which she adopted and elaborated upon in oral evidence. She was employed as an Accounts Assistant. She was L's paternal aunt.

[35] She saw L and her brother about once a week and her son H (5 years old) played with L. The defender was very good with L and H.

[36] She felt the pursuer had always been a bit standoffish in relation to her family. The pursuer did not like her dad, who could be a bit loud. She had not heard her father make racist or derogatory comments to the pursuer. The pursuer did not want support from her during her postnatal depression.

[37] The pursuer was a good mum and the defender was a good dad. L had the benefit of both parents involved in his life on a very regular basis in Scotland.

Conclusions from the evidence

[38] I found all the witnesses to be credible and reliable overall. The pursuer tended to minimise the significance of the defender's role in L's life and the defender tended to exaggerate his concerns about L's relocation, but that was understandable given the emotions involved in this case.

[39] I accepted the pursuer's evidence that L's paternal grandfather had made racist, derogatory comments towards her, which affected her relationship with him. I also accepted the parties' evidence that there had been communication difficulties between them.

[40] I accepted the defender's evidence that he was an engaged parent, who was actively involved in his son's life.

Legislation

[41] Section 11 of the Children (Scotland) Act 1995 provides:

Court orders relating to parental responsibilities etc.

11 (1)

In the relevant circumstances in proceedings in the Court of Session or sheriff court, whether those proceedings are or are not independent of any other action, an order may be made under this subsection in relation to —

- (a) parental responsibilities;
- (b) parental rights;
- (c) guardianship; or
- (d) subject to section 14(1) and (2) of this Act, the administration of a child's property.

(2) The court may make such order under subsection (1) above as it thinks fit; and without prejudice to the generality of that subsection may in particular so make any of the following orders —

(a) an order depriving a person of some or all of his parental responsibilities or parental rights in relation to a child;

(b) an order —

- (i) imposing upon a person (provided he is at least sixteen years of age or is a parent of the child) such responsibilities; and
- (ii) giving that person such rights;

(c) an order regulating the arrangements as to —

- (i) with whom; or
- (ii) if with different persons alternately or periodically, with whom during what periods, a child under the age of sixteen years is to live (any such order being known as a "residence order");

(d) an order regulating the arrangements for maintaining personal relations and direct contact between a child under that age and a person with whom the child is not, or will not be, living (any such order being known as a "contact order")

(e) an order regulating any specific question which has arisen, or may arise, in connection with any of the matters mentioned in paragraphs (a) to (d) of subsection 1 of this section (any such order being known as a 'specific issue order');

...

(3) The relevant circumstances mentioned in subsection (1) above are—

(a) that application for an order under that subsection is made by a person who—

- (i) not having, and never having had, parental responsibilities or parental rights in relation to the child, claims an interest;
- (ii) has parental responsibilities or parental rights in relation to the child;

...

(7) Subject to subsection (8) below, in considering whether or not to make an order under subsection (1) above and what order to make, the court—

(a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and

(b) taking account of the child's age and maturity, shall so far as practicable—

- (i) give him an opportunity to indicate whether he wishes to express his views;
- (ii) if he does so wish, give him an opportunity to express them; and
- (iii) have regard to such views as he may express.

(7A) In carrying out the duties imposed by subsection (7)(a) above, the court shall have regard in particular to the matters mentioned in subsection (7B) below.

(7B) Those matters are—

(a) the need to protect the child from—

- (i) any abuse; or
- (ii) the risk of any abuse, which affects, or might affect, the child;

(b) the effect such abuse, or the risk of such abuse, might have on the child;

(c) the ability of a person—

- (i) who has carried out abuse which affects or might affect the child; or
- (ii) who might carry out such abuse, to care for, or otherwise meet the needs of, the child; and

(d) the effect any abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person

who has (or, by virtue of an order under subsection (1), would have) those responsibilities.

(7C) In subsection (7B) above—

“abuse” includes —

(a) violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;

(b) abuse of a person other than the child; and

(c) domestic abuse;

“conduct” includes —

(a) speech; and

(b) presence in a specified place or area.

(7D) Where—

(a) the court is considering making an order under subsection (1) above; and

(b) in pursuance of the order two or more relevant persons would have to co-operate with one another as respects matters affecting the child, the court shall consider whether it would be appropriate to make the order.

(7E) In subsection (7D) above, ‘relevant person’, in relation to a child, means —

(a) a person having parental responsibilities or parental rights in respect of the child; or

(b) where a parent of the child does not have parental responsibilities or parental rights in respect of the child, a parent of the child.

(c) the court is considering making an order under subsection (1) above; and

(d) in pursuance of the order two or more relevant persons would have to co-operate with one another as respects matters affecting the child, the court shall consider whether it would be appropriate to make the order.

[42] Section 2 of the Children (Scotland) Act 1995 provides:

Parental Rights

2 (1) Subject to section 3(1)(b) and (3) of this Act, a parent, in order to enable him to fulfil his parental responsibilities in relation to his child, has the right –

(a) to have the child living with him or otherwise to regulate the child's residence;

(b) to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing;

(c) if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis; and

(d) to act as the child's legal representative.

(2) Subject to subsection (3) below, where two or more persons have a parental right as respects a child, each of them may exercise that right without the consent of the other or, as the case may be, of any of the others, unless any decree or deed conferring the right, or regulating its exercise, otherwise provides.

(3) Without prejudice to any court order, no person shall be entitled to remove a child habitually resident in Scotland from, or to retain any such child outwith, the United Kingdom without the consent of a person described in subsection 6 below.

...

(6) The description of a person referred to in subsection (3) above is a person (whether or not a parent of the child) who for the time being has and is exercising in relation to him a right mentioned in paragraph (a) or (c) of subsection (1) above, except that, where both the child's parents are person so described, the consent required for his removal or retention shall be that of them both.

Authorities

[43] Parties were agreed that the law was properly set out in the opinion of Lady Wise in the case of *GB or L v JL* [2017] CSOH 60.

Submissions for the pursuer

[44] The pursuer submitted that the law was quite deliberately vague in respect of the considerations the court had to apply. The best summary was that the court was to have

regard to whether the proposed relocation was in the interests of the child and whether an order in respect of the relocation was necessary. To do that, the court would have to have regard to what the move would entail on a day to day basis for the child.

[45] The pursuer submitted that the move to the Republic of Ireland was very much in the child's interests. She had a significant number of family and friends in the area and had grown up there. There were very recognisable education and health facilities in the area. There would appear to be plenty of job opportunities for the pursuer.

[46] The pursuer was clear that she had little or no family support in Scotland. The court had evidence of what would appear to be a difficult relationship between the pursuer and the defender and his family.

[47] The pursuer was sensible about wanting to maintain a relationship between L and his father. She had researched frequency and cost of flights and indicated she would be willing to bring L to Scotland for extended periods. The suggestion by the defender that he would never see his son again appeared to bear no scrutiny whatsoever.

[48] It was not controversial that L spent time whilst in his father's care in the care of his grandparents, and at times the defender absented himself so that he could carry out duties in his employment.

[49] The defender's mother and sister appeared critical of the pursuer, blaming her for being distant from them. The defender was critical of the Irish way of life, suggesting implicitly that it was in some ways backwards.

[50] The pursuer submitted that in any section 11 order application, the court had to have regard to the degree to which parties could co-operate with one another. That was contained in section 11(7D). The court also had to have regard to the extent to which a person other than the child had been abused in section 11(7B). It was submitted that the

more material of those two considerations in this case concerned co-operation and the court was directed to the various text communications lodged.

[51] The court had evidence about the defender seeking unilaterally to change the contact arrangements to inflate the time L was with him immediately when he realised the pursuer was seeking to relocate. It was submitted that all of that provided ample evidence that the defender found it difficult to co-operate with the pursuer.

[52] In all the circumstances, it was submitted that it would be in the child's interests to grant the specific issue order relating to relocation. If the court was not minded to grant such an order, then the court was invited to grant the second specific issue order authorising removal for holiday periods outwith the UK. As the pursuer was in receipt of legal aid, she had no motion for expenses whether she was successful or unsuccessful.

Submissions for the defender

[53] The defender submitted that each case would turn on its own facts and circumstances. What was clear was that in Scots Law, unlike previous English authorities, the effect of the refusal of an application to relocate on the parent who wished to relocate is not a material factor.

[54] In applying the test to the current case, it was submitted that the specific issue order in relation to relocation should not be granted because in Scotland, L had substantial involvement in both his parents' lives and they in his.

[55] If the order to relocate were granted, there would be a significant and profound impact upon the relationship between L and his father. L had two loving parents, both of whom were significantly and actively involved in his life. He had the benefit of that involvement from both of them and the granting of the order would result in him having

considerably less involvement with the defender, who was a committed and loving parent, as was the pursuer.

[56] It was of relevance that the pursuer resided in Scotland for several years before the relationship with the defender took place. On completing her university course, she chose to remain in Scotland. She formed a relationship with the defender. She remained in Scotland. After L's birth she had remained in Scotland. Whilst it was accepted that she had expressed a wish to return to the Republic of Ireland, it was only since the relationship failed she had actively sought to alter L's domicile.

[57] The pursuer's evidence was honestly given and it was not submitted that she in any way gave unreliable or incredible evidence. However it was submitted that she overstated the difficulties that she had experienced with the defender and understated the involvement of the defender in L's life. Indeed, she suggested within her evidence that the contact in week 1 from Monday to Thursday was nothing more than "extended childcare". She was reluctant to acknowledge that there was an important substantial bond between the defender and L. It was submitted that her reason for doing so was because she realised that in doing so, she may undermine her case given the impact that a relocation to the Republic of Ireland would have upon the relationship between L and the defender.

[58] The evidence led on behalf of the defender came from the defender, his mother and his sister. All spoke of the defender being significantly involved in L's life and being a significant part of the extended family.

[59] The defender submitted that the impact of relocation would be that L would see considerably less of the defender. Although the pursuer indicated that she would be happy to take L to whichever Irish airport the defender was able to travel to, the practicalities of that meant it was likely that the defender would only be able to do that three or four times a

year at best. He had limited annual leave. Even coupled with the pursuer travelling to Scotland to facilitate contact, it was submitted that the defender was unlikely to see L more than about five or six times per year. Although that was not perhaps an issue at the present time, as L reached school age, those periods of contact would necessarily have to take place outwith the school term. That would further impact on the ability of the defender and L to sustain their relationship.

[60] The balance to be considered by the court was the benefit of the pursuer and L going to the Republic of Ireland to be closer to her family against the detriment of L losing the relationship he currently had with his father. The relationship with his father was considerably more important than the relationship with the maternal family in Ireland. The pursuer would retain her close relationship with L wherever he was residing. In balancing these matters, it was submitted that given that the maternal family had travelled extensively to Scotland and the defender had indicated his willingness to agree to a specific issue order that the pursuer could spend up to 6 weeks per year in the Republic of Ireland, if the relocation order was not granted, L would be able to sustain a significant relationship with his maternal extended family but also sustain an almost daily relationship with his father, certainly during the week, and with his mother.

[61] Although it was accepted that the case for relocation had been thought through and there was evidence before the court that it was not on a "whim", the court still had to balance whether the making of an order was better for L than no order being made and to consider L's welfare as the paramount consideration. L's welfare was well provided for at the present time. The move to the Republic of Ireland was more to do with the welfare of the pursuer. No medical evidence was led to suggest that the current arrangements were having a detrimental effect on L or on the defender. There was no medical evidence to

suggest that the current arrangements detrimentally affected her mental health. She expressed significant unhappiness in the current arrangements but those arrangements enabled L to have a substantial arrangements with both parents, which would not be the case if he relocated.

[62] Much had been made of the fact that the defender sought to extend the amount of contact he had with L once he became aware of the pursuer's intention to seek relocation. He was fearful that if the order for relocation was granted he would not have the opportunity to have that additional contact with L again. It was not intended to be a tactical ploy on his part to thwart the application. It was the genuine wish of a loving father to spend more time with his son, concerned that such time would not be available to him if the order were granted. It was accepted that the defender overstated his position in that he was worried that he may not see L again but that was a genuine fear that he expressed in his evidence.

[63] The evidence of unpleasant messages between the parties did not amount to "abuse" of the pursuer. There had clearly been disharmony between the parties about aspects of the arrangement for L's care but it did not amount to something that the court should take account of in terms of section 11(7B). But for the pursuer's wish to relocate, the ongoing care arrangements for L had not required any court intervention previously.

[64] The defender's crave for residence was not insisted upon. It was not disputed that the child should reside with the pursuer. What was disputed was where that residence should be and it was submitted that it should be in Scotland for the reasons set out.

Discussion

[65] Parties were agreed that section 11(7) of the 1995 Act made it clear that the welfare of L was the court's paramount consideration. As indicated by Lady Wise in *GB or L v JL* at para 84, it is "*neither instructive nor appropriate to try to formulate any list of applicable factors to be applied in considering a case of this sort...these cases are fact sensitive and scrutiny of the particular circumstances of the dispute and the child concerned is what matters.*"

[66] Parties were also agreed that the pursuer's proposal to relocate to the Republic of Ireland was rational, reasonable and understandable viewed as a question of what she wanted or was best for her, but the court required to consider the advantages and disadvantages for the child.

[67] In this particular case, there were a number of neutral factors including that the pursuer could work as an occupational therapist in both countries; that L would attend nursery in both countries; that L would subsequently attend school in both countries; that L would have contact with his grandparents; and the amenities available in both areas.

[68] The differences were mainly minor in nature, including a rural rather than suburban environment in the Republic of Ireland; a larger house; a larger extended family; less need for private childcare; and more friends with children of a similar age.

[69] There was nothing negative about L's daily life in Scotland that would suggest that he would benefit in some way from a move to the Republic of Ireland. Instead, there was one significant negative factor of relocating in that L's relationship with his father would be adversely affected. The proposed contact would likely result in L seeing his dad five or six times per year, compared to six times per fortnight. I determined that it was not in L's best interests for contact with his father to be so limited.

[70] I considered whether the racist, derogatory comments made by L's paternal grandfather towards the pursuer amounted to abuse in terms of section 11(7B). Though the pursuer gave evidence that it affected her relationship with him, she did not indicate that it caused her mental injury, fear, alarm or distress. Nor was there any evidence that L spent a lot of time with his paternal grandfather. I therefore did not consider that this was a factor that supported relocation.

[71] I also considered the parties' ability to co-operate with each other in terms of section 11(7D). While the evidence showed there had been communication difficulties at times, I considered that it also showed that despite disagreements about finances not long after the relationship between the parties had ended, subsequently the parties had managed to adhere to a contact schedule which involved daily contact in week 1. I was satisfied that the parties were capable of prioritising L in order to deal with matters affecting him. I therefore did not consider that this was a factor that supported relocation.

[72] In all the circumstances, I was of the view that there were no compelling reasons for L to be taken to live in the Republic of Ireland, whereas there was a compelling reason for him to continue to live in Scotland as this was the only way he would continue to maintain and develop a meaningful relationship with both of his parents and the defender could play an active role in his upbringing.

[73] I therefore decided that the welfare of L required refusal of the order sought by the pursuer. In my view there were no factors from a child welfare perspective militating strongly in favour of change and one very significant factor supporting the status quo. The effect of refusal was that L would have two homes within reasonably close proximity and would spend time with each parent.

[74] Parties were agreed that I should fix a hearing in order that parties could have discussions about holiday arrangements and whether a residence order is required.