SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2023] SC GLA 33

F161-20

JUDGMENT OF SHERIFF CHARLES LUGTON

in the cause

G

Pursuer

against

H

Defender

Pursuer: Trainer, Advocate; MacRoberts LLP
Defender: McAlpine, Advocate; Family Law Matters

GLASGOW 12 August 2022

The sheriff, having resumed consideration of the cause, finds the following facts admitted or proved:

1. The pursuer is G. She resides in Glasgow. The pursuer is a US citizen. The pursuer is a senior developer advocate for (withheld).
2. The defender is H. He resides in Glasgow. He is a UK citizen. He is a software developer. He is employed by (withheld).
3. The parties are the parents of the children A, born in 2017, and B, born in 2019.
4. The pursuer and the defender both love the children. They both have a close relationship with the children. They both wish to play an active role in the children's upbringing. They are both able to care appropriately for the children.
5. The children have lived in Scotland for all of their lives.

6. The parties began their relationship in 2012. They were married on 12 April 2015. Between 2012 and September 2017 the parties moved on numerous occasions. They first conducted a long-distance relationship, with the pursuer residing in the US and the defender residing in Edinburgh. They moved to Rome in October 2014 and then to Edinburgh in December 2014. After their marriage they resided in Valencia between June 2015 and January 2016. They resided in Brighton from January 2016 until September 2017. The parties moved to Glasgow in September 2017.
7. The pursuer moved out of the parties' matrimonial home with the children in May 2020.
8. The pursuer wishes to relocate with the children to Seattle, Washington State, US.
9. The pursuer was born in the US. She resided in Washington State until she was 18 years old. The pursuer has family and close friends in Washington State. Her mother resides in Seattle. Her father resides in Washington State. She has extended family members who reside in the Seattle area. The pursuer's family would provide her with a support network in Seattle.
10. The pursuer does not have family members in Glasgow. She feels isolated and alone in Glasgow.
11. The children are developing relationships with their American relations. Their maternal grandmother has visited them in Scotland. In October 2021 they travelled to Seattle with their mother. They spent time with their family members. The children have continuing contact with their American family members by virtual means. If the children lived in Seattle they would have more frequent and direct contact with their American relations.

12. The defender has family members who reside in Scotland. The children are developing relationships with their Scottish relations. In particular, they see their paternal grandmother, aunts and cousins regularly.
13. The pursuer wishes to live in south Seattle. She has taken steps to arrange a mortgage. She has identified examples of suitable accommodation for the children in south Seattle that would be within her intended budget.
14. The pursuer has identified nursery, elementary and high school placements within the area for which applications could be made on behalf of the children.
15. In Seattle the children would enjoy wide-ranging sporting, cultural and educational opportunities.
16. The pursuer began working for her current employer on 9 May 2022. Her gross salary is £95,000. Her employment is remote. She would be able to continue in her present role if she resided in Seattle.
17. There is a significant tech sector in the US. The pursuer would have good career prospects there. The pursuer would have the opportunity to attend a greater number of professional meet ups.
18. The pursuer has remained in well-remunerated employment within the tech sector while she has lived in Glasgow.
19. The pursuer suffers from mental health difficulties. In May 2021 she was assessed as having an Adjustment Disorder with Mixed Anxiety and Depressed Mood. By February 2022 the pursuer's symptoms had worsened. She was diagnosed with an Adjustment Disorder with anxiety and a Major Depressive Disorder (severe) with suicidal ideation but no suicidal intent ("the pursuer's disorder").

20. At times the pursuer's disorder has had an impact on her cognitive functioning and this has affected her performance at work. In early 2022 the pursuer's previous employers advised her at a review that her performance had been under par. The pursuer does, however, remain capable of working. She has since obtained her present position.

21. If the pursuer relocates to the US her symptoms are likely to resolve in around six months.

22. If the pursuer remains in Glasgow her symptoms are likely to take around two years to resolve.

23. When the parties resided together they were both heavily involved in the care of the children. The pursuer took a year of maternity leave after A's birth and six months after B was born. She nursed the children. The defender took three months of paternity leave after the birth of each child. He was involved in feeding the children and looking after them overnight. He was also involved in their care during the daytime. He took A to swimming classes and football classes.

24. The pursuer has claimed that the defender has subjected her to emotional abuse. The defender has not subjected the pursuer to emotional abuse.

25. At times during the parties' relationship the pursuer sought to exert control over the defender. She restricted the pursuer's contact with his family and friends. In 2015, when the parties were living in Valencia, the pursuer assaulted the defender. On a subsequent occasion the pursuer hit the defender when he referred to A as "a little turkey."

26. During 2019 the pursuer began to suggest that the parties and the children should move to a different country. In early 2019 the pursuer told the defender that she

wished them to move to France. In summer 2019 the pursuer said that she wished to move to the US. The parties disagreed over the proposed move. On 15 October 2019 the pursuer told the defender that if he refused to agree to the move to the US he was not a real parent. The pursuer then started referring to the defender as a sperm donor in front of the children. The defender said that he would not engage in a discussion while the pursuer was insulting him. The pursuer asked the defender to discuss the terms of divorce.

27. The pursuer suggested that the parties should attempt mediation to agree terms on which the defender would accept a move to the US. The defender was sceptical as he was opposed to the move. However, the defender agreed to mediation.

28. In December 2019 the pursuer informed the defender that she was moving to the US with the children. The defender told the pursuer that he would not agree to this and that he was instructing a solicitor. The pursuer told the defender that if he wanted to be a parent to the children he would need to agree to the move.

29. On 7 December 2019 the defender took A with him to the shops. The pursuer reacted angrily when they returned. The pursuer told the defender that he had exposed A to the danger of air pollution. The pursuer made the defender promise not to leave the house with the children again without her permission.

30. In January 2020 the pursuer refused the defender's request to take the children to an outing to Deep Sea World with friends for his birthday. The pursuer said that aquariums were unethical.

31. The present proceedings were commenced with service of the writ upon the defender on 11 February 2020.

32. The pursuer has made false allegations that the defender has behaved inappropriately towards A.

33. On 7 April 2020 the pursuer made a false allegation to the NSPCC in relation to the defender's behaviour towards A. On 6 April 2020 A had fallen from her piano chair while the defender was looking after the children. Later the defender noticed a small amount of blood in A's underpants. He googled potential causes and concluded that A had probably sustained a "straddle injury." The defender told the pursuer about the blood in A's pants and about the accident. The pursuer contacted the NSPCC. The pursuer told the NSPCC that she had noticed a 1cm cut or tear at the back of A's vaginal opening; and that she had noticed similar injuries to A in the past. The pursuer told the NSPCC that the defender was oddly focussed on A. The pursuer did not disclose to the NSPCC that the defender had told her about the blood in A's pants.

34. On 8 April 2020, 2 police officers, 3 uniformed officers, a social services employee and a child protection officer attended at the matrimonial home in Hazmat suits and PPE in order to investigate the allegation. The defender was told that he should leave the property and that a Child Protection Order would be obtained if he refused to do so. The defender left the property voluntarily. On 9 April 2020 A was medically examined by Dr Mackay at the Children's Hospital, Glasgow. No cut or tear was identified and there were no internal or external signs of abuse. The investigation was closed and the defender returned to the family home.

35. In around August 2021 the pursuer made a false allegation to her GP that A had told her that the defender had been bathing with the children and that he had told A not to tell anyone. The pursuer's GP made a report to social services. Social services

undertook an investigation, which included contacting the children's nursey. On 6 August 2021 the defender was contacted by AM, social worker, who advised him of the investigation. She told him that no evidence had been found of anything inappropriate.

36. The pursuer has repeatedly attempted to obstruct and minimise contact between the defender and the children.

37. When the pursuer left the matrimonial home with the children, the parties initially agreed that the defender would have residential contact with the children twice per week. On the weekend of 23 May 2020 the defender exercised residential contact with A.

38. In late May 2020 the pursuer refused to allow the defender to have contact with B on the ground that he had no means of transporting her. The pursuer had removed a buggy that the defender had purchased, when she had left.

39. On 29 May 2020 the pursuer refused to allow the defender contact with either child because new arrangements for contact had not been agreed. The pursuer subsequently proposed that the children should have contact with the defender for three hours every second week. Ultimately the pursuer agreed that the defender should be allowed contact with the children for 2 hours and 15 minutes, 4 days per week, with an additional 6 hours with A on Sundays.

40. On 15 June 2020 A fell on her scooter while the defender was transporting her back to the pursuer after contact. The pursuer refused to allow contact on 17 June 2020 and 19 June 2020. She threatened to reduce contact to once per week.

41. The pursuer has opposed orders for contact between the defender and the children. At a Child Welfare Hearing on 14 July 2020 the pursuer unsuccessfully opposed the

defender's motion for interim contact with both children and residential contact with A. At a Child Welfare Hearing on 7 September 2021 the pursuer unsuccessfully opposed the defender's motion for residential contact with both children.

42. On 16 August 2020 the pursuer threatened to call the police when the defender was running late after exercising contact with A. He was due to return her to the pursuer at 13.00. When the defender was en route he sent a text message to the pursuer to say that he was running around 15 minutes late. At 13.16 the pursuer sent him a message which read "how close are you – I'm getting ready to call the police." The defender arrived 21 minutes late. The pursuer did not call the police.

43. On 18 November 2020 the parties had an argument following contact at the door of the pursuer's property. It was a cold and slippery day. The parties disagreed over how to safely manoeuvre the two children and the pursuer's dog into the property. On the following weekend the pursuer refused to allow the defender to exercise contact with the children, on the ground that B was unsettled following the argument.

44. On 6 December 2020 the pursuer suggested to the defender in a message that he had cut A. He replied that he had not done so.

45. The pursuer took the children on a visit to Seattle between 19 October 2021 and 6 November 2021. The defender was granted additional contact with the children the day before their departure, on 18 October 2021. The defender intended to spend the morning with the children. In a message, dated 17 October 2021, the pursuer insisted that the defender should take the children to nursery as normal on the following day. In a message concerning the return of the children, the pursuer wrote "I've spoken to

the police and have been told to call back if you're 'funny' about agreeing to return the girls."

46. The defender has taken an active interest in the arrangements for the children's education.

47. The pursuer has repeatedly enrolled the children in and removed them from nurseries and schools without consulting the defender.

48. A attended S Nursery, until September 2019.

49. A attended W Pre-School until March 2020.

50. On 2 July 2020 the pursuer advised the defender through her agents that A had received a place in SS Nursery. The pursuer had not consulted the defender before enrolling A. The pursuer asked the defender to forego weekday contact to facilitate A's attendance at the nursery. The defender asked if contact could be rearranged to allow for this. The pursuer then advised the defender that A had lost her place.

51. In around September 2020 the pursuer obtained a place for A at K Nursery without consulting the defender.

52. A was due to start at the nursery on 13 October 2021. The pursuer refused to allow the defender to transport A to the nursery because he planned to do so by bicycle. The parties engaged in an exchange of messages while the defender was at the entrance to the pursuer's property. The pursuer threatened to call the police.

53. The parties disagreed over who should collect A that evening. The pursuer contacted the defender to tell him that he was not allowed to do so. The defender contacted the nursery staff, provided them with a court order that specified that he was entitled to collect A and informed them that he would do so. Later, the pursuer sent the defender a message in which she wrote "if you intend to go to the nursery and make

legal threats there very likely won't be a nursery." The defender subsequently instructed his solicitor to agree to whatever transport arrangements the pursuer wished.

54. On 20 October 2020 the pursuer emailed the defender to tell him that she had removed A from the nursery.

55. A did not attend nursery between October 2020 and April 2021.

56. A has attended XY Nursery since April 2021. Prior to her start the parties agreed that the children should be placed on a waiting list for nursery places. The pursuer told the defender that it might take 2 years to obtain places. The defender made contact with XY Nursery directly and established that there might be space for A within a few weeks, although there would be a longer wait for B. A was offered a place on 26 March 2021.

57. B has attended XY Nursery since August 2021.

58. In November 2021 a nursery report stated that both children are making good progress.

59. The pursuer wishes to move the children from XY Nursery. She is not satisfied with the quality of care. She believes that A is not settled there. She has expressed concerns about the quality of communication from the nursery.

60. On 2 November 2021 the defender's agent wrote to the pursuer's agent regarding registering A for primary school. The defender proposed that A should be registered at G Primary School.

61. The pursuer enrolled A at F Primary School. She did so without consulting the defender.

62. In February 2022 the pursuer took the children to visit the M School in Edinburgh without informing the defender.

63. A's medical surgery allocated an appointment for her to receive her vaccination boosters on 19 April 2021. The defender was scheduled to look after A on 19 April 2021. Without consulting the defender, the pursuer rearranged the appointment for 30 April 2021, when she would be looking after A. On 13 April 2021 the pursuer informed the defender of this by email.

64. The defender currently exercises residential and non-residential contact with the children across a two-week cycle. He is involved in all aspects of the children's care. The children sleep at his home for four nights per fortnight. The children have contact with the defender on eight days across the two-week cycle. The children do not go for more than three days without seeing the defender.

65. If the children were relocated to the US they would have far less frequent contact with the defender. The children would go for periods of months without having direct contact with him. The defender would cease to be involved in the children's daily lives.

66. If the children were relocated to the US the pursuer would frustrate contact between the defender and the children. The pursuer would not support or facilitate the development of the children's relationship with the defender. The defender would be allowed only minimal contact with the children.

67. If the children were relocated to the US the pursuer would not involve the defender when decisions needed to be taken about the children's lives.

68. If the children were relocated to the US they would have little contact with their Scottish relations. The pursuer would not support or facilitate the development of the children's relationship with their Scottish relations.

69. The children currently move between the parties' homes on multiple occasions across the fortnightly cycle. The arrangement is disjointed and does not give the children the stability and consistency that they need.

70. If the defender had residential contact with the children for three nights every second weekend, the children would see him less frequently than they currently do. The defender would cease to have involvement in the children's lives during the working week. This would be a significant change for the children.

71. If the children lived with each party for seven nights per fortnight, both parties would continue to be involved in all aspects of the children's daily lives.

72. The children's relationship with their relations in the US can be preserved and developed with frequent visits to the US.

FINDS IN FACT AND LAW:

(1) That it is not in the children's best interests that a specific issue order be made under section 11(2)(e) of the Children (Scotland) Act 1995 ("the 1995 Act") to allow the pursuer to relocate the children to Washington State, USA in terms of the pursuer's second crave.

(2) That it is in the children's best interests that a joint residence order be made under section 11(2)(c)(ii) of the 1995 Act in favour of the both parties as first craved by the pursuer and first craved by the defender whereby the children will reside with the defender on a

fortnightly basis, in week one from Wednesday at 8am until Monday at 8am, and in week two from Wednesday at 8am until Friday at 8am; and with the pursuer at all other times.

(3) That it is in the children's best interests that a specific issue order be made under section 11(2)(e) of the 1995 Act to allow the pursuer to take the children to the United States of America for a period of four consecutive weeks each year, in the nursery and school summer holidays and for a period of two consecutive weeks on alternate years, in nursery and school Christmas holidays.

(4) That it is better that an order for joint residence and a specific issue order be made than that no orders should be made at all.

THEREFORE, Sustains the third plea in law for the pursuer and the first, second and third pleas in law for the defender and Repels the pursuer's second, third and fourth pleas in law and the defender's fourth plea in law; Refuses the second crave for the pursuer seeking a specific issue order allowing the pursuer to relocate the children to Washington State, USA; Grants the pursuer's first crave and the defender's first crave granting a residence order in favour of both parties; Grants a specific issue order allowing the pursuer to take the children to the USA for a period of four consecutive weeks each year, in the nursery and school summer holidays and for a period of two consecutive weeks on alternate years, in nursery and school holidays; Reserves all questions of expenses meantime; and Decerns.

THEREAFTER, fixes a hearing on the expenses occasioned by the proof and on the defender's application for interdict.

NOTE

Introduction

[1] The parties are married but they have separated. They are the parents of the children A (aged 4) and B (aged 2). Both parents reside in Glasgow. The mother pursuer is a US citizen. The father defender is a UK citizen. The pursuer wishes to relocate to Seattle.

Orders sought by the parties

[2] The pursuer craves:

(a) a residence order providing that the children shall reside with her, in terms of section 11(c) of the Children (Scotland) Act 1995 ("the 1995 Act");

(b) a specific issue order permitting her to relocate the children to Washington State, USA; and

(c) a contact order in terms of section 11(2)(d) of the 1995 Act, making provision for contact between the children and the defender following the proposed move.

If her application is refused, the pursuer seeks:

(i) a contact order providing for contact between the children and the defender to take place on alternate weekends from Friday after school and nursery until Monday at the start of school and nursery or otherwise 3pm, and making separate provision for holiday contact; and

(ii) a specific issue order entitling her to take the children to the US for specified periods during the school holidays.

[3] The defender opposes the application for relocation. He seeks a residence order, providing for the children to live with each of the parties for half of the time across a

fortnightly cycle. If the relocation application is allowed the defender seeks a contact order providing that he will have contact with the children as often as can be accommodated.

The Proof

[4] I heard evidence over three days from 14 to 16 March 2022 and submissions on 27 May 2022.

[5] It was only possible to restrict the proof's duration to four days because of the efforts of the parties' representatives. The agents lodged detailed and well-organised affidavits for each of the witnesses to fact, which were relied on in lieu of evidence in chief. In advance of the final day of proof counsel prepared comprehensive written submissions, to which I refer throughout this opinion. This enabled a more focussed and illuminating discussion of the issues in court. I wish to record my gratitude to agents and counsel for all of their assistance.

Organisation of this Opinion

[6] I have chosen to organise this opinion in the following way. I have started by summarising my assessment of the witnesses: paragraphs 8 - 23. Thereafter, I have divided my discussion of the evidence into the main chapters that were covered at proof: paragraphs 24 - 239. The evidence was wide-ranging and highly contentious, and I have had to undertake a lengthy examination of it. However, my decision and the reasons for it can be found at paragraphs 240 - 260**.**

[7] On the final day of the proof the defender moved for interdict ad interim and interdict, prohibiting the pursuer from removing the children from their current school and nursery; and from enrolling them elsewhere. I address this at paragraphs 261 - 274.

The Witnesses

The Pursuer

[8] The pursuer is a citizen of the USA and her home state is Washington. She works in the tech sector as a Developer Advocate.

[9] It is appropriate to record at the outset that the pursuer is undoubtedly a loving and committed mother, as the defender readily acknowledged. Her affection for her children and her abilities as a parent were obvious from her description of the care with which she provides them. It is not in dispute that she has a vital role to play in the children's lives.

[10] In outline, the pursuer's position is as follows: she wishes to move with her daughters to Seattle following her separation from the defender. During her relationship with the defender he subjected her to emotional abuse. She is lonely and isolated in Glasgow, having no support network in the form of family or friends. Her mental health has suffered. She has been diagnosed with an Adjustment Disorder with Anxiety and a Major Depressive Disorder (severe) with suicidal ideation but no suicidal intent. Her prognosis would be better if she were allowed to live in Seattle. An improvement in her mental health would be in the best interests of the children, as she is their principal carer. She grew up near Seattle. In Seattle, she and the children would benefit from the support of her family members and friends who reside there. She could provide the girls with excellent schooling and accommodation in Seattle. They would also benefit from the many opportunities that Seattle has to offer in terms of sports, the arts and other activities; which are better and broader than those on offer in Scotland. The children's father has never been their principal carer. Their relationship with him could be maintained through regular

contact both in Scotland and in the US. While he has family in Scotland, the girls do not have a particularly close relationship with the defender's relatives.

[11] The pursuer struck me as a sophisticated person of high intelligence. In the course of a day and a half of robust and skilfully executed cross examination she demonstrated considerable mental agility, often framing her answers to penetrating questioning in what she must have perceived to be the most attractive and persuasive terms that were open to her.

[12] But the corollary of this is that I did not find the pursuer to be an entirely straightforward witness. At times she seemed to dissemble: her answers often appeared to be less than candid and seemed contrived either to advance her prospects of being allowed to relocate with the children or to denigrate the defender's commitment and abilities as a parent. As I discuss in more detail below, the pursuer's evidence of the defender's allegedly abusive behaviour was lacking in detail; and her accounts of occasions on which she reported allegedly inappropriate behaviour on the part of the defender to the NSPC and to her GP were riddled with inconsistencies.

[13] There were, however, important parts of the pursuer's evidence that I accepted. For example, the extent of her connection to Seattle and of the support network available to her there were in dispute; and I believed her evidence on these points. Similarly, I accepted her evidence of the decline in her mental health (subject to the important caveat that I rejected her account of being the victim of emotional abuse at the hands of the defender).

The Defender

[14] The defender is a software developer. His position is that after the parties separated the pursuer consistently attempted to restrict and prevent his contact with the children. She

made false allegations that he had behaved inappropriately towards the children in an effort to separate him from them. Insofar as the children's health and education were concerned the pursuer had acted unilaterally, excluding him from the decision-making process. He believes that she would continue to do so if the application for relocation were allowed; and that he would struggle to obtain contact with the children or to play a meaningful role in their lives. He has always sought to participate in caring for them; and he wants a 50/50 division between the parties in terms of the children's living arrangements. The defender denies that he subjected the pursuer to emotional abuse. He suggests that she engaged in controlling behaviour during their relationship.

[15] I considered the defender to be a candid and straightforward witness. He seemed to me to be an understated and conciliatory person. He gave evidence in measured and moderate terms. In contrast to the pursuer's evidence of his ability as a parent, the defender proved capable of raising his eyes above the rancour that exists between the parties in order to acknowledge that the pursuer is an excellent mother. As I explain below, the defender gave cogent, detailed and convincing evidence regarding: (i) the parties' relationship prior to separation, (ii) the circumstances surrounding the allegations of abuse and inappropriate behaviour that have been levelled against him; (iii) the difficulties that have arisen following the parties' separation regarding their communication with each other, the defender's contact with the children and decision making in relation to the children; and (iv) his relationship with the children and his desire to be involved in their care. The result is that I found him to be credible and reliable and in many areas of dispute I preferred his evidence to that of the pursuer.

Other Witnesses to Fact

The Pursuer's Witnesses

[16] The pursuer lodged affidavits for her mother, D, her father, L, and her paternal aunt, I. These witnesses spoke of their relationships with the pursuer and the children; and of the support with which they could provide them if they were allowed to relocate to Seattle.

The Defender's Witnesses

[17] The defender's mother, T, provided an affidavit and gave evidence in court. She spoke to historical difficulties in the parties' relationship, a tendency on the part of the pursuer to exert control over the defender, and to her relationships with her son and with her grandchildren.

[18] The defender's aunt, R, provided an affidavit which covered similar territory.

[19] The defender also lodged an affidavit sworn by a longstanding friend of his, F. She described noticing the defender appearing anxious and modifying his behaviour when he was with the pursuer. F spoke to having seen the defender rarely during the parties' relationship, but to having had frequent contact with him and the children since the separation. She described the defender as a doting and able father.

[20] Finally, the defender lodged an affidavit sworn by SM, Social Worker. Mr McCabe spoke to an investigation that followed an allegation made by the pursuer regarding the defender in April 2020.

Assessment of the Witnesses

[21] T was the only witness to give evidence in person. I found her to be a straightforward witness and I regarded her evidence as credible and reliable.

[22] The affidavits of the other witnesses called by the parties were all relatively detailed and convincing. I have indicated in the sections below where I have taken account of their evidence.

Medical Evidence

[23] Mrs Mary Keenan Ross, consultant clinical psychologist gave evidence in relation to the pursuer's mental health. Dr Simon Petrie, chartered clinical psychologist, provided a critique of Mrs Keenan Ross's opinion. My assessment of their evidence can be found at the chapter in which I deal with this topic.

The Evidence

The Pursuer's Proposal for Relocation

[24] I will begin by dealing with the pursuer's rationale for the relocation and with the details of her proposal.

The Pursuer's Connection to Seattle

<u>The Pursuer</u>

[25] The pursuer's position was that her desire to relocate to Seattle was founded on her knowledge of the area, her support network in Seattle and her own sense of identity. She explained that she spent her childhood in Washington State and that Seattle was the most common destination for her school field trips. She also often travelled there to visit relations.

[26] After her childhood the pursuer had worked in Seattle as a web developer in 2005; and she had subsequently returned to live there from April 2014 until September 2014. She

had friends in Seattle, for example, her friend, C, whose son was the same age as A. Her mother also lived and worked in Seattle. The pursuer said that her mother was considering reducing her working pattern to two days a week, which would leave her time to spend with her and the girls. The pursuer said that her aunt, I, lives in Seattle, as does her Aunt S, who also has children and grandchildren in the area. Her sister, G, lives in Minnesota, which is a four-hour plane journey to Seattle. Her father lives in rural Washington. He would visit the girls regularly if they were allowed to move. Her father's family lived around Seattle.

[27] The girls had regular contact with their American relations by telephone - for example speaking to their grandparents around once a week and their aunt and cousins on average once per month. They had enjoyed seeing their family members when the pursuer had taken them to Seattle in October 2021.

[28] By contrast the children did not have a close relationship with the defender's family. The pursuer alleged that the defender was estranged from his father, who she had only met once. She also suggested that he had a difficult relationship with his mother, who lived in Leuchars. He had accused her of abusing him as a child. Shortly after the birth of B the defender and his mother had fallen out as when she had tried to visit he had asked her to wait downstairs because the pursuer and the children were asleep. The upshot had been that the defender's mother had not met B until she was two months old. This was corroborated by a contemporaneous exchange of messages between the parties, which was lodged as 5/106.

[29] The pursuer said that the defender had no relationship with several of his family members, but she acknowledged that he did have a relationship with four of his aunts on his father's side. The girls did not talk about the defender's family much.

The Pursuer's Witnesses

[30] The pursuer's position was supported by the affidavit evidence of her mother, D, her father, L, and her paternal aunt, I.

[31] D said that if the pursuer and the children moved to South Seattle they would be around 20 minutes away from her. She worked as a legal assistant, but would be able to care for the girls on a part-time basis. She already had a good relationship with the children as a result of her visits to Scotland and their trip to Seattle, together with contact conducted by virtual means.

[32] L confirmed that if the pursuer and the children moved to Seattle he would travel there to visit them regularly. He would also continue to have contact with them via telephone and video call.

[33] I said that if the pursuer and the children moved to South Seattle they would be around two minutes away from her. She anticipated that she would be able to assist the pursuer with childcare: she had previously done this for the pursuer's sister and she looked forward to doing the same for the pursuer.

The Defender

[34] The defender questioned the extent of the support network that would be available to the pursuer in Seattle. He pointed out that Minnesota, where the pursuer's sister and nieces live, is around 1500 miles from Seattle. He said that the pursuer's father's home is 90 minutes from Seattle. He highlighted that the pursuer had originally proposed to move to the US in order to provide care for her parents and suggested that both parents have mobility issues.

[35] If the pursuer and the children remained in Scotland his family could provide a greater level of practical help and support than would be available in Seattle. As discussed elsewhere in this decision, it was the defender's position that at times during their relationship the pursuer had obstructed contact between the family unit and the defender's mother. Notwithstanding this, the defender said that his mother and aunts remained willing to offer support; and he hoped that the pursuer would accept their help if she had to stay in Scotland.

[36] The Defender said that the children had regular contact with his family and friends. He provided photographs of the girls with his Aunt V at a family gathering (6/45); of the pursuer with his father; and of a visit with his friend C and her family (6/46).

The Defender's Witnesses

[37] The defender's mother, T, confirmed both in her affidavit and in her parole evidence that she enjoys a good relationship with her son and with the children. She accepted that she had a fight with the defender following the birth of B and that they had not spoken for around a month. The context was that she and her partner had not been admitted to the parties' home to visit the baby as the pursuer and the children were asleep. But they had subsequently reconciled. She explained that the broader background to the falling out was that her contact with her son and grandchildren had been restricted at times in the preceding years. She attributed this to the pursuer. She said that she now sees her grandchildren regularly. Although she lives in Leuchars she attempts to travel to Glasgow every second weekend to be with them.

[38] In her affidavit the defender's aunt, R, said that she and her family saw the defender, A and B very regularly. They often joined him and the children at the soft play at

Kelvingrove Park. They regularly spent days out together. She said that her son, W, who is 14, has a particularly nice relationship with A. By contrast, they had only seen the defender and the children sporadically when he and the pursuer had been together.

Analysis

[39] It was clear from the pursuer's evidence that she and her family have a strong link to Seattle. She grew up close to the city and a number of her relations live there. I do not accept, as was submitted for the defender, that the fact that the pursuer has spent many years of her adult life away from Seattle materially diminishes her connection to it.

[40] Similarly, I have no difficulty in finding that the pursuer would enjoy an extensive support network were she to move to Seattle. Her evidence of having a number of relations in the city (eg her mother and paternal aunt), family members relatively close at hand (eg her father) and others further afield but within the country (eg her sister) was convincing in its own right, but was also corroborated by affidavit evidence from her mother, father and paternal aunt.

[41] This would represent an improvement on the level of support available to her in Glasgow. While the defender suggested that his family could assist her, and while I believe the offer is genuine, they are not the pursuer's family. They might well be able to help the pursuer with the children and even offer her a level of friendship, but I suspect that they would be unable to replicate the emotional support and companionship that her own family members could provide.

[42] Having said that, given that the pursuer feels isolated in Glasgow (as discussed in more detail below), it seems to me that she would be wise to make use of the help that is on offer from the pursuer's family in Scotland.

[43] The position of the children is different. They have spent their early lives in Glasgow. The relations of both of their parents are their family. I accept that they have developed relationships with relatives on both sides of their family. I was unconvinced by the pursuer's evidence that the defender does not have a close-knit family from which the girls derive benefit. It seemed to me that her evidence on this point was partial and intended to persuade the court that the children's situation would be improved by a move to Seattle. Conversely, the evidence of the defender, his mother and his aunt was detailed and convincing. I accept that he has close relationships with his family - his mother and aunts, in particular - who in turn enjoy good relationships with the girls. Inevitably the girls see their American family members less often than they see their Scottish relations, but they know them as a result of their trip to Seattle, their grandmother's visits to Scotland and through contact via remote means. My overall conclusion is that the girls would enjoy the advantages of physical proximity to family members to a similar degree whether they lived in Glasgow or Seattle.

[44] Equally, in either location they would be physically apart from one side of their family. But I would have a particular concern about the consequences for the children's relationship with their Scottish relations if the relocation were to be allowed. As I shall come on to, the pursuer has persistently attempted to obstruct the children's contact with the defender. In addition, at times during the parties' relationship the pursuer restricted the defender's contact with his family. Against this background, I do not think that the pursuer would support and facilitate contact between the children and their paternal relations if the children were relocated to the US. On the other hand, if the children remained in Scotland, I would have no concerns about the children's relationships with their maternal family, as I think that the pursuer would make appropriate efforts to promote this.

Accommodation in Seattle

The Pursuer

[45] The pursuer's evidence was that she planned to live in South Seattle. She anticipated that she could buy a better home in this area than she would be able to purchase in Glasgow. Her budget would be up to $850,000. She had obtained a mortgage preapproval, which she had lodged (5/101). She explained that South Seattle is an area that offers low–density housing. It is served by light rail for commuting purposes. The pursuer said that she was looking for a two or three bedroom house in South Seattle with a porch and a yard. She had toured a number of houses during her recent trip to Seattle. She had lodged examples of a number of suitable houses that have been on the market.

[46] In her parole evidence the pursuer said that she would have more difficulty in obtaining a mortgage in Scotland.

The Defender

[47] The defender said that on the pursuer's budget she could purchase a 3 to 4 bedroom house in central Glasgow. He lodged an example at 6/58. He suggested that Seattle has a significantly higher cost of living than Glasgow and he lodged an article which he said supported this proposition (6/57).

Analysis

[48] It was submitted for the pursuer that she had done appropriate research into the type of accommodation that she and the children could live in in Seattle. By contrast, counsel for

the defender submitted that the pursuer's proposals for accommodation were thin and underdeveloped.

[49] I accept that if the relocation application were allowed, the pursuer would be likely to obtain suitable accommodation for her and the children in Seattle. She has identified that she wishes to live in the south of the city, she has produced examples of the sort of property she wishes to buy and she has provided a pre-mortgage approval (although this has expired due to the lapse of time, she could no doubt make a fresh application). Given her relatively high earnings, on the face of it her intentions do not appear unrealistic.

[50] But I am not persuaded that any accommodation that she could purchase in Glasgow would inevitably be inferior. While she spoke of difficulties in securing borrowing, the pursuer did not lodge any documentation to vouch this. In view of her salary it is not obvious why she should not be able to obtain a mortgage and purchase a suitable home in which to care for the children. Accordingly, while I accept that the pursuer could purchase an appropriate property in Seattle, I do not consider that I am in a position to find that this would necessarily be preferable to whatever accommodation she could afford in Glasgow. I have made no finding in fact to this effect.

Opportunities in Seattle

The Pursuer

[51] The pursuer suggested that Seattle would offer the girls sporting, cultural and educational opportunities that Glasgow could not. She gave numerous examples of this and lodged supporting documentation - for example, the Skate Like a Girl Skateboarding Club, the Girl Scouts, the Pacific Northwest Ballet, Martial Arts, the OL Rayne Football Academy, and the North-West Youth Theatre. She also listed a number of nearby attractions - eg the

Museum of Flight, the Seattle Aquarium, the Bamboo Shoot festival, the Pacific Science Centre, the Kids Science Lab, the Summer Youth Programme at the University of Washington, a programme run for children by Microsoft, and the Webop music class for babies and toddlers. If the children were interested in pursuing a career in STEM the US would offer them significant opportunities to do so.

[52] In cross examination the pursuer conceded that Glasgow also offered many cultural, sporting and educational opportunities for children, but contended that if either of them should show a particular interest in or aptitude for a given activity, they would be able to pursue it at a higher level in Seattle.

The Defender

[53] The defender gave evidence that similar opportunities were available in Scotland. The pursuer had listed football classes, museums, ballet lessons and nurseries as being available to the children in Seattle, but these and more were on offer in Scotland.

Analysis

[54] The pursuer gave fairly detailed evidence of the educational, cultural and sporting opportunities that would be available to the children in Seattle; and I have no difficulty in accepting that Seattle is an excellent city in which to bring up children.

[55] But I am not persuaded that the opportunities that Glasgow (and the central belt of Scotland as a whole) could offer the children would necessarily be materially poorer than those open to them in Seattle. The pursuer herself acknowledged that a wide range of sporting and cultural activities are on offer in Glasgow. I was unconvinced by her assertion that the girls would be able to pursue any chosen activity to a higher level in Seattle than

they would be in Glasgow. While the pursuer's evidence of the opportunities on offer in Seattle may have been, as I have said, fairly detailed, it remained anecdotal and it did not provide an adequate foundation for such a broad and sweeping proposition.

[56] Counsel for the defender invited me to make a positive finding that the opportunities in Seattle would be no greater than those in Scotland, but I did not hear detailed evidence on what Scotland has to offer and I do not consider it appropriate to treat this matter as falling within judicial knowledge, given that it is contentious. On the basis of the evidence I consider that it is appropriate to making no finding as to which location would offer the children greater cultural, educational and sporting opportunities.

Education in Seattle

[57] I discuss the schooling options for the children in Seattle below, in a chapter that covers the difficulties that have surrounded decision making regarding their education to date and the future possibilities for their education in both Scotland and Seattle: see paragraphs 147 - 183. As I explain, I am not persuaded that the girls would have better educational opportunities in Seattle - I consider that they could be placed in an appropriate school/ nursery at either location.

The Pursuer's Employment

<u>The Pursuer</u>

[58] At the date of the proof the pursuer was employed by (withheld) as a developer advocate, which involved a combination of technical training and marketing. Her salary was £78,000. She could do her job either in Scotland or the US. The pursuer's position was that the tech industry was large within the US, and that she would have improved career

prospects if she were to relocate there. She suggested that there were greater job opportunities in the US than in Scotland. She had lodged searches for Developer Advocate roles in Seattle and Glasgow respectively, in support of this contention (5/117; 5/118). She highlighted that in Glasgow she has limited opportunities to attend meet ups with other developers. This is partly because there are fewer meet ups and partly because they tend to happen during the evening, when she has parental responsibilities. In contrast to this, she would have the opportunity to attend a greater number of meet ups at manageable times in Seattle.

[59] The pursuer said in her parole evidence that her employer had recently indicated to her that her performance had not been up to par. She attributed this to her mental health difficulties. But the position had moved on by the date on which I heard submissions: at that stage the pursuer had obtained a new job with an alternative employer. Her gross salary was £95,000. As with her previous role she could undertake this from any location.

Analysis

[60] Counsel for the pursuer submitted that the pursuer would enjoy better career prospects in the US. Given that the pursuer had recently changed job, her performance having been brought into question by her previous employer, her professional future was uncertain. She would benefit from being in the US where there was a very large tech sector. Conversely, counsel for the defender submitted that the pursuer could perform her existing role from anywhere and that accordingly, the proposed relocation would have no influence over the pursuer's career prospects in either direction.

[61] I accept that the US has a very significant tech sector - indeed, I suspect that much is uncontroversial. But I am not satisfied that the pursuer has established, on the balance of

probabilities, that her employment prospects would be improved by a move to the US, or that she would have a better chance of securing a job there if her present employment were to end. While the pursuer provided some evidence about vacancies in the UK and the US, this was anecdotal in nature. The pursuer's evidence of the increased scope for attending "meet ups" (which I understood to be a form of professional networking) does not seem to me to provide an adequate basis for the findings that she seeks in relation to her career prospects. I am also conscious that I did not hear detailed evidence of the sort that a skilled witness might have provided (eg an employment consultant) on the relative sizes of the UK and US tech sectors and, in particular, on the level of competition for vacancies in each country. Another relevant factor is that both the pursuer and the defender appear to be able to perform roles within the tech sector remotely from any location in the world. This suggests that the pursuer would not necessarily be restricted to applying for UK-based positions in the tech labour market. Finally, I notice that the pursuer has worked in the tech sector from Glasgow for several years and that she has recently managed to secure a well-paid position within the sector, which she can undertake in Glasgow.

[62] Accordingly, I am not persuaded that the pursuer's employment prospects would be improved by the proposed relocation.

[63] Before concluding this chapter, I should highlight that I address the possible implications of the pursuer's mental health difficulties on her employment in the chapter on mental health, below - see paragraphs 210 - 239.

The Parties' Relationship, Abuse Allegations, and the Parties' Contributions as Parents

The Pursuer's Evidence

[64] The pursuer recounted that the parties met in Portugal in 2012 and were married in Seattle on 12 April 2015. During their relationship they lived variously in Rome, Edinburgh, Valencia and Brighton, before moving to Glasgow in September 2017. A was born in 2017 and B was born in 2019.

[65] The pursuer said that she had been the primary carer for the children from the start of their lives and that she was responsible for meeting all of their needs. She had taken a year off work following A's birth and six months off after the birth of B. She had organized all necessary medical care for them and she had researched and paid for their childcare. She was the only parent who had been involved during A's time at the West End Montessori nursery. The pursuer described her engagement with the children while caring for them: they played with Lego, did art projects, sang songs, danced, baked, played football and baseball, hula hooped and did bubble making.

[66] The defender had had little involvement in caring for the children. During the parties' relationship he had subjected the pursuer to emotional abuse. In the pursuer's affidavit she said that during her pregnancy the defender would start arguments, giving the example of a dispute that the defender had initiated over whether the pursuer should provide him with her medical records. She said that if she asked him to stop for the good of the baby, he would tell her that any harm to the baby would be her fault for disagreeing with him. She said that he did not support her in her care of the girls. He would complain if he was asked to monitor them while she used the bathroom. The defender would scream at her while she was holding them. He frequently criticized her care of them. He said and implied that she was not competent to do things such as take the girls to the library

unaccompanied. The pursuer said that she had accepted the defender's criticisms as accurate while they lived together and had only realized after leaving that her daughters were thriving largely due to her unassisted efforts.

[67] In her oral evidence the pursuer was asked what form the alleged abuse had taken, she said that she had meant primarily that the defender had put her down as a mother. She accused him of devaluing and belittling her, of telling her that she was useless and of being verbally abusive. She said that on one occasion he had told her that she was "just the milk" and that she could be replaced with formula. She also described the defender as controlling: he would threaten to divorce her, meaning that she would have to leave the country. She spoke of a particularly troublesome period in around March 2019 when she had considered returning to the US because she was receiving no support. The defender had responded by issuing what she described as terrible threats. He had told her that she would not see A again.

[68] The pursuer accepted that she had hit the defender in Valencia in 2015. She denied having engaged in emotionally controlling behaviour during their relationship. Her position was that her behaviour had been reasonable and rational throughout their relationship.

The Defender's Evidence

[69] The defender described having been heavily involved with the care of both of his children prior to the breakdown of the marriage. Following A's birth in 2017 he had taken three months of paternity leave. While both parents had cared for her, he suspected that his share of the burden had exceeded his wife's. Although A had been breastfed, the pursuer had expressed milk, which allowed for bottle-feeding. The defender said that he had been

involved with A's sleep routine: from six months she had slept in her own room. She would awaken every few hours and he would be responsible for re-settling her. Similarly, he was primarily responsible for putting her down for naps during the day.

[70] The defender described leaving the pursuer to look after A overnight for the first time in December 2018. He said that she was anxious as she had not had to deal with A overnight previously. Lodged at 6/23 is a series of messages sent at this time, in which the pursuer describes the experience as "fucking brutal". The defender said that before A started nursery the arrangement for her care was that he would look after her in the morning while the pursuer worked and the pursuer would take over in the afternoon. In practice, however, he often ended up caring for her for most of the day. When A began nursery the defender was primarily responsible for transporting her to and from nursery. The pursuer and the defender both attended recreational activities and appointments. He recalled having taken A to swimming classes and to Tiny Tots football classes - details of the latter activity are lodged at 6/20 and a photograph of A participating can be found at 6/21.

[71] The defender said that when B was born in October 2019 he again took three months of parental leave. He was chiefly responsible for entertaining both children in the mornings.

[72] Insofar as his relationship with the pursuer was concerned, the defender said that they had had difficulties since even before they were married. They had attended at least five therapists. He described the pursuer as extremely jealous and controlling. She had taken issue with his friendships with other women, including his long-term friend, F, and another friend, JT. His position appears to be corroborated by an email from the pursuer, dated 26 January 2014 (6/24), in which she acknowledges being jealous of JT.

[73] The defender said that the pursuer had been physically aggressive towards him during their relationship. In 2015 when the couple were living in Valencia, she had hit and

kicked him. He had been forced to leave the home and they had separated for a brief period, during which he had returned to Edinburgh. Around three weeks after the incident the pursuer had sent the defender an email, dated 30 October 2015 (lodged as 6/25), in which she wrote "I am genuinely sorry for pushing and slapping you" and proceeded to rationalise her behaviour in the following way: "I tried to make you see my emotional pain in a physical way and that was unproductive and caused further damage." The defender accused the pursuer of having been physically abusive at other times, such as an occasion when she had pushed him after he had referred to A as "a little turkey".

[74] The pursuer had discouraged him from seeing his friends. On two occasions she told him that she would be upset if he attended stag parties to which he had been invited. She took issue if he tried to take part in activities independently of her, such as playing football or taking exercise. She had isolated him from his family, frequently rejecting his requests for them to spend time with them. When visits with relations took place they were normally accompanied with an argument. The pursuer would seem anxious during social visits. This led to disagreements, often about unrelated things. Ultimately he felt under pressure not to organise social visits with his family.

[75] The defender said that real difficulties started to develop in the marriage from 2019 onwards. A major issue during this period appears to have been disagreement over the possibility of moving to another country. In early 2019 the pursuer had said that she wished to move to France. The defender had not considered this to be in the best interests of the children (the pursuer was pregnant with B at this stage), but had organised a trip to France for April 2019 to look at accommodation. Ultimately the pursuer changed her mind about moving to France in around March 2019.

[76] However, after a trip to Seattle in June 2019 the pursuer began raising the prospect of a move to the USA. They discussed this possibility for several weeks. Matters had come to a head on 15 October 2019 when the pursuer had told the defender that she wanted to move to America and that if he refused he was not a real parent. She had subsequently started to refer to him as a "sperm donor" in front of the children. He had said that he would not engage in a discussion if she insulted him and she had then asked him to discuss the terms of divorce. The pursuer had proposed mediation for agreement of the terms on which the defender would accept a move to the USA. The defender was sceptical of the prospects of mediation succeeding as he did not agree to the premise that the move would go ahead, but he agreed to participate. After that, in early December 2019, the pursuer had told him that she was moving to America, to which he had responded that he would be contacting a solicitor. A few days later the pursuer had told him that if he wanted to be a parent he would need to agree to the move.

[77] In the same month the defender discovered on his work phone a chain of emails to and from the pursuer, which concerned a potential plan to remove the children while he was on a work trip. He continued to read the emails and ultimately it became clear that the pursuer was not going to remove the children while he was away.

[78] During this period the pursuer had continued to engage in controlling behaviour, according to the defender. On 7 December 2019 she had reacted with anger when the defender had taken A with him to the shops to run an errand, citing air pollution as a danger; and had made the defender promise not to leave the house with the children without her approval. In January 2020 she had refused the defender's request to take the children on an outing with friends to Deep Sea World on his birthday, on the basis that aquariums were unethical and because she did not wish the children to travel by car.

Similarly, a request for the family to visit the defender's mother was denied on the grounds that it involved a 90 minute journey by car and would not fit in with A's schedule. At this time A was attending the W Pre-School. The pursuer did not allow the defender to take A to and from nursery and he never met any of the nursery staff.

Other Witnesses

[79] Aspects of the defender's evidence were corroborated by other witnesses.

[80] The defender's mother, T, said that the pursuer restricted her time with the children. The pursuer refused to allow her to babysit. T said that the defender would always look to the pursuer for confirmation and approval. She described an occasion when the defender had called out of the blue and asked if she wanted to play golf. On the golf course the pursuer had told her that the pursuer had hit him.

[81] The defender's aunt, R, said that she and her sisters had seen the defender only sporadically during his relationship with the pursuer. They had offered to babysit but this had never happened. R remembered the defender constantly looking to the pursuer for approval when she had seen them shortly after A's birth.

[82] F said that the defender would modify his behaviour when he was with the pursuer. She described going for a drink with her partner and the parties. She and the defender went to the bar to get a drink. The defender seemed anxious and rushed back to the table as if he was worried that the pursuer would think he was standing and chatting with F at the bar.

Analysis

[83] I found the pursuer's evidence regarding emotional abuse unconvincing. I was struck by the lack of detail both in her affidavit and in her parole evidence. She gave few

actual examples of the defender's abusive behaviour. There was the occasion on which the defender was said to have referred to her as "just the milk," which would certainly have been an appalling thing to have said. But I am not satisfied, on the balance of probabilities, that the defender did say this. This allegation did not feature in the pursuer's affidavit: it was first advanced in her parole evidence; and after she would have seen the defender's affidavit. It bears a suspicious resemblance to the defender's affidavit evidence that the pursuer called him a "sperm donor": the two insults are really mirror images.

[84] As additional evidence of abuse, counsel for the pursuer identified an incident that occurred when the defender was attempting to install a set of curtains. The pursuer started filming the defender on her phone because - according to her - one of the children was on the floor beside the ladder on which the defender was standing. She explained that she wanted to secure evidence of the defender's behaviour. Bizarrely, the incident culminated in the pursuer taking the curtains to the bathroom and throwing them into the shower. The pursuer's evidence was that the defender had made her feel "crazy" during the incident. I do not think that the "curtains episode" can be fairly interpreted as an example of the defender abusing the pursuer. On her own account, her acts of first videoing the defender and then putting the curtains in the shower were challenging and hostile things to do. The view that I have formed is that the pursuer was the aggressor on this occasion.

[85] In her submissions, counsel for the pursuer confirmed that she was not pointing to any other specific incidences. Instead she relied on the pursuer's general descriptions of the defender as undermining and belittling of her abilities as a mother; and on the effects of this on her. But the pursuer's account was broad and unspecific in its terms. In my opinion, her evidence presented a thin a basis for a finding that the defender subjected her to emotional abuse.

[86] This was all the more apparent when juxtaposed with the detailed and convincing account that the defender provided of the parties' relationship before their separation, which I have summarised above. Throughout his evidence, he referred to specific events and incidents. Aspects of his evidence were corroborated by email and social media correspondence - for example, his descriptions of the pursuer hitting him, of the pursuer's jealousy when he spent time with female friends and of her reluctance to allow the defender's mother to babysit.

[87] On the defender's account, which I accept, the pursuer had at times engaged in controlling behaviour - eg when she forbade him from taking the children out without her permission on grounds of the risks of air pollution. The evidence of T, R and F tends to suggest that the pursuer could be controlling of the defender. However, their evidence was by its nature episodic and viewed from "outside" and I attribute greater weight to the evidence that came directly from the defender.

[88] In contrast to the pursuer, the defender often seemed to take the line of least resistance when faced with the pursuer's wishes and demands: when the pursuer was uncomfortable with discussion of the paternal grandmother babysitting the defender broke the news to his mother (in the email correspondence he can be seen attempting to communicate this as diplomatically as possible in what is clearly an awkward exchange). When the pursuer mooted a move to France he arranged an exploratory trip, despite himself having no wish to move there. When the prospect of a move to the US was raised he agreed to mediation, although he wished to remain in Scotland. In all of these actions he was flexible and conciliatory.

[89] As I discuss in more detail in the chapter on the pursuer's mental health, this was undoubtedly an unhappy period for the pursuer as she navigated the challenges of early

parenthood in an unfamiliar place. But I do not accept that she was the victim of emotional abuse at the hands of the defender. Taken together with the pursuer's reports to the NSPC and to her GP that the defender has engaged in inappropriate behaviour towards A (discussed below), I think that her claim to have suffered emotional abuse forms part of a pattern of advancing untrue allegations about the defender.

[90] I accept the defender's evidence that he was heavily involved in the children's care prior to the separation. I suspect his claim that at times he was the principal caregiver is overstated: while this may have been his perception, it is hard to imagine that this would have been the reality, given that the pursuer took longer periods of parental leave following the births of the children and given that she nursed them. But I find that while the parties lived together the defender had a significant role in providing care to the girls.

Allegation of Inappropriate Conduct in April 2020

[91] I deal next with an incident on 6 April 2020 when the pursuer contacted the NSPC to make a report after blood was found in A's pants.

The Defender's Evidence

[92] The defender's account of the incident was that A fell on her piano chair at around 8.30am. She cried, received a hug and then seemed to recover. At around 3.40pm he took her to the toilet and noticed what he described as "not a large amount" of blood. He remembered that A had fallen that morning. He established via google that this was a common issue when children fell, known as a "straddle injury." He mentioned it to the pursuer who took a photograph of the pants. This did not seem strange to the defender, as

the pursuer sometimes did this in order to show the doctor a rash or an injury. But instead of calling the doctor she emailed the NSPCC.

[93] Two days later, on 8 April 2020, two police officers, three uniformed officers, a social services employee and a child protection officer arrived at the parties' home, wearing PPE and Hazmat suits. The child protection officer told the defender to leave the house; and although an order compelling this had not yet been obtained, he did so voluntarily. He went to stay in a hotel.

[94] The defender contacted his solicitor who made enquiries with the authorities. On Thursday 9 April 2020 he was told that matters had been fully investigated, neither the police nor the Social Work Department had any concerns and he was free to return home. He said that he was later contacted by social services, who confirmed that they had no concerns about him. They told him that the pursuer had been warned that she had dealt with the incident inappropriately. He found the experience very traumatic and attended therapy during May 2020.

Affidavit Evidence of SM, Social Worker

[95] The defender lodged an affidavit for SM, Social Worker. He spoke of receiving a referral from the NSPCC following their receipt of email correspondence from the pursuer on 7 April 2020. In her email the pursuer had written that she had noticed a significant amount of blood in A's underwear and that A appeared to have an injury to her vagina. This was not the first time that this had happened, but it was the first time that there had been bleeding. The pursuer said that the injuries always happened after A had spent time with the defender. She wrote that the defender was weird with her. SM recounted that in another email the pursuer said that she had noticed a cut or tear of around 1cm at the back

of A's vaginal opening. She said that she had noticed injuries of this type previously, but she could not provide specific dates. She had never raised this with her health visitor or GP. She said that the defender was oddly focussed on A: he always carried her everywhere and was always asking if she wanted a kiss or a hug.

[96] SM described making contact with Police Scotland, attending the parties' home on 8 April 2022, the defender's voluntary departure from the family home and the subsequent communication between the social work department and the pursuer's solicitor. All of this was consistent with the defender's account. He then described organising and attending a medical examination of A by Dr McKay, Consultant Paediatrician at the Children's Hospital on 9 April 2020. SM was not present at the examination, but had a discussion with Dr McKay following it. Dr McKay confirmed that there were no internal or external signs of abuse. SM held concerns that the pursuer had seemed a bit hesitant in her account; and that she had failed to seek medical advice, which he would have expected to be a parent's first instinct.

[97] Following the examination, SM advised the defender's solicitor that there was now no justification for not allowing him to return home.

[98] SM noted from his file that although the police interviewed the pursuer, it was not clear from his notes why they had attended. There was nothing to suggest criminality. The nursery and the health visitor both had no concerns.

The Pursuer's Evidence

[99] The pursuer said that she was very ill when the incident happened and had been lying down with B for most of the morning. The defender told her that A had blood in her underwear and instructed her to check her. The pursuer observed the blood in the pants

and then put A on the changing table. She could not see an injury. Later, when she bathed A, she saw what she thought was a cut. The pursuer emailed the NSPCC, who in turn contacted social work and the police. Subsequently, A was examined by her paediatrician but there was no explanation and no evidence of injury.

[100] In her affidavit the pursuer said that the defender had said things to her that made her concerned about the girls' safety with the defender. She had also seen him do things that worried her. He had tried to separate A from her, which made her nervous. There had never been any definitive explanation for the blood in A's underwear. In retrospect she wished she had contacted A's GP instead, but the appointment would probably have taken place via video and there would have been no privacy with the defender in the house. The pursuer was afraid of what the defender would do if she involved anyone else. The implication of this was that the pursuer continued to harbour suspicions that the blood in A's pants was the result of inappropriate behaviour on the part of the defender.

[101] The pursuer accepted in cross examination that she did not think that that the defender was a child abuser. But she then said that she did not know whether the defender might expose the girls to inappropriate behaviour and she suggested that the he might do so "inadvertently", before conceding that this was unlikely. She did, however, maintain that the defender was "oddly focussed" on A.

[102] When asked about the possibility of the defender physically hurting the girls, the pursuer said "I know for a fact that the girls have been saying he hurt them and I'm not sure why they made those statements". She did not specify what the girls had allegedly told her in this respect. Later in cross examination, the pursuer advanced a new explanation for the blood in A's pants: it might have been caused by the defender biting his nails; and have come to be on A and in her pants when the defender was wiping her.

[103] The pursuer confirmed having emailed the NSPCC, as outlined above. She accepted that although she had alleged that there had been similar vaginal injuries in the past, she had not reported these. She conceded that she had not told the NSPCC that the defender had alerted her to the blood in A's pants.

Analysis

[104] A preliminary question that arises is whether the incident in early April 2020 indicated inappropriate conduct on the part of the defender. The pursuer did not aver this in her pleadings, nor was it suggested on her behalf in submissions, but she appeared to entertain the possibility in her affidavit evidence.

[105] I have no difficulty in rejecting any suggestion of inappropriate behaviour on the defender's part. The defender's account was entirely credible, in my view. He gave a logical explanation for the presence of blood in A's pants - ie a straddle injury following on from a fall earlier in the day. He alerted the pursuer to the blood, which is exactly what one would expect a responsible parent to do in the circumstances. Shortly after the pursuer contacted the NSPCC, a medical examination revealed no evidence of abuse and the authorities concluded that there was no issue. In the circumstances, I find, on the balance of probabilities, that (i) A suffered a straddle injury as a result of her fall; and (ii) the defender did not behave inappropriately towards A.

[106] I found the pursuer's evidence regarding this incident troubling. It was littered with discrepancies. She vacillated between implying that the defender had behaved inappropriately in her affidavit and accepting that he was not a child abuser in her parole evidence. When being cross examined the pursuer's position continually shifted (or "evolved" as counsel for the defender put it): while conceding that the defender was not a

child abuser, the pursuer posited at one point that he might have inadvertently behaved in a sexually inappropriate manner towards the children, while also suggesting that he was oddly focussed on A. Later she introduced the theory that the blood came from the pursuer's finger nails. The pursuer's evidence was also markedly vague at points: in her affidavit the pursuer alleged that the defender behaved in a way that worried her, without ever giving any details of how or when. Similarly, in cross-examination she alleged that the girls had said that the defender had hurt them, but she did not elaborate on exactly what the girls had supposedly told her. I formed the impression that the pursuer was attempting to besmirch the defender with hints and innuendo, without articulating fully formed allegations.

[107] The pursuer accepted that in her email to the NSPCC she had alleged finding previous vaginal injuries after A had been in the care of the defender. That is a very grave allegation: when coupled with what the pursuer also told the NSPCC about the defender's general behaviour around A, it carries the implication that the defender might have subjected A to sexual abuse on a number of occasions. Had the pursuer made previous discoveries of injuries to A, I would have expected her to set this out in her evidence; and yet she made no mention of prior injuries until this was put to her in cross-examination.

[108] It was submitted on the defender's behalf that when the pursuer contacted the NSPCC in April 2020 she made a false allegation. Conversely, counsel for the pursuer submitted that her report to the NSPCC was the result of the pursuer being in a state of hypervigilance at the time. Regrettably, I am unable to accept this explanation. The timing of the incident was suspicious: it happened as the relationship was approaching its end, at a time when the parties were in dispute over whether the pursuer could take the children to the US. The pursuer had issued court proceedings in February 2020 and she would leave

the property with the children in May, a few weeks after the incident. In addition, the contents of the pursuer's correspondence with the NSPCC point towards the conclusion that the pursuer was deliberately advancing an untrue allegation, in particular: (a) the failure to report that the defender had brought the blood to the pursuer's attention, (b) the reference to the defender's behaviour around A and (c) the allegation of prior injuries to A on unspecified occasions (which the pursuer has since failed to repeat or elaborate on). This conclusion is consistent with my assessment of the pursuer's evidence on this issue as being nebulous, inconsistent and unsatisfactory. I find that when the defender alerted the pursuer to the blood in A's pants, she advanced a false allegation opportunistically, against the background of the dispute over the possible relocation of the children to the US.

Allegation of Inappropriate Behaviour in Summer 2021

[109] It is convenient next to consider a report made to the GP in around August 2021 by the pursuer that defender had been bathing with A.

[110] The pursuer gave the following account of this in her affidavit: in late June 2021 A put two figurines into a pot and said "Daddy and the big girl are in the bath." The pursuer asked A if she had taken a bath with the defender and she said yes. The pursuer found it odd that the defender should have started doing this when A was three years old, as he had never done so before. The pursuer mentioned this to her treating psychologist in the course of a CBT session, as it was causing her to worry. Her psychologist asked her if she thought she should report this to social services, but she said that she did not want to. When the pursuer's funding for CBT sessions ran out she started seeing her GP. The issue of the defender bathing with A came up in the context of a discussion about her mental health.

The GP reported this to the social work department. Social services made a series of phone calls before concluding that nothing had happened.

[111] The pursuer said that it had not been her intention to report the issue to social services - it had simply been a by-product of her seeking help for her own mental health. She maintained this position in cross examination. It was put to her that in addition to saying that she had bathed with her father, A had said that he had told her to keep it a secret. The pursuer accepted that she had reported this.

[112] The defender gave evidence that he was first alerted to the matter when he received call from AM of social services on 6 August 2021. She told him that social services had received a report from the GP because according to the pursuer A had said that the defender was "bathing with the children and telling A to not tell anyone." AM told the defender that she had undertaken an investigation, which had involved contacting the nursery. She had found no evidence of anything inappropriate. She explained that even if the defender had taken baths with the girls this would not have been inappropriate, given their ages. The defender's position was that he had not done so.

Analysis

[113] The pursuer's position was, I think, lacking in credibility in two respects. Firstly, she claimed to have been worried enough by what A had said to have consulted her psychologist and her GP regarding the impact of this on her mental health; and yet she took no action to address the perceived concern for A's welfare. It would not be unreasonable to hold such a concern if A had said that the defender had told her to keep their mutual bathing secret. It is surprising, therefore, that the pursuer was not prompted either to speak directly to the defender or to raise her concerns with the authorities. Secondly, the pursuer's

suggestion that she did not mean to trigger an investigation by disclosing what A had purportedly said to the GP strains credulity. The pursuer is, as I observed earlier, a highly intelligent person with a professional background. It is hard to imagine that she did not appreciate the implications of confiding a concern of this kind in a healthcare professional, given that the welfare of a child was at stake.

[114] I think the more likely explanation is that the pursuer cynically advanced the allegation in the context of the continuing dispute over the possible relocation of the children. This fits into a pattern of behaviour that emerges from the evidence of the earlier allegation of inappropriate conduct relating to A and the allegation that the defender subjected the pursuer to emotional abuse.

Contact with the Children

[115] I deal next with the evidence that I heard regarding disagreements that surrounded contact between the defender and the children following the departure of the pursuer and the children from the family home in May 2020.

The Defender's Evidence

[116] The defender provided a very detailed account of the negotiations and disputes over contact in his affidavit.

[117] On the defender's evidence the pursuer told him that a removal van would be coming and that she and the children would be living elsewhere on the morning of their departure. The parties agreed that the pursuer could leave with the children on the basis that the defender would have two residential nights with A and that more contact with both

girls would be agreed thereafter. At the defender's request the pursuer emailed him and his solicitors confirmation of this (the email is lodged as 6/1).

[118] The pursuer allowed residential contact with A to proceed on 23 May 2020. In the initial days after the pursuer's departure she denied the defender contact with B on the basis that he did not have a carrier for her. This was despite the fact that the pursuer had taken a carrier that the defender had purchased when she left.

[119] More significantly, the pursuer disallowed any further residential contact. On 29 May 2020 she refused previously agreed contact on the basis that no new arrangements had been put in place. As the courts were closed due to the pandemic, the defender then had to accept whatever minimal contact the pursuer allowed. At the outset the defender made plain that he would not refuse any contact. The pursuer initially proposed 3 hours every second week, but eventually she allowed 2 hours and 15 minutes for four days, with an extra six hours with A on a Sunday.

[120] On 15 June 2020 A fell on her scooter while the defender was transporting her back to the pursuer after contact. According to the defender this led the pursuer to refuse contact to proceed on 17 June 2020 and on 19 June 2020. The pursuer threatened to reduce contact to once per week. She demanded that the defender would not allow A to use the scooter during transport to and from contact. The defender also gave evidence that the pursuer raised repeated objections to the defender transporting the children via bike and trailer.

[121] The defender said that on 2 July 2020 the pursuer advised the defender through her agents that A had received a place at SS Nursery. He was asked to forego weekday contact to allow the children to attend nursery. When he asked if contact could be reorganised to facilitate their attendance at nursery he was told that A had lost her place.

[122] On 16 August 2020 the pursuer threatened to call the police when the defender was running late with A after a contact session. He sent her a message to say that he would be 15 minutes late. A minute after the 15 minutes had elapsed the pursuer texted him to ask where he was. She said that she was getting ready to call the police. In the end he was 21 minutes late.

[123] According to the defender, on 18 November 2020 the parties had a dispute at the entrance to the pursuer's home. The defender was bringing the children back just as the pursuer was returning from walking her dog. The issue was how safely to bring the two children and the dog into the entrance as it was a cold and slippery day. The parties could not agree whether, as the defender suggested, it would be better for the pursuer to take the dog in first while the pursuer hung onto the children. The following weekend the pursuer emailed the defender to say that she did not think that the girls should go to him for contact with the girls, as B was distressed following the argument. The defender believed that this was a punishment.

[124] The defender said that the pursuer would frequently question him about things that had not happened - for example accusing him of "cutting" A on 6 December 2020. On another occasion she had accused him of taking A out on a frozen pond. He said that A often talked about being questioned by the pursuer; and that she asked him what she should answer.

[125] In October 2021 the pursuer was allowed by the court to take the children on a three-week trip to the USA. The court ordered that the children should spend additional time with the defender both before and after the holiday. The pursuer demanded that the defender should put the children into nursery on 18 October, which fell within the period of his pre-holiday additional contact, as they would normally have been scheduled to attend.

The defender referred to email correspondence between the parties regarding this (6/47), in which the pursuer can be seen instructing the defender to take the children to nursery. In relation to arrangements for the handover of the children, the pursuer also writes "I've spoken with the police and have been told to call back if you're 'funny' about agreeing to return the girls."

[126] The defender said that during the months that followed the pursuer's departure with the children, she opposed motions for increased contact that he made in the course of the court action. For example, on 14 July 2020 at a Child Welfare Hearing the defender was awarded residential contact with A, despite opposition from the pursuer. The court also ordered non-residential contact on weekdays from 2.00pm to 5.00pm. The defender proposed splitting the transport that would be required, but the pursuer demanded that he undertake all transport.

[127] This cut into the defender's time with the children. As regards Saturday contact, the defender said that this was due to start at 2.00pm. However, the pursuer organised the children's schedule such that the children would be napping at 2.00pm. He believed that she did this deliberately.

[128] Later, on 11 September 2021, the pursuer was granted residential contact for both children. This was strongly opposed by the pursuer on the ground that there was too much "back and forth" for the girls. The pursuer contended that B, who by this time was nearly two, was still nursing; and that it was too soon for her to spend nights away from her. The pursuer also suggested that weekend contact should only take place every second weekend.

[129] The defender said that he organised social events and activities for the girls during contact. The scope for doing this increased after he was granted residential contact. He took them to Balloch along with members of his family in October 2020. Almost every day he

would take them to the park. They would spend time with friends. He enrolled A in ballet classes (although this was actually prompted by the pursuer).

The Pursuer's Evidence

Affidavit Evidence

[130] In her affidavit the pursuer explained that when she first left with the girls the parties agreed that contact would take place on a Monday, Wednesday, Friday and Sunday between 08.45 and 11.00. This did not work out as it involved too much back and forth. B was still breast feeding and the frequent visits interrupted the girls' feeding and sleep patterns.

[131] The pursuer went on to explain that from September 2021 the court ordered an increase in the level of contact to be exercised by the defender. For the first time he would exercise residential contact with B.

[132] The pursuer's position was that she had encouraged contact between the children and the pursuer. She understood the importance of the girls' relationship with their father; and she was assisting in the development of this. When they returned from contact the pursuer would ask them what they had enjoyed during their time with the defender in order to help them "solidify their memories". She and B had made a father's day card together (a photograph of this was lodged as 5/107).

[133] The pursuer said that the girls seemed to enjoy contact with their father, but she went on to say that they would tell her that they did not want to go and see him and wanted to stay at home. She said that for several months A was unsettled by having residential contact with the defender: she would throw up in advance of going to the defender. When

she came home she was distressed and would act up to seek attention and reassurance. She would become clingy and would sometimes have accidents.

Cross-Examination

[134] In cross-examination the pursuer was asked about the disagreements over contact of which the defender had spoken.

[135] It was put to the pursuer that shortly after her departure she had agreed contact arrangements with the defender, including residential contact with A, but that she had then reneged on this. She answered that what had been agreed was for one week only. She said that the parties had not made a legal agreement and that future contact arrangements were still to be agreed at that stage. It was put to the pursuer that the contact to which she had subsequently agreed was minimal, particularly the level of contact with A. She replied that the defender had spent little time with the children in the six months before the pursuer left with them.

[136] The pursuer confirmed that she had stopped contact after A's accident on the scooter. She said that she did not criticise the defender directly for the fall, but that she did criticise him for making A walk for 45 minutes from the defender's home to her home - A was much too young for this.

[137] Insofar as the proposal that A should attend SS Nursery was concerned, the pursuer said that there had been more of a dialogue about this possibility than the defender suggested. The context was that the children had what she described as a "staccato" schedule, divided into small chunks of time and punctuated by naps. She said that the defender had been opposed to the children attending the nursery and had not had an alternative proposal for scheduling. It was suggested to her that the defender's time with

the children was important and she responded that she could not say whether time spent with him or at nursery was more important from a developmental perspective.

[138] When asked about the occasion on which the defender was running late and she threatened to call the police, the pursuer started off by saying that the police had two telephone lines - one for emergencies and the other for information. She was concerned by the defender's behaviour and she was conscious that there was a court order in place. The pursuer said that she was envisaging calling the information line to raise this. She went on to say that she felt that something unusual was going on and that she thought that the police might be able to help if the defender did not bring the girls back.

[139] When the pursuer was asked about the exchange over whether the children would go to nursery on 18 October 2021, she maintained that her position was reasonable: as she paid for the nursery she should have a say in whether the girls attended. If the defender had wished to remove the girls from nursery this ought to have been agreed. He should not have taken unilateral action. The pursuer explained that she had threatened to call the police if the defender was funny about returning the girls because she was afraid that he might run off with them. The context was that they were about to travel to the USA and the defender had been opposing the proposed relocation to America. She conceded, however, that he had not at any time breached a court order.

[140] The pursuer accepted that following the argument over making a safe entry to her property with the children and the dog on 18 November 2020 she had refused to send the children to contact. She said that after the incident B screamed whenever she was taken out and that she wanted to wait until she relaxed before re-starting contact. She accepted that at the next Child Welfare Hearing on 16 December 2020 she had sought to vary and reduce the respondent's contact, but that the sheriff had in fact increased the level of contact.

[141] The pursuer conceded that the children were happy seeing their father. She also accepted that she struggled when the children were not with her and she explained that she found it difficult to be stuck in Scotland when, as she put it, she had nobody and nothing here.

Analysis

[142] Having listened to the parties' evidence, I formed the view that the pursuer repeatedly attempted to frustrate contact between the defender and the children.

[143] At the outset the pursuer allowed only minimal contact to take place. Leaving aside the question of whether she reneged on the detail of an agreement over contact at that stage, her general approach seems to have been to restrict the level of contact substantially. She sought to justify this partly on the basis that the defender had shown little interest in the children in the preceding six months. I reject this suggestion as untrue: as I explained earlier, in my view the defender was heavily involved in caring for the children prior to their departure from the family home with the pursuer. The pursuer also pointed to the fact that the children were very small at the time and to issues over their routines. I recognise that this would have presented a genuine challenge, but I did not form the impression that the pursuer was interested in trying to navigate this in such a way as to facilitate a reasonable level of contact with the defender. And the pursuer did not offer any satisfactory explanation for refusing residential contact with A after the initial weekend. It is obvious why residential contact with B, who was only 7 months old in May 2020, might have posed problems. Conversely, it is far from obvious why there should have been any difficulty with the defender exercising residential contact with A, who was 2 years and 5 months at that

stage - particularly given that the pursuer actually agreed to an initial session of residential contact.

[144] Analysis of the period that followed this reveals a pattern of the pursuer creating difficulties in relation to contact. For example, the pursuer stopped a contact session after A's scooter accident. While it is understandable that a mother will be concerned for the safety of her children, what was striking about the scooter incident was that the pursuer's reflex action was to withhold contact in response to it. On another occasion she threatened to call the police when the pursuer was running late. I found her suggestion that she was contemplating calling a police information line to be disingenuous: it is plain from the text of her message that she was making a threat. As to the pursuer's refusal of a contact session following the argument at her property's entrance, I did not believe her explanation that she did this because B was still distressed several days later. It seemed to me that her refusal of contact fitted into a clearly discernible pattern of behaviour.

[145] Prior to the trip to the US the pursuer insisted that the defender take the children to nursery on a day that had been allocated to him for additional contact. The pursuer's explanation that she was entitled to a say in whether the children attended as she was paying for the nursery was not an attractive one. The background was that the defender would not be seeing the children for three weeks. The court had awarded him additional contact in lieu of this. The pursuer's rigid insistence on nursery attendance in these circumstances suggested that she did not recognise the importance of the additional time that had been allowed. Her threat to call the police if the defender did not return the children to her was both irrational (the defender had never breached a court order previously) and eloquent of the absence of trust between the parties.

[146] It was submitted on the pursuer's behalf that what underlay some of her conduct was anxiety. As discussed below, I accept that the pursuer has been diagnosed with a mental disorder. While anxiety may have contributed to the pursuer's behaviour, the fact remains that much of her conduct was aggressive, controlling and intended to obstruct the defender's contact with the children. Looking at the pursuer's conduct as a whole, it seems to me that she has failed to appreciate the importance of contact between the children and the defender taking place. While the pursuer claimed that she had attempted to nurture the girls' relationship with their father, her actions suggested otherwise.

The Children's Education and Health

[147] I turn next to consider the parties' evidence in relation to the girls' education.

The Defender

[148] The defender's position was that the pursuer had repeatedly taken decisions in relation to the children's education unilaterally. He also criticised her for moving the girls on a number of occasions.

[149] As I have already mentioned in the context of my discussion of contact, the defender recounted that the pursuer raised with him via her agents the possibility of sending A to the SS nursery in July 2020. The context of this communication was that he was being asked to forego contact in order to facilitate A's attendance, but he said that he was given no information regarding on what days and for how long they would be attending. He asked if contact could be re-organised so that A could attend nursery, but he was subsequently told that A had lost her place.

[150] The defender said that in September 2020 the pursuer organised places for the children at K Nursery. She did not involve him in the decision making process but simply informed him that she had done this. A court order provided for the defender to take the children to nursery two days per week. Disagreement arose over the mode of transport to be used, which ultimately resulted in the pursuer withdrawing them. On 13 October 2020 the defender arrived at the pursuer's home in order to take A to nursery but the pursuer refused to let him do so as he was proposing to transport her with a bike and trailer. He planned to push the bike with A in the trailer so that she could have breakfast on the way. The pursuer refused to allow the defender to transport A via bike. In a Gmail exchange at the time (6/37) the pursuer accused the defender of harassment and threatened to call the police.

[151] The defender said that he was contacted by the pursuer later that day, who told him that he was not allowed to pick up A from the nursery. He contacted the nursery and informed them that he would be collecting A. He provided the nursery with a copy of a court order which made provision for this. In response to this the pursuer sent him a further message in which she said "if you intend to go to nursery and make legal threats there very likely won't be a nursery." She went on to say that she would take A to and from nursery the following day and that she would hope to put alternative arrangements in place in time for next week. The defender was concerned about the potential impact on the children if they were unable to attend nursery and, therefore, he emailed his lawyer to agree to whatever transport the pursuer wished. But on 20 October 2020 the pursuer emailed the defender to say that she had withdrawn the children from the nursery.

[152] The defender said that according to the manager the children had settled in well. Three months later, on 14 January 2021, the pursuer's solicitor emailed the defender to say

that she had removed A from the nursery due to the quality of the nursery's care. But the defender believed that the dispute over transport had been the cause of the pursuer's decision to withdraw them.

[153] The defender said that in early 2021 the parties agreed that the children would be placed on a waiting list for an alternative nursery. At one stage the pursuer told the defender that it might take up to 2 years for the children to be enrolled. This prompted the defender to make contact directly with the XY nursery. He was told that there might be a space for A within a few weeks, although there would be a longer wait for a place for B. When he told the pursuer this she accused him of lying and emailed the nursery directly to check the position. A was offered a place at the nursery on 26 March 2021 and she started there in August 2021.

[154] Both girls continue to attend the nursery and it was the defender's position that they are thriving there. He relied on a letter from the headteacher of the nursery (6/40), which confirms that the girls are getting on well.

[155] Turning to future plans for schooling the defender said that A was due to be registered for school between 1 and 5 November 2021. He emailed the pursuer via his solicitor in an attempt to reach an agreement regarding school registration. On 4 November 2021 they received a reply to the effect that the pursuer had already enrolled A in F primary school. She had not attempted to discuss A's enrolment in school or notify the defender of A's enrolment prior to the email exchange of early November 2021. The defender said that F is a very highly rated primary school and that he was excited by the prospect of A attending it.

[156] The defender noted that the pursuer appeared to have enrolled A onto the waiting list for a school in Seattle. He said that she had not given him notice of doing so.

[157] The defender said that the pursuer had unilaterally changed an appointment for A to receive her vaccination booster as it fell on a date on which he was due to be looking after her. The letter arrived on 12 April 2021 and the appointment was due to take place on 19 April 2021. On 13 April 2021 the pursuer emailed the defender to tell him that she had rearranged the appointment for 30 April 2021, when she would be looking after A.

The Pursuer

Affidavit evidence

[158] The pursuer confirmed that both girls currently attend XY nursery five days per week in the morning. She said that B settled in very well and A had always loved nursery, although there had been a few issues with other children bullying A and sometimes she did not want to go. A had previously attended S Nursery until September 2019. She then went to the W preschool, which closed due to Covid-19. The pursuer said that in July 2020 she arranged for both girls to start at the SS Nursery. She made all of the necessary arrangements and paid the deposit for the nursery. However, the defender would not allow them to attend during contact time with him, nor would he rearrange contact so that they could take up their places. The pursuer said that she had subsequently arranged for A to attend K Nursery in October 2020, but that she had removed her after the nursery had let the defender take her home from nursery without having previously met him or verified his identity. She denied having threatened to remove A from K Nursery due to the defender's involvement with the nursery. She said that she was concerned that the nursery would deny A a place because they would not wish to be in the position of having to enforce court orders. She went on to say that the way that the nursery handled the situation made her uncomfortable and so ultimately she removed them anyway.

[159] She said that before enrolling the girls at the XY Nursery she emailed the defender with a list of nurseries in order to get his input (5/97). He emailed her back to say that any of them would be fine.

[160] The pursuer rejected the suggestion that she had sent the girls to several nurseries because she was hypersensitive about other people looking after them. She said that the majority of the moves and false starts were attributable to the difficulty of having the girls on separate schedules coupled with the challenge of working around contact. For example, she would happily have kept A at W pre-school, but B was too young to attend and it was not feasible to have the girls attend nursery in different parts of town as the pursuer worked. Similarly, she would have been far more hesitant about removing A from K Nursery if a place had also been available for B.

[161] The pursuer said that she has recently communicated to the defender that she is not happy with the girls' present nursery. If she is not allowed to relocate then she will seek to move them. She explained that A had been voicing intermittent objections to going since not long after she started, and that she was now doing so more frequently. She was concerned that A was being left to play on her own and that she was not getting much structure or attention. By contrast, she said, B seemed to be happy in her room at the nursery.

[162] The pursuer had conducted research into both preschools and schools in Seattle. She had identified the Tiny Trees nursery as a possible nursery and she had placed the girls on the waiting list for it. She wished to send them to a K-8 school, which she favoured because the children would remain with the same peer-group for the duration. She had identified several K-8 Schools in the area and she said that there was no waiting list for them. She said that she would apply to the district with intended schools as her first and second choices.

She proposed to select Orca and South Shore as her top choice primary schools because of their proximity to the neighbourhoods that they were most likely to live in and because of their academic scores. She had also considered Dunlap because of its proximity and Deer Park because it offered unique multi-lingual lessons.

[163] As regards secondary education, the pursuer said that Seattle contained numerous specialised schools. She would consider one of them if the children were drawn to anything specific. Otherwise, she would enrol them at Cleveland High or The Centre, both of which were nearby and had received good reports. All of the schools to which the pursuer had referred would provide the children with a more multicultural education than they would receive in Glasgow. In contrast to Glasgow, it would be possible to apply to schools beyond their local area.

[164] Insofar as schooling options in Scotland were concerned, the pursuer recalled that during her trip to Seattle she had been informed by her solicitor that the defender's agent had demanded on his behalf that A should be registered at G primary school by the end of the week. She said that this felt to her as if the defender was imposing his view unilaterally without any discussion with her whilst she was abroad.

[165] The pursuer said that she had subsequently registered the A at F primary school. She had also applied for a place at U primary school. In addition, she had expressed an interest in the M school in Edinburgh. This latter possibility was bound up with her interest in moving to Edinburgh, which she thought might be an easier city to integrate into as an immigrant.

Cross-examination

[166] In cross-examination the pursuer accepted that she had not asked the defender for his views in relation to the SS Nursery before enrolling the children there. She also accepted that the proposed nursery sessions would have cut across the order imposed by the court for contact between the children and the defender. She explained that the contact was arranged for such random times that it made it almost impossible to schedule nursery without encountering a conflict.

[167] Insofar as K Nursery was concerned it was put to the pursuer that she should have handed over the children to the defender to be transported to nursery notwithstanding the fact that the defender was intending to convey the children via bike and trailer. The pursuer replied that she was not comfortable with the children being transported in this way as she considered it to be dangerous. When the pursuer was asked about her threat to call the police she explained that the defender was blocking the door in and out of the building at the time.

[168] The pursuer accepted that after this she had unilaterally removed the children from the nursery. She justified this on the basis that the nursery had not verified the defender's identity before releasing the children to him. She also said that the nursery had not been honest about what had happened on this occasion.

[169] The pursuer was asked about further possible changes to the children's nursery arrangements and an exchange of emails between the parties lodged at 6/60 was put to her. In the first of these, dated 21 January 2022, the pursuer indicates that she is going to research nursery alternatives for the girls. She raises concerns about B changing rooms within the nursery, communication from the nursery and Covid safety. In the exchange that follows

the defender expresses concerns about the disruption involved in moving the children again while the pursuer maintains her concerns about the nursery.

[170] It was put to the pursuer that she had taken unilateral action in February 2022 by arranging a visit for her and the girls to the M school in Edinburgh without telling the defender. The pursuer replied that she had assumed that her affidavit provided sufficient notice that she was contemplating sending the girls there.

[171] Insofar as primary school was concerned the pursuer accepted that she had made enquiries about and enrolling the girls into school in Seattle without the agreement of the defender. As to schooling in Scotland, the pursuer was referred to 6/48, which is an email dated 2 November 2021 from the defender's agent to the pursuers agent. The defender's agent points out that registration for primary schools closes imminently; and proposes enrolling the girls at G primary school on the basis that it is very close to the defender's home. It was suggested to the pursuer that by having this email sent on his behalf the defender was acting transparently. The pursuer responded by suggesting that the defender was proposing to act unilaterally by indicating his preference for G Primary.

[172] The pursuer accepted that by the time of this email she had already in fact registered A for U Primary with F Primary as a second choice. She conceded that she had acted unilaterally in doing so but she explained that she considered this to be a backup plan. She also suggested that she had asked the defender for his views on schooling many times but he had not responded.

[173] It was suggested to her that this offered a window into how decisions would be taken if she were allowed to relocate to Seattle. The pursuer said that in Seattle the defender would still be able to stop her if she attempted to do things that he did not agree with; and

she said that she hoped that communication between the parties would be much better once the issue of relocation have been put to bed.

Analysis

[174] A number of points emerge from a review of the evidence of the girls' education to date.

[175] Firstly, both parties are clearly interested in the education of their daughters. The pursuer has taken numerous decisions about the children's education over the past few years. While the pursuer suggested that she was the more engaged of the parties, my assessment of the available evidence is that the defender has also demonstrated a genuine interest in the girls' education. For example, he corresponded with XY Nursery and established that they could take A sooner than the pursuer had expected. His interest in the girls' progress at nursery is also evident in the email exchange from January 2022 (6/60) to which I have referred above.

[176] Secondly, the difficulties in the parties' relationship has been the root cause of various setbacks and disruptions to the girls' nursery careers. The abortive placement at the SS Nursery was an early example of this, which foundered because the parties proved incapable of collaborating to solve the scheduling issues that arose. Similarly the children's removal from K Nursery shortly after they had started there was the consequence of a dispute between the parties over transport to the nursery. This is particularly unfortunate given that the nursery had expressed a view that the girls had settled in well.

[177] Thirdly, before the children started at their current nursery they appear to have moved nursery on a surprising number of occasions. The pursuer sought to explain this with reference to scheduling issues relating to contact and the logistical challenges posed by

sending the girls to different nurseries. While this may provide some of the explanation it is not a full or adequate answer. These issues might have been challenging, but they were hardly unique: logistics is a fact of family life and many children have siblings, separated parents and parents who work. Even allowing for these factors it is difficult to escape the conclusion that there have been too many changes to the educational arrangements for these children.

[178] Fourthly, the pursuer has taken a number of unilateral steps and decisions in relation to the children's education. These include (a) enrolling the children at the SS Nursery; (b) removing the children from K Nursery following the disagreement over transport to the nursery; (c) taking the children to visit the M school without the knowledge or consent of the defender; and (d) applying for U and F primaries, again without the knowledge or consent of the defender. (On a similar theme, the pursuer unilaterally rearranged A's vaccination appointment, although I regard this as rather a minor matter in the overall scheme of things).

[179] In my view the pursuer did not offer a satisfactory explanation for taking any of these steps without the agreement of the defender. This seemed to me to represent a pattern of behaviour, which revealed a failure on the pursuer's part to recognise that the defender is entitled to be involved in decisions about the children's' lives - and that it is in the best interests of the children for him to be involved.

[180] Fifthly, it is difficult to draw any firm conclusions regarding the future schooling arrangements for the children. In particular, I do not feel able to conclude that the children would receive a better education either in the US or in Scotland. This is because there appear to be a range of options in both countries. The pursuer does appear to have made enquiries and undertaken research in relation to K8 Schools in Seattle. She provided a

rationale for her preference for a K8 school - ie that the children would maintain relationships with their peers all the way through. But she had identified several K8 schools as options. Equally, U primary school was the pursuer's first choice of primary in Glasgow; and she has identified the possible alternative of the M school in Edinburgh. On the final day of proof the prospect of home-schooling was also raised during submissions, and I am unsure of whether the pursuer would wish to home-school her children if her application for relocation should be allowed, or only if she were required to stay in Scotland. As regards secondary education, the pursuer has researched a range of options and given some general evidence about the availability of specialist schools and schools that would provide multicultural environments in Seattle. Secondary schooling is several years away and the pursuer had sensibly identified several possible High Schools, with the result that her evidence as regards this was understandably open ended. I did not hear evidence regarding possible secondary schools for the children in Scotland.

[181] Counsel for the defender founded on the fact that the pursuer had not actually enrolled the children at school in Seattle. I do not criticise her for this given that the relocation is dependent on the outcome of this action. But in light of the wide range of schooling options that have been identified, it seems to me that I can go no further than to find that there would be reasonable educational options available for the children both in Scotland and in Seattle.

[182] The more troubling (and pressing) issue that emerged from my assessment of the evidence on education was, as I have explained above, that the parties have often failed to engage with each other and collaborate when decisions required to be taken. The pursuer, in particular, has often acted unilaterally.

[183] Finally, it is worth highlighting that on the final day of the proof I was invited to interdict the pursuer from removing the children from their existing school and nursery, or enrolling them elsewhere. The background to this was that the pursuer had recently failed to tell the defender promptly that A's enrolment had been moved from F Primary School to U - see paragraphs 261 - 271, below.

The parties' relationship more recently

[184] Has there been any improvement in the parties' relationship and ability to communicate in recent months?

[185] Counsel for the pursuer submitted that recently the parties have been able to communicate appropriately regarding the children's lives. In support of this position, the pursuer had lodged WhatsApp messages between the parties, dating from 23 March to 18 May 2022 that concerned practical and logistical matters relating to the care of the girls (5/129). This covered the period between the conclusion of evidence (16 March 2022) and the date on which I heard submissions (27 May 2022).

[186] Counsel for the defender accepted that the pursuer was capable of communicating and working with the defender for periods, but he submitted that in the end she would always revert to behaving obstructively and taking unilateral decisions. He referred to a very recent exchange of text messages on 12 May 2022 in which the pursuer had threatened to call the police when the defender was running late with the children (6/66).

[187] While the WhatsApp messages lodged by the pursuer have a civil tone and seem to demonstrate a level of cooperation between the parties, it would be premature to conclude that they will be capable of collaborating in the future, in my view. The messages relate to an eight-week period and they must be weighed against all of the difficulties that arose in

the preceding years, which I have explored in detail in this opinion. And the proposition that the parties are consistently cooperating is rather cut off at the knees by the pursuer's threat to call the police on 12 May 2022.

[188] In addition, it is clearly relevant that on the day of submissions following proof, the defender moved the court to interdict the pursuer from removing the children from their respective school and nursery, or enrolling them in alternative institutions. The fact that I was invited to hear such a motion - and the content of parties' submissions - was undermining of the suggestion that the pursuer is currently capable of working collaboratively with the defender in relation to the children.

The Defender's relationship with the children

[189] It is convenient at this stage to summarise my conclusions regarding the defender's relationship with the children and the role that he plays within their lives. This is, of course, an issue that is touched on throughout this opinion.

[190] The evidence that I have considered in the preceding chapters demonstrates that the defender is a committed and loving father. He was heavily involved in the children's care before the parties separated. Following separation, the defender consistently sought meaningful contact with the children. Throughout the children's lives the defender has taken the children to activities - eg swimming, football and ballet. He has nurtured the children's relationships with his family. He and the children have spent time with friends. I deal with the parties' residence/ contact proposals below, but at this stage I notice that the defender presently has frequent contact with the girls, meaning he is involved in their daily lives.

[191] In her written submission, counsel for the pursuer criticized the defender for choosing not to contribute to decisions regarding the children in the event of relocation. But I view that as a product of his fundamental opposition to relocation in principle rather than as being indicative of a lack of interest in the children's lives.

[192] The pursuer gave inconsistent evidence regarding the defender's relationship with the children. In her affidavit she claimed that she was committed to nurturing the children's relationship with their father. At one point she acknowledged that the girls seemed to enjoy their time with the defender. But she also said they had told her that he hurt them. At times she seemed to cling to the idea that the pursuer had behaved inappropriately towards A when blood was found in A's pants (although I did not consider her account of that episode to be genuine, as I have explained). The pursuer queried whether attendance at nursery or time with the defender was more important to the children's development.

[193] Notwithstanding the pursuer's ambivalence, in submissions it was accepted on her behalf that the defender is a loving father who has a close relationship with his children and that he is capable of caring for them. This is consistent with my own conclusion regarding the defender's relationship with the children.

Proposed Future Arrangements for Residence and Contact

Introduction

[194] I will consider next the parties' evidence regarding the options for residence and contact.

[195] At present, contact operates on a fortnightly cycle, with the defender having residential contact with the children as follows:

Week 1: Wednesday, Friday, Saturday;

Week 2: Wednesday.

Non-residential contact takes place on the following days:

Week 1: Monday, Thursday;

Week 2: Thursday.

It is common ground that this is too disjointed an arrangement as it involves the children moving between houses too frequently. I turn now to the parties' positions on contact and residence, either in the event that the application for relocation should be allowed or refused.

The Pursuer

Contact Arrangements if Relocation Permitted

[196] If the application for relocation were to be granted, the pursuer proposed that the defender should exercise substantial contact with the defender, in particular: (i) two weeks during the spring holidays in Scotland; (ii) four weeks during the summer holidays in Scotland; (iii) three weeks in the summer holidays in Washington State; (iv) in the Christmas holidays on alternate years, from 2023 onwards; and (v) at such other times and locations as the parties should agree.

[197] The pursuer proposed to build accommodation in the garden of the property that she would purchase, which the defender could stay in when he travelled to America. The pursuer suggested that the defender's work would involve travel to the US; and, indeed, that he was free to work in the US, meaning that additional contact could be arranged.

[198] In cross examination the pursuer was questioned about this proposal (and about her original proposal, which was set out in her first affidavit). The thrust of the line that was put to her was that this proposal was entirely unrealistic given that she had previously

frustrated contact between the defender and the children, excluded him from the process when decisions required to be taken regarding the children's lives, accused the defender of emotionally abusing her, and accused him of engaging in inappropriate behaviour towards A. The pursuer maintained that the proposed contact arrangements were viable.

Residence and Contact if Relocation Refused

[199] If the relocation application were to be refused, the pursuer sought: (i) to reduce the defender's contact with the children to alternate weekends from Friday after school or nursery until Monday at the beginning of school or nursery; (ii) for contact to take place for one half of the school holidays on dates and times to be agreed; and (iii) for contact to operate at such other dates and times as the parties should agree.

[200] It was put to the pursuer that this would represent a substantial reduction in the existing level of contact in operation. Her position was that the present arrangement involves too much back and forth between the two households and that her proposal would provide the children with consistency and stability.

The Defender

Contact Arrangements if Relocation Allowed

[201] The defender' position on the proposed contact arrangements if the relocation proceeded was that they were unrealistic. He feared that in practice the pursuer would allow him minimal contact; and that when decisions regarding the children required to be taken she would cut him out of the process. It was put to the pursuer in cross-examination that he had been offered the chance to participate in planning the children's lives in the US,

but that he had not responded. He was asked what he wanted by way of contact and he replied that he would take whatever contact he could get.

[202] The defender did not accept that he could work in the US. He would be reliant on obtaining a green card as a result of being married to the pursuer. This was obviously not feasible given the status of the parties' relationship.

Residence and Contact if Relocation Refused

[203] If his opposition to the relocation application proved successful, the defender sought a residence order, providing for the children to reside with him on a fortnightly cycle as follows:

Week 1: from Wednesday at 8.00am until Monday at 8.00am;

Week 2: from Wednesday at 8.00am until Friday at 8.00am.

This would mean that the children would be spending an additional three nights with him. The defender justified this on the same basis as the pursuer had done regarding her proposal: it would be an improvement on the present arrangement as the girls would not have to move between households multiple times per week.

Analysis

[204] Counsel for the pursuer invited me to find that the proposal for contact in the event of relocation was workable. The pursuer would endeavour to ensure that the arrangement operated and that regular contact was maintained between the defender and the children. In the event that the application should be refused, the pursuer's proposal for contact was to be preferred. The context was that the pursuer had always been the children's principal caregiver. In practical terms it was she who got the girls up, took them to nursery and put

them to bed for the most part. Her proposal represented only a relatively small reduction on the level of contact currently in operation.

[205] Counsel for the defender submitted that in view of the pursuer's track record of obstructing contact, taking unilateral decisions regarding the children and advancing false allegations about the defender I should reject the pursuer's evidence that her proposal was feasible. If the relocation proceeded then the pattern of contact that she had outlined would not happen, as it required a level of collaboration between the parties that had been absent from their relationship since their separation. As regards the parties' proposals for contact and residence should the relocation application be refused, counsel for the defender submitted that the defender's proposal should be accepted. He pointed out that the pursuer's proposal would mean a significant reduction to the present level of contact.

[206] In my opinion, the submissions of counsel for the defender are to be preferred. In this opinion I have explored at length the pursuer's attempts to obstruct contact and to exclude the defender from decisions. She has also traduced him with allegations that he has subjected her to emotional abuse and behaved inappropriately towards A. The parties' relationship has been characterised by acrimony, failure to communicate with each other and a lamentable lack of collaboration. Given that this has been the position while both parties have lived in Glasgow, I fail to see how a contact arrangement involving transatlantic cooperation and travel, with all of the logistical challenges that this implies, would have any real prospect of succeeding. I am not persuaded that the pursuer would make genuine endeavours to make such an arrangement work when I read her assurances in parenthesis with her past conduct. I think that the likeliest outcome would be that once the pursuer and the children were installed in Seattle, the defender would be allowed minimal contact with the children and would have little involvement in their lives.

[207] Counsel for the defender also submitted that if the children moved to Seattle with their mother there was a real risk that they would come to believe that the defender had behaved in an aggressive manner, or that there were safety concerns around him, as a result of the pursuer's influence. Counsel for the pursuer submitted that there was no evidence of the pursuer having influenced the children. While I can understand why the defender might harbour this concern (given the various allegations that the pursuer has made to the NSPCC, her GP and this court), this is not a case in which there was evidence of attempts to influence the children. The focus of the case was on the pursuer's efforts to frustrate contact with the defender. It is on this latter consideration that I base my conclusion about the implications of relocation for the children's relationship with the defender.

[208] Turning to the alternative proposals should the children remain in Scotland, as I have already recorded, the parties were agreed that the existing arrangement is not ideal as the children have to move between houses several times across the fortnightly cycle. An important feature of this arrangement is that the defender currently cares for the children for a significant proportion of the cycle: they are with him for four nights and eight days, albeit five of those days are weekdays. It follows that the pursuer's proposal would represent a significant diminution in the defender's involvement with the children, as he would be relegated from playing a role in their daily lives throughout each fortnight to seeing them every second weekend. While it was submitted for the pursuer that she is responsible for many practical aspects of the children's care for the bulk of the time (eg getting them up, taking them to nursery and putting them to bed) the fact remains that the defender sees the children on 8 days out of 14. It would not be an exaggeration to say that he is a constant presence in their lives.

[209] Having said that, the defender's proposal would constitute a material increase in his involvement (up from four nights to seven) and a commensurate decrease in the pursuer's time with the children (down from ten nights to seven). While this would be a marked change, in my view its effect would be less dramatic for the girls than the pursuer's proposal, given that they are currently looked after by both parents at points throughout the two-week cycle.

The pursuer's mental health

Introduction

[210] I deal next with the pursuer's mental health. She had been diagnosed with an adjustment disorder with anxiety and a major depressive disorder (severe) with suicidal ideation but no suicidal intent by Mrs Mary Keenan Ross, consultant clinical psychologist. The parties were divided over whether I should accept this diagnosis and as regards its implications for the outcome of the action.

The pursuer's evidence

[211] In her affidavit the pursuer said that she had been attending cognitive behavioural therapy since January 2021, which she had found helpful in assisting her to recover from the emotional abuse that she had suffered during her relationship with the defender. She hoped to start therapy that was geared towards self-improvement. The pursuer noted the presence of various stressors in her life, which Mrs Keenan Ross had referred to in her report. She said that prior to receiving treatment and reading Mrs Keenan Ross's report she had often felt that no one saw how hard it was for her to keep going. Her difficulties had been minimised by the defender both before and after their separation.

[212] The pursuer was asked about her mental health when she gave evidence at court. She described herself as being pretty depressed. There were days when she did not want to get out of bed. She did not know if she could pick herself up and keep going. She also had fantasies about ending her life. She wished that the ground would just swallow her up. She described having experienced a sinking feeling of hopelessness for the past few months. She referred to a martial arts class that she had been unable to continue with; and to a book group that she had joined but had not found the enthusiasm to persevere with. At times she felt as if she had no reason to exist. The pursuer said that the children had rarely seen her joyful.

[213] When the pursuer was asked what had happened to make her feel like this she referred to the delays in the litigation. She also said that the change in the contact order had affected her as the girls were away from her more frequently now.

The evidence of Mrs Keenan Ross, consultant clinical psychologist

[214] In her first report, dated 31 May 2021, Mrs Keenan Ross diagnosed the pursuer with an adjustment disorder with mixed anxiety and depressed mood. At page 16 of her report she specified that the disorder was currently "persistent." She anticipated that if the pursuer was allowed to relocate to the US then her disorder would resolve within six months. On the other hand, if the pursuer's application was refused then the disorder would continue for at least a further two years. But later in the report (page 19) Mrs Keenan Ross made further observations about the pursuer's prognosis which are not easily reconciled with her earlier comments. She wrote that if the pursuer's relocation application was refused then the disorder would be likely:

> "to remain in permanent form rather than transitory form. It is likely that this will be associated with an increased risk of the onset of generalised anxiety disorder and a major depressive disorder. It is my assessment that this would not impact on her ability to act as primary care for her children but would be challenging for her in relation to coping with day-to-day events and stressors."

[215] Mrs Keenan Ross explained that the pursuer had experienced a number of common stressors that might lead to an adjustment disorder, in particular, relationship problems, separation from her husband, giving birth on two occasions, two miscarriages and health issues. The pursuer was at greater risk of experiencing an adjustment disorder than the general population because she was female, she had experienced difficulties in her marriage, she was involved in legal proceedings and she had a history of experiencing psychological difficulties during her teenage years. The pursuer was also subject to risk factors associated with an increased likelihood of mental health difficulties. In particular, the pursuer reported that she had experienced emotional abuse at the hands of her ex-husband during her marriage, which she said it resulted in low self-esteem. She was now experiencing loneliness and isolation.

[216] Mrs Keenan Ross explained that the pursuer's prognosis was poorer in Glasgow because she was isolated and she had no local sources of emotional support. Conversely, in the US the pursuer would benefit from practical and emotional support from her family.

[217] In her supplementary report, dated 15 February 2022, Mrs Keenan Ross noted a deterioration in the pursuer's mental health. She provided a revised diagnosis of an adjustment disorder with anxiety and a major depressive disorder (severe) with suicidal ideation but no suicidal intent. She recorded that the decline in the pursuer's mental health appeared to have coincided with her return from the trip to Seattle in November 2021. Mrs Keenan Ross attributed this development to a court order which resulted in the pursuer spending less time with her daughters coupled with delays in the legal proceedings.

[218] Mrs Keenan Ross recorded that the pursuer was experiencing a significant increase in cognitive impairment, that this had been noted by her employers and that the pursuer was becoming very anxious about her employment prospects. She also noted the pursuer was claiming to experience anxiety as a result of having to communicate with the defender, as this often resulted in conflict.

[219] When she gave evidence in court Mrs Keenan Ross confirmed that the pursuer's adjustment disorder is persistent rather than permanent. She explained that ultimately patients suffering from an adjustment disorder make the necessary adjustment to the stressors that have precipitated their condition. However, Mrs Keenan Ross was concerned about the next couple of years, particularly given that the pursuer had gone on to develop a major depressive disorder and in view of the fact that she was attempting to manage without friends or family nearby. Mrs Keenan Ross confirmed that the conclusion of the litigation would mean the removal of one of the stressors that had given rise to the pursuer's disorder.

[220] Mrs Keenan Ross made various additional comments about the emotional abuse that the pursuer was alleged to have suffered from at the hands of the defender. Firstly, she noted the pursuer had only used the word "abuse" after leaving the relationship, as at the time she had recognised the defender's behaviour as constituting abuse. Mrs Keenan Ross said that this was the form that emotional abuse commonly takes. Secondly, she elaborated on her comments regarding the pursuer's anxiety in relation to communication with the defender. She suggested that the pursuer's threats to call the police on occasions might be attributable to hypervigilance (I have dealt with this issue above - see paragraph 146). Thirdly, Mrs Keenan Ross addressed the implications for her evidence if the court were to find that no emotional abuse had taken place. She said that in the absence of emotional

abuse her view would remain that the pursuer suffered from an adjustment disorder. Abuse was not the major reason for the disorder - there were a number of other factors at play.

[221] Mrs Keenan Ross was asked about several aspects of her approach and methodology. As a result of Covid her appointments with the pursuer had taken place virtually. She was asked whether this had the potential to undermine her assessment of the pursuer.

Mrs Keenan Ross responded that there was very little research on the question of whether virtual assessments were of lesser quality than in-person consultations, although she had found some research which suggested that it made no difference. She pointed out that the alternative was to have an in-person assessment in which the pursuer wore a face mask, which would inevitably impede the assessment process.

[222] It was put to Mrs Keenan Ross that she ought to have considered the possibility of exaggeration or manipulation on the part of the pursuer; and that by way of cross checks she should have interviewed other witnesses and reviewed the pursuer's medical records.

Mrs Keenan Ross responded that she had never interviewed other witnesses and that to do so would not be in accordance with her professional guidelines. She said that she had asked for the medical records but that they had not been forthcoming. In the absence of them she had asked the pursuer to describe her contact with her GP, which she accepted was self-reporting.

[223] Mrs Keenan Ross was asked about the interplay between the psychological assessment and the psychometric testing that she had undertaken. It was suggested to her that she had not presented evidence of having cross-checked the former with the latter. She responded that she would automatically cross-check and screen all the time. She confirmed that she had looked out for signs of exaggeration or falsification.

[224] Mrs Keenan Ross was asked whether the pursuer might improve if offered pharmacological or psychological treatments. She rejected this suggestion: she said that treatments would make no difference to an adjustment disorder. You could put in support and problem-solving techniques but their effectiveness would be quite limited. This was because the adjustment disorder was caused by external stressors and would persist while those stressors remained present.

[225] Finally it was put to Mrs Keenan Ross that she was not qualified to offer the view that the pursuer's mental health would not affect her ability to look after her children. In response, she accepted that she was not an expert on children, but she said that she could look at cognitive functioning. She noted that the pursuer had a memory issue but continued to be able to work; and that she had managed to get the children to and from Seattle. The pursuer had reported being anxious in advance of Christmas day, but ultimately she had managed to give the children Christmas. Mrs Keenan Ross's conclusion was that the pursuer's impaired cognitive functioning would not affect her ability to parent.

Dr Simon Petrie, chartered clinical psychologist

[226] I also heard evidence from Dr Simon Petrie, chartered clinical psychologist. Dr Petrie had not examined the pursuer, but provided a critique of Mrs Keenan Ross's opinion. He began by adopting his report (6/64). He made the following criticisms of Mrs Keenan Ross's methodology:

1. She had not assessed the pursuer in person, but had conducted the consultations virtually. He did, however, acknowledge that the use of online platforms was standard practice for most clinical psychologists during the pandemic. He accepted that this would typically yield adequate information for the purpose of

assessments within a medico legal context, albeit he said that face-to-face consultations would always provide the best quality information.

2. In order to assess the possibility of exaggeration or manipulation on the part of the pursuer, Mrs Keenan Ross should have obtained what he called "broader clinical information" by, for example, reviewing the pursuer's medical records, interviewing "relevant others", seeking clinical or medical opinions and obtaining corroborative evidence from other sources.

3. While Mrs Keenan Ross had referred to the use of psychometric testing she had not explained how the tests were administered to the pursuer, how she had carried out her observations or what further steps she took to assess for exaggeration, minimisation of falsification. Similarly, she did not present evidence of having cross checked the completion of the psychometric measures with the psychological assessment. It followed that it was not possible for Mrs Keenan Ross to conclude that the results of the psychometric assessments had not been exaggerated, minimised or falsified. However, Dr Petrie did accept in cross-examination that it is a recognised practice to send the psychometric tests to the patient and allow them to complete them at their leisure.

4. Mrs Keenan Ross had failed to take account of the fact that if the pursuer was suffering from an adjustment disorder, it was eminently treatable by way of pharmacological interventions as well as psychological interventions. This undermined her opinion on the pursuer's prognosis. It was put to him in cross-examination that an adjustment disorder could not be treated by these means. He responded that you treated the disorder by treating the symptoms: it was the anxiety and depression that you treated. These could be treated effectively by the

interventions that he had identified. There was a strong evidence base to support this.

5. Mrs Keenan Ross's opinion in relation to the pursuer's parenting capacity and her relationship with her children was unjustified as she had not adequately addressed this issue in her report. Such an assessment was typically detailed and highly specialised and was most often undertaken by a suitably qualified and experienced psychologist with extensive child or family expertise.

Analysis

Introduction

[227] It will be clear from my description of the evidence regarding the pursuer's mental health that this topic was complicated by (i) controversy over aspects of the underlying factual evidence; and (ii) the defender's wholesale attack upon the methodology and conclusions of Mrs Keenan Ross. It is well recognised that an opinion offered by a skilled witness is only valid to the extent that the factual evidence that underpins the witness's conclusions is established (whether by proof or agreement). Similarly, before accepting an expert's conclusions the court must first be satisfied with the methodology that the expert has employed. Accordingly, I will begin by examining the factual evidence on which Mrs Keenan Ross's opinion was predicated, before considering her approach and analysis.

Assessment of the Factual Evidence

[228] The factual evidence came principally from the pursuer. A difficulty with her evidence was that she repeated her allegations of emotional abuse to Mrs Keenan Ross: there were copious references to this in the two reports and Mrs Keenan Ross discussed this

in detail in her oral evidence. For reasons that I have given earlier on in this opinion I do not believe that the pursuer was subjected to emotional abuse at the hands of the defender. While I notice that Mrs Keenan Ross said that the pursuer's presentation was in some respects typical of a victim of emotional abuse, it remains my role to make an assessment of the credibility and reliability of the pursuer. I have disbelieved her evidence on this point. It follows that this part of the factual matrix on which the psychological evidence is premised falls away.

[229] The pursuer did, however, give other reasons for the decline in her mental health: she referred to her sense of loneliness and isolation in Glasgow, to the fact that the children were now with her for less time during the fortnightly contact cycle, and to the impact of the delays in this litigation. In contrast to the pursuer's allegations of abuse I find her evidence on these points to be both credible and reliable. It was abundantly clear from the evidence in this case as a whole that the pursuer feels alone in Glasgow and wishes to relocate to the US. It is also clear that the pursuer is a fervently committed mother who loves her children deeply. In general terms (and leaving questions of diagnosis and prognosis to one side for now) I consider it plausible that these factors would be liable to have an emotional impact on the pursuer. I also accept the veracity of the pursuer's description of feelings of depression and hopelessness, which was vivid and persuasive.

[230] Similarly, I believed the pursuer's description of the mental health challenges that she had faced in the past. It was unfortunate that neither Mrs Keenan Ross nor the court were able to scrutinise the pursuer's medical records, but Mrs Keenan Ross had obtained a history of the salient points of the pursuer's medical history directly from her. This is contained in her first report and includes (a) the pursuer's struggles with mental health difficulties as a child following the breakdown of her parents' marriage, (b) a suicide

attempt in 2007 that the pursuer attributed to the side-effects of medication prescribed to assist her with giving up smoking, (c) two miscarriages, (d) the traumatic birth of A, and (e) her separation from the defender. This chronology was not challenged and while it may not represent an entirely complete account, I regard it as being sufficiently reliable to entitle me to find that the pursuer has experienced difficulties with her mental health in the past. As I have already recorded, Mrs Keenan Ross identified that these historical mental health difficulties were one of a number of factors that placed the pursuer at greater risk of developing an adjustment disorder.

Assessment of Mrs Keenan Ross's Evidence

[231] I turn next to Mrs Keenan Ross's evidence. I considered her to be an impressive witness. She struck me as a measured and fair minded in her evidence. In cross-examination she made reasonable concessions - for example, accepting that it would have been preferable for her to have had sight of the pursuer's medical records. She readily accepted that the reference in her report to the pursuer's disorder as becoming permanent was erroneous. While this was certainly infelicitous phrasing it seemed to me to represent an exception to the careful manner in which she presented her evidence as a whole.

[232] I was unconvinced by the various criticisms that were made of Mrs Keenan Ross's methodology. Dealing with these briefly, I reject the suggestion that Mrs Keenan Ross's assessment of the pursuer was undermined by virtue of being conducted virtually. Dr Petrie produced no data or research to support this view; and his argument lost much of its force because of his concession that consultations are regularly conducted virtually in the field of psychology.

[233] In so far as the criticism that Mrs Keenan Ross should have spoken to other "relevant persons" is concerned it is difficult to reach any firm conclusion on this point as there was a dispute between the experts over whether this falls within the practising guidelines of a psychologist but no guidelines (or other relevant literature) were placed before the court. I have reservations about the proposition that such an exercise would fall within the remit of a psychologist when providing an opinion in a medico legal context, as this might risk supplanting the court from its role of assessing the credibility and reliability of the pursuer's evidence - but this is not a point that I was addressed on. However, whether or not the fact that Mrs Keenan Ross did not take these steps might be a valid criticism in principle is academic, as I have made my own assessment of the pursuer's evidence regarding her history of mental health problems and the other factors that appear to have given rise to her present disorder.

[234] As to the suggestion that Mrs Keenan Ross should have cross-checked her psychological assessment with the psychometric testing that she had undertaken, I accept her evidence that she did this.

[235] I was ultimately prepared to accept Mrs Keenan Ross's diagnosis of the pursuer as suffering from a major depressive disorder (severe) with suicidal ideation but no suicidal intent. Similarly, I accepted her opinion that if the pursuer were allowed to return to the US she would be likely to recover within around six months. Insofar as the prognosis should the pursuer remain in Scotland was concerned, counsel interpreted what Mrs Keenan Ross had said differently. Counsel for the defender submitted that Mrs Keenan Ross had said that the pursuer would recover in the next two years. Conversely, counsel for the pursuer submitted that Mrs Keenan Ross's prognosis was less certain, particularly given that the pursuer had developed a major depressive disorder. I have summarized Mrs Keenan Ross's

evidence at paragraph 219, above. She indicated that she was concerned about the pursuer over the next two years; and I did not understand her to suggest that the pursuer's symptoms would be present in perpetuity. Indeed she said in terms that ultimately patients with adjustment disorders adjust to the stressors that are present. She also acknowledged that the conclusion of the litigation will remove one of the stressors to which the pursuer is subject. While Mrs Keenan Ross could have articulated her opinion with greater clarity, I think the correct interpretation of what she said is that the pursuer is likely to recover after around two years. I am prepared to accept this conclusion.

[236] As I have noted above, Dr Petrie suggested that the pursuer's symptoms could be ameliorated with medication, whereas Mrs Keenan Ross rejected this suggestion. As Dr Petrie did not produce any data to support his position, I am unable to reach a conclusion on this point; and I think I must proceed on the basis that the pursuer's symptoms will persist in their present form for approximately two years.

[237] The pursuer's position at proof was that her symptoms were impacting on her employment. Mrs Keenan Ross appeared to support the view that the pursuer's cognitive functioning might have been affected, with potential ramifications for her performance at work. However, I did not understand her to go as far as to say that the pursuer might become incapable of working (indeed, she cited the pursuer's continuing ability to work as an indicator of her likely capacity to parent the children). By the date on which I heard submissions the pursuer had managed to secure a new job within her sector. Looking at matters in the round I conclude that the pursuer's symptoms may pose challenges for her in the workplace, but should not prevent her from continuing to work.

[238] Another issue that was explored at proof was the potential impact of the pursuer's symptoms on her ability to parent the children. Mrs Keenan Ross opined that the pursuer's

ability to do this would be unaffected, whereas Dr Petrie challenged Mrs Keenan Ross's qualification to offer such an opinion. As I have recorded above, when this was put to Mrs Keenan Ross she accepted that she was not an expert on children, but maintained that she was qualified to offer the opinion that the effect of the pursuer's disorder on her cognitive functioning would not have an impact her ability to look after the children. In my opinion this is too subtle distinction: I take the more straightforward view that as Mrs Keenan Ross accepted the premise that assessment of parenting capacity constitutes a specialised area within psychology, it follows that she was not a suitable expert to speak to this issue.

[239] But from here the issue becomes circular: if I discount Mrs Keenan Ross's opinion that the pursuer should be able to parent the children then the position comes to be that there is no evidence before the court to suggest that the pursuer's symptoms would prevent her from looking after the children appropriately. This accords with the evidence of the parties, both of whom said that the pursuer is capable of doing so.

Decision

The Applicable Law

[240] Section 11 of the 1995 Act provides:

> **"11.— Court orders relating to parental responsibilities etc.**
> (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.
> 1

(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'*);

(f) an interdict prohibiting the taking of any step of a kind specified in the interdict in the fulfillment of parental responsibilities or the exercise of parental rights relating to a child or in the administration of a child's property;

(g) an order appointing a judicial factor to manage a child's property or remitting the matter to the Accountant of Court to report on suitable arrangements for the future management of the property; or

(h) an order appointing or removing a person as guardian of the child.

[

(2A) An order doing any of the things mentioned in subsection (2) is to be regarded as an order in relation to at least one of the matters mentioned in subsection (1).

]2

(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;

[...]3

[

(aa) that application for a contact order is made with the leave of the court by a person whose parental responsibilities or parental rights in relation to the child were extinguished on the making of an adoption order;

(ab) that application for an order under subsection (1) above [...]5 is made by a person who has had, but for a reason other than is mentioned in subsection (4) below, no longer has, parental responsibilities or parental rights in relation to the child;
]4

(b) that although no [application for an order under subsection (1) above]6 has been made, the court (even if it declines to make any other order) considers it should make such an order.

(4) The reasons referred to in subsection [(3)(ab)]7 above are that the parental responsibilities or parental rights have been—

(a) extinguished on the making of an adoption order;[or]8

[...]9

(c) extinguished by virtue of [section 55(1) of the Human Fertilisation and Embryology Act 2008 (parental orders: supplementary provision)]10 on the making of a parental order under [[section 54 or 54A]12 of that Act]11[.]13

[...]9

(5) In subsection (3)(a) [and (ab)]14 above 'person' includes (without prejudice to the generality of that subsection) the child concerned; but it does not include a local authority.

(6) In [subsections (3)(aa) and (4)]15 above— [

'adoption order' has the meaning given by section 119 of the Adoption and Children (Scotland) Act 2007 (asp 4).

]16

(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.

]17"

[241] From the careful submissions of counsel, I identify the following points in relation to these provisions and their application in relocation cases:

(1) Where the court requires to make an order regulating the care arrangements for a child, section 11(7)(a) provides that the welfare of the child is the paramount consideration and that no order should be made unless it is considered to be better than not for the child that the order should be in place. In a case involving an application for the relocation of a child, the dual burden of showing that both parts of this test are satisfied falls upon the applicant: *SM* v *CM* 2011 CSIH 65 (para [57]).

(2) In relocation cases the court must adopt a "presumption free approach." This means that there is no rule that any particular factor deserves greater weight than

any other factor. For example, it would be wrong to presume that the critical question will be what the effect of the refusal of the application would be on the applicant. There is no predetermined table of considerations to be applied, as to approach the issue in this way would risk distracting from the test set out in section 11(7)(a). The court must undertake a fact-specific evaluation, taking the welfare of the child as the paramount consideration: *SM*; *Donaldson* v *Donaldson* 2014 CSIH 88 (para [27]); *MCB* v *NMF* [2018] CSOH.

(3) Section 11(7)(b) makes provision for the child to be given an opportunity to express a view on the proposed order and for the court to take account of this, subject to the age and maturity of the child.

(4) Sections 11(7A) - (7C) compel the court to have regard to the effects of abuse or the risk of abuse and the need to protect the child from this. These provisions are concerned both with abuse (or risk of abuse) that would directly affect the child and with the potential indirect effect upon the welfare of a child that may be created by abuse (or risk of abuse) being suffered by a person with parental responsibilities.

[242] The only supposed point of controversy on the law concerned the second of these points. Counsel for the pursuer relied on *M* v *M* 2008 Fam LR, in which the court identified a number of factors that may be relevant in relocation cases. She took this as the starting point for the structure of her submissions. Counsel for the defender submitted that since *SM* it had been settled that there is no preordained list of factors. I agree with him that this is clear from the authorities referred to above (although curiously, the court in *SM* specifically referred to *M* as a case in which a presumption free approach had correctly been applied). But counsel for the pursuer in fact made the same point in her written submission. While

she borrowed from the list set out in *M*, she did not adhere to it slavishly; and ultimately she advanced the pursuer's position attractively and with clarity.

Decision on the Facts

Relocation

[243] The pursuer's motivation for the proposed move is that she has a deep connection to Seattle, a knowledge of the area and a support network available to her. As I have explained in my appraisal of the evidence, I have no difficulty in accepting this and I regard her desire to live in Seattle as being entirely understandable. However, I am required to consider the merits of the application from the perspective of the children's welfare rather than from the stand point of the pursuer. The children are too young to express a view on the application, but all of the arguments for and against it fall to be considered through the prism of what is in their best interests. I turn now to consider the factors on which the pursuer relies.

[244] I begin with the issue of proximity to family members. It is submitted for the pursuer that the children would benefit from being physically closer to their maternal relatives, as they would have the opportunity to build closer relationships with them. That much is unarguable, but as counsel for the pursuer properly acknowledges in her written submission, whatever the outcome of this application, the children will inevitably live on a different continent from either their paternal or their maternal relations. In either country they will have the advantage of having relatives close by. While the pursuer would benefit from living nearer to her relations I am not satisfied that it would be in the best interests of the children to live closer to their American family in preference to their Scottish family. In fact, the converse is true: while I have no doubt that the pursuer would ensure that the children would develop their relationships with her family from Scotland, I think that if the

children were moved to the US, the pursuer would be unlikely to support attempts by the defender to maintain the children's relationships with his family (see paragraph 46). Accordingly, I do not consider that this factor militates in favour of the application.

[245] The pursuer submits that suitable accommodation and schooling would be available for the children in Seattle. I accept this. But I am not persuaded that the accommodation and school places that could be secured for them in Seattle would necessarily be superior to the equivalent housing and education available in Glasgow and I have refrained from making findings in fact to this effect (see paragraphs 48 - 50; and 180 - 181). Accordingly, I view accommodation and schooling as being neutral factors.

[246] The pursuer's position is that Seattle boasts cultural, sporting and educational opportunities with which Glasgow cannot compete; and that the children would be able to pursue their chosen interests to a higher level than they would be in Glasgow. I am satisfied that Seattle would offer the children a multitude of opportunities for physical and intellectual development and enrichment. But I am not persuaded that the material that the pursuer placed before the court provides a sufficiently broad and firm basis for a finding that the opportunities on offer in Seattle are materially greater than those in Glasgow. As with schooling and accommodation, I have made no finding in fact to this effect (see paragraphs 54 - 56).

[247] It is submitted for the pursuer that the children are at ages and stages whereby they could integrate easily into a new environment. This is said to be demonstrable by the fact that they have already coped with the disruption of the pandemic and with their parents' separation. This may be true (although it is at odds with the pursuer's contention that the children have at times been unsettled by changes to the contact arrangements), but on any view it is not a positive point in favour of the relocation being allowed to proceed.

Moreover, a correlative of this argument is that the children would be ceasing to live close to their father at a very early stage in their lives.

[248] Turning to employment, the pursuer submits that her career prospects would be improved if the application were granted as the US has a large tech sector; and that if she were to lose her current role she would have a greater chance of obtaining alterative employment. For the reasons given at paragraphs 60 - 63 above, I do not accept this.

[249] The pursuer relies on her allegation that the defender subjected her to emotional abuse. It is submitted on her behalf that there is a risk of the children being exposed to conduct of this kind if the parties have to cooperate in order to parent. It is submitted that the parties will have more contact if the pursuer remains in Scotland. This, in turn, is likely to have a deleterious effect on her mental health. For the reasons given at paragraphs 83 - 90 I do not believe that the defender perpetrated emotional abuse upon the pursuer. Accordingly, sections 11(7A) - 11(7C) are not engaged and this factor falls away.

[250] The final factor on which the pursuer relies is the effects of the granting or refusal of the relocation application on her mental health. As I have discussed under the relevant chapter (see paragraphs 227 - 239), I have found in fact that: (a) the pursuer has an Adjustment Disorder with Anxiety and a Major Depressive Disorder (severe) with suicidal ideation but no suicidal intent; (b) if she is allowed to move to the US her disorder is likely to resolve in around six months; (c) if she remains in Scotland the probable timescale for resolution is around two years; (d) her cognitive functioning has been affected, which has in turn impacted on her performance at work; and (e) she does, however, remain capable of working. There is no evidence before the court to suggest that the pursuer's mental health difficulties affect her ability to care for the children.

[251] It is obvious that relocation to Seattle would be in the pursuer's best interests in light of her prognosis - I do not neglect this. But it is clear from the authorities to which I have referred above that I am not entitled to presume that what is in the pursuer's best interests must also be in the best interests of the children. The pursuer said that the children had rarely seen her in a joyful state. But she also gave a vivid description of caring for the girls, playing with them and engaging them in a range of activities. The defender acknowledged that she is a good mother. On the whole, therefore, the evidence supports the view that the pursuer performs her role as the children's mother admirably. There is, as I have said, no basis in the medical evidence for a finding that the pursuer's disorder should preclude her from continuing to do so. Moreover, the prognosis is that the pursuer's disorder should resolve in Scotland, albeit over a lengthier period than would be the case in the US. As to the impact of the pursuer's mental health difficulties on her employment, as explained at paragraph 237**,** although she experienced problems in her previous role, she remains capable of working. In these circumstances, remembering that I must approach the issue from the perspective of the children's welfare, I do not consider that the pursuer's mental health difficulties weigh heavily in favour of the application.

[252] I deal next with the effect of the proposed relocation on the children's relationship with the defender. They currently have frequent contact with him across the 14-day contact cycle. The defender is a loving and committed father who has consistently taken a keen interest in his children's lives. At this stage of their lives the children's most important relationships are those which they share with their parents. The children have a right to maintain and develop their relationship with the defender as they are growing up. If the application were to be granted then at best the children would see far less of him. He would

cease to have involvement in their daily care. This, in itself, is a potent argument against the relocation application.

[253] But the matter does not end there. As I have explained at paragraph 206, if the pursuer were allowed to relocate with the children I do not believe that a workable arrangement for contact could be operated. Given the parties' poor relationship and the pursuer's record of obstructing contact, it is likely that the defender would be allowed only minimal contact with the children. One can readily foresee visits to and from the US falling apart at the planning stage and contact by virtual means failing to take place, in light of the historical problems around contact in this case. Likewise, I doubt that the defender would be allowed to participate when decisions needed to be taken regarding the children's lives. I suspect that the defender would be substantially absent from the children's lives - in marked contrast to the *status quo*.

[254] In my opinion, the potentially devastating consequences of relocation for the children's relationship with their father are not in their best interests. I attribute great weight to this issue and I view it as the decisive factor in the determination of this application. I have not been persuaded that the various factors relied on by the pursuer provide significant support for the application; but even if I had attributed greater weight to them, they would not have been sufficient to counterbalance my concerns about the implications of the relocation for the children's relationship with the defender. The promise of what counsel for the pursuer called a bigger life in Seattle would be poor compensation for the virtual disappearance of the defender from the children's lives.

[255] I conclude: (1) that to grant the application would run contrary to the welfare of the children; and (2) that it would not be better for the children that the application should be granted than that it should not be granted. I shall therefore refuse it.

Contact and Residence in Scotland

[256] I turn next to the parties' proposals for contact and residence in Scotland. I have explored their competing positions at paragraphs 194 - 209. As I have explained, both parties accept that the present arrangement involves the children having to move between the parties' homes too often over the fortnightly contact cycle. While either proposal would involve a significant change for the children, the pursuer's proposal would represent a more dramatic change to their lives. This is because the defender would cease to have regular contact with them across the 14-day period and would see them only every second weekend.

[257] In my opinion, the welfare of the children would be best served by the implementation of the defender's proposed arrangement. The pursuer's position that it would be better for the children to spend 11 nights out of 14 with her is predicated on her contention that she is their principal carer. It is true that the pursuer currently has care of the children for a greater proportion of the fortnightly cycle. But the reality is that since September 2021 the defender has been responsible for the girls' care for 4 nights and 8 days per fortnight. Even allowing for the fact that the children attend school/ nursery, this amounts to substantial involvement in their daily lives. In my view the defender is a devoted father who has a close relationship with the children; and they benefit from his involvement in their care. The converse of this is that it would be a loss to the children if the defender's contact with them were to be reduced to seeing them every second weekend.

[258] The defender's proposal would mean that the girls would live with each parent for half of the time, with fewer moves between the parties' homes across the fortnight. This arrangement would eliminate the chopping and changing to which the children are

currently being subjected; and would provide them with the consistency and stability that both parties recognise is necessary. It is true that they would spend more time with the defender - and proportionately less time with the pursuer - than at present. Understandably, this is an undesirable outcome from the pursuer's perspective. But the children benefit from having two parents who are eager to participate fully in their care. The defender's proposal makes provision for both parents to do so. I regard the opportunity for the defender to make a greater contribution to the children's upbringing as a positive feature of the proposed arrangement, particularly as they will continue to spend a significant portion of their lives with the pursuer. Although it will involve a change for the children, they are used to spending significant periods with the defender and to staying at his home. In all of the circumstances I consider that the implementation of the defender's proposal would be in the children's best interests.

[259] Counsel for the defender invited me to put the new arrangement in place under the auspices of a residence order. I shall do so. In light of the history of contention over contact and residence in this case, this is intended to impress upon the parties that the children have two homes and reside with both parents. It is consistent with the welfare of the children that the parties should understand this.

Visits to the US

[260] Finally, the pursuer seeks a specific issue order to allow her to take the children on frequent visits to the US, as detailed at the start of this Note. I have no doubt that it is consistent with the children's welfare that they and the pursuer should be allowed to visit their American relations regularly. The defender was not opposed to this in principle, but he questioned whether there was any need for the court to make an order for this. Given

that the parties currently struggle to cooperate, I consider that it is in the children's best interests to encapsulate this within an order and that it is better that the order should be made than that no such order should be made.

The Defender's Application for Interdict

[261] On the final day of proof counsel for the defender invited me to grant interim interdict and thereafter to consider granting interdict in terms of section 11(2)(f) of the 1995 Act, prohibiting the pursuer from:

(i) Removing A from the school roll of U Primary School, Glasgow, and pending her starting there in August 2022 from XY Nursery;

(ii) Removing B from XY Nursery, Glasgow

(iii) Taking any steps whatsoever to enrol A at any other primary school; and

(iv) Taking any steps whatever to enrol B at (i) any other nursery and (ii) any primary school until further orders of the court

The Hearing and my decision on Interim Interdict

[262] Counsel explained that the application was being made because the pursuer had moved A's school place from F Primary School to U Primary School unilaterally. She had only intimated this to the defender after doing so, on 17 May 2022. He referred to an exchange of messages between the parties, dating between 17 May and 19 May 2022 (6/67), in which the pursuer raised the possibilities of a move to Edinburgh and of home-schooling A next semester, until the future was clear. Counsel for the defender submitted that the pursuer's decision to move A's enrolment without consulting the defender was part of a pattern of behaviour on the part of the pursuer.

[263] Counsel for the pursuer submitted that the pursuer had not moved A's school place. U school had been her first choice when she had originally applied for schools on A's behalf. A place had become available at U and the local authority had allocated it to A automatically and then notified the pursuer of this.

[264] I asked whether the pursuer had any documentation that confirmed this explanation. I was provided with an email from the local authority, informing the pursuer that A had been enrolled at U and indicating that she should contact the head teacher of the school with any further enquiries.

[265] This was the first time that the defender had had sight of the email. It was dated 20 April 2022. This meant that 30 days had elapsed before the pursuer had advised the defender of this development. If the defender had been allowed to see the email it would have been open to him to raise any queries or concerns that he held about the change of placement with the head teacher of U school.

[266] I asked why the pursuer had failed to advise the defender of the change promptly. I was told that she had not done so because she was considering moving elsewhere within Glasgow, which might result in a further change of school.

[267] I did not consider this to be a satisfactory explanation - indeed it was revealing of the pursuer's belief that the defender's right to know of a development in A's life was contingent on her own plans. This in turn suggested a failure on the part of the pursuer to appreciate that the defender holds parental rights and responsibilities in relation to the children, just as she does.

[268] It seemed to me that counsel for the defender's submission that this formed part of a pattern of behaviour was well-founded - see paragraph 178 (together with the foregoing discussion). While the change of school had not been triggered by the pursuer's actions, her

decision to delay informing the defender (and not to forward him the relevant email correspondence) was consistent with the pursuer's record of taking unilateral decisions about the children's education.

[269] Given that (i) the start of the academic year was three months away; (ii) the pursuer had suggested that she might move within Glasgow; (iii) the pursuer was also considering moving to Edinburgh; (iv) the pursuer had raised the spectre of home-schooling; and (v) the pursuer has a history of acting unilaterally, I concluded that there was a reasonable apprehension that she might attempt a further change to the children's schooling without consulting the defender over the summer. I considered that it would not be consistent with the welfare of the children for decisions of this kind to be taken without the involvement of both parents. Accordingly, I concluded that a *prima facie* case had been made out. It seemed to me that the balance of convenience favoured the defender, as the interim interdict would not prevent the pursuer from seeking the agreement of the defender for any proposed change of school or nursery.

[270] I was told that the pursuer was prepared to give an undertaking that she would not move the children to an alternative school or nursery. However, in view of the pursuer's record of taking unilateral decisions I concluded that it would be preferable to make the order so as to impress upon her that she must not take decisions regarding the children's education without the defender's involvement.

Interdict

[271] At this stage I must decide whether to grant interdict, as sought by the defender. On one view the considerations that I have outlined above militate powerfully in favour of doing so. Conversely, it was submitted for the pursuer that the imposition of an interdict is

not conducive to cooperation between the parties. I think there is considerable force in this argument. For all of the past difficulties in this case, the parties need to learn to work together. Accordingly, I will be prepared to recall the interim order and to refrain from imposing interdict if the pursuer is willing to give suitable undertakings.

[272] I have two short points to add to this. Firstly, there may be merit in adding to the terms of the interdict or undertaking that the pursuer will pass on information and correspondence relating to the children's education promptly. I would be grateful if the parties' representatives would discuss this along with any other possible refinement to the terms of the interdict/ undertaking.

[273] Secondly, in the course of opposing the defender's motion, counsel for the pursuer raised the possibility that the parties might engage in mediation. She indicated that the pursuer is amenable to this. This is an eminently sensible idea. The parties need to start communicating and collaborating more effectively in relation to their children.

[274] In advance of the next hearing I would be grateful if the parties would discuss (via their agents if necessary) the possibility of engaging in mediation. I will wish to be addressed on whether the parties are prepared to do so and on what arrangements have been put in place to facilitate this.

Further Procedure

[275] I will fix a hearing for the continued consideration of the defender's motion for interdict; and to allow the parties to address me in relation to the expenses occasioned by the proof.