



OUTER HOUSE, COURT OF SESSION

[2023] CSOH 64

F84/20

OPINION OF LADY CARMICHAEL

In the cause

JP

Pursuer

against

AAR

First Defender

and

ENM

Second Defender

Pursuer: Party

First Defender: Cartwright; Millard Law

Second Defender: MacBride; Lisa Rae & Co Court Solicitors

22 September 2023

Introduction

[1] In 2020 JP unsuccessfully sought orders under the Child Abduction and Custody Act 1985: *JP v AAR and ENM* [2020] CSOH 80; [2020] Fam LR 117. As Lady Wise did in that case, I shall refer to JP's daughter, who is the subject of these proceedings, by the fictitious name of Bella. Bella was born in 2012. JP now seeks an order that Bella reside with her, and

a specific issue order that she should reside with her at her home in Empoli, Italy. Failing an order for residence, she seeks an order for both indirect and direct contact with her.

[2] Bella came to Scotland to stay with her father, AAR, and his partner ENM, in January 2018. Both AAR and ENM oppose the orders sought by JP, save in relation to indirect contact, and themselves seek residence orders.

[3] JP avers, and AAR and ENM admit, that on 26 March 2018 and 25 April 2018 Bella presented at the Royal Hospital for Sick Children. On each occasion she presented because she had an item inserted in her private parts.

[4] JP avers, further, that on 3 April 2018 police and social work services conducted a Joint Investigative Interview (JII) of Bella in the course of which she said she had been sexually abused in Italy while in the care of JP by an individual she named as Corrindo, for whom JP had worked as a cleaner. JP avers that on infrequent occasions she took the child to the man's home while she worked, and that the child was in her company save on one occasion when JP was using the lavatory. The record contains criticisms of the approach of those who carried out the JII and of social workers involved in the case, but JP did not pursue that line at proof. At proof JP alleged that ENM had herself abused Bella, and had manipulated Bella into making the allegation about Corrindo.

[5] A proof was appointed in this case to take place in April 2022. The Lord Ordinary discharged it on 29 March 2022 and appointed the cause to the procedure roll for debate as to the relevancy of JP's averments describing photographs and video recordings she said she had received from ENM in March 2018. She averred that she had concluded from the content of those recordings and images that ENM had abused Bella. I heard the debate and allowed the averments to go to proof.

[6] At the proof the pursuer gave evidence and led evidence from her sister, MU, and her mother, TV. The defender gave evidence and led evidence from Dr Kirsty Dalrymple, a consultant clinical psychologist, and from Gemma Kirkpatrick, a social worker. ENM gave evidence. She led evidence from her mother, CM, and from her sister, AL.

[7] The Lord Ordinary appointed Dr Kirsty Dalrymple to report in relation to the following matters:

- “i. Is it probable that either or both parties (the defender and minuter being treated as one party) has attempted to alienate the child from the other?
- ii. If so, which party has attempted to do this and in what way?
- iii. Has the child in fact been alienated from either party? If so, is this because of the actings of the other party?
- iv. Given that there is a general assumption that contact with the non-resident parent is in a child’s best interests and given the failed attempt at indirect contact in October/November 2021 does the psychologist have any proposals for how indirect contact (including the format of such contact) (i) might be re-instated and (ii) how it might be supported to ensure it is positive experience for the child?
- v. In the longer term does the psychologist have any proposals for how direct contact between the child and the pursuer might be facilitated safely and supported to ensure it is a positive experience for the child?”

[8] In the course of investigating matters relative to possible future contact, Dr Dalrymple interviewed Bella on a number of occasions in 2022 and 2023. Those interviews recorded Bella’s views. At an earlier stage, in 2021, Bella had expressed similar views to a child welfare reporter.

[9] Insofar as Dr Dalrymple expressed an opinion about whether JP, AAR or ENM had sought to alienate Bella from one or more of the other parties, she did so on the basis of accounts that she obtained. I heard evidence in the course of the proof about how indirect contact had been conducted. On the basis of that evidence I reached my own conclusions, which, as it happens, coincide in most respects with the opinion that Dr Dalrymple had formed. I did not, however, take that part of her opinion into account. That is because I considered that Dr Dalrymple had been asked to report on what were really issues of fact

involving an assessment of where the balance of probabilities lay regarding things allegedly said or done by any or all of JP, AAR and ENM. That was a matter which I was in a position to resolve myself.

[10] I have, however, taken into account Dr Dalrymple's evidence as to how indirect contact might best be supported in Bella's interests. They are informed by her expertise as a child psychologist. There was no dispute that she was qualified to provide an opinion on that matter. I was satisfied that her evidence was credible and reliable.

[11] AAR and ENM have three children other than Bella, whose names I have changed to preserve their privacy. They are David, born in July 2016, Sarah, who is about a year younger, and Tegan, born in September 2022. JP has a son, born in 2020, whom I will call Giacomo.

[12] JP sought to adduce evidence that ENM had been the victim of sexual assault herself. She regarded this as relevant because she believed that someone who had been the victim of a sexual assault would be more likely to engage in the sexual abuse of others. I refused to allow her to give evidence or to ask questions designed to adduce evidence of that character. I considered that it was evidence of an intrusive and personal nature so far as ENM was concerned, and also that it was collateral evidence. There was therefore no necessity to hear and consider it in order to resolve the matters which were the subject of the dispute.

Evidence

JP

[13] JP emphasised how close she and Bella had been in the period before Bella came to live in Scotland. Bella had never had any medical difficulties in Italy, and there had been no involvement with social services there in relation to matters of welfare, although JP had

sought financial assistance from them on a few occasions. Bella had been close to the family of MU, and had stayed with MU and her children in Switzerland for a period when JP was in Italy. JP decided that Bella should live with her father in Scotland while JP undertook a full-time course in sewing. She knew that Bella would be upset so did not tell her about the arrangement until shortly before she left.

[14] JP's evidence was that AAR had relatively little involvement in Bella's early life, and that his family were unsupportive when she became pregnant, in contrast to her own mother.

[15] JP said she regretted the arrangement for Bella to come to Scotland. She alleged that ENM had blocked her from having access to Bella, and that ENM was mentally unstable. She believed that ENM had manipulated Bella so as to cause her to make up the allegation that she was sexually abused in Italy. She alleged that there had been an incident in January 2020 when ENM had "thrown out" both AAR and his mother. She said that Bella had expressed to her a wish to return to Italy. Bella had never told JP that anything bad happened to her in Italy. The person Bella had accused of abusing her was someone for whom JP had worked as an "assistant". He had been investigated in Italy, and nothing had been found.

[16] ENM had sent JP a video of Bella engaging in sexualised behaviour, and a photograph or photographs of Bella which she had found shocking.

[17] JP's evidence was that she worked Monday to Friday and would be available to drop Bella off at school and to pick her up. As far as she knew Bella still spoke Italian, although she had lost her French, and would be able to go to school in Italy with no problems. She would go into the fifth year at Giovanni Bosco elementary school. She would live with JP, JP's mother and sister, and JP's son. The home in which JP lived was the one in which Bella

had lived with her in Italy. It had two bedrooms, a living room and a bathroom. If Bella returned to Italy JP would have to find another solution so far as accommodation was concerned, so that Bella would have her own space. She would try to maintain phone contact between Bella and AAR, and AAR could visit Bella in Italy.

[18] Cross-examined by Ms Cartwright, JP departed in some respects from her position on record. She said that she did not accept that that Bella made an allegation about Corrindo. She did accept that she worked for Corrindo as a cleaner. She had taken Bella to Corrindo's home, but not while she was working. She had taken her only twice, as she was going to school, and had never left her with anyone. She then accepted that Bella would not have been at school, but at nursery in the period before she left Italy, and volunteered that the times she had taken Bella to Corrindo's had not been within school hours. She said she had "shared with the lawyers" messages demonstrating that ENM had given different versions of where Bella had alleged the abuse occurred. I was not directed to messages of that character in the course of the evidence.

[19] Referred to Dr Dalrymple's report recording Bella's view was that she was happy at home, she said she was glad she was happy. That was the case only because JP had called the police and social workers and as a result ENM had changed and started to treat Bella nicely. She did not have any particular proposals as to how Bella should maintain contact with her siblings in Scotland. She said that she was the one who should be raising the issue in relation to Bella's brother in Italy. She did not care about ENM and did not want Bella to have contact with her, even if that were to be in Italy. She alleged that she had asked police in Scotland to attend AAR's home because of particular incidents which concerned her, including one when she learned that Bella had been kidnapped by her paternal grandmother.

[20] JP accepted having sent a video recording to AAR. The video was played in court during JP's evidence. In it JP performs a lyric, partly in Italian and partly in English, to a musical backing track. The lyrics are addressed to "you" using the Italian second person plural. It includes the lines: "You say you love my daughter, but you're holding her hostage".

[21] At the end of the song JP says, "Bella I love you so much. Mum. See you soon." She said that her intention was to send a message to AAR, and not to Bella, to the effect that she would always do her best to get Bella back. She could not remember whether she had asked AAR to show the recording to Bella. She had asked him to show her videos in which she sang happy birthday to Bella.

[22] She had never said anything bad to Bella about AAR or ENM during video calls. On one occasion she had said that they were lying or mistaken because they had said she had not sent a parcel for Bella when she had in fact done so. She had never shown Bella a picture of Giacomo. She had told Bella she could see Giacomo if she came to Italy. Bella wanted to know the baby's name and she had looked excited. She did not let Bella see Giacomo on the call because she would be afraid that ENM would use a picture of him to create a false profile, and that she would send the picture to strangers.

[23] She was reluctant to engage with questions about possible arrangements for contact if Bella were to remain in Scotland, insisting that Bella should return to Italy. She would not currently be able to travel to Scotland herself as a result of difficulties with travel documentation. She was asked whether she would be able to speak to AAR or ENM without insulting them. She replied that ENM was not Bella's mother, and that she was. She denied ever having insulted ENM, and said that ENM had insulted her. She accepted

that she had not responded when AAR had sent her a picture of Bella, and said that she had not replied because she wanted a video call, not a photograph.

[24] Cross-examined by Ms MacBride about communications between her and ENM in early 2018, JP did not answer directly a number of the questions she was asked, and gave explanations which did not fully engage with the question. She was shown the video that ENM had sent her which depicted Bella engaging in sexualised behaviour. JP accepted that a voice audible on the recording was saying, in Italian, "What are you doing? Putting it in your flower, you shouldn't do that." She said that recording the behaviour of the child in that way was not the way to love or look after a child, and that ENM would not have recorded her own child in that way. She could not remember whether she saw the video before or after the first occasion that Bella was taken to hospital. JP said she had seen a picture showing blood from her daughter's private parts on a piece of toilet paper. Bella had never exhibited sexualised behaviour in Italy. It would have been impossible for her to have been assaulted in Italy without JP's knowledge.

[25] JP did not remember declining to attend an appointment offered by Dr Dalrymple in early 2023. In relation to supervised contact she expressed a positive preference for having someone like a social worker or other neutral party involved in supervising contact. Asked about how she would feel if there were rules in place for contact, requiring her not to say "bad stuff" she said that she had always behaved in the past and thought about her daughter's well-being.

MU

[26] MU's statement, which she adopted, was prepared in connection the proceedings before Lady Wise and had not been updated.

[27] MU is the sister of JP. She lives in Switzerland. She and JP are close and speak by phone frequently. From Bella's birth until September 2017 she saw Bella regularly, usually in Switzerland, but also in Italy. She has five children who were close to JP and Bella. She was shocked when JP told her that Bella was going to stay with her AAR in Scotland. She thought that JP might have asked AAR to take Bella to Scotland so that he might build a better relationship with her. She understood that JP had been about to embark on a course at the time. MU did not think that it had been a good idea to leave Bella with AAR.

[28] MU described JP as a protective and loving mother. She met Bella's material needs and the two enjoyed a close and loving relationship. She said that AAR had blocked her number and blocked her on social media.

[29] MU believed that the allegations that Bella had been abused in Italy had been made up. She had never seen Bella behaving in an unusual or sexualised manner. She had been unable to speak to Bella other than on two occasions shortly after Bella arrived in Scotland. She had however observed Bella speaking to JP on FaceTime, as JP had recorded some of those interactions and had sent them to MU. She thought Bella looked unhappy. She did not think Bella was unhappy because she was speaking to JP. It was awful to have lost her contact and links with Bella.

[30] She believed that AAR and ENM had abused Bella, because of a photo or photos that ENM had sent. She had never been party to a telephone call between JP and a social worker in Scotland, or present during such a call. In 2019 JP told her that she, JP, had been involved in a call, and that the social worker had not been very nice to her.

TV

[31] TV is the mother of the JP. Her statement was prepared in 2020 and had not been updated. She is 54 years old and lives in Empoli, near Florence. Bella and JP had their home with TV until Bella came to Scotland. TV was shocked and angry when she learned that JP had arranged for Bella to come to Scotland. For a time JP was living in Venice, but she returned to live with TV after she had Giacomo. TV had been supportive of JP and AAR when AAR's mother had not been. TV was critical of both AAR's mother and ENM's mother.

[32] Before Bella came to Scotland, she attended nursery from Monday to Friday. JP had been an attentive and caring mother to her. There had never been any allegations or investigations into claims of sexual abuse concerning Bella when she lived in Italy.

[33] In cross-examination TV was asked about an allegation that Bella made that if TV were angry with her she would take out a belt and be about to slap her. TV denied conducting herself in that way. She said she had always taken good care of Bella. She was adamant that Bella needed to be with her and with JP. She believed that someone in Scotland was maltreating or had maltreated Bella, and that Bella was suffering.

[34] TV's evidence was that she shared her home with her youngest daughter, who had turned 18, with JP and with Giacomo. Her home had two bedrooms and a living room. Both TV and JP were in salaried work. There would always be room for Bella, and the size of the house was irrelevant. Bella might be in a "large house" in Scotland, but she was being maltreated.

AAR

[35] AAR is 29 years old and works as a pizza chef. He collected Bella from his mother's home in Italy in January 2018 and brought her to Scotland. At first she seemed to settle in well. Shortly after arriving, however, she had difficulties sleeping. She began to display aggressive behaviour to ENM and her siblings, and ate toilet paper. In February he and ENM contacted social workers to ask for help. Bella told a social worker that a man named "Corlindo" had pinched her bottom.

[36] Following Bella's attendance at hospital, he learned that she had disclosed at interview that she had been sexually abused in Italy. After that he struggled to cope with Bella's behaviour and considered whether she might live with his mother in Italy, with whom she had a good relationship, but social workers advised against such a move. JP had been clear that Bella could not live with her or TV at that time. He sought more help from social workers. His relationship with ENM became strained because of the difficulty in managing Bella's behaviour, which included hitting her young sister and hurting herself. He and ENM separated for a period and he took Bella with him. He voluntarily placed Bella in foster care. He saw her twice a week after that and spoke to her by phone four or five times a week. He moved back into the family home and reconciled with ENM in August 2018 and they had never separated subsequently.

[37] Bella remained in foster care until May 2019, having started to have contact with AAR, ENM and her siblings in the family home some months earlier. Since May 2019 family life had become much more settled. Bella had made friends in Scotland. Her English was now more fluent than her Italian. She could understand Italian, but struggled to speak it. Sometimes she would start a sentence in Italian but have to finish it in English. In late 2019 and early 2020 police officers attended his home on five occasions, sometimes during the

night, to carry out welfare checks. Those were prompted by allegations from JP that he or ENM was abusing Bella.

[38] He had attempted to initiate regular phone contact between JP and Bella in October 2020. It took place twice and did not go well. JP was silent for lengthy periods during the calls and Bella was upset. After the calls JP sent him and ENM abusive text messages and videos. He believed that it would be appropriate to try again with contact. He tried to have weekly calls for a couple of months, but those ended in November 2021. Bella was upset and confused after contact and said she did not want the calls. He was listening to the call during which JP told Bella about Giacomo. The news had come out of the blue and Bella was shocked and confused. When Bella asked to see her brother, JP said she would not bring him on the video call, and was not going to show Bella pictures of him until Bella was in Italy. He felt that this was manipulative and selfish. In November 2021 he had recently moved house, and did not want JP to know where he lived, as she had previously caused police to attend at his home, and his lawyers offered to act as a postal address for the delivery of gifts from JP to Bella, but none arrived with them. JP claimed to have sent a parcel to AAR's old address. He believed that deep down Bella did want a relationship with JP and that to have that relationship would be in her best interests. Bella had, however, been upset and let down during contact, and did not wish there to be an order for contact. During contact JP had been focused on Bella's returning to Italy, rather than what was best for Bella.

[39] He had arranged for Bella to send JP a card for mother's day. Bella had been upset by JP's response. JP sent a picture of Bella's cousin, whom Bella had not seen for some years. The response did not have any information about JP herself, or ask about Bella. JP had only sent two text messages for Bella between April 2022 and February 2023. She had

requested a video call on Bella's birthday. AAR declined because the contact on Bella's previous birthday had gone badly, and suggested a video message. JP sent a text message.

[40] During a trip to Italy alone to see his mother in December 2022 he was stopped by police at the airport who wished to speak to him about the "abduction" of Bella. He had been allowed to travel on to see his mother after giving an explanation. He was consulting an Italian lawyer as to why this had happened and whether it was as a result of allegations by JP to the Italian police.

[41] Before the proof he had not viewed the video ENM sent JP. He did not believe ENM had abused Bella.

[42] His and ENM's circumstances had improved since 2018. They were in more suitable accommodation, with three bedrooms. Bella was doing well at school, and her English was "amazing".

[43] AAR was shown a report from Bella's primary school class teacher dated 31 January 2023. It related that her attendance was 97.09%. It was in very positive terms in relation to her academic and social progress and the effort she made across a range of subject areas. It included the following:

"Parental engagement is high and always positive with regular contact with the class teacher, Family support teacher and [deputy head teacher]. Both the parent/teacher consultation and a recent update meeting were both attended and very positive. It was lovely to see Bella at the recent Scots evening with the family and it looked as though she had a great time taking part in the ceilidh dancing."

[44] He sent photographs of Bella to JP at Easter 2023, but she did not reply. Bella knew that he was sending the photographs and was content that he did so. Bella had sent two letters to her mother. JP had replied to one of them. Bella wanted to know more about JP's life, and had complained that JP did not tell her anything about that. Cross-examined by JP he explained that Bella had been upset because the subject of Giacomo had been

introduced suddenly without Bella's even having known that her mother was pregnant.

He thought that JP could have sent more regular and routine messages asking Bella how she was getting on at school.

[45] AAR said that he and ENM now had a very good relationship with Bella. Bella had grown a lot and was "almost like a teenager". He thought that supported contact would be a good idea.

Dr Kirsty Dalrymple

[46] Dr Dalrymple spoke twice with Bella in 2022 and on a further occasion in 2023.

In the interview in March 2022 Bella said she had been upset that she had found out her brother only after he was born. She had also been upset after what was at that time the last call she had with JP, at around Christmas 2021, because:

"[JP] says bad stuff to me about my dad. She said he was lying to me. She doesn't care about my dad or [ENM] and that makes me sad. My Grandma and my mum say bad stuff to [ENM] to upset her and this makes me sad."

Bella was worried that her mother would say "bad stuff". She did not want to see her mother in person in Scotland or in Italy, as that would not feel safe. She was worried that her mother would take her away from AAR and ENM.

[47] The following is taken from Dr Dalrymple's account of her most recent meeting with Bella.

"Bella was visibly more confident and grown-up. She engaged immediately talking with me and recalled our last meetings ... We discussed family life and she spoke about the new baby ... She advised me she is happy at home and still likes sharing a room with [Sarah]. We spoke about school, and she explained that she is excited for high school. Bella reported enjoying playing football in the school playground and hoped to be able to join a girl's football team at some point in the future.

[...]

We spoke about contact with her mother and Bella was more open to the possibility of indirect contact at this time. Bella was clear direct contact with her mother did not feel safe at this point. She advised she was scared about going to Italy in case her mother tried to keep her, but she would try a phone call or video call with her. She was clear that she would only talk with her mother... if she was prepared to talk about her life (JP's life in Italy), tell her more about herself and her brother and what she does every day instead of just asking questions of Bella (this is how Bella has experienced past contact). Bella was also clear she would not feel safe if her mother said 'bad things' about her father and ENM or made accusations. We discussed the possibility of having a professional supervise contact and Bella was willing to try this."

[48] It was important that Bella's views be taken into account, and that she was supported to feel safe and to engage in contact. Bella had said that she would like to understand more about JP's life. Bella felt that many questions were asked of her, but that she did not really have a sense of the things that her mother did on a day-to-day basis. She had voiced a lot of curiosity about Giacomo. The reference to "saying bad things" had been in relation to the last FaceTime contact with JP in late 2021, and related to a parcel that had not been delivered. Bella spoke about feeling distressed by that both at the time of the contact and afterwards. She seemed anxious when speaking about the matter. Bella had a sense that the adults did not get on with each other.

[49] It was essential that non-resident parents should provide and demonstrate support for the care that the child received in her home life. Comments that undermined her primary care-givers carried a risk of making her feel unsafe.

[50] JP told Dr Dalrymple that she would be willing to engage with supervised contact. She had spoken with Dr Dalrymple on two occasions, but had declined to speak to her in 2023 when offered the opportunity to do so. Dr Dalrymple met with AAR and ENM both separately and, in 2023, together. Both of them expressed a willingness to engage with and cooperate in arrangements for supervised indirect contact between JP and Bella.

[51] Dr Dalrymple formed the view, which is in accordance with my own findings, which I detail below, that JP lacked reflective capacity to assess the impact of her own conduct, including her conduct during contact, on Bella. She considered that JP would need support to consider Bella's needs and wishes regarding what information to share, how to share it, and how to pace the sharing of information during contact so as to avoid causing distress or confusion to Bella.

[52] Dr Dalrymple recommended a period of supervised indirect contact by video call. All the adults involved (JP, AAR and ENM) should be willing to contract by way of oral and written agreement as to their behaviour and expectations. That would include agreement about the language used about the other adults both during and outside contact. If the contract were not adhered to or the contact was not operating in Bella's best interests the contact should be stopped. She suggested a trial block of eight sessions of 15 to 20 minutes, weekly or fortnightly. It would be desirable to keep the first sessions short to reduce the risk of awkwardness or stilted communication. Before the sessions JP should be encouraged to prepare information she would like to share about her life, and perhaps information about Giacomo, to be delivered in a paced and child-centred manner. There might be planning sessions with JP and Bella separately before the first contact. Subsequent sessions might need less planning.

[53] The supervisor should be present with Bella to facilitate the process for her and to offer guidance to JP. The venue should be a neutral setting, and not Bella's family home. If the trial sessions went well, then the duration of the sessions could be extended.

Dr Dalrymple would recommend continuing supervision for 9 months to a year.

[54] The process would require the assistance of an interpreter. There were professionals with expertise in negotiating agreements around supervised contact of the type she

recommended. Dr Dalrymple had done so herself in the course of her professional work. She did not support direct contact at present.

Gemma Kirkpatrick

[55] Gemma Kirkpatrick is a social work team leader. She was allocated to Bella's case in 2019, when she was a senior practitioner. She took over from a colleague. Social work had been involved initially because AAR and ENM had asked for support, and were also involved when Bella made disclosures about having been sexually abused.

[56] She closed the file in 2021, as at that point the social work department had no concerns about the care Bella was receiving. Ms Kirkpatrick was satisfied that it was safe for Bella to continue to live with AAR, ENM and her siblings.

[57] At the point when Ms Kirkpatrick became involved, there were concerns about Bella's transition from foster care back to the care of AAR. At that time AAR and ENM expected Bella to be more grown up than could reasonably be expected of a child her age. Bella's needs had been complex. The family was a young family struggling to adjust and to recognise and respond to Bella's needs. AAR and ENM had engaged well with Ms Kirkpatrick, and she had formed a very positive relationship with the family. Ms Kirkpatrick worked with both AAR and ENM for 2 years. She felt that things turned around substantially in the final year of her involvement. She described AAR as very calm with Bella, which had helped Bella to be settled and happy at home.

[58] During her involvement with the family she became aware that JP was calling Police Scotland and asking them to carry out welfare checks on Bella. This resulted in police attending the family home at night and asking to see Bella. This disturbed the whole family.

[59] Ms Kirkpatrick was aware of the allegation that Bella was sexually abused by a male in Italy when in the care of her mother. She had not personally been involved in the JII, but had considered the papers and records relating to it. Bella had disclosed during the JII that she was sexually assaulted in Italy while in the care of her mother. She would be concerned if Bella were to be returned to the care of her mother in Italy. In 2019 she received a number of calls from JP asking for contact to be arranged. The call was not successful and JP appeared to have other family members with her, who shouted at Ms Kirkpatrick. She was unable to make arrangements for contact, and her subsequent communications with JP were by email. The focus of those communications was allegations by JP that AAR and ENM were abusing Bella.

[60] Ms Kirkpatrick saw Bella regularly herself during the time she was involved with the family. Police reported that they found no concerns about Bella's care. Bella was also seen regularly at school. School were very positive about Bella's situation. When Ms Kirkpatrick tried to reassure JP about the Bella's wellbeing in the light of those factors, JP was unwilling to accept her reassurances. JP's cross-examination of Ms Kirkpatrick at proof reflected her continuing concerns that Bella might not be being cared for properly.

[61] AAR had given her accounts of telephone contact between JP and Bella that he had arranged. He said that JP would tell Bella that she had been kidnapped and abused by AAR and ENM. Ms Kirkpatrick advised AAR that there should not be contact unless the experience were was positive for Bella. She advised JP to obtain her own legal advice. She would not support unsupervised contact. The social work file was closed in 2021 because there were no concerns about the care AAR and ENM provided for Bella. Ms Kirkpatrick remained concerned about the potential for distress to Bella, and also AAR and ENM, were JP to ask Police Scotland to carry out welfare checks.

ENM

[62] ENM has been living in Scotland with AAR since November 2015. Both of their children were born in Scotland. At the end of 2017 JP advised AAR and ENM that she could not look after Bella. JP was trying to concentrate on her studies and described difficulties in her relationship with her own mother, with whom she and Bella were living at the time, and it was agreed that Bella should come to live in Scotland in January 2018. Bella started to display sexualised and other challenging behaviour about a month after she arrived in Scotland. ENM informed JP. ENM and AAR also sought help from the social work department.

[63] At the time ENM was 21 years old and had two young children of her own. She was unprepared to cope with Bella's needs and behaviour. She felt that Bella was jealous of the younger children. She also felt that Bella had been treated "like a parcel sent out to another place", and Bella had not been prepared for having siblings. ENM had contacted JP. JP had made excuses not to call Bella, saying that she would call at a later time when Bella had had more time to get to know her younger siblings, and that she was giving Bella space to do that.

[64] Bella had started to hit and kick Sarah, and it was at that point that ENM and AAR asked for help from the social work department. Bella threatened to throw herself out a window or to take a knife, and she was eating paper. She hit herself on the face with books, and hit her face off the floor. ENM found it difficult to supervise her so as to prevent her from doing that while taking care of the other children. ENM and AAR asked JP for help, but JP said she could not offer help, as she was not in a stable place.

[65] Bella had started to speak about Corrindo. She said that she had been going “there” (ie to Corrindo’s) and that JP had not wanted JP’s mother to know that that had been happening. Bella opened up to ENM’s mother. Bella had been speaking a good deal about Corrindo, and ENM’s mother asked Bella if she had something to tell her. Bella started to say that Corrindo had touch her private parts. It was after that that she started to engage in sexualised behaviour. The matter was reported and Bella was interviewed.

[66] ENM contacted JP several times. She admitted sending the video already referred to. She said she now knew that she had been wrong to do so. At the time it had seemed like the right thing to do. She thought that JP, as Bella’s mother, would want to see what was happening with her own eyes. JP had asked ENM to send her photographs and a video of the behaviour. ENM had not encouraged Bella to behave in the way shown in the video. She did not think that Bella knew she was recording the behaviour. She had come upon Bella behaving in the way recorded in the video and then recorded it. She had not created the situation or directed Bella to behave in that way. She was very shocked when she saw Bella behaving in a sexualised way. She had not abused Bella. JP kept saying that she could not take Bella back, and she was content that Bella should stay in ENM’s care. In cross-examination ENM denied sending a still image showing someone’s hands touching Bella’s private parts.

[67] ENM and AAR’s relationship became strained as a result of difficulties in coping with Bella’s behaviours. ENM asked AAR to leave and to take Bella with him. The couple reconciled, and have not separated on any other occasion.

[68] Police had attended ENM and AAR’s home on eight or nine occasions. Sometimes they had attended in the middle of the night. They had asked to see Bella, and it had been

necessary to wake her up at 2.00am to allow that to happen. Bella had been scared. ENM and AAR had not told her that it was JP who had asked the police to attend.

[69] ENM had on one occasion said to JP that she wanted Bella to return to Italy. This was before Bella was moved to foster care. ENM was not able to manage Bella's needs and behaviours, and she had felt that the best thing would be for JP to care for her. JP had refused to take Bella back. She had told ENM that her (JP's) mother kept a lock on the refrigerator, and that her connection with her mother "wasn't the best".

[70] ENM had subsequently become aware that if there were any attempt to return Bella to Italy the social work department would seek a child protection order. AAR had decided that he wished Bella to be accommodated in foster care, although the social work department had already been discussing the possibility of such a placement. The arrangement had been a voluntary one, and there had been no compulsory measures. AAR had continued to see Bella regularly. At that time ENM had felt there was not much she could do to influence matters. Things were different now. Her relationship with both AAR and with Bella had developed and changed since then, and any important decision about Bella would be one for ENM and AAR to take together.

[71] When Bella came back from foster care she was speaking mainly in English, with a pronounced Scottish accent. She was much happier and more comfortable. ENM felt that foster care had been helpful to Bella, partly because she was accommodated with another child her own age. The first time she had been reunited with Bella was at Christmas 2018. They had made cookies and had a video night. Bella had wanted to return to AAR's care. AAR and ENM had not been separated from Bella since Bella's return from foster care in May 2019. Bella got on well with her siblings and in particular with her little brother, who has autism. He would seek her out to play with at school. She shared a room with Sarah,

and they had friends in common. Bella had responded very well to Tegan's birth, and enjoyed being a big sister.

[72] In October and November 2021 Bella had about five telephone contacts with JP. They did not go well. JP told Bella that she had a number of gifts for her, and Bella became upset because she thought she would have to go to Italy to get them. JP then said she had sent the gifts and that if Bella had not received them that must be because AAR and ENM were hiding them. Bella complained that JP did not have much to say to her and did not ask about her. JP made negative comments about AAR and ENM. JP told Bella that she had a brother, but could not answer Bella's questions about her brother. Bella became more upset after each contact.

[73] ENM would be concerned about the risk of sexual abuse to Bella if she spent time in her mother's care in Italy. Bella had also disclosed that her maternal grandmother was mean to her and hit her with a belt buckle.

CM

[74] CM is ENM's mother. She lives in Italy. She had spoken to JP by phone in 2017 before Bella came to Scotland. At that time JP had described difficulties in the relationship with her own mother, and a reluctance on TV's part to buy things for JP and Bella. CM was staying with AAR and ENM in Scotland when the "problems" with Bella started. Bella started talking "out of nowhere" about JP's boss touching her private parts. CM told ENM that she needed to do something about it. After CM left Scotland ENM telephoned her in some distress and told her that Bella had put an item in her private parts. When JP became aware of Bella's behaviour she accused ENM of having fabricated Bella's allegation against Corrindo. JP had claimed that CM's nine year old son had "touched" Bella.

[75] When Bella returned from foster care she was happy to be back with her siblings. JP had been unhappy that Bella wanted stay with ENM, and had become abusive towards ENM.

[76] ENM and Bella had a good relationship. CM was in contact with the family nearly every day by phone. She had been unable to visit as often as she would wish during the Covid pandemic, but planned to return to her previous pattern of visiting four or five times a year, for a number of days at a time.

[77] Cross-examined by JP, she explained that she treated Bella as her own granddaughter, and that Bella treated her as a grandmother.

Submissions

JP

[78] JP maintained that Bella had been sexually abused in Scotland, evidenced by the video recording already referred to, and also, she said evidenced by a still image or images. JP had never abused Bella in any way herself. She would look after Bella properly if Bella were returned to her care, and would maintain contact between Bella and AAR, and between Bella and her siblings in Scotland. She would be happy for Bella to spend holidays in Scotland with AAR. She placed considerable weight on her own status as Bella's natural mother, in contrast with ENM. She noted that ENM had observed some of the proof remotely in order to assist with her childcare arrangements. That evidenced that she was overburdened in caring for her children. JP by contrast had time available to spend with Bella. The size of the accommodation available for Bella in Italy was irrelevant, as she would benefit from love and harmony there.

AAR

[79] In oral submissions counsel departed from her written submission, in which she had characterised the factual dispute as being “in whose care the child had been abused”, and in which she invited a finding that Bella had been sexually abused in Italy by someone known to JP in Italy, and while in JP’s care. AAR’s pleadings did not contain any positive averment inviting such a finding.

[80] In oral submission counsel did not ask me to make any positive finding as to whether Bella had been abused, or as to where that might have happened, or who was the perpetrator. Instead she invited me to find that Bella said, at a joint investigative interview in April 2018, that she was abused by a friend of the pursuer while she was in Italy.

[81] AAR opposed direct contact, but not a trial period of indirect contact. He did not oppose ENM’s conclusion for a residence order in her favour.

[82] Counsel referred to section 11 of the Children (Scotland) Act 1995 and in particular to subsections (7) and (7A-E) and to *Sanderson v McManus* 1997 SC (HL) 55; *Donaldson v Donaldson* 2014 Fam LR 126; *White v White* 2001 SC 689. There was a general principle that having a relationship with both parents was conducive to a child’s best interest. The court must consider all the relevant material and decide what would be conducive to the child’s welfare. Before refusing an application for parental contact it was necessary to carry out a careful balancing exercise to identify whether there were weighty factors justifying that course: *J v M* 2016 SC 835. Proof must lead to a degree of finality: *SY v FA* [2019] SAC (Civ) 5. After proof it was, however, competent to put a case out by order for further inquiries about whether an order for contact could be facilitated, and how: *Perendes v Sim* 1998 SLT 1382; *Ahmed v Iqbal* 2014 Fam LR 93; *LRK v AG* 2019 Fam LR 142.

ENM

[83] ENM's submissions were aligned with those of AAR. She sought a residence order independently of that sought by AAR. It was better that such an order be made than not because JP's refusal to recognise ENM's role as an important caregiver for Bella.

Decision

[84] There was no dispute as to the law that I should apply. In considering whether or not to make an order under section 11(1) of the Children (Scotland) Act 1995 I must regard Bella's welfare as the paramount consideration. I must not make any order unless it is better for Bella that the order be made than that no order should be made. I also require to have regard to the views that Bella has expressed, taking into account her age and maturity.

[85] It is a matter of admission in the pleadings that that on 26 March 2018 and 25 April 2018 Bella presented at the Royal Hospital for Sick Children. On each occasion she presented because she had an item inserted in her private parts. I am satisfied on the evidence, and it does not appear to be disputed, that police and social work services conducted a JII of Bella. She said she had been sexually abused in Italy while in the care of her mother. I am satisfied also that Bella told CM that she had been abused by Corrindo, who was JP's employer. I accept the evidence of ENM and CM as credible and reliable in relation to that matter. I have found no basis in the evidence for JP's contention that ENM caused Bella to fabricate an allegation that she was abused in Italy by Corrindo while in the care of JP. It is clear from JP's own evidence that Corrindo is a real individual, and that Bella did visit his home while in JP's care.

[86] The foundation for JP's case that Bella was sexually abused after she came to Scotland is the video recording. JP has asserted that ENM sent her a still image of someone touching Bella's private parts. No image of that sort has ever been produced in this process. I am not satisfied that ENM sent JP an image of that sort. There is no dispute that ENM sent JP a video of Bella demonstrating disturbing and sexualised behaviour of the type that led to her attending hospital. ENM should not have sent that video. It was an image that should never have been created. I do not, however, draw any inference from the creation and transmission of the video that ENM or AAR sexually abused Bella. I accept as credible and reliable ENM's explanation as to why she created the recording.

[87] It is clear from the evidence of AAR, ENM and Ms Kirkpatrick that AAR and ENM initially struggled unsuccessfully to meet Bella's needs. Those needs were complex. Bella had been catapulted without preparation into a new country and situation. She was living with new caregivers and, for the first time, with two siblings. She was demonstrating behaviours and making allegations that strongly suggested that she had been the victim of sexual abuse before she arrived in Scotland. After a very difficult period, involving her accommodation in foster care, she has come to be in a settled family situation with AAR and ENM. AAR and ENM needed, and accepted, help from the social work department, including Ms Kirkpatrick. They engaged consistently with her following Bella's return from foster care. I accept the evidence of AAR, ENM and Ms Kirkpatrick in relation to those matters. I accept that Bella is happy living in family with AAR and ENM, and that she is thriving and doing well at school. She has developed strong and positive relationships with her (half) siblings. I accept the evidence of AAR and ENM that they have not separated at any time since Bella came back to live with them. I do not accept JP's evidence that there was a point in 2020 when ENM caused AAR and his mother to leave the family home. Her

evidence on that point was confused and there was no other evidence supporting that contention.

[88] ENM's evidence demonstrated that she had reflected with sensitivity on Bella's experience of having been moved summarily from Italy to Scotland without much by way of preparation or explanation. She presented as someone with empathy for Bella and as having both a wish and a real capacity to engage with her feelings and her needs. AAR was a less eloquent witness and did not reflect expressly on that aspect of Bella's experience. He appeared, however, to have a good understanding of the impact on Bella of JP's rather sudden announcement during contact that Bella had a younger brother, and why that had been a difficult experience for Bella. He was able to reflect on her experience of that announcement and articulate both why it was difficult for her and how it might have been made less difficult for her.

[89] JP's evidence, by contrast, disclosed no element of reflection on her part that her decision that Bella should come to Scotland might have caused distress or confusion to Bella. She did not acknowledge how disorientating an experience it must have been for Bella to arrive in Scotland where she had spent very little time previously, to live with a father with whom she had had relatively limited contact until then. She was unwilling to accept Ms Kirkpatrick's assurances that school and social workers were monitoring Bella's well-being during the time of Ms Kirkpatrick's active involvement with the case. She was unwilling to accept that police welfare checks had disclosed nothing of concern. She did not appreciate that repeated welfare checks, some in the middle of the night, would have been disruptive and distressing to the whole family, including Bella.

[90] At proof she expressed the belief that Bella was now thriving only because she had pressed police and social workers to intervene. JP has demonstrated very little insight

into Bella's needs and what is in her best interests, as opposed to what JP wants to happen, which is that Bella should return to Italy. She is unwilling to recognise the very important role that ENM now plays in Bella's life. Her insistence that Bella should live with her was based primarily on her being Bella's biological mother, in contrast to ENM, who is not. She saw no reason why Bella should have contact with ENM if she were to return to Italy.

[91] JP found it difficult at times to focus on Bella's current circumstances, and what is currently in her best interests. As to arrangements if Bella were to return to Italy, her evidence was vague. JP provided no detail as to her means or as to what accommodation might become available to her. Her evidence did not touch on questions as to how Bella might be helped to adjust to living in Italy again, and in developing a relationship with her young brother, whom she has not yet met.

Residence

[92] It is clearly in Bella's best interests that she continue to live in Scotland with AAR and ENM and her siblings. She is happy and settled in Scotland. She is doing well at school. It would be contrary to her interests to disrupt that established situation to return her to Italy to live with her mother, whom she has not seen in person for more than 5 years and with whom she has had little even indirect contact. I am satisfied that I should make an order that Bella reside with AAR. It is necessary for me to make that order because the question of residence is a matter of dispute. It is in Bella's interests that the matter is regulated by the court, given JP's insistence that Bella should reside with her. I am unable to make a finding as to the precise nature of the difficulty that AAR encountered with police when he entered Italy in December 2022. That there may be some concern on the part of

the authorities there that Bella ought not to be living with him in Scotland reinforces the need for the court to make an order.

[93] In the particular circumstances of this case I am satisfied that I should also make the order for residence that ENM seeks. It will make no practical difference to Bella's living arrangements, as AAR and ENM live together. JP's lack of understanding of, and respect for, ENM's role as a caregiver of central importance in Bella's life has been a striking feature of these proceedings. It is likely to hamper the development of a positive relationship between Bella and JP. It is with a view to impressing upon JP the importance of Bella's relationship with ENM that I have concluded that it would be better, from Bella's point of view, that I make the order than not make it.

[94] I have reached these conclusions without requiring to consider the availability of suitable accommodation for her in Italy, or to make findings as to the extent of any risk that she might be subjected to any form of physical or sexual abuse if returned to Italy. I record that the accommodation in Italy described by JP and TV is not sufficiently large to house Bella in addition to the other people who already live there. I found the evidence of TV and MU of little assistance in ascertaining what would be in Bella's best interests. Neither of them has any direct knowledge of her current circumstances. I record also that while I was not invited to make a finding that Bella suffered sexual abuse in Italy, there are significant grounds for thinking that she was, given the terms of the allegation she made, and the sexualised behaviour she displayed in 2018.

Contact

[95] It is in Bella's interests to have a relationship with her mother. She is curious about her mother and her maternal family, including the younger brother she has never met. It is

in her interest to have an opportunity to rebuild a connection with her mother, and in due course with her wider maternal family.

[96] It is now more than five years since she has had any direct contact with her mother. She is frightened that she might require to go back to live in Italy. There is no evidence to support the proposition that direct contact with JP at this stage would be in Bella's best interests. JP herself offered no positive suggestion as to how direct contact might take place. She could not travel to Scotland, and declined to engage with questions from counsel about this matter.

[97] As I have already observed JP has demonstrated little capacity to reflect as to what will serve Bella's interests, as opposed to her own desires. The evidence about the way she has tried to engage in contact shows that she has not reflected effectively on what is likely to make indirect contact a constructive and positive experience for Bella.

[98] The evidence is of a limited number of indirect contacts in late 2021. In relation to one of these, at around Christmas time, there is evidence that JP made a comment to suggest that AAR and/or ENM was or were lying about the non-appearance of a parcel. None of JP, AAR or ENM should be making pejorative references to any of the others in Bella's presence. JP's comments on that occasion are a factor that has meant that Bella has not enjoyed contact. Bella expressed that clearly to Dr Dalrymple. Bella has also been disappointed not to learn more about her mother and her younger brother. She learned of the birth of her younger brother in a rather sudden and unexpected way in the course of one the contacts. JP accepted that she had not shown Bella a picture of Giacomo, but had told her that she could see Giacomo if she came to Italy. That approach is inappropriate and seems calculated to try to capitalise on Bella's natural wish to know about her brother by making information about him dependent on Bella's presence in Italy.

[99] The other communication from JP to which specific reference was made in the evidence was the “song” of which she sent a video recording to AAR. JP did not send it directly to Bella, although there is a salutation addressed to Bella at the end of it. There is no evidence that Bella has seen it. It is an ill-judged communication, containing an unfounded allegation that AAR was holding Bella hostage. It demonstrates JP’s lack of appreciation of the roles that AAR and ENM now fulfil as Bella’s caregivers.

[100] JP has criticised AAR and ENM when speaking to Bella by making the comment already referred to about the gift. She does not understand that the comment made Bella unhappy, or why. More generally she does not appear to understand what sorts of actions and communications from her will be likely positively to promote Bella’s relationship with her and provide a positive experience of indirect contact for Bella. My impression is that she has been so focused on her position that Bella must be returned to live with her that she has thus far been unable to engage with any other means of developing Bella’s relationship with her.

[101] There is no evidence that AAR and ENM have spoken to Bella in negative terms about JP. I accept, however, Dr Dalrymple’s evidence that Bella has a sense that the adults in her life do not all get on with each other. It might be surprising if she had not picked up on that to some extent, given the nature and duration of the dispute between the parties about her care.

[102] I am satisfied in principle that it would be in Bella’s best interests to have the opportunity for her relationship with her mother to develop by means of indirect video contact. For the reasons given below, I am satisfied that the contact must be supervised contact. For contact to serve Bella’s best interests it will require, at least in the first instance, professional support and supervision of the sort described in Dr Dalrymple’s evidence as I

have summarised it in paragraphs 51-54. JP will require assistance and support to engage in communications which will benefit Bella, and which provide the best opportunity for them to rebuild and develop their relationship in the future. I have reached that conclusion because of the various matters to which I have already referred which demonstrate that JP has not been able to identify without assistance ways of communicating with Bella that best serve her needs and interests.

[103] JP, AAR and ENM all expressed their willingness to engage with or support supervised indirect contact. I have accepted their evidence in that regard. I will put the case out by order for further discussion as to the practicalities associated with supervised indirect contact. In doing so I am conscious that, on Dr Dalrymple's evidence, such arrangements require the adults involved to sign up to ground rules. Counsel for AAR expressed some reservations as to whether JP would, in fact, do so. The conclusion I have reached is that for contact to serve Bella's interests, it will have to be supervised contact on the basis described in Dr Dalrymple's evidence. If that cannot be arranged for a reason that emerges after the proof, then I will not be in a position to order indirect contact. All parties should understand that there will be no further inquiry at the by order hearing in relation to any other form of contact.