SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2019] SC GLA 96

F96/18

JUDGMENT OF SHERIFF AISHA Y ANWAR

in the cause

Mr Ahmad (a pseudonym)[1]

Pursuer

against

Mrs Ahmad (a pseudonym)

Defender

Act: Ms Marshall, Solicitor, John Kilcoyne & Co
Alt: Ms Robb, Solicitor, Murphy Robb and Sutherland

GLASGOW, 15 November 2019. The **s**heriff having resumed consideration of the cause,

Finds in fact:

(1) The parties were married in Pakistan in July 2006. They are respectively, the father and mother of Adil Ahmad born December 2014 ("Adil").

(2) The parties' marriage was arranged. The parties are second cousins. The pursuer is a Pakistani national. The defender is a British citizen. Following the parties' marriage in Pakistan, the pursuer remained in Pakistan. He joined the defender in the UK in or around November 2007.

(3) Between 2007 and 2009, the defender suffered two miscarriages. The parties' relationship broke down however they continued to reside together. The defender could

[1] All names used in this judgment are fictitious.

not trust the pursuer. She believed that he had been seeing other woman and had been stealing.

(4) The pursuer returned to Pakistan in or around 2009. The defender remained in the UK.

(5) While the pursuer was in Pakistan, the defender came across a note written by the pursuer in the pursuer's diary dated 10 February 2008 (item 6/2(b)), in the following terms:

> ". . . I am writing this with all my senses at my command, saying that I have committed suicide. Neither has anyone annoyed me, nor has anyone wronged me, nor do I have any enemies. In fact I made a big mistake which is known to my wife. I was responsible for this mistake. I never wanted to see my wife upset. . . . please forgive me. . ."

(6) Item 6/2(c) is a further note by the pursuer in similar terms dated 10 March 2008.

(7) For a period of approximately four years, the parties communicated by telephone. The pursuer returned to the UK in January 2013. The pursuer persuaded the defender that he wished to commit to their relationship. The parties reconciled and began to reside together.

(8) In or around Spring 2014, the defender became pregnant. The defender had a difficult pregnancy. The defender left the marital home in or around April 2014 to reside with her parents who provided the defender with care and support. During the defender's pregnancy, the pursuer visited the defender for short periods around once every two or three weeks.

(9) Adil was born in December 2014 by emergency caesarean section. The pursuer was present at the hospital at the time of the birth. Shortly after Adil's birth he developed breathing difficulties. He required to be intubated. He required two major surgical interventions. He required to remain in hospital until February 2015. After his birth, the pursuer visited Adil around once per week in hospital.

(10) Upon discharge from hospital, the defender and Adil resided with the defender's parents until in or around April 2015 when they returned to the marital home.

(11) In or around May 2015, police officers attended at the marital home. The officers advised the defender that they had received reports from neighbours of a large number of females entering and leaving the property during the period the defender had resided with her parents.

(12) During arguments between the parties, the pursuer was aggressive. On one occasion he grabbed the defender's wrists. On another occasion, he pushed her. He was verbally abusive towards her. The pursuer threatened to remove Adil and take him to Pakistan. The defender was apprehensive that the pursuer may act upon his threat. The defender was frightened of the pursuer. She was fearful of the stigma which she may suffer in the Asian Community were the pursuer to divorce her. She believed that the pursuer may change. She did not report the pursuer's conduct to the police or to her family.

(13) In March 2017, the pursuer was found guilty after trial of one charge of breach of the peace with a sexual aggravation and of two charges of sexual assault under section 3 of the Sexual Offences (Scotland) Act 2009. In respect of the first charge, the pursuer had repeatedly made inappropriate comments of a sexual nature to two female children aged 11 and 12 who had been wearing school uniform at the time. In respect of the second charge, the pursuer had approached a lone and unknown female under the pretext of seeking directions. He then touched her right breast and said that he wanted to kiss her. In relation to the third charge, the pursuer had followed a lone and unknown female and had touched her buttocks.

(14) Following his conviction, in view of the nature of the offences, the Criminal Justice Social Work Department made a referral to Children and Families Social Work Services. A

social worker met with the defender to consider whether any compulsory child protection measures were necessary. The social worker was satisfied that the defender could care for and protect Adil from any risk posed by the pursuer's offending behaviour. The social worker advised the defender not to leave Adil alone in the pursuer's care.

(15) The pursuer was sentenced in May 2017 to a community payback order with a requirement of supervision for a period of two years, a requirement to complete 200 hours of unpaid work within six months and he was made subject to the notification requirements of the Sex Offender's Register.

(16) The parties continued to reside together until 19 July 2017. The pursuer continued to act in an aggressive and abusive manner towards the defender. During this period, the defender was responsible for all of Adil's needs. The pursuer was working long hours. The pursuer showed little interest in Adil. The pursuer has never had sole care of Adil.

(17) On 19 July 2017, the pursuer was detained by immigration officials and taken to a detention centre as his spousal visa had expired.

(18) Owing to his detention, the pursuer only completed approximately 100 hours of unpaid work and did not carry out any meaningful offence focussed work with criminal justice social workers. His community payback order was revoked in or around September 2017 on an application by the criminal justice social work department on account of his detention.

(19) While detained, the pursuer made repeated phone calls to the defender to seek her assistance in securing a spousal visa for him. He advised the defender that if she did not assist, he would obtain a visa on the basis of his right to family life as father of Adil. He referred to Adil as his "golden ticket". During the period of his detention he made no enquiries in relation to Adil's health, development or welfare.

(20) The pursuer was released from the detention centre in or around November 2017. Upon his release he did not contact the defender. Upon learning of the pursuer's release, the defender left the marital home where she had been residing with Adil and moved to reside with her parents. She did so because she feared the pursuer. The police have provided the defender with security advice and protection measures owing to her fear of the pursuer.

(21) These proceedings were raised in January 2018.

(22) In or around 30 January 2019, the pursuer's WhatsApp status included a comment which read as follows ". . . I don't want to live so I hide myself from the world." (item 6/4a). On or around 5 February 2019, the pursuer's posted a photograph to his WhatsApp status of his wedding cake having removed his name and that of the defender from the image (item 6/6a). On or around 13 February 2019, in a WhatsApp status message entitled "height of hating", the pursuer posted a comment suggesting the use of violence against an ex-partner (item 6/5a).

(23) On joint motion, a final residence order in terms of section 11(2)(c) of the Children (Scotland) Act 1995 was granted in favour of the defender in respect of Adil on 29 April 2019. On the same day, on joint motion, interdict was granted in favour of the defender prohibiting the pursuer from removing Adil from the care and control of the defender, from the care of anyone to whom the defender has entrusted his care and control, or outwith the sheriffdom of Glasgow and Strathkelvin without the express permission of the defender or order of the court.

(24) The pursuer has not seen Adil since 19 July 2017. Since that date, he has not sought any information regarding Adil's education, his health or his welfare. He has not sent Adil any presents or communications on his birthdays or on any other significant event, such as Christmas or Eid.

(25) Adil is happy, settled and thriving in the defender's care. The defender is devoted to his care. He benefits from extensive support and attention from members of the defender's family, particularly from the defender's parents. He is nearly five years of age. He started primary school in August 2019. He recently required surgery in relation to a hernia. He has required a phased introduction to primary one because of that surgery.

(26) The defender is anxious and nervous at the prospect of any form of contact between the pursuer and Adil. Adil does not exhibit any curiosity regarding his father and does not have a clear memory of him.

(27) The pursuer has applied for indefinite leave to remain in the UK on the grounds of his right to family life, namely his relationship with Adil. He has also made an application for asylum. A determination is respect of both applications is pending.

(28) The pursuer's application for contact with Adil is motivated by his desire to remain in the UK, rather than a desire to play a role in Adil's life.

FINDS IN FACT AND LAW:

(1) That it is not in the best interests of the child that the pursuer should maintain personal relations and direct or indirect contact with him.

(2) It is not better for the child that an order for contact is made rather than no order being made at all.

ACCORDINGLY sustains the defender's first plea in law and refuses the pursuer's plea in law; dismisses the cause and finds no expenses due to or by either party.

NOTE:

Introduction and Background

[1] The pursuer seeks an order for contact in terms of section 11(2)(d) of the Children (Scotland) Act 1995 ("the Act") with the parties' son, Adil who is almost five years old. The pursuer holds full parental rights and responsibilities in respect of Adil. The defender opposes all forms of contact between the pursuer and Adil.

[2] On joint motion, at a pre-proof hearing on 29 April 2019, a final residence order in terms of section 11(2)(c) of the Children (Scotland) Act 1995 was granted in favour of the defender. On the same day, on joint motion, interdict was granted in favour of the defender prohibiting the pursuer from removing Adil from the care and control of the defender or from the care of anyone to whom the defender has entrusted his care and control, or outwith the sheriffdom of Glasgow and Strathkelvin without the express permission of the defender or order of the court.

[3] There was no dispute that the defender is a devoted and loving mother. The sole question for the court at proof was whether the pursuer should have contact, in any form, with Adil.

The evidence

[4] The court heard evidence over three days. I do not regard it as helpful or necessary to summarise all of the evidence. Instead, I simply set out my assessment of the evidence below.

[5] The pursuer gave evidence. Dr Stirling, a Consultant Psychologist and Lewis Hultman, a criminal justice social worker gave evidence on behalf of the pursuer. Dr Stirling spoke to his report dated 15 October 2018 (item 5/1). Mr Hultman spoke to his

criminal justice social work report dated 5 April 2017 ('CJSWR') which forms item 6/1 of process.

[6] The defender gave evidence. The defender's sister, Ms Ahmed adopted her affidavit (item 13 of process) and was also examined and cross-examined.

Submissions

[7] Both Ms Robb and Ms Marshall helpfully provided written submissions. There was no dispute as to the applicable law. Both agents made submissions based largely upon the credibility and reliability of the witnesses, each seeking to persuade the court that their witnesses were to be preferred.

Discussion

Assessment of the evidence

[8] I regret that I found the pursuer's evidence unreliable and lacking in credibility. His evidence was exaggerated and self-serving. I have required to treat his evidence with caution and to accept only those parts of his evidence which are supported either by other witnesses or by the documents before the court. Where his evidence contradicted that of the defender or her sister, I have preferred the evidence of the defender and her sister.

[9] I have formed this judgment for a number of reasons.

[10] Firstly, the pursuer claimed that the defender and her family had 'tortured' him and were 'controlling' of him; that they would take his salary from him; that he required to uplift the key to the marital home from the defender's parents each day after work; that the defender's family demanded property in Pakistan and money from him in exchange for supporting his application for a visa; and that they prohibited him from holding a bank

account or registering with a general practitioner. During other chapters of his evidence, he confirmed that he had in fact registered with a general practitioner, that while he was detained he had obtained a payment from a friend directly into the pursuer's bank account, and that he had registered himself to vote. His evidence was inconsistent. His demeanour and his temperament during his evidence did not lend itself to the conclusion that he was someone who might be capable of being 'controlled' or 'tortured' in the manner he described. He was forthright, assertive and very self-assured.

[11] Secondly, the pursuer claimed that the defender had moved to reside with her parents in April 2014 because she had suffered a "sore throat". Despite stating that (i) he visited the defender at her parents' home once every 2 or 3 weeks (ii) that she or a member of her family would attend to collect his salary every Friday and (iii) that he required to attend at the defender's parents' home every day to collect keys to the marital home, he stated that he was unaware that she had been pregnant with Adil between April 2014 and October 2014. When it was put to him during examination in chief that the defender's pregnancy must have been apparent to him, he claimed that on each occasion that he had visited the defender, she had been under a blanket. During cross examination he stated that the defender was 'not always, but mostly' to be found under a blanket. The pursuer's evidence lacked credibility. It was evident that the reference to the defender being cloaked with a blanket was an attempt to provide a rationale for what appeared to be an implausible position. His denial of any knowledge of the pregnancy was designed to provide an explanation for his lack of attentiveness during that period.

[12] Thirdly, he claimed that the defender and her family had obtained advice from an Imam from a local mosque. The Imam had performed 'black magic' on the defender and had told the defender that if the pursuer visited her during her pregnancy or after birth, 'the

child will die'. He claimed that he was fearful of visiting the defender or Adil were anything unfortunate to occur. Yet, he accepted that he did see the defender during her pregnancy. He also stated that he did visit Adil in hospital after his birth. He stated that he visited every week. He then stated that he visited twice a week and also stayed overnight with him in hospital. His evidence was contradictory and inconsistent. It was designed to provide an explanation, which I regarded as implausible in any event, for his absence during the defender's pregnancy and after Adil's birth.

[13] Finally, the pursuer accepted that the offences for which he was found guilty involved four separate complainers. However, during his discussions with Mr Hultman, his discussions with Dr Stirling and during his evidence, he continued to deny any wrong doing. He has suggested that the complainers had mistaken his identity (notwithstanding that one of the complainers lived on the same street), that the allegations were false or that he had been the victim of entrapment. His position was untenable.

[14] I found Dr Stirling and Mr Hultman to be reliable and credible witnesses, both of whom sought to assist the court and to provide their evidence is a straightforward and honest manner.

[15] The defender generally gave her evidence in a candid and sincere manner. She spoke to her attempts to reconcile with the pursuer notwithstanding his conduct and her reluctance to end their marriage for fear of tarnishing her reputation or that of her family, within the Asian community. She spoke of her hope that the defender would change his behaviour. However, while I found the defender's evidence generally reliable and credible, there were chapters which I found to be exaggerated and motivated by a desire to portray the pursuer negatively. I refer to those chapters below insofar as they are relevant to my assessment of the disputed facts.

[16] The defender's sister, Ms Ahmad, gave evidence in straightforward manner. She did not seek to embellish or exaggerate her evidence. While she clearly wished to support her sister, I am satisfied that she nonetheless endeavoured honestly to assist the court. She readily accepted that she had not witnessed any physical abuse of the defender by the pursuer. She also accepted that she spent little time in the pursuer's company and could only comment upon his interactions with Adil to a limited extent.

Disputed issues of fact

[17] There were a number of factual disputes. Those which I considered relevant to my decision are set out below.

Has the pursuer assaulted the defender and behaved in a threatening or abusive manner towards her?

[18] I am satisfied, on a balance of probabilities, that the pursuer acted in a threatening and abusive manner towards the defender, that he pushed her and grabbed her wrists and was verbally abusive towards her.

[19] While the defender did not report matters either to the police or to her family, I accepted as genuine her fear that the pursuer would either remove Adil from her care or divorce her, if she did so. After the pursuer was detained, the defender disclosed the pursuer's abusive behaviour to her sister. I accept Ms Ahmad's evidence of what she had been told by the defender. Ms Ahmad also spoke to witnessing the pursuer's verbal abuse of the defender on one occasion during a discussion regarding his arrest for the offences for which he was later found guilty.

[20] The defender spoke to the pursuer's repeated apologies after each such event and to her hope that he may fulfil his promises to change. That the pursuer made at least one

apology for past mistakes was evident from the terms of the note dated 10 February 2008 (item 6/2b).

[21] The pursuer suggested that his marriage was 'okay' and that there were 'no big issues, it was normal'. Yet he accepted that he was asked to leave the marital home and to return to Pakistan in 2009 by the defender. I accept the defender's evidence that the parties had agreed that the pursuer should return to Pakistan to allow the parties 'some space because of his lying, cheating, and stealing' and because of his conduct towards her.

[22] I do not however accept the defender's evidence that the pursuer had on one occasion attempted to strangle her. There was no reference to what would have been a serious assault, in the pleadings. The defender did not provide any details or context for the assault. The defender's evidence in this regard was exaggerated with a view to inflating the seriousness of the incidents of abuse.

Was the pursuer aware of the defender's pregnancy?

[23] I am satisfied that the pursuer was aware of the defender's pregnancy and that he had been told of it by the defender in or around April 2018. I do not accept as plausible the pursuer's position that he was unaware of the pregnancy. While on the one hand he claimed to be unaware of the pregnancy, on the other hand, he claimed that he was prevented from visiting the defender because 'black magic' posed a risk to the unborn child.

[24] The pursuer exhibited little interest in the pregnancy. By his own admission, he visited the defender approximately once per week.

Has the pursuer assaulted Adil?

[25] I am not satisfied, on a balance of probabilities, that the pursuer has assaulted Adil nor acted in any sexualised manner in his presence.

[26] The defender provided no context for or description of, any assault upon Adil, beyond simply stating 'one time he [the pursuer] tried to strangle him'. The defender's devotion to Adil and her desire to protect him from any harm was apparent throughout her evidence. Had such an assault occurred, the defender would in my judgment, have recalled it with clarity and would have attached far greater weight to it as a basis for her opposition to contact.

[27] The defender spoke to her suspicion that the pursuer may have 'done something' to Adil. She explained that on one occasion, she had detected an odour in the bedroom when the pursuer had been alone with the child and that thereafter the child had been upset when she changed his nappy. I noted that her allegation appeared to be no more than a 'throwaway remark' made towards the end of her examination in chief. No such allegation is made in the pleadings. I did not regard her suspicion as one which is genuinely held.

Was the pursuer involved in caring for Adil?

[28] The pursuer accepted that he visited Adil in hospital after his birth around once per week. He later asserted that he visited twice a week and on one occasion he had stayed overnight with Adil. The defender spoke to the pursuer attending the hospital around once per week. I accept the defender's evidence in this regard.

[29] The defender spoke to remaining with Adil each day while he was in hospital. She spoke to Adil's medical needs, to the need for him to remain in intensive care and to her concern and distress during that period. The pursuer provided very little detail of Adil's needs during this period.

[30] It was a matter of agreement that Adil did not return to the marital home until April 2015. It was a matter of agreement that the defender cared for him with the support of her parents until that time.

[31] During examination in chief, the pursuer was asked to comment upon his relationship with Adil when he came to reside in the marital home in April 2015. He stated that 'I was close to my son. He would ask that I feed him and we would eat together. He would feed me'. His solicitor pointed out to him that at this stage, Adil would have been only five months old. He then stated that he would feed Adil a bottle. He went on to describe reading and singing to Adil, changing his clothes and his nappy. I am satisfied that the pursuer understood the original question and thereafter changed his evidence upon realising the irrationality of what he had stated. I preferred the defender's evidence in relation to the period from April 2015 to 19 July 2017, namely that the pursuer showed little interest in Adil, had little interaction with him, had never had sole care of him and had not attended any medical appointments with him. While Ms Ahmad's observations of the pursuer's interactions with Adil were based on infrequent visits to the marital home, her evidence supported that of the defender.

[32] I note that Mr Hultman spoke to meeting the pursuer in the company of the defender and Adil on one occasion. He described the interaction between the pursuer and Adil as normal and natural. However, his visit was a planned visit, occurred on only one occasion and could not provide a cogent basis upon which the court could form a view upon the quality of the relationship or bond between the pursuer and Adil.

Does the pursuer suffer from poor mental health?

[33] Dr Stirling spoke to his report dated 15 October 2018. He explained that he had met with the pursuer twice; once in relation to providing an assessment for the purposes of the pursuer's claim for asylum and thereafter in relation to the present case. At paragraphs 36 and 37 of his report, he concluded as follows:

> "36. In my opinion [Mr Ahmad] has a mental disorder within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003, namely iCD10 F43.2 Mixed Anxiety and Depression. His illness has improved over the course of 2018 and since my initial assessment in January 2018. His symptoms are now mild. He has no insight impairing mental disorder. This improvement in his mental state is related to treatment with antidepressant Mirtazapine which he continues to take.
>
> 37. In my opinion I can see no reason why specifically due to mental illness he should not have supervised access to his son. I am of the opinion that at present only supervised access in a contact centre should be considered as the environment of his current home needs a full and proper evaluation."

[34] During examination in chief, Dr Stirling explained that the absence of concerning symptoms, suicide or psychosis had influenced his opinion.

[35] Upon cross examination, Dr Stirling accepted that he had not had sight of any of the court pleadings in this case. He had based his assessment upon the information provided to him orally by the pursuer and he had had sight of the CJSWR. He stated that he considered it important to note that he had not had sight of the pursuer's medical records, and that sight of those records 'would have been helpful'. In answer to a question from the bench, Dr Stirling stated that access to the GP records would have allowed him to consider whether the pursuer's description of his symptoms was supported and such records could assist with other 'subtleties'. He stated that his opinion would carry greater weight had he had sight of the medical records.

[36] The pursuer's WhatsApp postings, namely item 6/4a of January 2019 and item 6/5a of February 2019, were put to Dr Stirling. He noted that had he received a copy of these, he would have made direct enquiries of the defender and he would have re-assessed matters. Having done so, it was possible that Dr Stirling's assessment might have been altered. He noted that both of these communications were said to have been made after his assessment of the pursuer and that 'mental state can change'.

[37] Dr Stirling confirmed that the pursuer had not disclosed any previous suicidal thoughts to him. Items 6/2b and 6/2c were put to him. Dr Stirling noted that had he received these documents, he would have 'made further enquiries'. He noted that these documents 'emphasised the need for collateral information'. Dr Stirling stated that he had not carried out any form of risk assessment in relation to the pursuer but had simply provided an assessment of his mental health as at October 2018.

[38] In my judgment, little weight falls to be attached to Dr Stirling's report. Dr Stirling appeared to have concerns regarding the veracity of what had been reported to him by the pursuer. In the absence of his medical notes or any other 'collateral information', Dr Stirling had only the pursuer's account of information and his own observation of the pursuer upon which to base his assessment. The only collateral information he had was the CJSWR. In relation to that report, Dr Stirling noted during cross examination that there appeared to be a discrepancy between the description of the criminal charges provided to him by the pursuer and the charges for which the pursuer had in fact been convicted in terms of the CJSWR. He was asked whether he had been concerned 'about the truth of what you had been told?' He replied 'that's why I raised this issue'. Moreover, there was material before the court, which had it been provided to Dr Stirling, may have caused him to reconsider his conclusions.

[39] It is clear that as at October 2018, the pursuer was suffering from anxiety and depression. It is also clear that as at February and March 2008, the pursuer had suicidal ideations. The WhatsApp status postings would indicate that the pursuer's mental health remains a matter of concern however there is no current and comprehensive diagnosis of the pursuer's mental health available to the court.

Does the pursuer's offending behaviour pose a risk to Adil?

[40] The CJSWR assessed the pursuer as posing a 'medium risk of sexual reconviction'. Page 7 of the report notes that the likelihood of re-offending will increase if *inter alia* the pursuer does not 'undertake offence focussed work to address his level of denial', 'doesn't comply with statutory supervision' and 'isn't supported to address his attitudes/develop a relapse prevention plan'.

[41] As a result of the pursuer's detention, he attended for supervision between May 2017 and July 2017. During that period, Mr Hultman confirmed that there had been no re-offending and the pursuer had attended for each supervision appointment. However, he stated that the pursuer continued to deny his offending behaviour. Mr Hultman explained that no offence focussed work had been undertaken with the pursuer. He explained that it was possible that the criminal proceedings and the trial had been the 'shock' which the pursuer needed and that he may not re-offend, however, no rehabilitative work had been undertaken. He confirmed that there were several services with which the pursuer could have engaged voluntarily, after the revocation of the community payback order, and upon his release from detention, had he wished to do so.

[42] In the circumstances, the court cannot make any assessment of the likelihood of further offending behaviour by the pursuer, beyond noting that the rehabilitative work which was deemed necessary by the criminal courts has not been completed and thus it is reasonable to conclude that the pursuer continues to pose a 'medium risk of sexual reconviction'. The pursuer sought to rely upon the terms of a letter dated 18 April 2019 from Police Scotland (item 5/3) which appeared to assess the risk posed to the public by the pursuer as 'low' and noted that the pursuer required 'management at MAPPA level 1'. However, no witness spoke to the terms of this letter, it was not clear what assessment had

been carried out or how that compared to the assessment detailed in the CJSWR and spoken to by Mr Hultman. Accordingly, little weight could be attached to the terms of the letter.

[43] Mr Hultman explained that owing to the nature of the pursuer's convictions, he made a referral to Children and Families Social Work Services. A social worker attended at the marital home to discuss the pursuer's convictions with the defender. The social worker had concluded that no further action was necessary. The defender spoke to being advised by a social worker that she should not leave Adil alone in the pursuer's care and that she should not allow him to be bathed or changed by the pursuer. The defender explained that she was regarded as a protective factor and on that basis, no compulsory child protection measures were considered necessary in relation to Adil. The defender's recall of her conversation with the social worker was supported by the terms of Mr Hultman's CJSWR which noted at page 5 "[the] social worker interviewed [the pursuer's] wife and is satisfied that she can protect and care for herself and their child accordingly. Therefore, the case has been closed".

[44] In the absence of any professional risk assessment it is difficult for the court to assess, on a balance of probabilities, the risk posed by the pursuer, if any, to Adil. What is clear however is that the pursuer's convictions gave Mr Hultman sufficient cause to make a referral to the Children and Families Social Work Services, for a social worker to consider the possible need for compulsory child protection measures and for Dr Stirling to note at para 38 of his report:

> "38. I am of the opinion that the findings documented in the criminal justice social work report of 05/05/17 need to be taken into consideration with regards to any planned contact with his son. In particular, clarification on whether he engaged in any offending behaviour work during his time with criminal justice social work and if not, then a decision be made on whether such work should be provided to him. I particularly draw attention to this given the comment in the report that he is at medium risk of re-offending for sexual offences."

[45] It was clear from the evidence that what had obviated the possible need for compulsory child protection measures by the social work department at the time was the defender's presence.

The applicable law

[46] The pursuer seeks an order for contact in terms of section 11(2)(d) of the Act. Section 11(7) of the 1995 Act sets out the matters to which the court must have regard when considering such an application:

> "(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."

[47] Both parties referred the court to the often quoted dicta of the Inner House in *White* v *White* 2001 SC 689 at para 21:

> "the court must consider all the relevant material and decide what would be conducive to the child's welfare. That is the paramount consideration. In carrying out that exercise the court should have regard to the general principle that it is conducive to the child's welfare to maintain personal relations and direct contact with his absent parent. But the decision will depend on the facts of the particular case and, if there is nothing in the relevant material on which the court, applying that general principle, could properly take the view that it would be in the interest of the child for the order to be granted, then the application must fail."

[48] More recently, the Inner House summarised the general principles to be derived from the authorities in *J v M* 2016 SC 835 (at paragraph 11) thus:

> "(1) In terms of section 11(7)(a) of the 1995 Act, the judge must treat the welfare of the child as the paramount consideration. The issue is – what is best for the child? . . . . The court must have regard to a number of specified matters, including the need to protect the child from any abuse (defined as including any conduct likely to cause distress), and the need for co-operation between the parents: section 11(7A-E).
> (2) Before refusing an application for parental contact, a careful balancing exercise must be carried out with a view to identifying whether there are weighty factors which make such a serious step necessary and justified in the paramount interests of the child (sometimes referred to as "exceptional circumstances"). Reference can be made to *M v K* 2015 SLT 469 in the opinion of the court at paragraph 25. This approach is reflective of the general background of it almost always being conducive to the welfare of a child that parental contact is maintained. In [*NEDB v JEG* 2012 SC (UKSC) 293] at paragraph 14 Lord Reed explained that there must be "a reasonable basis" for a decision to refuse such an application."

Application of the law to the established facts

[49] Having considered all of the evidence, having regard to Adil's welfare as the paramount consideration and having taken account of the matters set out in section 11(7) of

the Act, I am satisfied that that it is not in the best interests of the Adil that the pursuer should maintain personal relations and direct or indirect contact with him and that accordingly, no order in terms of section 11(2)(d) of the Act should be granted in favour of the pursuer.

[50] Adil is too young to express a view. I accept the evidence of the defender and that of her sister that he has no clear recollection of his father and does not mention him.

[51] There has been abuse of the defender in terms of section 11(7C) of the Act and the court requires to take account of the effect of that abuse upon the defender in terms of section 11(7B)(d).

[52] The possibility of meeting the pursuer for handovers of the child causes the defender a degree of anxiety. She has sought and been provided with security measures from the police in relation to her concerns. She was alarmed by the tenor of the pursuer's whatsapp status postings, particularly that which referred to the use of violence against an ex-partner (item 6/5) in February 2019. However, the parties no longer reside together and there was no evidence before the court of any repetition of the pursuer's abusive behaviour since his release from detention, beyond a vague assertion by the defender that she believed that she may have been followed by unknown individuals acting on behalf of or with the instructions of the pursuer. There was no indication that the pursuer sought contact as a pretext to be in the defender's presence or to intimidate her. Were the court to make an order for contact, the defender would require to be in the pursuer's presence for a very short time and could be accompanied by a member of her family who continue to support her. Were contact to take place in a contact centre or were handovers to take place in a public place, the risk of any abuse of the defender could be further ameliorated.

[53] The need to protect Adil from abuse or the risk of abuse arising from the pursuer's abusive and threatening conduct towards the defender and the effect of that abuse upon the defender are matters to which I attach weight, however, I do not regard them as factors which would, in isolation, justify the refusal of an order for contact in any form.

[54] The lack of any current and comprehensive diagnosis in relation to the pursuer's mental health gives rise to difficulties with regards to an assessment of any risk posed to Adil. Were the pursuer to suffer from significant symptoms of poor mental health or further suicidal ideations while Adil is in his care, it could have a damaging effect upon Adil's wellbeing. However, were the court to conclude that contact was otherwise in Adil's best interests, any risk to Adil could be managed with supervision until a comprehensive assessment of the pursuer's mental health is available. The risk posed to Adil by the pursuer's poor mental health is a matter to which I have paid due regard, however again, in isolation, it would not justify the refusal of an order for contact in any form.

[55] That the pursuer continues to deny his offences, notwithstanding his conviction, is a matter of concern. According to the CJSWR, the offences were committed between July 2014 and October 2015 and involved four separate complainers, two of whom were young school girls. The period over which the offences took place and the nature of the charges is also a matter of concern. I accept that there was no evidence of any subsequent offending behaviour on the part of the pursuer. However, in my judgment, it can reasonably be assumed that the risk of recidivism remains at a 'medium' level in the absence of the rehabilitative work which had been required of the pursuer. There was no risk assessment before the court which may have assisted an understanding of what risk, if any, was posed to Adil in the circumstances. What was clear however was that each of the professionals who had considered matters, namely Mr Hultman, the social worker who visited the

defender, and Dr Stirling all spoke either to the need for supervision of any contact between the pursuer and Adil or to the possibility of child protection measures.

[56] The possible risk posed to Adil by the pursuer's offending behaviour is a matter to which I have paid due regard. Again, any such risk could be managed with supervision and in isolation it would not justify the refusal of an order for contact in any form.

[57] There was little reliable and credible evidence of any appreciable bond between Adil and the pursuer. I am satisfied that the pursuer exhibited an indifference towards the defender's pregnancy, a lack of interest in Adil's medical needs and his development after his birth and played a very limited role in Adil's young life.

[58] I regret that I am also satisfied that the pursuer's primary or dominant purpose for seeking contact with Adil is to improve his prospects of obtaining indefinite leave to remain in the UK.

[59] I accept the defender and her sister's evidence that the pursuer referred to Adil as his 'golden ticket', namely an opportune means by which to obtain the right to remain in the UK. The court can have little confidence that were an order for contact to be made and were the pursuer to secure his right to remain in the UK, he will choose to remain committed to Adil and play a meaningful role in his life.

[60] The pursuer repeatedly referred to Adil as 'the child' throughout most of his evidence. He appeared to refer to him as an object or a possession rather than as a young boy in need of care, love and affection. The pursuer last saw Adil on 19 July 2017 when he was detained. Notwithstanding his medical needs and the early stages of his development, the pursuer has not sought any information from medical professionals regarding Adil's progress; he has not sought any information from nursery or school staff regarding his

development or his education; he has not sought any information from the pursuer regarding his welfare. He has not contacted Adil on his birthday, at Christmas or at Eid.

[61] Most unusually, the pursuer did not lodge or refer to a single photograph or video of Adil. While such photographs or videos are, by their nature, only a snapshot in time, it is remarkable that in the circumstances of this case, where the pursuer's motivations and the sincerity of his commitment to Adil were in sharp focus, no photographs or videos were before the court.

[62] Moreover, it would have been clear to the pursuer that the defender opposed contact on a number of grounds, including the pursuer's convictions and the risk he may pose to Adil. It was noteworthy, in my judgment, that the pursuer had not sought to assuage those concerns by voluntarily seeking to engage in offence focused work after the revocation of his community payback order.

[63] The pursuer's lack of commitment to and interest in Adil's health, welfare, development and education and the pursuer's desire to obtain contact to further his application for leave to remain in the UK are weighty factors which would in my judgment, justify the refusal of an order for contact in any form.

[64] Until his detention in July 2017, the pursuer resided with the defender and Adil. Notwithstanding the pursuer's abusive and threatening behaviour, his convictions, his poor mental health and his lack of interest in Adil, the defender continued to reside with him. But for the pursuer's detention, it is possible that he may have continued to do so. Nevertheless, following his detention and his failure to return to the marital home upon his release, the defender no longer wishes to reside with the pursuer and does not support contact in any form.

[65] Taking a holistic approach, the factors which justify the refusal of an order for contact in favour of the pursuer are (a) the pursuer's lack of commitment to and interest in Adil's health, welfare, development and education; (b) his desire to obtain contact to further his application for leave to remain in the UK; (c) the limited role that the pursuer had hitherto played in Adil's life; (d) the need to protect Adil from abuse or the risk of abuse arising from the pursuer's abusive and threatening conduct towards the defender and the effect of that abuse upon the defender; (e) the lack of a meaningful assessment of the risk posed to Adil by the pursuer's poor mental health and previous suicidal ideations and (f) the lack of assessment of the risk, if any, posed to Adil by the pursuer's offending behaviour. While some of the risks posed to Adil could be managed by supervision, in my judgment, standing my assessment of the pursuer's motivation and his lack of commitment to or interest in Adil, the court can have no confidence that the pursuer will remain involved in Adil's life. To re-introduce the pursuer to Adil in such circumstances would be contrary to the paramount interests of the child.

[66] I do not regard it as appropriate to make any order for indirect contact. The pursuer has not sought to exercise indirect contact with Adil. He has not sought to remain in contact with him by way of birthday, Christmas or Eid greetings or presents. There was no impediment to him doing so. The court can have no confidence that the pursuer would maintain any indirect contact were such an order to be made. While indirect contact may provide Adil with a greater sense of identity and it may enhance his feelings of self-esteem and self-worth to be aware of his father and to communicate with him, it is likely also to lead to disappointment, confusion, hurt and rejection if it is not maintained.

Decision

[67] Accordingly, I shall uphold the defender's first plea in law and refuse the pursuer's first plea in law. Parties were both in receipt of legal aid and were agreed that no expenses should be found due to or by either party.