

NOTE BY SHERIFF AISHA Y ANWAR

in the cause

Mr Patrick (a pseudonym)¹

Pursuer

against

Mrs Patrick (a pseudonym)

Defender

GLASGOW, 20 March 2017.

Summary

[1] The pursuer and the defender are the parents of three children, Julie, Brian and Angela, aged between 12 and 6 years. The issue at the centre of this particularly bitter and acrimonious dispute is whether the pursuer should be found entitled to contact, in any form, with the children. Until November 2015 the pursuer had enjoyed extensive residential and holiday contact with the children.

[2] The proof lasted 11 days. I heard evidence from both parties, various family members and the pursuer's former wife and current partner, Mrs McCormick. I also heard evidence from a Detective Constable, who had conducted the joint investigative interviews of the two older children in relation to allegations of sexual abuse by the

¹ All names used in this judgment, including in the letter to the children, are fictitious.

pursuer, and from Dr Khan, a clinical psychologist who specialises in working with children. Dr Khan had met with the children and was able to speak to their views. Dr Khan also produced two reports. Dr Khan reported that Julie and Brian do not wish to see the pursuer.

[3] I provided a lengthy *ex tempore* decision at a hearing on 1 March 2017 explaining my assessment of the evidence and the reasons for my decision.

[4] I regret that I found chapters of the evidence of both the defender and the pursuer to be largely self-serving. I had concerns regarding the reliability and credibility of the parties' account of events. Their account of events was filtered through a prism of animosity and hostility. They very clearly continue to bear a great deal of ill-will towards each other and neither was willing to give the other the benefit of the doubt. There were bitter reprisals and allegations and counter allegations throughout the parties' evidence.

[5] I did not find the allegations of sexual abuse to be established. Having found that it was in the best interests of the children that they have a relationship with the pursuer, I granted the pursuer's first crave and found the pursuer entitled to indirect contact with the children. I explained that I regarded it as important that the pursuer engage with professionals to address his poor parenting decisions and his lack of insight into the children's reactions to the situations in which he had placed them. I also explained to the parties that consideration required to be given to both parties attending counselling and mediation.

[6] At the hearing on 1 March 2017 I explained to the parties that I did not consider it to be in the children's best interests in the short, medium or long term for there to be a detailed written assessment of the issues of reliability and credibility, in respect of each of the parties. I did not consider it to be in the best interests of the children in the short, medium or long term, for there to exist a detailed record or summary of the evidence led in this case, including in particular, the allegations and counter allegations made by the parties; there is a risk that exposing the children to the details of the evidence led would have the effect of undermining their sense of identity and self-worth. In particular, Julie, who has been described as "a very literal" child, may struggle to comprehend the details of the evidence led. Having regard to the parties' past conduct, regrettably the court can have no confidence that the parties would not provide the children with selective quotes from a full written decision in order to vindicate themselves or to apportion blame.

[7] Parties were agreed that in the event that an award of contact was made, a further hearing was necessary to determine the arrangements for contact. During her evidence, Dr Khan had explained that a great deal of preparatory work would be necessary with both parties and with the children, before any form of contact could take place. I assigned a further hearing on 13 March 2017 to allow parties to address me on these issues.

[8] At the hearing on 13 March 2017, the following agreement was reached between the parties:

1. that the pursuer would undertake the Triple P Parenting course;

2. that a psychologist would be instructed by both parties, to work with the children, to assist them to develop a relationship with the pursuer, with the pursuer meeting the expenses of her appointment;
3. that the parties would work with family therapists, as a precursor to mediation, with each party meeting their own costs;
4. and that thereafter, both parties would instruct a mediator, with the pursuer meeting the costs of her appointment.

The professionals involved in counselling or mediation required to be appraised of the facts, as found established by the court. For that reason, I provided a short written decision to the parties setting out the facts that I found to be established. This note is an abbreviated and anonymised form of that decision.

Communicating the decision of the court

[9] Dr Khan offered the opinion that the decision of the court was best communicated by the court to the children. She explained that it was important for the children, who hold entrenched views, to understand that the court had considered all of the information and had decided what was best for the children, and why. She explained that it was important for the children to hear the decision from a neutral third person, who was not allied to either parent. I explained to the parties, that I proposed to write to the children to explain the decision of the court. I explained that I proposed to provide a draft of my letter to Dr Khan to ensure that the communication was age appropriate and would not cause the children further distress or alarm.

[10] At the hearing on 13 March 2017, the parties' agents had made contact with Dr Khan, who had in turn confirmed that she would be agreeable to meeting with the children and reading my letter to them. She also agreed that she would work with the children to help them understand my decision and to answer any questions they may have. Accordingly, having invited her comments on my draft, I provided Dr Khan with a letter which is addressed to Julie and Brian. I have left it to Dr Khan's judgment as to whether Angela, at her tender age, should be involved in her meeting with the children. A copy of my letter is appended to this note.

Letter to the children

Dear Julie and Brian

My name is Sheriff Anwar.

Your mum and dad have asked me to make a decision on whether you should see your dad.

I think that as my decision is all about you, it is only fair that I should write to you.

I have not met you, but I have heard a lot about you. Your mum has told me all about how you are getting on at school and about your likes and dislikes. Your dad has told me about all the things you used to do together.

Your mum and dad have also told me about the problems they have had with each other after they split up. Sometimes, when parents split up it is very hard for them to stay friends. Your mum and dad have found it very hard to stay friends. Sometimes when people are no longer friends, they can say some nasty things about each other. They forget what is good about each other. That is not right and it is not nice. It shouldn't happen. You should not have to hear any of that. That is for the adults to sort out.

I have listened carefully to what everyone has said. It's my job to listen carefully and then decide what is best for you.

Your mum, dad, and other members of your family have all spoken to me. I have also listened to what Dr Khan has said. I know, from what your mum and Dr Khan have told me, that you don't want to see your dad.

I can understand that. Your dad's job is to care for you, protect you, love you, help you, make good plans for you and to know what is right for you. Sometimes, he has not been very good at that. He has locked you in your rooms when you have been naughty and you haven't liked that. He has sworn at you sometimes and you haven't liked that. When you were younger, he washed you and he was a bit rough, and you didn't like that. He asked Mrs McCormick to move in to his house and he took her on holiday with you, without telling you first. He should not have done that. That was not fair of him. He should have talked to you first so that you knew what was happening and why.

But I don't believe that your dad meant to hurt you or to be mean to you in doing the things that he has done. I believe that he did not really think about how you would feel. That does not make him a bad dad. I know that there are lots of things that you did together that you really enjoyed, like playing in the garden, skiing and going on holidays. I know that he used to help you with homework, make your dinner and pick you up from school. I know that he has kept in touch with the school to learn about your progress.

There is a good side to your dad. He really wants to make things better with you. He wants to be your dad. He wants to love and care for you. He wants to spend time with you. He has told me that he will do anything he has to do to make things right.

I think that your dad needs some help to understand how you are feeling and to understand how he can be a better dad to you. I think that your dad needs some help to make sure he doesn't make the same mistakes. I have asked him to get that help and he has agreed. He might also, sometimes, need some help from you to understand how you feel.

I think your mum also needs some help to be better able to support you and to be more positive about your dad. She has agreed. I hope that she will now focus on helping you to see the good in your dad. She has told me that she will support you in getting to know your dad again, if that is what I decide is the right thing for you.

I have also asked your mum and dad to get some help so that they can talk to each other again, even if they can't be good friends.

So, I have thought about all of this very carefully. I have especially thought about how you feel.

I don't think that it is good for you to grow up thinking you have a bad dad. I don't think that it is good for you to forget all the good times. I don't think that it is good for you to think that your dad meant to hurt you, when he didn't. I think that it is better for you to get to know your dad again and to give him a chance to make things better.

I have asked Dr Khan to meet with you and to help you to understand my decision. I have decided that your dad should write to you once a month, so that you can start to get to know each other again. I hope that you will feel able to write back to him.

We all make mistakes. The important thing is that we learn from them. I think your dad has learned from his mistakes.

I hope that my letter explains to you why I have made this decision.

Sheriff Anwar