SHERIFF APPEAL COURT

[2020] SAC (Civ) 17
AYR-F298-19

NOTE

by

SHERIFF PRINCIPAL A Y ANWAR

in the cause

JC

Pursuer and Appellant

against

MN

Defender and Respondent

10 November 2020

[1] These proceedings relate to a six year old child. The appellant is a party litigant. At a hearing on 27 July 2020, the sheriff made an interim award of contact in favour of the appellant in the form of fortnightly supervised contact at a contact centre. The sheriff notes that it appeared to be common ground between the parties that the pursuer had no contact with the child from her birth until 26 October 2019 when contact commenced at the contact centre. Contact had taken place on seven occasions but required to be terminated as a result of the Covid-19 pandemic. The contact centre had since re-opened. During the course of the hearing on 27 July, the appellant also sought indirect contact by way of video conferencing.

The sheriff refused the appellant's motion noting that in his judgment, face to face contact between the child and the appellant required to be re-established first.

[2] The appellant has sought to appeal the sheriff's decision to refuse interim indirect contact. The appeal was provisionally appointed to the accelerated appeal procedure. Orders for intimation and answers were made in the usual form.

[3] The respondent's answers noted that the appeal was *prima facie* incompetent as the appellant had not sought leave. To avoid the inconvenience and expense of a hearing, I invited the appellant to provide a written Note of Argument setting out his position in relation to the question of competency.

[4] In his Note of Argument, the appellant submitted that section 110(1) of the Courts Reform (Scotland) Act 2014 ("the 2014 Act") allows an appeal to be taken "to the Sheriff Appeal Court without the need for permission". He submitted that section 110(1)(b) which provides that "any decision of a sheriff in civil proceedings" could be appealed without leave, included a decision to award or refuse interim contact and that subsections (i) to (vi) of section 110(1)(b) were illustrative only. Separately, the appellant contended that to deny him a right of appeal in circumstances in which he alleged that his rights under Schedule 1, Article 8 to the Human Rights Act 1998 ("the 1998 Act") had been breached would be incompatible with the European Convention of Human Rights and with section 110(4) which expressly preserved a right of appeal to the Sheriff Appeal Court under "any other enactment". He submitted that the court required to interpret and apply the provisions of the 2014 Act having regard to the terms of section 3 of the 1998 Act.

[5] Section 110(1) of the 2014 Act is in the following terms:

> "(1) An appeal may be taken to the Sheriff Appeal Court, without the need for permission, against—

(a) a decision of a sheriff constituting final judgment in civil proceedings, or

(b) any decision of a sheriff in civil proceedings—

(i) granting, refusing or recalling an interdict, whether interim or final,

(ii) granting interim decree for payment of money other than a decree for expenses,

(iii) making an order ad factum praestandum,

(iv) sisting an action,

(v) allowing, refusing or limiting the mode of proof, or

(vi) refusing a reponing note."

[6] Section 110(2) of the 2014 Act provides as follows:

"(2) An appeal may be taken to the Sheriff Appeal Court against any other decision of a sheriff in civil proceedings if the sheriff, on the sheriff's own initiative or on the application of any party to the proceedings, grants permission for the appeal."

[7] Section 110(1) sets out the types of decisions which may be appealed to the Sheriff Appeal Court without the need for permission. Section 110(2) makes clear that in respect of "any other decision of a sheriff in civil proceedings" not expressly referred to in section 110(1), permission to appeal is necessary. The decision of a sheriff to refuse a motion for interim contact does not fall within section 110(1). No leave to appeal has been sought from or granted by the sheriff in this case. Plainly, in the absence of leave, this appeal is incompetent.

[8] This court considered the competency of an appeal without leave in *Finlayson* v *Munro* [2019] SAC (CIV) 27. Sheriff Principal Pyle, delivering the opinion of the court, neatly summarised the sound policy reasons behind section 110 at paragraph [7] thus:

> "It is important that litigation is conducted within the appropriate level of the judicial hierarchy and is dealt with expeditiously at whatever level Parliament has decided is appropriate. That principle would be undermined if at any point in the process an aggrieved party were entitled to appeal to a higher court an interlocutory decision of the court below. The reason for the exceptions reinforces that principle, in that they are all decisions which are of material importance or would affect the status quo of the parties (Macphail, *Sheriff Court Practice*, 3rd edit, para 18.31)."

[9] Those sound policy reasons apply with even greater force in relation to proceedings involving children. The courts have repeatedly emphasised the need for expedition in disputes involving children. Were there to exist a right of appeal, without permission, of all interlocutors of an interim nature refusing or granting interim orders in terms of section 11 of the Children (Scotland) Act 1995, the child at the centre of such proceedings could become trapped on a carousel of endless appeals.

[10] The appellant's secondary argument in relation to section 110(4) is misconceived. Section 110(4) preserves those specific rights of appeal provided by particular enactments. No such specific right of appeal under any enactment is referred to by the appellant.

[11] In so far as the appellant seeks to rely upon the 1998 Act, the appellant's submissions are based on a false premise. An appellant is not denied a right of appeal by the operation of section 110 of the 2014 Act; the provisions of the Act instead regulate when that right may be exercised and, importantly, when an appellant requires permission to do so.

[12] Accordingly, this appeal is refused as incompetent.