

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT DUNDEE

[2026] SC DUN 26

DUN-F339-24

JUDGMENT OF SHERIFF GREGOR MURRAY

in the cause

G

Pursuer

against

H

Defender

Act: Morris, Lawson Coull and Duncan

Alt: Myles, J. Myles and Co

Dundee, 14 January 2026

The sheriff, having resumed consideration of the cause, finds in fact:

1. The parties are designed in the instance. This court has jurisdiction.
2. The parties formerly cohabited. There is one child of their relationship, F, who was born 27 June 2015. The defender is named as F's father on his birth certificate, number 5/1/1 of process. The defender holds parental rights and responsibilities in relation to F.
3. In March 2018, the defender assaulted the pursuer by shooting her with an air gun. In May 2018, the defender assaulted the pursuer by repeatedly punching her to the lower stomach and face while she was pregnant. Soon after, the pursuer and F left the defender as a result of his domestic abuse. The pursuer later miscarried.

4. Following the parties' separation, the pursuer relocated twice with the assistance of Women's Aid and withheld both addresses from the defender to prevent him abusing her further.
5. Since the parties separated, F has resided with the pursuer and her three other children, born in 2015, 2019 and 2024. It is in F's best interests to continue to do so.
6. The defender subsequently formed a relationship with his present partner J and moved to reside with her and her two children. The defender developed a close relationship with J's children.
7. In July 2021, the defender and J met F and the pursuer's neighbour by chance at a car boot sale. J offered to drive them home afterwards. The pursuer's neighbour agreed. The pursuer was unaware of the meeting until F returned in the defender's company. She was taken aback and called the police. After discussion with police, the defender and J left to return home.
8. The pursuer then spoke to F, who asked to have contact with the defender. Following a telephone discussion and a meeting later that day, the parties arranged that contact would commence the following weekend. Thereafter, the defender exercised regular contact with F, generally from 4.00pm on Friday until 5.00pm on Sunday.
9. F enjoyed spending time with his father. He got on well with J's children. Number 6/2/2 of process contains photographs of him taken during contact visits.
10. In January 2022, F tested positive for COVID during a contact period. As J was then shielding from COVID in the late stages of a difficult pregnancy, the defender contacted the pursuer and asked her to collect F. The pursuer was unable to do so as she was away for the weekend. In accordance with COVID legislation then in force, F and the defender then required to isolate for 7 to 10 days. The defender later returned F to the pursuer's care.

11. In February 2022, the defender and J moved to a larger property in Dundee which has sufficient accommodation for them, their children and F. In the same month, J gave birth to a daughter.

12. In early 2022, F began to exhibit aggressive and defiant behaviour at the pursuer's home. He had previously been referred to CAHMS as a result of such behaviour. As he did not behave similarly during contact periods, the pursuer asked the defender to look after F for 5 days. The parties agreed that the defender would return F on 26 June, the day before his birthday. They did not agree the time at which he would do so.

13. The defender arranged a pre-birthday tea for F, his mother and members of his family on 26 June. He did not advise the pursuer in advance. The pursuer expected the defender to return F at 5.00pm. The defender returned F around 7.00pm, which angered the pursuer.

14. Between 22 June and 7 July 2022, the parties communicated by text message. Copies of their messages form numbers 5/4/8 and 6/2/3 of process. During the exchange, the defender was abusive to the pursuer.

15. After 26 June 2022, the pursuer refused to allow the defender further contact with F.

16. On 28 March 2023, the pursuer raised proceedings in this court craving interdict against the defender from molesting her verbally, threatening her, putting her into a state of fear and alarm or distress or from using violence towards her together with a power of arrest in terms of section 1 of the Protection from Abuse (Scotland) Act 2001.

17. On 19 April 2023, the pursuer's former partner sent J a video recording taken at the pursuer's home. The recording forms number 6/3/4 of process.

18. In early August 2023, the pursuer uploaded a social media post which stated that F was being bullied at his primary school in Dundee. The defender became aware of the post.

On 18 August, he and his partner attended the school. They brought a new school uniform for F. The school secretary arranged for F to come from his class to collect it. F was surprised to see the defender and appeared unsure about his presence.

19. Between 18 August and 14 September 2023, J and the pursuer's mother communicated by text message. Copies of their messages form number 6/3/5 of process.

20. On 1 November 2023, in absence, the pursuer obtained decree of interdict against the defender together with a power of arrest. An extract of the decree forms number 5/1/2 of process.

21. The defender periodically rode his motorbike and drove his car near to the pursuer's home. The pursuer was concerned that he did so to make contact with F or to take him away. She advised F of her concerns and told him that he was not to play outside at home out of her sight. As a result, F became concerned that the defender would try to take him away from the pursuer. In August 2024, the defender and J drove past the end of the cul-de-sac in which the pursuer and F reside. They saw F playing there. The defender stopped, opened his window, and called over to F. F immediately became very upset and advised the defender that he did not want to speak to him and did not want to go away with him. F was consoled and taken home by the pursuer's neighbour K.

22. The incident caused the pursuer to raise these proceedings on 28 August 2024 and to seek a residence order in relation to F. On 23 September 2024, the defender lodged a Notice of Intention to Defend, in which he intimated that he intended to seek contact. The pursuer advised F of the defender's intention.

23. On 8 January 2025, the head teacher at F's primary school prepared a well-being wheel with him. F advised her that he felt safe with the pursuer, her partner L and his

siblings. He said that he knew the defender was seeking contact with him and, without prompting, stated "I don't want to see dad".

24. On 14 January 2025, the court appointed a child welfare reporter to take F's views. The reporter met F at school on 23 January. F advised him that he did not want to see the defender. He said that the defender shouted at J during contact visits, that J's son told him that he heard the defender and J having intercourse one evening, that the defender was "mean" to him and the pursuer and that the defender kept him away from the pursuer for about 3 weeks just before his birthday one year. F subsequently expressed similar views to the pursuer's partner L. The views which F expressed were influenced by the pursuer. They were neither maturely nor independently formed.

25. Between January and April 2025, F displayed violent and aggressive behaviour at school, during which he threw items and tipped over furniture. His school held periodic Team Around the Child meetings to discuss his needs. F was given an alternative timetable and a reward chart to assist his motivation. Number 6/4/7 of process is a report from his school dated 19 June 2025 which accurately records the difficulties which he exhibited and action taken by the school to address them.

26. It is unlikely that F's views have changed since January 2025. It would be impracticable to take his updated views as to do so would risk his behaviour deteriorating again and upsetting him.

27. On 30 June 2025 the defender and J saw the pursuer near her home in Dundee. The defender made disparaging and abusive comments about the pursuer. A video recording of the incident forms number 5/4/12 of process.

Finds in Fact and in Law:

1. It is in F's best interests and would promote his welfare to continue to reside with the pursuer;
2. It would be better than not for F that an order be made to that effect;
3. Contact with the defender would not be in F's best interests and would not promote his welfare;
4. Sustains the pursuer's first and third pleas-in-law and repels all other pleas and in terms thereof grants an order providing that F reside with the pursuer and refuses the defender's crave *in hoc statu*; finds no expenses due to or by either party.

Introduction

[1] The disputed issue in this case was whether contact should resume between the defender and F, having last been exercised in June 2022. The pursuer's crave for residence is not opposed. I am satisfied such an order would promote F's welfare.

[2] Proof was heard in person on 20 October and 19 November 2025. Some evidence, including the views which F expressed to a child welfare reporter, was agreed in a joint minute of admissions. It was also agreed that the defender should lead. Each witness adopted an affidavit sworn in advance, gave further oral evidence and was cross examined. Both parties gave evidence. In addition, the defender led J and her grandmother. The pursuer led her partner L, her neighbour K and from the head teacher at F's Primary School. Written submissions were lodged after conclusion of the evidence.

Defender's submissions

[3] The defender held parental rights and responsibilities in relation to F. They included a right to direct contact, which generally promoted a child's welfare (*White v White* (2001) SC 689). As previous contact was successful, it should be reintroduced.

[4] The defender was not responsible for the break in contact. The pursuer rejected his informal request for contact before 2021, unilaterally ceased contact in 2022 and thereafter refused to reinstate it. That flew in the face of the enjoyment which F derived from contact, and the relationships which he developed with the defender, J, her children and, latterly, his newborn sibling. The pursuer's decision was borne of the anger she displayed when the defender returned F later than she wished following a successful period of residential contact. Both parties could have handled that difficulty better. Such a minor disagreement ought not to have caused contact to cease.

[5] The pursuer's other reasons for stopping contact were spurious. Her belief that contact was not operating successfully was unfounded. Text messages between the parties in 2022 suggested the contrary. Her references to historic domestic abuse were unfounded. Even if they were true, the issue was superseded when contact was successfully introduced. Neither the school visit in August 2023 nor the incident on 3 August 2024 were particularly relevant to determination of the issue. The views which F expressed did not reflect his feelings when contact ceased, which were more accurately reflected in his comments to the pursuer in the video recording taken by her ex-partner. F's views reflected the pursuer's irrational concerns: as the child welfare report stated "unsurprisingly, he follows her views about contact". That conclusion was also supported by the video recording and the text messages between her mother and J.

[6] Broadly similar difficulties and considerations led the court at first instance in *White* to award contact, a decision which was upheld by the Inner House although 5 years had by then passed since contact was exercised. As the defender no longer worked, he would be able to exercise any contact offered.

Pursuer's submissions

[7] On disputed areas, the pursuer's evidence should be preferred to the defender's. The evidence of F's head teacher was largely unchallenged. The evidence of L was both credible and reliable. The evidence led from the defender's witnesses should be ignored, as it was historic and irrelevant.

[8] Contact was not in F's best interests and should be refused. F clearly told the child welfare reporter that he did not want to see his father. He expressed similar views to his mother, L and his head teacher. By seeking contact, the defender sought to put his interests before F's. F's views should be the court's primary focus (*Shields v Shields* (2002) SC 246; *Woods v Pryce* (2019) SLT (Sh Ct) 115).

[9] While contact took place between 2021 and 2022, the pursuer terminated it as F regularly disclosed issues during contact, as the defender often failed to attend for it or regularly changed the times at which it was due to be exercised. Those difficulties came to a head when the defender returned F late on 26 June 2022.

[10] F was 7 years old when contact was last exercised; he is now 10. The defender took no formal steps to seek contact for over 3 years after the parties separated and for 2 and a half years after it ceased. It would be detrimental to force F to attend contact now.

[11] Any award of contact risked the defender further abusing the pursuer. There was clear evidence that abuse occurred, in particular the decree for interdict and power of arrest

which the pursuer obtained. The pursuer gave evidence that she continued to be fearful of the defender.

Agreed context

[12] Although each party at times argued black to the other's white, a good deal of their evidence was actually agreed or undisputed.

[13] F has resided with the pursuer since the parties separated in 2018. No contact between F and the defender was then agreed. However, F asked for contact with the defender after they met by chance in July 2021, to which the pursuer agreed. Regular residential contact was then exercised until July 2022, when the pursuer terminated it. Immediately before and after termination, the parties exchanged text messages. No contact has taken place since.

[14] In March 2023, the pursuer raised proceedings against the defender seeking a non-molestation interdict and a power of arrest. A month later, the pursuer's former partner sent J a video recording of the pursuer speaking to F at their home. In August that year, the pursuer posted a social media message which stated F was being bullied at school, which caused the defender and J to attend the school. During that visit, they unexpectedly met F. In the following weeks, J exchanged text messages with the pursuer's mother.

[15] In November 2023, the pursuer obtained decree in absence against the defender in the interdict action.

[16] In August 2024, the defender saw F playing in the street near to the pursuer's home and spoke to him, which caused F to become very upset. The pursuer raised these proceedings soon after, which led the defender to counterclaim for contact.

[17] F suffers from behavioural difficulties, which he has displayed at the pursuer's home and at school. He has repeatedly stated to his head teacher at school and to the child welfare reporter that he does not want to see the defender.

Reasons for findings in fact on disputed areas

[18] The disputed evidential issues came to be whether: (i) the defender subjected the pursuer to abuse before and after their separation (ii) the defender retained F after a contact period in January 2022 (iii) either party caused contact to break down in June 2022 (iv) the defender has regularly attended the area around the pursuer's home (v) when they attended F's school, the defender and J had arranged an appointment in advance and whether they met the head teacher and (vi) the pursuer influenced F's views.

[19] On the first issue, the pursuer said that the parties separated in 2018 after the defender repeatedly assaulted her by shooting her with an air rifle and by punching her to the stomach and face when she was pregnant. She miscarried soon after. After the defender learned where she resided, he repeatedly attended the area around her house. The defender denied all those points. On that issue, I preferred the pursuer's evidence to the defender's. The pursuer's evidence was given in an entirely credible manner and was supported by related circumstantial evidence. She required to raise interdict proceedings as a result of the abuse. They were not defended. The abuse led her to consult Women's Aid, who assisted her to relocate twice to avoid the possibility of further abuse. The defender admitted he repeatedly attended the area around her house. The texts between the parties which he lodged conveniently omitted those which disclosed further abuse. The video recording which he took of the pursuer in June 2025 also showed him abusing the pursuer.

[20] On the second issue, the pursuer alleged that the defender caused difficulties by repeatedly returning F late after contact and by changing contact dates. In January 2022, he retained F for an extended period without her consent and refused to return him until he received an e-mail from her solicitor which requested he did so. The defender denied any timing difficulties; he also said that in January 2022, F tested positive for COVID during a contact period. As, J was then shielding from COVID during the late stages of a difficult pregnancy, he contacted the pursuer and asked her to pick up F. However, as she refused to do so, F required to isolate with him for 10 days. On that issue, I preferred the defender's evidence to the pursuer's. The pursuer did not refer to the January 2022 incident on record or in her Affidavit and only raised it in her oral evidence. She did not lodge the e-mail from her solicitor to which she referred. When pressed in cross-examination, she conceded that F had COVID in January 2022, that the defender asked her to pick him up and that she was unable to do so as she was away for the weekend. As it is accepted that J gave birth the following month, it follows she was then vulnerable. In context, it was reasonable for the defender to ask the pursuer to uplift F. However, as she was unable to do so, the defender required to isolate with him.

[21] The evidence of the third issue needs considered more carefully. On record, the pursuer averred, and the defender denied, that she terminated contact as the defender exercised it erratically, as F was unhappy during it, as the defender did not feed him properly and did not provide him with a bed. However, the pursuer's affidavit and oral evidence was entirely different. She said that she stopped contact following comments made to her by F that: the defender and J had intercourse while he was awake; he slept on a broken camp bed; he saw the defender push the door open while J was naked in the bathroom; he was not allowed to wake the defender in the morning and that J looked after

him while the defender was at work. In his evidence, the defender maintained contact was wholly successful, none of the difficulties the pursuer referred to in evidence occurred and that she stopped contact as he returned F to her later than she wanted on 26 June 2022.

[22] Some of the defender's evidence on the issue lacked credibility and reliability. He could not have known what, if anything, F heard while he was in bed during contact.

Though he accepted that he sent the text messages to the pursuer, that he did not defend the interdict action, that he continued to attend the area around the pursuer's home and was abusive to her in the video recording taken in June 2025, he refused to accept they evidenced a continued established course of abuse towards her.

[23] The pursuer's evidence on the issue appeared to entirely lack reliability and credibility. She largely departed from her case on record. She led no evidence that the defender fed F erratically. Her evidence that the defender exercised contact erratically appeared undermined by her text messages to the defender requesting F spend more time with him. In cross, she often gave angry, emotive responses to questions which she appeared to think caused her difficulty. The text messages did not support her averments or evidence. She refused to accept that the "sexual intercourse" and "bathroom door" incidents might have arisen innocently.

[24] However, other factors suggested some weight could still be attached to what the pursuer said. She could hardly be expected to regard the defender's actions objectively a result of his abuse. She did agree to contact when F requested it and facilitated it for over a year. She said she suffered from mental health problems. The emotion she showed in evidence could have been a consequence of her then being pregnant.

[25] One point did become clear - both parties contributed to the dispute on 26 June 2022. The pursuer's expectation that F would be returned at 5.00pm was unfounded as no return

time was agreed in advance. Equally, the defender did not advise the pursuer that he had arranged a pre-birthday tea for F and, when the pursuer queried that in the text messages, his responses were unhelpful and appeared designed to create a dispute. Otherwise, I am satisfied that neither party's evidence on the issue can be relied upon. However, as discussed below, some conclusions can be drawn.

[26] On the fourth issue, there was ample evidence that the defender repeatedly attended the area around the pursuer's home before and after she obtained the interdict against him. The pursuer's evidence that he did so was credible and reliable in itself. The defender also stated in his affidavit that he saw F on 3 August 2024 when he "was driving past the street which turns into" the pursuer's home and accepted that he took the video recording of the pursuer on 30 June 2025 near her home. There was no apparent reason for him to be anywhere near the pursuer's home, which is situated on the northern outskirts of Dundee, some distance from his home and any major road he might be expected to travel on.

[27] On the fifth issue, it is admitted the defender attended the school soon after the pursuer's social media post. I accept the defender's evidence that he did so through concern for his son's welfare. It is agreed that when he did, he and J met F unexpectedly and that F showed no adverse reaction. However, as both issues are irrelevant to F's welfare, it is unnecessary to determine whether or not the meeting at the school arose by appointment and whether the head teacher was present.

[28] On the sixth issue, the evidence clearly showed that F's views were influenced by the pursuer. I discuss that further below.

[29] I have attached no weight to the text messages between J and the pursuer's mother and the video recording taken by the pursuer's ex-partner. Neither the pursuer's mother nor her ex-partner gave evidence. The pursuer freely accepted that she does not have good

relationship with her mother. It is almost impossible to hear what is said in the video recording. Neither the pursuer nor F can be seen in it.

Decision and reasons.

[30] Contact with the defender could benefit F. In 2021, it was exercised regularly and successfully for extended periods. It was then introduced without difficulty after a significant gap. The defender has a settled life and new family, with whom F developed good relations. F did not exhibit behavioural difficulty during contact. There is sufficient accommodation for him at the defender's home. The wording of any order could address the pursuer's concerns about the defender's ability to exercise contact consistently and on time and the likelihood that the parties would not co-operate with one another. Contact would enable F to benefit from the defender exercising the other parental rights and responsibilities which he holds.

[31] However, the defender has not shown any sustained commitment to F. He has never acted proactively to promote F's welfare. Tellingly, all his contact with F took place at or after chance meetings at the car boot sale in 2021, at school in 2023 and near F's home in 2024. The defender only provided support and guidance to F for one year, some 3 years after parties separated. After contact broke down, another 3 years passed before he sought contact. Had he promptly sought contact in 2018 or 2022, any difficulties could have been addressed and possibly overcome. However, he did not. At this stage of proceedings, the court cannot test the water by trialling interim contact (*Ahmed v Iqbal* (2014) WL 2807746 at 29 – 30). The defender also failed to react to the obvious need in 2022 to address F's behaviour and ignored the pursuer's request for his assistance.

[32] The defender's request for contact must also be viewed against his protracted abuse of the pursuer, which the 1995 Act obliges the court to have particular regard when it considers F's welfare (section 11(7A)). Abuse includes violence, harassment and threatening conduct, that conduct includes speech and presence in a specified area (section 11(7C)) and that the court's obligation extends to consideration of the effect of abuse, or the risk of it, on a party's ability to promote a child's welfare (section 11(7B)(d)). In this case, the defender was repeatedly violent to the pursuer in 2018. His comments in at least one of the 2022 text messages and in the 2025 video recording and his conduct which led the pursuer to obtain a permanent interdict against him were all abusive of her. Equally importantly, so were his repeated visits to the area around the pursuer's home, which led her to reasonably fear he would try to make contact with F or remove him. The distress which F exhibited when he saw the defender in August 2024 was a direct consequence of that abuse. As the 2025 video evidenced recent abuse, there is a risk of it may continue. In context, the defender has repeatedly and persistently abused the pursuer for over 7 years.

[33] Sadly, while I have considered F's views, I have been unable to attach any real weight to them. As the child welfare reporter noted, many of them mirrored baseless allegations expressed by the pursuer (lack of feeding, the defender retaining F and unsuitable accommodation), or which appear to have arisen innocently (F hearing intercourse and seeing J naked). Though the court has a continuing duty to know what he thinks at the time it makes an order and take his updated views *ex proprio motu* (S v S at 10), it would be impracticable to take his views again. F is unaware of the wider background to the case brought out in this judgement. Taking his further views would risk another significant deterioration in his behaviour, as occurred immediately after his views were last taken. Only 9 months elapsed between his views being taken and commencement of the

proof. Finally, it is unlikely that F's views have changed, as they were influenced by the pursuer, as he later expressed similar views to L and as there is no ongoing contact.

[34] In summary, it is accepted that F's welfare will be promoted by him continuing to reside with the pursuer. He is happy and settled in her care and likes staying with L and his siblings. The defender has not demonstrated sustained commitment to F's welfare. He also failed to assist F and the pursuer to address F's disruptive behaviour after contact broke down. Contact only ever took place following chance meetings and was not sought for significant periods. There is a clear link between F's disruptive behaviour and contact, as that which he displayed in 2022 and 2025 occurred when contact was being exercised and after he became aware that the defender was seeking its reintroduction. He also displayed extreme distress when he last met the defender. As he has yet to receive expert assistance to enable the reasons for it to be understood and addressed, it is probable that an order for contact would have the same effect. While there is no presumption that contact should be refused as a result of the defender's abuse of the pursuer (*R v R* (2010) WL 2539817 at [27]), it has affected the pursuer's ability to exercise her parental responsibilities in relation to F. There is a risk that abuse may continue. While F's views were influenced by the pursuer and it is impracticable to take his updated views, he has clearly and repeatedly stated that he does not want to see his father. It follows that the defender's crave for contact should be refused.

[35] As agreed, I have found no expenses due to or by either party.