

Appeal by Stated Case under s163(1)(a)(iii) of the Children's Hearing (Scotland) Act 2011 by Gordon Brechin, Locality Reporter Manager, Scottish Children's Reporter Administration against LO and EO

Case Ref No: XA3/24

Date of Hearing: 26 February 2025

Division and Senators: Extra; Lords Malcolm and Doherty, Lady Wise

Livestreamed Hearing?: No

Agents and Counsel (*if known*):

Appellants

L. Brabender KC; Anderson Strathern LLP

Respondents

J. Scott KC; CSG Legal

Curator *ad litem*

R. Innes KC; Balfour + Manson LLP

Link to Judgment Reclaimed / Appealed (*if available*):

Not available

Case Description:

This case concerns the welfare of a child and as a result some names are anonymised to protect the child's privacy.

It is an appeal by stated case under s163(1)(a)(iii) of the Children's Hearings (Scotland) Act 2011. It is brought by the Scottish Children's Reporter Administration, via their Locality Reporter Manager, Mr Brechin. It concerns the child of the respondents, LO and EO, who is called NO. NO is 13 and has complex needs. He lacks legal capacity.

LO, EO, and NO hold dual Italian and Nigerian citizenship. In 2016 they came to Scotland, and their children (NO and his siblings) were enrolled in school. In February 2017 NO's brother, MO, disclosed to his teachers and social workers he had been physically and emotionally abused by LO and EO over a number of years. In due course, a proof followed in which the two eldest children, P and MO, gave evidence. The Sheriff found "not only on the balance of probabilities, but beyond reasonable doubt" that LO and EO had assaulted their children. A criminal prosecution followed, in which LO and EO were acquitted after P retracted his evidence. Meantime, LO and EO returned to Italy, where they now reside.

A compulsory supervision order was made in respect of NO in 2018. NO resides in Scotland in local authority accommodation, as provided for in the order. In September 2023 the compulsory supervision order was reviewed by the Children's Hearing as required under s125 of the Children's Hearings (Scotland) Act 2011.

The Children's Hearing decided to continue the order. LO and EO appealed to the Sheriff against the decision of the Children's Hearing alleging there had been a procedural irregularity. SCRA conceded the appeal. The Sheriff then had to consider what to do next. SCRA sought a referral back to the Children's Hearing. LO and EO instead asked the sheriff to issue a letter of request to the Italian courts to assume jurisdiction over NO under Article 15 of Council Regulation No. 2201/2003, also known as "the Brussels II recast regulation" or just "Brussels II recast".

The Sheriff agreed with LO and EO, and ordered that a letter of request be issued to Italian courts. He considered that this step was competent and that the Italian courts were "better placed" to determine NO's best interests – the parents could not exercise "meaningful" contact with NO from Italy and there was no risk to NO from supervised direct contact with his parents.

The SCRA now appeal the Sheriff's decision to the Inner House. They argue: (i) That the proper forum to determine whether to issue a letter of request was the Children's Hearing – the Sheriff's jurisdiction when hearing an appeal against a decision of the Children's Hearing is a narrow one and does not extend to a wholesale reconsideration of the merits. The decision of the sheriff was not competent (i.e. he made a decision he did not have the power to make) and (ii)

Even if the Sheriff did have the power to issue a letter of request, his decision to do so was one which no reasonable Sheriff could have made based on the information that was before him. The SCRA ask the court to send the case back to the Sheriff with a direction that the Sheriff order a fresh Children's Hearing to determine whether to continue the compulsory supervision order.

LO and EO resist the appeal. They ask this court to uphold the Sheriff's decision.

Because NO lacks legal capacity but has no legal guardian, the court has appointed a curator *ad litem* – a person to represent his best interests in this litigation.

The SCRA, the parents LO and EO, and the curator *ad litem* will address the court in this appeal.

The appeal will be heard on 26 February 2025 before the Extra Division chaired by [Lord Malcolm](#), sitting with [Lord Doherty](#) and [Lady Wise](#).