

Child Case Law Update

What's new?

Jany's M Scott KC



Westwater Advocates

What's new - domestic abuse?

***SN v JN* [2024] CSIH 33**

(remitted to Inner House [2024] SAC (Civ) 28)

- **Rape allegation was 'justiciable' but not relevant to arrangements for children.**
- **No evidence that children adversely affected by mother's complex trauma.**
- **Status quo of shared care served children's interests**

See also *M v A* [2024] CSOH 38.

What's new – contact orders?

***ID v KC* [2023] SAC (Civ) 30**

Sheriff made no finding of sexual abuse of child, but reasonable for mother to have been concerned. Contact order made.

Appeal refused. No risk to child established. Child keen to see father.

***LM v GR* [2024] SAC (Civ) 32**

Ten years, 70 hearings, distressed child. Sheriff drew a line at child welfare hearing. Appeal refused.

***M v E* [2024] SC ABE 7**

17 failed contacts, 3 proof diets, 2 solicitor resignations - contempt.



What's new – parent in custody?

***AB v CD* [2024] SC KDY 2**

Carefully reasoned first instance decision in application to remove PRR from abusive parent in custody.

***PL v SD* [2024] SAC (Civ) 33**

Mother's appeal against video contact with father in custody refused

What's new – relocation?



R v S [2024] CSOH 21

- Relocation to Australia – father on bail for abuse.
- Best interests paramount, no leaning in favour of rights and interests of others, no checklist, fact-sensitive.

M v A [2023] CSOH 80

- Father sought order to force (Latvian) mother to relocate from Aberdeen to Glasgow. Refused.

W v W [2023] CSOH 72

- Mother sought orders to allow her to return with child to France. Father had consented, but withdrew consent. Shared care. Adverse effect on relationship with father.

What's new – child abduction?



***TS v S* [2024] CSIH 24**

- **Child aged 8 wrongfully retained by father in Scotland objected to return to mother in Russia. Lord Ordinary exercised discretion in favour of refusing return. Appeal refused.**

***FPS v SM* [2024] CSIH 20**

- **Spanish court decided children aged 13 and 8 should live with father in Spain. Children refused to return to father after holiday with maternal grandparents and mother. Lord Ordinary refused return.**
- **Appeal refused. 1996 Hague Convention may be relevant but not determinative in this case.**

See also *Petition of JL* [2024] CSOH 24. Grave risk of mother's suicide.

What's new – permanence orders?

East Lothian Council v L [2023] SAC (Civ) 1

- Child age 11/12, permanence order, no adoption, sheriff reduced contact with parents from fortnightly to bi-annual.
- No confusion with post-adoption contact, welfare grounds, no violation of ECHR Art 8

Glasgow v M 2024 SLT (SAC) 159

- Child age 16, no parental right of residence, no permanence order.

See also *JM v KB and EH* [2024] SAC (Civ) 36 re child age 16.

What's new – parental orders?

AB and XY, Petitioners [2023] CSOH 46

- **Twins born of surrogacy arrangement. Petitioners separated. Application late (>6months after birth).**
- **Order granted.**

Petition for a Parental Order in relation to A [2024] SC EDIN 29

- **One petitioner died. Application late (>6months after birth).**
- **Order granted in favour of both petitioners.**

What's new – human rights?

Y as legal rep of B, X, Y and Z v NHS Grampian [2024] CSOH 72

- Allegation of FII by paediatricians led to CPO and referral, ICSOs over period of 10 months.
- Reporter decided case could not be established.
- Child, parents and siblings claimed under ECHR Art 8.
- Different from PI claim ✓
- Interference ✓ Causation ✓
- Failed on facts - there was a sufficient basis for doctors to assert FII diagnosis

See also *F v Moray Council* [2024] SAC (Civ) 27

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