OUTER HOUSE, COURT OF SESSION

[2023] CSOH 80

F98/22

OPINION OF LORD STUART

In the cause

M

Pursuer

against

A

Defender

Pursuer: Laing; MacRoberts LLP
Defender: Morgan; Rutherford Sheridan

16 November 2023

Introduction

[1] This action concerns the care arrangements for the parties' two children, born 17 June 2019 and 3 December 2020. Both parties seek various orders, some competing. Whilst, when applying the relevant test, different children within a family must be considered from the perspective of their particular needs, it is not suggested by either party in this case that the care arrangements for the individual children should differ. Accordingly, I will refer to "the children" throughout. The children currently reside with the defender, their mother, in Aberdeen. The pursuer, their father, resides in Glasgow. The case called before me for proof. The parties invited the court to adjudicate only on the pursuer's conclusion for an

order requiring the children to relocate to reside in the Glasgow area. Thereafter, counsel requested that the court put the case out by order to consider any further orders in light of the court's decision on relocation. Accordingly, this opinion addresses only relocation of the children.

The applicable law

[2] Both parties to this action hold full parental responsibilities and parental rights in respect of the children. These responsibilities and rights are listed, respectively, in sections 1 and 2 of the Children (Scotland) Act 1995. Section 11(1) of the 1995 Act provides that the court may, in the relevant circumstances, make orders in relation to:

(a) Parental responsibilities;

(b) Parental rights;

(c) Guardianship; or

(d) The administration of a child's property.

[3] In terms of orders for relocation, section 11(2)(e) allows the court to make:

> "(e) an order regulating any specific question which has arisen, or may arise, in connection with any of the matters mentioned in paragraphs (a)-(d) of subsection (1) of this section (any such order being known as a 'specific issue order')"

[4] The pursuer's conclusion for an order that the children relocate to reside in the Glasgow area is a conclusion for a specific issue order.

[5] The test to be applied by the court where an order under section 11, including a specific issue order, is sought is set out in section 11(7), which provides:

> "… in considering whether or not to make an order under subsection (1) above and what order to make, the court –

(a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all;

(b) taking account of the child's age and maturity, shall so far as practicable –

(i) give him an opportunity to indicate whether he wishes to express his views;

(ii) if he does so wish, give him an opportunity to express them;

(iii) have regard to such views as he may express."

[6] The children are 2 and 4 years old. Given their age, it is not practicable to have regard to the children's views.

[7] Accordingly, in considering whether to grant the pursuer's conclusion for relocation of the children, the proper approach for this court to take is to consider whether, having regard to the children's welfare as the paramount consideration, it would be better for the children that the relocation order be made than for the court to make no order at all.

[8] Further, any person reaching a major decision involving his or her fulfilling a parental responsibility or exercising a parental right must also have regard, so far as practicable, to the views of any other person who has parental responsibilities or parental rights in relation to the child (section 6 of the 1995 Act).

[9] The applicable law governing the approach that courts in this jurisdiction must take to relocation is settled. In *M* v *M* 2012 SLT 428 a mother sought an order permitting her children to relocate to England to live with her. The father opposed relocation on the basis that the link between a child and their natural parent was so important in itself that it should be preserved. In addressing the proper application of the section 11(7) test, Lord Emslie, giving the opinion of the court, cited Lord Hope from *Sanderson* v *McManus* 1997 SC

(HL) 55. In *Sanderson*, an unmarried father sought access to his son (now contact). In considering the test under section 3(2) of the Law Reform (Parent and Child)(Scotland) Act 1986, the precursor to section 11(7), Lord Hope said:

> "In my opinion the effect of sub-section (2) is clear. The court is given a wide discretion as to the considerations pointing one way or the other which it may take into account. But all other considerations must yield to the consideration which is stated by the sub-section to be paramount, which is the welfare of the child. As it is told that it 'shall not' make any order relating to parental rights unless it is satisfied that 'to do so' will be in the best interests of the child, the onus is on the party who seeks such an order to show on balance of probabilities that the welfare of the child requires that the order be made in the child's best interests.
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> …
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> The natural relationship is a fact of life which it will always be proper to take into account. But the importance which is to be attached to it must vary according to the circumstances. This is a matter which must be decided not by applying any presumption but upon an evaluation of the evidence. *As with any other factor* which the court is asked to take into account, the question is whether contact with the parent has something to offer which is likely to be of benefit to the child's welfare. This question must be examined from the point of view of the child. ... Whatever the view which is taken on this matter in the light of the evidence, the child's welfare is paramount. The decision of the court will depend on its analysis of all the factors which bear on the question what is in the best interests of the child." (my emphasis).

[10] Having cited these passages from *Sanderson* Lord Emslie, in *M* v *M*, stated:

> "On the binding authority of the decision in *Sanderson*, it can in our opinion be said with confidence that the requirements contained within section 11(7) of the 1995 Act effectively preclude reliance on any presumptive rule or guideline tending to favour the wishes or interests of either parent. … Moreover, the weight to be given to such wishes or interests must, *as with any other factor*, be such weight as the court deems appropriate in the particular circumstances of an individual case. In the end, the welfare and best interests of the child or children concerned are paramount, and fall to be judged without any preconceived leaning in favour of the rights and interests of others." (my emphasis).

[11] Here "best interests" is used synonymously with welfare and the tests set out in section 3(2) of the 1986 Act and section 11(7) of the 1995 Act.

[12] The above approach was confirmed by Lady Smith in the case of *Donaldson* v *Donaldson* 2014 Fam LR 126 (Inner House) at paragraph 27 (albeit obiter) when her Ladyship said:

> "Since the decision of this court in the case of *M* v *M* it has been clear that, on an issue of relocation, it is no part of our law that a judge requires to regard any particular factor as having greater weight than any other. It would, for instance, be wrong to proceed on the basis that there is a rule that the most crucial assessment required is as to the effect that a refusal of the relocation application will have on the applicant. This is often conveniently described as a 'presumption free' approach; it accords with the court's duty to regard the welfare of the child as the paramount consideration. That is not to say that, in an individual case, there may not be features which are of particular importance when considering the welfare of the individual child concerned. The availability in each jurisdiction of some particular medical treatment or educational provision that the child requires would be an example. Much will depend on the facts of each case."

[13] The above position differs to the approach in England where the reasonable plan of a parent with sole primary care of a child, including the effect of the refusal of an application to relocate by that parent, has been a material factor (*Payne* v *Payne* [2001] 2 WLR 1826). Such an approach forms no part of the law of Scotland.

[14] Finally, in questions of relocation it is neither instructive nor appropriate to try to formulate any preconceived list of applicable factors. Relocation cases are fact sensitive and scrutiny of the particular circumstances of the dispute and the child, all within the context of section 11(7) as outlined above, is what matters (*Donaldson* v *Donaldson*; *GL* v *JL* 2017 Fam LR 54).

Submissions

[15] The pursuer does not challenge that the children should continue to reside with the defender. In support of his conclusion for relocation of the children, Mr Laing focused his submission around 13 evidential considerations. Prior to December 2021 the children were

habitually resident at the family home in the Glasgow area, where the pursuer was "significantly" involved with the children's care. The pursuer's reasons for seeking relocation were his desire to be actively involved in the children's upbringing, including their education and health. In terms of affordability, the court could be satisfied that the defender finding accommodation in Glasgow was not an insurmountable barrier. The defender's mother could offer financial support and the pursuer's mother could help with removal costs and a deposit for a flat. If living in Glasgow, the travelling time undertaken by the children would be significantly reduced and this would allow more time for the pursuer to spend with the children. That would be less stressful for the children. Since the children have been in Aberdeen, the pursuer has had little involvement with the children's health and education decisions. That would be easier if the children resided in the Glasgow area. In terms of education, the children will experience a change in nursery in Aberdeen, including a loss of friendships and acquisition of new ones. The defender has identified Green Apple Nursery as a suitable nursery for the children, which is sufficiently close to his home. It was important to note that if the children attended the Green Apple Nursery they would remain together for a further year, which would not be the case in Aberdeen. The children had demonstrated that they were capable of adapting to change. The defender had conceded in cross-examination that it would be possible for her to work in Glasgow but in a different role. The court is invited to reject any contention that the defender could not find work in Glasgow and continue her role as carer for the children. The court should reject the defender's evidence that relocation to Glasgow would prevent the children maintaining their Latvian links in Aberdeen. There was no barrier to the children attending the Latvian school in Aberdeen if based in Glasgow. The children could engage with their Latvian peers by video call. The children would be able to spend more time with their paternal family in

Glasgow, who could also provide support for childcare to the defender. The lack of childcare available in Aberdeen is likely to have an adverse effect on the children in the long term. The children's maternal family could visit them in Glasgow.

[16] Ms Morgan, on behalf of the defender, submitted that the order for relocation sought disrupted the status quo, which had been in place since September 2022. The defender had employment in Aberdeen. Her terms and conditions of employment were such that the defender could meet her childcare responsibilities, pay for private rented accommodation and meet nursery fees. There was no guarantee that the defender would obtain similar employment in the Glasgow area. The defender's immigration status meant she could only claim Universal Credit if in employment. In Aberdeen the children had security and stability. They had places at nursery, which was a short drive from their house. They had an enclosed garden. They had friends, both from school and from the Latvian community, with whom they enjoyed playdates. The children were able to spend time with their maternal and paternal families on a regular basis, irrespective of living in Aberdeen. There was no dispute that this would continue if the children remained in Aberdeen. Uprooting the children's lives in Aberdeen would not be in the children's best interest. Whilst it was accepted that, if living in the Glasgow area, the children would likely have more contact with the pursuer, there was no evidence to suggest that the pursuer did not already have a strong relationship with the children and no evidence that that relationship would suffer if the children continued to reside in Aberdeen. Further, there was insufficient information before the court about what life would look like for the children were they to relocate to the Glasgow area. For example in relation to where the children might live, or how much such accommodation would cost, or what employment might reasonably be available to the defender given her inability to simply transfer offices, or difficulties arising from her

immigration status, all of which would materially impact on the defender's ability to care for the children. In all the circumstances, the pursuer had failed to discharge the onus on him to demonstrate that, having regard to the welfare of the children as the paramount consideration, it would be better to grant the order for relocation than no order be made at all.

The evidence in connection with the issues before court

[17] The issue before me relates to relocation of the children to the Glasgow area. Oral evidence was taken from the pursuer and a number of his family members, each supplementing affidavits lodged. Oral evidence was also taken from the defender, again supplementing an affidavit. In respect of a number of other witnesses, joint minutes of agreement were entered into agreeing that their affidavits be treated as the witnesses' unchallenged evidence. Having reviewed this evidence, it seems to me that it fell into seven broad areas. These largely mirror Mr Laing's evidential considerations and are:

1. The pursuer's reasons for seeking relocation
2. The care of the children, their development, health and education, including the parties' contributions to the children's upbringing before and after 4 December 2021
3. The parties' respective employment
4. The parties' respective accommodation
5. Travelling and time spent with the pursuer
6. The importance of and engagement with the Latvian community
7. Family and other support

[18] In terms of a joint minute of agreement it is agreed that the children's mother is a Latvian national. The parties were friends before entering into a relationship in 2017. Prior to 4 December 2021 the parties and children resided at the Glasgow address at which the pursuer continues to reside. Prior to 4 December 2021 the children were registered with medical and dental practices in the Glasgow area. On 4 December 2021 the defender took the children to Latvia with the consent of the pursuer. Between February 2022 and 13 September 2022 the defender wrongfully retained the children in Latvia, returning to Scotland on 13 September 2022. Since their return to Scotland the defender and the children have resided in Aberdeen. Prior to January 2023 the pursuer had intermittent contact with the children. Between January 2023 and April 2023 the pursuer had residential contact with the children every other weekend. From April 2023 the pursuer has had residential contact with the children every other weekend and indirect contact by way of a video call on a Thursday evening.

[19] Turning to the first of the identified areas of evidence, the pursuer' reasons for seeking relocation of the children. In his affidavit the pursuer states he "would like to be able to co-parent with" the defender. That was echoed in his oral evidence. I accept that the pursuer would like to do so. As matters stand, the pursuer says, he has limited scope to be involved in the children's education and health. The defender does not challenge that it would be in the children's interests to have their father in their lives in a meaningful way. Indeed, the evidence before the court supports that the defender has, since returning to Scotland, taken steps to facilitate meaningful contact between the pursuer and the children. At various parts of his affidavit however the pursuer states "it would be better for the boys if [the defender] and I lived closer together so [the children] don't have to travel to see me … This is one reason why [the defender] should move back to Glasgow with the children" and

"I am wanting to be involved with my children and if they lived closer to me then I can be more involved and see them more often." The above comments by the pursuer are examples of a perspective where the pursuer appears to put his own desires before an objective consideration of the children's needs and welfare. It was notable and instructive that when asked in evidence what he would do if the children remained in Aberdeen in the long term, the pursuer replied, without any real hesitation or apparent concern, he would have to think about moving to Aberdeen. He then expressed the view, more by way of afterthought, that that might be difficult as he would have to sell his house. But as discussed below, the house is held in a family trust for his use. Further, his employment, again discussed below, in contrast to the defender's, is temporary. In the end, I was left with the impression that the pursuer appeared to confuse a desire to co-parent, largely on what appeared to be his own terms, with an objective assessment of how that could or should be achieved having regard to the welfare of the children as the paramount consideration and I found little in the evidence of the pursuer's reasons from which to draw a favourable inference in support of meeting the test for relocation.

[20] In terms of the parties' respective employments, the defender is employed by a UK company operating in the IT and Telecommunications field. Currently, she has a role as a business development manager and is on a career progression programme with the aim of being promoted to the position of Account Manager by the end of 2023 or beginning of 2024. She is on target to achieve this. This would provide a pay rise and higher commissions. Within Scotland the company operates in regions, with offices in Aberdeen and Glasgow. The defender works in the Aberdeen region. This region has a discreet client base. On promotion the defender would work within the Aberdeen region client base. The defender's

current position on the career development plan could not be transferred to the Glasgow region. Any move to Glasgow would require the defender to obtain different employment.

[21] Prior to March 2020 the pursuer worked as a chef. During the Covid pandemic the pursuer was put on furlough and subsequently his employment was terminated. He does not intend to return to that line of employment. In what appears to be around November/December 2020 the defender assisted the pursuer to obtain employment within the company she worked with. The pursuer currently works assisting a friend who is a landscape gardener. He had been doing this for a couple of months at the date of his June 2022 affidavit. The role is temporary. His intention is to find employment that allows him to be an active parent. Beyond this the pursuer provided no specification of the type of employment he proposed to find. The evidence in relation to the parties' respective employment demonstrates that the defender is in secure employment in Aberdeen, with good prospects, and is able to provide the children with security. In contrast, there is no basis in the evidence that the pursuer is in a position to do likewise.

[22] In terms of the parties' respective accommodation, the defender currently resides in a privately rented, end terrace house with an upstairs and downstairs. It has adequate space for the defender and the children. It has a large, enclosed private garden to the rear and garden to the front. The house is located around a 10 minute drive from the children's current nursery and the defender's work. It is located near Kincorth Hill Nature Reserve. The witness JW in her affidavit comments positively about the defender's house.

[23] The pursuer resides in a spacious house. The pursuer, defender and older child moved to the house in November 2020. The younger child was born in December 2020. The defender and the children resided at this house until they went to Latvia. The house is located at a suitable distance from nurseries and other amenities. The house was purchased

by the pursuer's parents, is mortgage free and held in trust for the pursuer's use. The reasons for this were not explained in evidence by the pursuer.

[24] In relation to travelling and time spent with pursuer, the current arrangements mean that the children travel for six hours every other weekend for direct contact with the pursuer in Glasgow; three hours each way. This reduces the time the pursuer and the children can spend together engaged in meaningful activities. I note the pursuer states in his affidavit "it would be better for the boys if [the defender] and I lived closer together so [the children] don't have to travel to see me." I agree that it is not in children's best interests for them to spend considerable time travelling between Glasgow and Aberdeen facilitating contact with the pursuer and that if the children lived closer to the pursuer, less time travelling might well mean more time together. But I also note the witness JW's unchallenged evidence that "It took [the children] a while to settle in Aberdeen. Now they are settled, in a good routine and doing well." I have discussed the parties' respective employments and accommodation above. I note that the children's paternal grandparents, live in St Andrews, equidistant between Aberdeen and Glasgow. In what I consider to be an important passage of oral evidence, the pursuer was asked what he would do if the children remained in Aberdeen in the long run. I noted him to reply that he would have to think about moving to Aberdeen, suggesting that that might be difficult as he would have to sell his house. However, the house is not, in fact, owned by the pursuer. Rather, it appears to be held in trust having been purchased by the pursuer's parents as discussed above. As with other aspects of his evidence, the pursuer's position here is very much from his own perspective rather than from the perspective of the welfare of his children. On the evidence before me, in relation to the question of the children travelling, from the perspective of the welfare of the children,

there seems little to prevent the pursuer moving to be near his children and much to suggest that the children should not be moved.

[25] The parties agree that it is in the best interest of the children that they understand and participate in their Latvian heritage. Part of the defender's reasoning for returning to Aberdeen was the presence of an established Latvian community there. That community allows the children to engage with their Latvian heritage and provides the defender with some support. The children attend a Latvian school in Aberdeen, although not on a frequent basis. The children have made friends with other children from the Latvian school and they have had play dates. The Latvian community also arranges events that the children can attend. In Aberdeen the children benefit from engagement with both Scottish and Latvian traditions. Glasgow does not have an equivalent Latvian community. The pursuer identified the opportunity to receive privately funded lesson in Latvian in Glasgow and suggested that the children would be able to travel from Glasgow to Aberdeen to attend the Latvian school. Such proposals by the pursuer are, in my judgement, further examples of the pursuer's tendency to interpret matters from the perspective of his own desired outcome rather than the children's perspective. It seems to me self-evident that the proposals suggested by the pursuer would provide a poor substitute for living and being immersed within an active community.

[26] Turning to the issue of family and other support. Insofar as interacting with wider family members, the evidence supports a submission that were the children to reside in the Glasgow area they would have the potential to see more of their wider paternal family. Whilst the extent to which that potential would actually materialise was not explored in any detail in the evidence, I am prepared to accept that if located in the Glasgow area, the children are likely to see more of their paternal family. The children's paternal grandparents

live in St Andrews and own a flat in Glasgow. The evidence was that St Andrews is equidistant between the parties, so when the paternal grandparents are at home, there is less force in a submission that living in the Glasgow area will provide greater opportunity for their support. The defender's mother and other family members travel from Latvia every couple of weeks to see the defender and the children and stay for between a couple of days and a week. I find this evidence neutral to the question of relocation because the defender's family would most likely visit wherever the defender and children were located.

[27] In terms of providing support for the children, the primary responsibility for the care and upbringing of the children lies with the parties and not others, whether family members or otherwise. That said, almost all parents need some help or support from time to time and here the availability of support, whether family or friends, is relevant. The evidence suggests that the pursuer's parents have provided, and continue to provide, some support to the pursuer and children. The pursuer's mother gave evidence that, whether at their flat in Glasgow or in St Andrews she provided support to the pursuer and the children. She also said in evidence that she would support the defender and the children in Aberdeen. The pursuer's sister's evidence was that she had looked after the children on three occasions, the last being around early 2021. When asked in evidence what practical support she might offer to the defender, she gave as examples cooking, job interviews and flat viewings. The pursuer's brothers' evidence did not address the question of support for the parties and the children. The pursuer's aunt's affidavit stated that she lives close to pursuer and would support the parties and the children if asked to do so.

[28] As noted above in relation to visiting the defender and the children, whilst the defender's family members' evidence was that they would travel to Aberdeen to support the defender and the children, they would most likely travel to Glasgow to provide such

support, so, again, the evidence is neutral on the issue of support. Beyond support from family members, the defender's evidence was that the Latvian community in Aberdeen has a support network, which did not exist in Glasgow.

[29] Turning to the care of the children, their development, health and education, including the parties' contributions to the children's upbringing before and after 4 December 2021. This conflates a number of the separate areas identified by counsel in his submission on behalf of the pursuer. I address these issues this way for two reasons. Firstly, the pursuer asserts he was "significantly" involved in the children's care before 4 December 2021 and from this he asks the court to infer that he will be again if in a position to do so. Secondly, it seems to me that an assessment of the care of the children, their development, health and education is, to some extent at least, dependent on the factors identified above and are best considered in the round and against the background of those factors.

[30] The parties' agreed position in evidence was that the defender ought to be the children's primary carer. That is therefore the starting position for a consideration of the parties' respective contributions to the future care of the children, their development, health and education.

[31] The pursuer's behaviour and the extent of his contribution to the care of the children before 4 December 2021 are matters of significant dispute. The defender stated that the pursuer had a significant problem with drinking alcohol, which continued throughout their relationship. He would drink late after work. On occasions he would miss the following day's work and this caused him to change jobs. He would have frequent blackouts. After the birth of the parties' older child, the pursuer helped for a few weeks but then began to go out more in the evening and come home drunk. The pursuer's behaviour became increasingly controlling. He was often angry and verbally abusive towards the defender. In

February 2020, towards the end of the defender's maternity leave, the defender's mother stayed with the parties to help for around four months. In March 2020, as a consequence of the pursuer's intoxication and aggressive behaviour, the defender, her mother and the eldest (and then only) child were forced to leave the parties' flat and spend the night in a hotel. In December 2021, just before the defender left for Latvia there was a further event when the pursuer was aggressive towards the defender and her mother.

[32] The defender's mother's affidavit is agreed to be unchallenged evidence. It contains part hearsay and part first hand evidence. Following being contacted by the defender in November 2019, the defender's mother visited the parties. She witnessed the pursuer having been on a "drinking streak". The pursuer's eyes were red, his hands were trembling and he was shouting and yelling at the defender. The pursuer's parents were present and his father was angry with the pursuer. The defender's mother's affidavit refers to her stay with the parties in the spring of 2020. She states that she witnessed the pursuer's drinking, anger and disrespectful, aggressive and irritable behaviour. She makes reference to the incident in March 2020 when she, the defender and the parties' eldest child were forced to stay in a hotel overnight as a result of the pursuer's behaviour. Around a month before the defender and the children went to Latvia in December 2021, the defender's mother visited the parties. She states that she again witnessed the pursuer's constant drinking, aggression and throwing tantrums. She states that during the month she stayed, communications about money issues were a constant problem.

[33] The defender's sister also prepared an affidavit that is agreed as unchallenged. After the elder child's birth the defender's sister noticed that the defender was becoming harder and harder to reach. The defender was reluctant to talk on the telephone and postponed calls for weeks. When on the telephone the defender would stop their calls abruptly, saying

that the pursuer had come home and that he did not like the defender speaking Latvian. Sometimes on their call the defender's sister could hear the pursuer sounding aggressive and moody, which was alarming.

[34] The pursuer's evidence was that he took the children for walks, took them swimming and shopping, he bathed and changed them, he took them to medical appointments, prepared meals for them, did laundry, cleaned the flat and sterilised bottles. In relation to drinking alcohol the pursuer acknowledged that he did drink from time to time but stated that it did not and does not interfere with his caring for the children. The pursuer acknowledged that the defender had expressed concerns about his drinking alcohol and that he did go to Alcoholics Anonymous at the request of the defender on one occasion. The pursuer's mother gave evidence that the pursuer assisted as per the pursuer's evidence above. The pursuer's mother stated that the pursuer drank alcohol no more than a normal person and that he drank less after the children were born. The pursuer's sister stated that the pursuer would cook, entertain the children and that he undertook a fair split of all of the work of the elder child. The pursuer's brothers and aunt also gave evidence that the pursuer was engaged as a father and that the pursuer would take the children out for walks and take them swimming. The pursuer's siblings and cousins gave evidence that the pursuer did not drink alcohol heavily and that he did not drink around the children. The evidence of the pursuer's aunt and the pursuer's cousins was admitted by way of affidavit only and agreed as unchallenged.

[35] Finally in this regard, is the affidavit of JW, again agreed to be unchallenged evidence. Whilst JW's own knowledge of the defender postdates the period before 4 December 2021, JW's involvement in her role as a domestic abuse support worker with the defender contains support for aspects of the defender's account. It is, of course, possible that

the defender has engaged in a plan of deceit using JW to advance such evidence but that is, in my judgement, unlikely given that the defender was brought to the attention of the Domestic Abuse Team within Aberdeen City Council through a police concern report and referral in October 2022. It was not the defender who initially contacted the police.

[36] In assessing this evidence, subject to the exception below, I accept that the various witnesses sought to tell the truth. However, and perhaps understandably, given the nature of the dispute, I was left with the impression that significant parts of the evidence involved witnesses advancing a "party line". Much of that appeared to have been done by reference to what others, principally the parties, had told them or by drawing inferences from snapshots directly experienced. In these circumstances, in reaching my conclusions on the evidence, I have concentrated primarily on what the various witnesses were able to speak to from their own experience. When doing so, I come to the conclusion that much of the direct evidence is silent on the significant matters at the heart of the dispute in this area. I accept that there were occasions, witnessed by the pursuer's siblings or cousins, where the pursuer engaged with the children and did not drink alcohol. But these affidavits are notably silent on much of the significant matters in dispute. On the other hand, the evidence from the defender's mother, in particular, lends first hand support for the defender's evidence in connection with the pursuer's use of alcohol and negative behaviour. Further, the specific examples relating to the consequences of the pursuer's behaviour finds support in the evidence of the pursuer's mother and brother, for example the need to take refuge in a hotel in March 2020 and the fight between the pursuer and his brother on holiday.

[37] Considering the evidence in the round, on balance, I accept defender's evidence about state of the parties' relationship, the pursuer's drinking and behaviour and the pursuer's contributions towards the care of the children. The exception to my assessment of

the evidence referred to above relates to the pursuer's express denials in connection with his drinking alcohol and his behaviour towards the defender and her mother and his assertions regarding his contributions towards the care of the parties' children. In my judgement, the pursuer's position is not credible. Accordingly, I am not prepared to draw the inference I am invited to do so in relation to the pursuer's asserted contributions towards the care of the children before 4 December 2021.

[38] That said, I do accept the pursuer's evidence that he loves his children and wants to be involved in their lives going forwards and I do think it is in the children's best interests for the pursuer to be so involved.

[39] Turning to the question of nurseries, I accept the Green Apple nursery is a well-regarded nursery but I do not accept that the evidence suggests the nursery currently attended by the children in Aberdeen is inadequate and fails to meet the needs of the children. Likewise, I do not accept that the elder child moving on from nursery for the preschool year is detrimental to either child. Such a move would happen in any event and, as is normal, the child will move on with his, or at least some of his, peer group, as children do throughout their education. There is no evidence to suggest that current healthcare provision for the children is not appropriate. On the basis of the evidence, there is no advantage to the children from the perspective of education or health in relocation.

Conclusions

[40] Drawing together my conclusions based on the evidence before me in relation to the identified areas, in my judgement, the children are well settled in their current circumstances in Aberdeen. They reside in appropriate accommodation. Their mother, who it is agreed should be the children's primary carer, is in good employment in Aberdeen, with

prospects of promotion and is thereby in a position to provide for the children. They attend nursery where they are doing well and they have a secure and identified path forward that they will travel with friends and others known to them. They are part of a community that supports both their Scottish and Latvian heritages where they have friends with whom they play. Their paternal and maternal grandparents either are, or are located so as to allow them to be, a meaningful part of the children's lives. Whilst the distance between the children and the pursuer does have a negative impact on the children's ability to have direct contact with the pursuer, I see no real impediment to the pursuer moving to be closer to his children. He is in temporary employment. The house in which he resides is not owned by him. His own parents, the children's paternal grandparents, with whom he is keen for the children to spend time, live in St Andrews. In short, there is little, if any, benefit in requiring the children to relocate. On the other hand, the evidence demonstrates that there are many reasons to leave the children in their current circumstances and, to the extent the current circumstances could be improved, they could best be improved by the pursuer taking action rather the children. As set out above, the pursuer's perspective appears to be based on his own subjective desires rather than an objective assessment of what is in his children's best interest. In these circumstances, having regard to the welfare of the children as the paramount consideration, it is my clear judgement that it would not be better to grant the order for relocation sought than for no order to be made at all. Accordingly, I refuse to make a specific issue order for the relocation of the children as second concluded for by the pursuer.

Orders and further procedure

[41] In light of the conclusion I have reached in respect of the pursuer's conclusion seeking an order for the children to relocate to the Glasgow area, I repel the pursuer's first plea in law and dismiss the pursuer's second conclusion. In line with the submissions of counsel, I will put the case out to be addressed on further procedure.