SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES & GALLOWAY AT DUMFRIES

[2021] SC DUM 30

F223/17

JUDGMENT OF SHERIFF BRIAN A MOHAN

in the cause

BB

Pursuer and Respondent

against

JT

Defender and Minuter

Pursuer and Respondent: Bryce, JHS Law, Dumfries
Defender and Minuter: Shields, Colledge and Shields, Dumfries

Dumfries 14 February 2020

Introduction

[1] This action concerns a Minute in which the mother of M, aged five, seeks the permission of the court to move to Australia with the child. She lived there previously for a number of years with her partner and their son (now aged 14), who suffers from cystic fibrosis. After separating from her partner, the minuter moved back to Scotland. She and the respondent had a relationship which lasted for just over a year, during which time M was born. The child has lived in Scotland since birth. The respondent exercises contact to his daughter. He is opposed to the relocation.

[2] The Sheriff, having resumed consideration of the cause,

FINDS IN FACT:

1. The defender and minuter (hereafter referred to as the minuter) is JT. She is 37 years of age. She resides at [ ] Dumfries. She is employed as a psychiatric nurse.

2. The minuter lives with her partner PD, their son T (aged 14) and her daughter M, whose father is the respondent. M is aged five and was born on 23 September 2014.

3. The pursuer and respondent (hereafter referred to as the respondent) is BB. He is 39 years old and is self-employed with a carpet cleaning business. He lives at [ ] Dumfries.

4. The respondent lives with his partner HH and their baby. He is the father of M. He has two older daughters from previous relationships. He exercises contact to his daughter L, aged 7. He does not exercise contact to his older daughter K, aged 15. Both of those girls know and have a relationship with M.

5. In 2007 the minuter relocated from Scotland to Brisbane, Australia with her partner PD and their son T, who was then aged two. T has cystic fibrosis, a condition which affects his lungs and general health. The climate and lifestyle which the family enjoyed in Australia were beneficial to T's health and development. The move to Australia was carefully planned by the minuter before she left.

6. The minuter and PD married after they moved to Australia. A few years later they separated, but both continued to live in Brisbane. They lived in the same area of the city and co-parented T. The minuter made annual trips home to Scotland.

7. In around June 2013 the minuter came back to Scotland with her son T to visit family in the Haddington area. She and the respondent had begun a friendship online, and had known each other previously when they were both at school. When

the minuter visited Scotland in June 2013 she and the respondent met and began an intimate relationship. The minuter returned to Australia after a few weeks and the respondent visited her there in or around September 2013 and again a few months later. Their relationship continued, though the respondent had to return to Scotland. He had business and family commitments in East Lothian.

8. In early 2014 the minuter became aware that she was pregnant. Discussions took place between the minuter, PD and the respondent over the following few months. As a result of these discussions the minuter and PD, who were both employed as nurses, relocated to the Dumfries area in mid-2014, together with their son T. They were not in a relationship at that time, but co-parented their son and lived at separate addresses. The view of the minuter was that she would try the return to Scotland because she had begun a relationship with the respondent and was expecting his child. PD was more reluctant to agree the move back because of T's condition. Both the minuter and PD agreed to review the decision if T's health deteriorated.

9. The respondent was part of these discussions: both he and the minuter planned to live together in Scotland with the minuter's son T. As a compromise the respondent relocated his business and home to the Dumfries area. PD had family in the Dumfries area and both he and the minuter were confident that they could obtain work in the mental health field through the NHS in the surrounding region.

10. From around June 2014 the parties rented a home together in Dumfries. Shortly after the parties moved in together they realised that they were not compatible. Their relationship deteriorated. T was exposed to many domestic arguments. M was born in September 2014. After M was born the parties disagreed

about the minuter's proposed return to work. They decided to separate. The respondent moved out of the home in late 2014.

11. Following the separation of the parties, they reached agreement that the respondent would exercise non-residential contact to M - who was then only a few months old - each Wednesday. Contact was problematic. The child was often unsettled at handovers. The minuter tried different strategies to make contact work, including staying during part of the contact.

12. The parties' own circumstances changed in the years immediately after their relationship ended. The respondent continued to live in Dumfries, but his business operated in both Dumfries and East Lothian. He exercised contact to his other daughters at weekends. At times he did not give priority to his relationship with M. During a period of several months he did not exercise any contact to her.

13. In 2015 the minuter reconciled with PD, T's father. They moved to another house in Dumfries together with T and the child M. That is the household in which the child still lives.

14. The parties' own relationship remained strained after separation. They attempted to attend mediation to discuss arrangements regarding M. The respondent removed himself from mediation. Both of the parties and PD used social media, and in particular the Facebook platform, to air their differences of opinion. 'Postings' on Facebook from all three were disrespectful and abusive. In or around March 2017 the respondent's contact with M ceased.

15. In November 2017 the respondent raised court proceedings in Dumfries Sheriff Court seeking contact and an interdict preventing the minuter from returning to Australia with the child. After procedure in that court action the minuter gave an

undertaking not to seek to relocate to Australia without the permission of the respondent or a court order. At the conclusion of that action in February 2018 the respondent was permitted non-residential contact to M every second Saturday for four hours, and every second Wednesday for four hours.

16. The respondent currently exercises contact to M for times in excess of that earlier order. He sees M each second Saturday for around eight hours. Such contact usually operates at times when the respondent has residential contact with one of his other daughters, L, who is aged seven. Every second Wednesday he also sees M for three to four hours. Additional contact has been agreed between the parties on the occasions of birthdays and Christmas.

17. Since the parties' relationship ended in late 2014 the respondent has not exercised residential contact to M.

18. The health of the minuter's older child T has deteriorated since his return to Scotland from Australia in 2014. He has suffered more respiratory infections because of the colder, wetter climate and his physical development has not progressed at the rate which it did when he lived in Australia. In particular, his levels of vitamin and calcium have been deficient and resulted in a need for medication and health supplements. These were not required to the same extent when he lived in Australia.

19. The minuter and PD remain in a relationship and live together. They are both in employment in Scotland in the field of mental health. They have a good standard of living and both provide appropriate care for their son T and for M. They live in good accommodation. M has contact with the minuter's wider family, and in particular the minuter's mother, who lives in East Lothian and often visits them in Dumfries.

20. Both the minuter and PD have realistic prospects of promoted, well-paid employment in Australia under conditions which are 'family-friendly' and accommodate flexible childcare arrangements. They have dual citizenship in the UK and Australia. M has Australian citizenship (by descent). The minuter and her partner have friends and former work colleagues in the Brisbane area where they formerly resided, and where they seek to return. They are each more qualified and more experienced in their field of mental health nursing than when they lived there previously.

21. There is a realistic prospect that, if the minuter were to return to live in the Brisbane area of Australia, she and her partner would be able to afford to buy a good house for themselves and the two children with whom they reside. It is likely that T's health and wellbeing would improve if he were to return to live in the Brisbane area. There is good schooling in the area and arrangements can be made for M to attend the primary school there which T formerly attended. M participates in karate, dancing and gymnastics in Dumfries. There are similar clubs available in Brisbane which cater for children.

FINDS IN FACT AND LAW:

1. It is better for the child that an order is made than that no order is made at all.

FINDS IN LAW:

1. It is in the best interests of the child M that a specific issue order is granted in favour of the defender and minuter permitting her to relocate to Australia with the child.

2. It is in the best interests of the child that the existing contact order in favour of the pursuer and respondent is varied.

THEREFORE:

(1) Makes a specific issue order in terms of Section 11 (2) (e) of the Children (Scotland) Act 1995 permitting the Defender and Minuter to relocate with the child M to Australia,

(2) Grants leave allowing the defender and minuter to remove the child M from Scotland with a view to taking the child to Australia,

(3) Makes an order varying the pursuer and respondent's contact with the child M, with the pursuer and respondent being entitled to direct and indirect contact to the child as follows:

(A) Before any relocation to Australia takes effect:

(i) Every second Wednesday for a period of three hours,

(ii) Every alternate Wednesday (when direct contact does not take place) indirect contact by telephone or video messaging service (such as Skype or Facetime), the particular method of communication being the choice of the respondent, for a minimum period of fifteen minutes,

(iii) Every second Saturday in a four week cycle whereby the first such period of Saturday contact takes place on a non-residential basis from 10am until 6pm, and the next such contact takes place from 10am on Saturday until 5pm on Sunday, the first such residential contact taking place after 1 April 2020.

(B) After relocation to Australia takes effect:

(i) Indirect contact once per month by telephone or video messaging service (such as Skype of Facetime), the particular method of communication being the choice of the respondent, for a minimum period of 30 minutes,

(ii) Direct contact annually in Scotland or in Australia for a minimum period of one week on a residential basis, it being required that the minuter will take all reasonable steps to facilitate such contact whenever the child returns to Scotland on visits, and that she will take all reasonable steps to facilitate such contact in Australia when the respondent visits there, with the further requirement of three months' notice being given by the parties to each other of any such visits.

(4) Assigns a hearing on expenses to take place at Dumfries Sheriff Court Buccleuch Street, Dumfries at 10am on [ ] 2020.

NOTE

[3] The oral evidence in this case came from the two parties. The other evidence consisted of various affidavits (sixteen in total) and numerous documentary productions. The disagreement between the parties centres on whether the relocation of the child to Australia should be permitted. The respondent counterclaimed for an increase to his existing non-residential contact.

[4] In the previous action between the parties, raised in 2017, the then pursuer (respondent in this action) obtained a contact order. An order dated 8 February 2018 awarded him contact every second Saturday for four hours, and every second Wednesday for four hours. The defender (minuter in these proceedings) gave an undertaking that she would not seek relocation without a specific issue order from the court. Her present Minute

was lodged with the defender seeking permission to relocate to Australia at some point from mid-2020 onwards. Evidence from the parties was heard over two days. Written submissions were lodged thereafter, and a further hearing took place on 7 January 2020.

Minuter's position

[5] The minuter seeks to relocate from Dumfries back to Brisbane in Australia for a number of reasons. From the evidence and submissions her arguments can be summarised:

a) Her son T (aged 14) has cystic fibrosis. The warmer climate in Australia and the lifestyle there would lead to a direct improvement to his health. When she returned from Australia it was always understood that the situation would be reviewed if T's health deteriorated because of the Scottish climate. This did not mean that M's interests came second in her considerations. She had only two children, both of whom had resided with her for all of their lives; there was no question of her going to Australia with one and not the other,

b) The quality of life which she and her partner had in Brisbane and to which they planned to return would benefit M,

c) Her proposed move realistically would not take place before late 2020, so there would be plenty of time for the practical arrangements to be addressed,

d) Since she lived in Brisbane for seven years she was familiar with the city, its different areas, its schools and health system. She had considered carefully all relevant aspects of her planned move to Brisbane. Her assessment of this was realistic because it was based on her previous experience,

e) She, her partner and her son T had Australian citizenship, and M had 'citizenship by descent', so there would be no practical difficulties in effecting a move,

f) The work prospects for herself and her partner in Australia were good because of their previous employment, their UK training, and the further relevant employment experience which they had each gained in Scotland since their return in 2014; she had researched the up to date opportunities and they were good,

g) She was very confident that the lifestyle would suit M: the child was adaptable, was meeting her relevant development milestones, and showed a keen interest when her older brother T spoke about his time in Australia,

h) She had been "over the course" regarding transition from Scotland to Australia - and vice versa - before. She would be patient and careful in ensuring that details of the move were carefully planned out. She and her partner still had many friends and contacts in Brisbane and those connections would help their relocation to operate as smoothly as possible,

i) She was committed to maintaining the respondent's contact and his relationship with M. He had been erratic in his approach to contact at different points after their separation, and she had encouraged its successful operation. The child had been reluctant to go, but the minuter had persisted in order to make it work, using a contact centre, promoting mediation, and sometimes staying with M at the start of contact to allow her to become relaxed in the company of her father. She had never been against contact developing naturally,

j) The respondent's relationship with his daughter – who was now five – was still limited. His older daughter L (seven) was there at the Saturday contact which

took place every fortnight. L's presence was what made M happy about going for contact, and she was less keen on the visits every second Wednesday when she saw the respondent on her own,

k) The respondent had never exercised residential contact and only sought this when a possible return to Australia was raised. Despite living relatively close to the child he had only visited her nursery once, so his commitment to being part of M's life was limited. He made very little contribution through the CMA (less than £11 per week) and made no other financial contribution to his daughter,

l) She recognised that the arguments between the parties which were aired on social media were the fault of both, and she regretted her own part in those. She had displayed a more measured approach to the respondent and his relationship with his daughter in recent years. She could be trusted to ensure that this was maintained if the move to Australia were allowed,

m) She had considered matters such as social media contact through platforms like Skype and Facetime, and contemplated visits by the respondent to Australia or his contact with M when return visits to the UK took place. She anticipated annual trips back to the UK as had been the practice when she lived in Brisbane previously.

Respondent's position

[6] The respondent was opposed to the granting of the specific issue orders. He also sought an increase to his contact. Based on the evidence and submissions his position can be summarised as follows:

a) He has an established relationship with the child M. This would be altered fundamentally and damaged if she were to relocate to Australia,

b) M has a half-brother (T) who is part of her household, and it was not disputed that the proposed move would be in the best interests of T because of his health. But M also had two half-sisters (the respondent's other daughters) with whom she had a relationship; those relationships would suffer if the move to Australia were to go ahead,

c) Although the minuter, her partner and T previously had lived in Australia, M had not: she had spent her whole life in Dumfries and was settled; that strong bond should not be overlooked,

d) The respondent had relocated his business and home to Dumfries when he and the minuter were planning their lives together before M's birth in 2014. He had made many sacrifices to do that, and the choice of town was made by PD: it would be unfair to overlook those significant changes he had to make,

e) He accepted that previous social media postings aired the parties' disagreements in public, and that both had made regrettable comments; however, it was apparent that the minuter and PD wanted the respondent eased out of M's life, with PD instead being regarded as her father,

f) The real motivation for the planned move was the minuter's own career opportunities, not the best interests of the child,

g) The earlier discussions about relocation were made in a context which involved all of the relevant parties moving, him included. In the early months of the relationship between the parties there was some discussion about him relocating to Australia, but his business and family commitments with his other daughters prevented that, so the agreement reached among the adults was that they would all relocate to Dumfries as a compromise,

h) The minuter's attitude appeared to change when she reconciled with PD in 2015 and when the respondent met his own partner; from then on the minuter appeared to want to exclude him or at least restrict his relationship with M,

i) There was no good reason why residential contact was not being permitted by the minuter: the child wanted to spend overnights with him and L, but the minuter's common response was that the child was "not ready",

j) He had a good relationship with his daughter. He was concerned that M may have told the minuter what she wanted to hear in expressing reluctance about overnight contact. His experience was that the child wanted to spend more time with him and wanted residential contact and an improved relationship; the minuter had deliberately stalled over any increase in contact to prevent him becoming a more central part of his daughter's life,

k) The respondent's infant son passed away in early 2018, and he no longer saw his fifteen year old daughter K because of disputes with her mother: he did not want to lose a relationship with another of his children by the minuter being permitted to emigrate with M,

l) If the move went ahead he would struggle to afford to travel, so the idea of contact being exercised in Australia was theoretical: he had travelled to Australia twice during the early months of his relationship with the minuter but his finances now would not allow that expense,

m) The proposals about accommodation, schooling, activities etc. for M in Brisbane were all speculative,

n) The fact that the minuter and PD had separated previously when they lived in Australia demonstrated that the relationship was not as solid as the minuter

sought to make out: this was relevant to the question of the stability which would be offered,

o) He did not agree with the characterisation that he lost interest in contact for a period of eighteen months after he and the minuter separated: there were many complications which took a long time to resolve, such as the operation of his business in East Lothian and Dumfries, and his contact two his two older daughters,

p) He accepted that there was little conversation between himself and the minuter at handovers: PD had been responsible for that, and had ensured that the respondent was made to feel awkward.

The relevant law

[7] In any decision relating to a child the court has to regard the child's best interests as the paramount consideration: **Children (Scotland) Act 1995 Section 11 (7) (a).** More specifically, in relocation cases the relevant authorities make clear that the evidential burden is on the party seeking the order to satisfy the court that it is in the child's best interests. There is a requirement to show that it is better that an order is made than not.

[8] Previous cases also make clear that each decision is fact specific. There is no checklist to be used, and factors relevant to one case may not be relevant to another. In other words, each case must be decided on its own circumstances. The central question is: what is in the best interests of the child?

[9] The authorities referred to have addressed applications by the resident parent to move a child abroad, or to live in another part of the UK some distance from the parent who exercises contact. The English courts have their own tests quite different from the principles which apply in Scotland. One of the main authorities in England gives autonomy to the

resident parent to make decisions which she or he adjudges to be in the best interests of the family unit (***Payne* v *Payne* [2001] 2 W.L.R 1826**). That approach, however, has been disapproved in Scotland.

[10] Three recent Inner House decisions have established the correct approach to be adopted by courts in Scotland. In ***M* v *M* 2012 SLT 428; 2012 SCLR 92,** a father opposed the mother's proposed relocation from Scotland to the south of England. The sheriff had permitted the move, and the father appealed to the sheriff principal, where the sheriff's judgment was upheld. However, the father appealed to the Inner House and that court took the opportunity to review the authorities and set out the correct approach to such cases. In doing so, their Lordships specifically disapproved the English approach, identified in *Payne* v *Payne* (above). The decision of the sheriff was set aside because the wrong approach had been applied. The judgment in *M* v *M* made clear that a party seeking to relocate:

> "must undertake the dual burden, imposed by Section 11 (7) (a) of the 1995 Act of showing (i) that the relocation would actually be in the best interests of the children, and (ii) that, again, from the child's perspective, it would be better for a specific issue order to be made by the court than for no order to be made" (*M* v *M* 2012 SLT 428; 2012 SCLR 92, para 57).

[11] The position was emphasised a few months later in the case of ***S* v *S* 2012 SCLR 361,** another Inner House case, which followed the *M* v *M* approach (with one of the judges sitting in both appeals). That case dealt with an appeal against a sheriff's decision to allow a mother to relocate to Texas following a job offer where there was some urgency to the decision. In refusing the appeal (and allowing the move of the child), their Lordships stated that, in relation to relocation cases:

> "In particular, the welfare and best interests of the relevant child or children are paramount, and must be judged without any preconceived leaning or presumption in favour of the rights and interests of either parent." (*S* v *S* 2012 SCLR 361, at 365)

[12] The third recent appeal decision which has confirmed the correct approach to relocation disputes for first instance courts in Scotland is ***Donaldson* v *Donaldson* 2014 CSIH 88; 2014 Fam.L.R. 126**. This was another case in which a mother sought to relocate to the United States. The father's appeal (though it related to contact) gave rise to a further statement of the relevant law. His appeal was refused. In stating the opinion of the court Lady Smith noted the following:

> "[27] 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 settled position arising from all three cases was neatly summed up in a Scots Law Times article in 2016:

> "The only criterion with which the court is concerned is what is in the child's best interests, upon which there are no presumptions or preconceptions."
> (*Relocation, relocation, relocation* by Alan Inglis, 2016 SLT (News) 93)

[14] Some other first instance decisions were referred to in the submissions before me. It is appropriate to note an influential sheriff court decision from 2008 by Sheriff Morrison QC: ***M* v *M* 2008 Fam L.R. 90** (this is a different case from the 2012 Inner House decision bearing the same name, though Sheriff Morrison's approach was cited with approval in the trio of Inner House cases cited above). While no checklist can be used, consideration must be given to those factors which are relevant to the circumstances before the court. Given that a

burden rests on the parent seeking the move, he or she has to address such relevant factors in the application being presented before the court. Sheriff Morrison noted in that case:

> "It seems to me that sometimes it is necessary to set aside or postpone one's dreams for the sake of one's child." *(M* v *M* 2008 Fam L.R. 90, at [29])

[15] ***GL* v *JL* [2017] CSOH 60; 2017 Fam.L.R 54** was an Outer House case from 2017 where an application to move to England was refused by Lady Wise. In that case the father opposing the order was "routinely and actively engaged in the care of his son". ***MCB* v *NMF* [2018] CSOH 28; 2018 SCLR 660** was another judgment by Lady Wise wherein an application to relocate to Northern Cyprus was refused. In the latter decision Lady Wise determined that the "likely diminution of the strong bond" between the five year old child and her father was the strongest factor against permitting relocation. However, there was in that case an added element of the pursuer having earlier sought to frustrate the exercise of contact, which eroded the judge's confidence that the pursuer would foster continuing relations if she were to be permitted to remove the child abroad.

[16] It would appear that in those cases where the proposed relocation has been permitted by the court the planned move has been well thought out (where possible), with specific consideration to the child's education and how the non-resident parent would be able to exercise contact and other parental rights after the move. The reported decisions noted above reveal that relocation has been refused where a parent who has made careful plans to relocate has failed to discharge the burden of demonstrating that the move would be in the child's (as opposed to the resident parent's) best interests because of a failure to persuade the court that suitable arrangements are in place for schooling, accommodation, or the maintenance of the relationship with the other parent.

Analysis of the evidence

[17] One of the striking features of this case was the upheaval which both of the parties chose to undergo during the months before and after the child's birth in September 2014. That is relevant when looking at the further changes which relocation would involve, and when analysing whether this has been shown to be in the best interests of the child M.

[18] The minuter moved from East Lothian in Scotland to Brisbane in Queensland, Australia in 2007 together with her then partner PD and their two year old son T. That child had been diagnosed with cystic fibrosis as a baby, and the couple implemented plans to move to the warmer climate. This suited T: his health improved and the family all enjoyed the lifestyle, with both adults having good jobs in their field of mental health nursing in and around the Brisbane area. Although the minuter and PD married then separated while in Australia, it appears that they successfully co-parented T after their split, and maintained reasonable relations for the sake of their son.

[19] Nevertheless, the minuter appears to have been quite vulnerable emotionally when she returned to Haddington in 2013 for a visit to family, accompanied her son, and met the respondent. She threw herself into that new relationship and, a couple of months later, paid for the respondent to visit her in Australia. He came on a second visit at the end of that year and they began to make plans. When the minuter became pregnant in early 2014 big decisions were made. She relocated to the Dumfries area to live in a rented flat with the respondent and her son. PD (her son's father) moved too, so that he could continue to have a significant role in T's life. He had major misgivings about the move and made clear that he would want to review the decision if T's health suffered from the change in climate.

[20] The respondent too appeared to be in quite an emotionally fragile state when he embarked on his relationship with the minuter. A former partner whom he intended to

marry had recently terminated their relationship quite suddenly. He had two young daughters with whom he was trying to maintain a relationship. They each lived in the East Lothian area with their mothers. He lived in Haddington and had a business based there. Notwithstanding those connections, he agreed to move to Dumfries to start a new life with the respondent who was expecting their baby, with her young son T being part of the new household. He expanded his business to the local area in and around Dumfries and tried to manage his life in the two locations.

[21] Both parties agreed that their cohabitation was not a success, and that they realised very soon after moving in together that they were incompatible. There were a number of domestic arguments between them, with T sometimes being caught in the middle. The respondent disengaged to some extent: one weekend while the minuter was still expecting M he went away on a 'stag do' with friends and deliberately made himself uncontactable, even when the minuter was taken into hospital with complications. The parties could not agree about the minuter wanting to return to work when M was about three months old. The minuter's position was that she had no option because of the restricted finances, but the respondent disapproved and the minuter had to arrange for her mother to travel down from Haddington to Dumfries to provide childcare.

[22] The respondent struggled to maintain his different commitments after M was born in September 2014. The parties separated in early 2015. The minuter went to live in her own accommodation with T and M, who was a few months old at the time. But as the minuter became slowly more settled in her own life the respondent appeared to become more wayward. He did not maintain a good routine for contact with M. He began to take cocaine regularly and this affected his outlook and his application to his domestic and work responsibilities. He struggled to form a bond with M, and the minuter had to devise ways

to make contact work. She encouraged his relationship with their daughter and sometimes stayed at the start of visits to settle the child. Mediation – mostly promoted by the minuter – was not a success because the respondent disengaged from that at an early stage. I formed the impression that the respondent was very sensitive to criticism and disagreements descended quickly into arguments.

[23] While this summary relates to incidents some years ago (during the first two years of M's life) the parties' own accounts of this period were instructive. The minuter was reflective about these events, and conceded that they appeared to show a degree of turmoil in her life. She thought that both parties were vulnerable when they met and became deeply involved with each other too quickly as a result. She insisted that the decision to move back to Scotland was not any reflection of life in Australia, but was a compromise because of the differing commitments. Although both of the parties originally came from the Haddington area (they knew each other from both attending school in that area) PD had the Dumfries connection and that was why they opted to settle there.

[24] The respondent did not seek in his evidence to apportion blame for the breakdown of the relationship. But, on the whole, he appeared to be less able to face up to the consequences of his decisions. It was clear that he faced enormous pressures with his different family and business commitments, but he did not appear able to accept responsibility for his limited relationship with M. Among all of his commitments he still lives in the same town as the child, yet since her birth he has never exercised residential contact to her. While he maintained that the minuter was the barrier to this I was not persuaded that this was the full picture.

[25] I concluded that the respondent wavered in his commitment to M in the early years. Though it is clear that he loves M, he did not seek to increase his contact until he learned of

the minuter's plans to seek permission to relocate. The earlier action raised by the respondent in 2017 sought to "renew" non-residential contact, and it is only in his response to this current minute procedure that he has sought to increase this to overnights. So, for the first four years of M's life, he did not ask the court – in an ongoing court action - to allow him overnight contact, despite the minuter's refusal to agree. This is an odd feature of the case, because the respondent had daughters from his other relationships and exercised overnight contact with them, even though they both lived in Haddington. Handover arrangements with his older daughters were more complicated logistically than with M, who has always lived in the same town as him. I formed the view that the respondent struggled to cope with some of the emotional complexities of his situation, and that - when things became difficult - his response was to disengage. He said in evidence that, by July 2019, he no longer had contact with his fifteen year old daughter K because she was "a liar". The background to this appears to relate to a friendship that formed between the minuter and K, and the respondent taking exception to various discussions about family relationships.

[26] My overall impression was that the minuter was very sensitive to the need to form and maintain relationships between M and her blood relatives, including the respondent, whereas the respondent himself often struggled to manage relationships when things did not go to plan. To be fair to the respondent I should add that – while it was not pled as part of the case – reference was made to him and his partner having suffered the death of a baby son in the last few years. This was mentioned almost in passing during the evidence, though some of the affidavits from the respondent's witnesses gave more detail, the background being that the baby contracted meningitis and passed away in 2018. Doubtless the tragic and premature loss of a young life has brought its own difficulties. The

respondent's current partner HH was expecting another baby at the time he gave his evidence.

[27] My assessment of the minuter was that she had no intention to relocate to Australia without careful preparation and planning. She had been through this process before, albeit in reverse. Prior to her return to Scotland with her son T in 2014 (when he was then nine) she engaged in 'transitioning' to make sure that his move from one school system to another was as smooth as possible. While she and the respondent may have thrown themselves into their relationship in mid-2013 it was, nevertheless, clear that the actual move back to the UK took many months and involved careful planning relating to housing, jobs and schooling.

[28] It should be acknowledged, of course, that the respondent was part of that planning. He too had to relocate, from one part of Scotland to another. In recent years, however, when the subject of a possible return to Australia by the minuter has been raised, it seems that he has not been able to discuss this at all. When asked to comment on the proposed relocation his response in evidence was "I can't bear to think of it happening." He said that relations between him and PD had deteriorated and "I now do my talking through solicitors". The respondent's two older daughters have a relationship with M. L, aged seven, sees M every fortnight as his contact to both girls overlaps at weekends. And, although he does not currently have a relationship with his 15 year old daughter K, it was apparent from the evidence that the minuter herself has formed a connection with K's mother, and the two children get on well (an affidavit from K was produced).

[29] In relation to the proposed relocation the test I have to apply is that of the best interests of the child. The authorities cited above make clear that the minuter has the burden of demonstrating that the proposed move is in the child's best interests, because it is the minuter who proposes to alter the status quo. Furthermore it is not enough that the move

would be in the interests of *a* child of the family, such as T in this case. It was conceded in the submissions for the respondent that a move to Australia would be in T's best interests. I would agree with that plain observation, because of the evidence about the effect of the Australian climate on his cystic fibrosis when he lived there previously. However, proof of that does not itself overcome the hurdle before the minuter. She has to show that, in the whole circumstances of the case, the proposed move is in M's best interests.

Details of the proposed relocation

[30] The authorities confirm that there is no checklist to be ticked off in a relocation case, but there are numerous factors to consider. Some of these can be measured with objective evidence (employment or educational opportunities, for example) But some relevant circumstances are specific to an individual case and involve an assessment of more subjective factors like a party's motives, the overall reasonableness of the proposed move, the quality of the existing bond with the non-resident parent, or the impact of granting or refusing the request.

[31] The relevant assessment in this case has involved consideration of the minuter's proposals regarding accommodation, employment opportunities, education, finances, social life, maintenance of contact between the child and the respondent, contact with other family members, the effect on T insofar as that is relevant to M's best interests, and the impact of making or not making an order.

Accommodation

[32] In presenting her evidence about proposed accommodation the minuter has the benefit of having experienced life in the city (Brisbane) to which she seeks to relocate. She

provided documentary evidence of available housing for rent in the specific area of Redcliffe, a suburb of the city, and she gave evidence of her own experience of both renting and buying property there. Affidavits from several former work colleagues and friends in that area confirmed the available local support in finding and even providing (in the short term at least) suitable accommodation.

Household

[33] The family unit to which the minuter's proposals refer is the same household which lives together in Dumfries, namely the minuter, her partner PD with whom she has been reconciled for some years, their son T who is now 14 years old, and M, who has lived as part of that family since she was less than one year old.

Employment opportunities

[34] The minuter spoke in her evidence of the opportunities in mental health nursing available to her and her partner in Australia if they were able to return there. PD's affidavit confirmed this, as did the affidavits of various supporting witnesses and documentation produced by her (Productions 6/17, 6/36 – 6/40, and 6/43). It appears that there exist a number of opportunities in Brisbane for employment for suitably qualified mental health nurses. Since their return to Scotland both the minuter and her partner have increased their relevant experience and have improved their qualifications. All of this strongly indicates that both have good prospects for a return to well-paid employment if the relocation is to proceed. Other documentation produced by the minuter detailed the flexible working hours available in Queensland (Productions 6/20 and 6/21). The minuter cited this in her

submissions as evidence that there would be less juggling of shifts required than she and her partner have to do at present in their respective jobs in Dumfries.

Finances

[35] It would appear that the available employment offers the prospect of a good income for the minuter and her partner (Productions 6/17, 6/18 and 6/19).

Education

[36] The minuter has earlier experience of the education system in Brisbane, and specifically Redcliffe. She produced various documents regarding schooling available in the area, including reports about the primary school attended by her son T (Humpybong Primary School), the availability of a place for M, and the school's curriculum, together with various performance reports (Productions 6/7–6/10, and 6/15).

Social life

[37] The minuter has researched the availability in Brisbane of a number of activities in which M currently participates, such as karate, dancing and gymnastics (6/24, 6/25, 6/26, and 6/28). Since she formerly lived in the area with her son T she has direct knowledge of the local lifestyle, with an emphasis on activities available for children. The minuter also produced evidence of local child care services, and her supporting affidavits contained comments by friends and colleagues about a social network in the area which could offer friendship and practical support.

Contact and relationship with respondent

[38] The respondent's submissions in this case did not challenge the availability of good employment, accommodation, and a network of friends. Nor did he doubt that the proposed move would be of benefit to T, for whom the milder climate would appear to offer undoubted improvements to his health. The respondent's challenge was that a move would all but destroy his relationship with his daughter M, and that it was not in her best interests for that bond to be eroded. Clearly this point is at the heart of the dispute, and its determination is at the core of the decision I have had to make.

[39] It is obvious that a move to live abroad would diminish significantly the respondent's relationship with his daughter. The continuation of that connection is an important factor to be weighed up in the balance to be reached. The respondent sees his daughter every second Wednesday for about three hours, and every second Saturday for about eight hours. But I have concluded on the evidence that the respondent has not done his best to foster and nurture that relationship. He was not committed consistently in the early years of M's life to exercising regular contact. He struggled to deal with difficulties, including problems the child had in settling in his company, and it was thanks to the minuter's patience and insistence that his contact progressed to become unsupervised without further complications.

[40] He did not seek constructively (either through court or in private negotiations) to increase his contact to operate on a residential basis. His counterclaim to these proceedings is the first time he has formally sought overnight contact. He has stayed away from involvement in other aspects of M's life, such as her nursery: some of this may be his response to the hostility demonstrated to him by PD, but nevertheless there remains a lack of involvement beyond his hours of contact. And I was satisfied that, on occasions, M is not

very enthusiastic about the Wednesday contact. She appears to be far keener on the Saturday visits when she knows that her half-sister L will be involved. My conclusion, therefore, is that, while the relationship with the respondent should be promoted and maintained in some form, it is not such a central part of M's life as to justify an order preventing the relocation. If there was a long history of weekly and holiday residential contact, or if the respondent was more active in co-parenting, his objections to the move would have held more force. But such elements – which would indicate a stronger bond – are absent from this case.

Contact with wider family members

[41] The respondent's limited contact with M has restricted his opportunities to involve his own wider family – most of whom live in East Lothian – in direct contact with M. His partner HH provided an affidavit supportive of the respondent and indicating her own fondness for the child, though it is clear that Ms H has been in the middle of the unseemly personal fallouts which have marred many of the parties' discussions. The other affidavits produced by friends and family of the respondent tend to offer support for his wish to prevent the move or increase his contact, rather than offering any concrete evidence about M's relationship with other family members.

[42] The minuter produced many affidavits too, some from friends and family who continue to live in East Lothian. The minuter's mother MG provided an affidavit (Number 17 of process). She was involved regularly in looking after M after the parties separated. She has her own relationship with her granddaughter and she has been involved regularly at handovers with the respondent. It is clear that she has problems with the respondent and takes the view that he is stubborn and uncommunicative. She supports the

move to Australia, even though it would reduce her contact with her grandchildren. Her affidavit speaks of the regular visits back to Scotland which the minuter (her daughter) made when she lived in Australia previously.

[43] A number of other affidavits were helpful in assessing the fuller circumstances here. Number 15 of process is an affidavit from the minuter's friend CH, a former school friend from Scotland who moved to Brisbane shortly before the minuter. She offered some relevant observations about the available lifestyle in Brisbane (where she still lives) and the practicalities of visits to and from the UK. The respondent's daughter K provided an affidavit (number 16 of process). She gave details of her relationship with M, regular visits and 'facetime' contact. She too is supportive of the move to Australia, despite the reduction in her own contact with her half-sister which would result.

[44] Number 27 of process is an affidavit of AB, the sister of the respondent. Ms B's affidavit was helpful because she too knows both of the parties and offered some reflective observations about the parties' relationship and how it appeared to sour quite quickly after they moved in together. Ms B's affidavit makes clear the difficulties which family members of the respondent have had in seeing the provocative social media messages posted by PD, and she is clearly supportive of her brother. But, while many of her observations seem valid, her evidence demonstrates – like many of the other such evidence presented by the respondent – that there is not a strong relationship between M and many members of the respondent's wider family, even if they would wish it to be otherwise.

[45] Number 28 of process is an affidavit from SC, a former partner of the respondent and the mother of L, who is a half-sister of M. Ms C offers some useful observations relating to contact, since she speaks regularly to her own daughter while the respondent is exercising weekend contact, and on such occasions has observed M in that setting. But Ms C's affidavit

does not stress the existence of any strong bond between the two girls, merely that they are friendly and spend time together when they both see their father (the respondent).

[46] My conclusion is that – leaving aside the respondent's relationship with the child – there are no other strong relationships in existence which would justify the refusal of an order for relocation.

Other relevant factors – M's half-brother T

[47] The respondent conceded that a return to Australia would be in the best interests of T, presently aged 14, as the climate is likely to reduce his sensitivity to infection and improve his circulation and strength. T himself provided an affidavit (number 19 of process) in which he expressed his disappointment that he returned from Australia when he was nine years old, and stated that he would like to go back with his mum, dad and M to live there. He thinks his health would improve, and is upset that one of his medical advisers in Scotland told him that his mobility would decline in his teenage years if he was still subjected to the Scottish climate. He thinks that a move to Australia would be good for both him and M, and it would allow a "fresh start".

[48] It is clear that some care has to be taken when assessing the extent to which any beneficial impact on T of relocation should affect the decision relating to the minuter's request to relocate with M. It is the best interests of M, not T, with which this decision must be concerned. Practically speaking, it may seem artificial to separate a discussion of M's best interests from that of her half-brother T, when they are close, are part of the same family unit, and have lived in the same household for all of M's life. But, legally, that is the exercise which must be carried out. M has never lived in Australia and she does not endure the medical condition which T has and which would most likely be significantly improved by

the Australian climate. Furthermore, T lives with both of his parents and the planned move would continue that arrangement, whereas M would become separated by thousands of miles from her father.

[49] I have concluded, however, that the clear benefits to T of the planned relocation are a relevant consideration (albeit not the major one) when assessing all of the circumstances surrounding M. The evidence demonstrated that there were concerns expressed by both the minuter and PD about the potentially negative effects on T of a return to Scotland in 2014, so the possibility of a return to Australia for his benefit was always a consideration. The fact that T's health has deteriorated since his return in 2014 has upset both of his parents. The issue would be more acute and the decision more finely balanced if I had concluded that there was a strong bond between M and the respondent, but that is not my finding. With the diagnosis that T's health may deteriorate further if he remains in the UK, the minuter, her partner and T are likely to be placed under more stress if the relocation cannot go ahead. It therefore would not promote a good atmosphere in the household - and consequently not be in M's best interests – if a planned return to Australia were to be thwarted because of an order relating to M's contact with her father, the respondent.

Views of the Child

[50] It will be noted that I have not listed the views of the child as part of my assessment. When the application was lodged initially the minuter sought to dispense with intimation on the child by reason of her young age. In the evidence led before me and the later written submissions, both parties took the view that it was not appropriate to seek the views of M because of her young age. In my later consideration of the evidence and submissions I was mindful of the requirements of the authorities which stress the importance of obtaining the

views of the child where she is old enough to express a view: Section 11 (7)(b) of the 1995 Act, and the decisions of ***Shields* v *Shields* 2002 SLT 579** (child aged seven and a half), ***M* v *M* 2008 Fam LR 90** and ***Woods* v *Pryce* (SAC) 2019 SLT (Sh Ct) 115** (child aged nine). The question of whether and how the views of the child should be ascertained was specifically addressed at a further hearing before me on 7 January 2020. It remained the clear position of both parties that the child was not mature enough to express a view on this matter. Notwithstanding their own disagreement about the proposed relocation, both parties shared the view that asking the child to express a view on the matter would place her in a difficult and possibly distressing position. As a result of that joint position the child's views have not been separately taken.

Decision on relocation

[51] The minuter has gone to considerable lengths to provide as much evidence as she can about the future life which she hopes for her family in Australia. The opportunities which she seeks to pursue for herself and her family are not mere speculation. She has the benefit of having lived there previously, and she has maintained her friendships and connections there. She has provided ample proof of her proposed arrangements concerning housing, schooling, employment, social activities and the positive lifestyle, all of which appear to offer an improvement on the quality of life which she and her family enjoy at present. She believes that the lifestyle and opportunities available there will be in the best interests of M. I was satisfied that she was not motivated only by her focus on career opportunities for herself, or by the benefits for T. I have concluded that relocation is in the best interests of the child M.

[52] I was also persuaded by the minuter's evidence that she is committed to promoting the respondent's ongoing relationship and contact with M. I have reached this conclusion for a number of reasons. Firstly, when she lived in Australia before she made annual trips back to Scotland to foster and maintain family connections. Secondly, in the early years of M's life she encouraged the respondent's contact with M and appears to have taken many practical steps to make it work (such as staying at the beginning of contact to settle the child). Thirdly, she has encouraged M to have a relationship with the respondent's older daughters: Saturday contact overlaps with the respondent's contact with L, and she has fostered and maintained separate relations with K, even after the respondent stopped seeing that child.

[53] As a result of this background I believed the minuter when she said that she would make every reasonable effort to maintain the relationship between the respondent and M if she moved to Australia. I should note that some of the social media postings produced in the case (referred to below) did cause some hesitation, mainly because of PD's insistence on airing his battle of wills with the respondent in that forum. But, after assessing the minuter's own history and her evidence before me, I am confident that she intends to promote the relationship between the respondent and M. There appear to be many ways in which direct and indirect contact between the respondent and M can operate. In order to focus parties' minds on this question I will deal separately with orders in relation to contact, both before and after any relocation takes place.

Social media postings by the parties

[54] An additional difficulty in this case came in the Facebook 'postings' made by both of the parties and PD. As is (sadly) quite common in family actions, the reactions of parties to

disputes between them in real time were laid bare in their social media messages, some of which were produced in process. I agree with the respondent's solicitor that neither party emerged well from this evidence. Such messages have to be seen in the context of the world of social media, a fast-changing environment which is used by people for different purposes. Such is the casual resort to insult and abuse often encountered, that some users appear to equate online comments with a face to face argument, i.e. words said only in the heat of the moment in a particular argument between them. The difference, of course, with social media postings is both that the audience tends to be wider, and that a record of the words and messages is preserved, to be viewed and picked over later.

[55] I accept that it is sometimes appropriate to see an individual's postings or messages as a knee-jerk reaction to a dispute, and not necessarily their considered response to a situation. None of that excuses abuse or criminal communications, but where – as here – each party has lodged copies of online communication for consideration, it is relevant to consider the context. I have reached a few conclusions from these messages and the oral evidence from the parties about them. Firstly, the only posting from the respondent reproduced (at 6/14 of process) is his reaction to a letter from the minuter's solicitor when the matter of relocation was raised. Since this appeared to coincide with a period when he was grieving over the death of his young son, his reaction seems understandable. It is unfortunate, however, that the comments appeared to have been made by him to draw the attention of others to the dispute between the parties (some of the affidavits confirm this). Secondly, one message sent by the minuter indicates that she too (and not just the respondent) withdrew from at least one mediation session (Respondent's First Inventory of Productions, item 7 (b)).

[56] Thirdly, there is a strain running through many of the messages which indicates a passive-aggressive approach by the minuter's partner PD to claim that M is 'his' daughter. Because of the explanations given by the parties in their evidence about the background to the case and PD's role at the centre of much decision-making, this is a relevant observation. Not only is this attitude clear from the respondent's productions (Respondent's First Inventory, items 1(a) and 7 (b)), 8, 9 and 10) but the minuter's own productions display this trait too (item 6/41/2). I can understand that PD has strong feelings about this case. Although he was not called to give evidence there was an affidavit in process completed by him and other items relating to his work history were produced, including a character reference at 6/45. He accompanied the minuter to court and remained in the courtroom throughout the evidence (at one point the respondent complained that PD was trying to put him off his evidence). T is his son and he had misgivings about relocating to Scotland because of concerns about the impact on his son's health. He was central to the negotiations surrounding the return and agreed to relocate in order to accommodate the minuter's attempts to start a new family with the respondent so that he could remain a large part of T's life. His son then became part of a household with the respondent where arguments were a feature of daily life, to the point where T himself became distressed at the atmosphere. Furthermore, since his reconciliation with the minuter in 2015 PD has performed the day to day role of being father figure to M.

[57] I have little doubt that PD sees himself as providing solid background support to the minuter in her dispute with the respondent. But where he has overstepped the mark is in his public messages, including the regular, innocent-looking photographs and postings referring to M as "my" or even "MY" daughter. It seemed clear that many of these messages were designed to taunt the respondent. Furthermore, other messages were downright

abusive towards the respondent, for example Respondent's Third Inventory of Productions, item 12.

[58] I have concluded in this case that the respondent did not make much effort to build or strengthen his relationship with M in her early years, distracted as he was by other commitments and decisions. But I have also concluded from the evidence before me that PD has sometimes exercised a negative influence towards the respondent, and that his input has fanned the flames of this dispute. PD is an experienced and well-qualified mental health nurse and should know better. His behaviour on social media has done the minuter no favours. At some point the respondent and PD will need to communicate sensibly and in private about M. I point out at this stage the difficulties which I have observed from the evidence about the attitudes they have both displayed in recent years, so that they might reflect on how damaging this has been and alter their approach for the sake of M.

Respondent's Contact

(1) Competency of procedure

[59] The respondent has counterclaimed in this minute procedure, and seeks a variation of the contact order contained in the decree of 8 February 2018 to include residential contact. Part of the minuter's submissions included a challenge to the competency of the respondent's counterclaim. I am satisfied that such a counterclaim is competent, based on my reading of Section 11 of the Children (Scotland) Act 1995 and Rule 33.44 of the Ordinary Cause Rules.

[60] OCR33.44. (1) establishes that an application for the variation of a Section 11 order "shall be made by minute in the process of the action to which the application relates." That is the process which was invoked by the minuter in seeking the specific issue order to permit

relocation to Australia. The argument made on her behalf about the competency of the counterclaim is that the respondent should have lodged his own separate minute for variation of the contact order.

[61] But Section 11 of the 1995 Act appears to contemplate that both applications can be heard together. Section 11 (1) states:

> "In the relevant circumstances in proceedings in the …. sheriff court, *whether those proceedings are or are not independent of any other action*, an order may be made under this subsection in relation to (a) parental responsibilities; [and] (b) parental rights….." [my emphasis]

Section 11 (2) confirms that the court may make such order under 11(1) "as it thinks fit" including a contact order (11 (2) (d)). And Section 11 (3) makes clear that the "relevant circumstances" referred to in 11 (1) include where an application for a Section 11 order is made by a party who has parental rights and responsibilities: (Section 11 (3) (a) (ii)).

[62] Section 11 (3) (b) even extends the court's power to make an order where

> "*although no application for an order under subsection (1) above has been made,* the court (even if it declines to make any other order) considers it should make such an order."

And, finally, Section 11 (13) states "Any reference in this section to an order includes a reference to an interim order or to an order varying or discharging an order." It is apparent, then, that Section 11 of the Children (Scotland) Act 1995 was designed to give the court complete flexibility and to allow any relevant decisions relating to children to be made when the court considers it appropriate in proceedings before it, even if such order is not moved by either party. Given those circumstances, I have concluded that it was competent for the respondent to have sought his own variation of contact by way of a counterclaim once the minute procedure – which sought a variation of a Section 11 order - was underway.

(2) Variation to contact

[63] I have concluded that it is appropriate for the respondent's contact to M to progress to involve an element of residential contact, both before and after the move to Australia. There are a number of reasons for this. Firstly, while I have found that there is not at this stage a strong bond between the respondent and M, regular contact is nevertheless ongoing. The child is well-used to spending time with him. She knows his partner HH. The evidence was that she enjoys the longer Saturday contact (every fortnight) when her half-sister L is there. I accepted from the affidavit of L's mother (SC) that M is comfortable and safe when in the respondent's care. Ms C's affidavit referred to her seeing and speaking to M when she contacts L by virtual means over the course of those weekends. I had no reason to doubt the truth of that observation, since it comes from an ex-partner of the respondent who would appear to have no reason to give evidence favourable to either party.

[64] Secondly, since the main decision in this judgment is to give the minuter permission to take the significant step of relocating with M to Australia, it would be inconsistent to decide that continuing caution should apply meantime to the question of some overnights for the respondent in Dumfries. If the child is ready to emigrate to Australia, she is ready for residential contact. Thirdly, when the relocation takes effect, future contact between the respondent and M can only realistically take place on one or two occasions per year. It would be appropriate that such contact should be for extended periods on a residential basis.

[65] For those reasons I have decided that a long-term approach to contact should be taken here. To prepare M for her future relationship with the respondent, both overnight and Facetime/Skype contact (or an equivalent to those specific social media platforms) should become part of the contact at the moment, with due sensitivity for the need to phase

in the residential aspect. I have therefore decided that the respondent's existing contact should continue to operate as it does at present but that, after 1 April 2020, one of the Saturday contacts per month should extend until Sunday at 5pm. This would mean that the fortnightly Wednesday contact will continue unchanged, but the fortnightly Saturday contact will operate with one being non-residential, the next extending to Sunday, the next non-residential, the next residential, and so on.

[66] The other alteration to existing contact is that on the Wednesdays when the respondent does not currently see M, he will be entitled to have a fifteen minute conversation with her via an appropriate live-time video messaging platform (such as Facetime or Skype). This will enable the parties and M to become used to communicating in that way. Both of these variations in the operation of contact should allow the respondent and M to become used to both video contact and residential contact in the months before any relocation takes place.

[67] Once the anticipated move to Australia takes effect, it is appropriate that arrangements are in place for some core contact between the respondent and the child. The respondent was unable in his evidence to face up to the practicalities of a move to Australia for emotional reasons. The minuter was more forthcoming: she and the affidavits of her friends in Australia contemplated visits back to Scotland, including the possibility of M coming to Scotland for family visits while being accompanied by persons other than the minuter or PD. While the exact details of future contact will have to involve some flexibility on all sides, I think it is realistic to expect from the minuter's previous history, her family connections in East Lothian, and the evidence in the case, that annual return visits to Scotland will take place.

[68] In assessing the respondent's evidence and complicated domestic circumstances it may be beyond his means for him to afford an annual trip to Australia (in addition to his three daughters he now has another baby with his current partner, and his previous visits to Australia in 2013 were funded with assistance from the minuter). Leaving aside the argument that the respondent makes limited financial contributions to M's care, my overall assessment was that he may struggle to be able to fund a trip to Australia every year to visit M. I therefore take as my starting point the assurances given by the minuter about proposed future trips, and make the following orders in relation to contact between the respondent and M *after* the relocation to Brisbane is effected:

1) The respondent will be entitled to have monthly contact with M by a live time video messaging service such as Skype or Facetime (or by telephone if he prefers) for a minimum time of 30 minutes,

2) The respondent will be entitled to exercise contact to the child annually in Scotland or in Australia for a minimum period of one week on a residential basis, it being understood that the minuter will take all reasonable steps to facilitate such contact when the child returns to Scotland on family visits, and will take all such reasonable steps to facilitate such contact in Australia when the respondent is able to visit there, subject to three months' notice being given by the parties to each other of any such visits.

Expenses

I am minded to make no order for expenses in this action. However, I have assigned a procedural hearing, and at that time parties can address the question of expenses, if either seeks such an order.