



OUTER HOUSE, COURT OF SESSION

[2023] CSOH 61

F22/23

OPINION OF LADY CARMICHAEL

In the cause

HS

Pursuer

against

TP

Defender

and

LB

Minuter

Pursuer: MacBride, Drummond Miller LLP

Defender: Cartwright, Thorntons

Minuter (LB): L Morgan, CSG Legal

21 July 2023

Introduction

[1] Ms HS is the mother and Mr TP is the father of Simon, who was born in January 2016 in Kentucky. Simon has a maternal half sibling, Jonathan, who was born in December 2010.

Ms LB is the fiancée of HS. The names Simon and Jonathan are fictitious, in order to protect the identity of the children. The names of some witnesses have been altered, and locations redacted, to prevent jigsaw identification of the children.

[2] TP's paternity was established in paternity proceedings brought in 2017 by HS. A fresh birth certificate was issued for Simon after that process. In the present action HS initially sought a residence order in respect of Simon, which failing a contact order, and interdict against TP's removing the child from Scotland. She did, however, not move the court to make a residence order in her favour at the close of the proof.

[3] TP seeks a residence order and also a specific issue order permitting him to take Simon to live with him in the United States of America. HS opposed both of those conclusions.

[4] LB, who entered the process as minuter, seeks an order for contact with Simon. In her pleadings she alleges that in a video call on 21 June 2023 TP and DP scolded Simon for calling LB "Mama".

[5] HS met LB in 2017 and they became engaged in February 2018. According to HS's affidavit evidence, she decided to relocate from Kentucky to Scotland. It is common ground that Simon stayed with his father from 14 May 2018 to 24 October 2018. That arrangement was the subject of temporary agreed joint custody order. In the course of HS's oral evidence it became clear that Simon also lived with his father for 6 weeks from about 11 February 2018 while HS was in Scotland.

[6] Simon returned to his mother's care on 24 October 2018. A further temporary agreed joint custody order was made in a court in Kentucky on 7 November 2018. It provided that HS would have custody of the child from 24 October 2018 until 28 June 2019; from 19 August 2019 until 28 June 2020; and from 19 August 2020 until 23 October 2020. It also provided that TP would have custody of Simon in the United States from 28 June 2019 until 19 August 2019; and from 28 June 2020 until 19 August 2020. Simon was not in TP's care for the period that had been agreed during the period June to August 2019.

[7] The order made no specific provision for the period after 23 October 2020, but provided that the parties agreed to re-evaluate the arrangement in the summer of 2020 taking into consideration both the parties' and the child's positions and circumstances at the time, looking into the near future and agreed to submit another agreed order in regard to custody at that time.

[8] Simon came to Scotland with his mother in December 2019. He has been in Scotland since 9 December 2019. He lived with his mother, Jonathan and LB until 7 June 2022.

[9] Simon and Jonathan were removed from the care of HS and LB on 7 June 2022 under a Child Protection Order, and were placed with foster carers. The Children's Hearing made a series of interim compulsory supervision orders in respect of both children. In September 2022 HS pleaded guilty to an offence in terms of section 12 of the Children and Young Persons (Scotland) Act 1937, and received a community payback order involving 18 months of supervision and 170 hours of unpaid work. The grounds of referral were established by the agreement of HS, LB, and TP, who were all relevant persons, and the reporter, at the Sheriff Court on 27 October 2022. The statements of fact were amended to reflect the offence to which HS had pleaded guilty, which related to a single day. The statements of fact include:

"On 7 June 2022 at [address] LB and HS:

- (i) allowed their home to become dirty and unhygienic;
- (ii) allowed their home to become strewn with items that posed a danger to Simon and Jonathan;
- (iii) failed to provide Simon and Jonathan with adequate food;
- (iv) failed to provide Simon and Jonathan with adequate bedding causing them to lie and sleep on dirty and unhygienic mattresses;

(v) installed a lock on Simon and Jonathan's bedroom door so that their room could be locked from the outside;

(vi) failed to provide Simon and Jonathan with adequate clothing and shoes."

[10] A compulsory supervision order (CSO) was made on 10 January 2023 and was discharged on 20 March. Simon was placed in the care of his father. HS and LB appealed against the compulsory supervision order. It was part heard, and then abandoned.

[11] HS breached her community payback order. The sheriff has allowed the community payback order to continue.

[12] TP and Simon's paternal grandmother, DP, are presently caring for Simon in Scotland. The local authority has provided them with accommodation to enable them to do so and the household receives an allowance of £200 per week. TP is absent from his work in the United States. His wife, AP, and other children have remained in the United States while he has been in Scotland caring for Simon. He is present only on a tourist visa. He has no other lawful basis to be in the United Kingdom. Both he and the local authority appear to have proceeded on the basis that he would be able to take Simon to the United States immediately on the termination of the CSO.

[13] While Simon was living with foster carers he started school. He did so in August 2022 when he was 6 years and 8 months old. He entered primary one.

[14] On 28 September 2022 TP's attorney filed an ex parte motion in a court in Kentucky for emergency temporary custody. The court made an order providing TP with temporary sole custody of Simon. A copy of the order was sent by email to HS's Scottish agents on 30 September 2022. The court in Kentucky made a temporary custody order on 25 October 2022. HS was not present or represented at the hearing. On 27 February 2023 TP's attorney filed a motion for emergency sole custody of Simon and sole application for a passport for

travel from Scotland to Kentucky. HS attended the hearing of that motion by video link, without representation. The court made a temporary sole custody order on 1 March 2023.

[15] HS raised the present action, and contended that Simon was habitually resident in Scotland, so that section 2(3) of the Children (Scotland) Act 1995 applied. She contended that he had been habitually resident in Scotland when the court in Kentucky made orders in 2022 and 2023, so that this court should not recognise those orders in terms of section 26 of the Family Law Act 1986. TP, DP and Simon have remained in Scotland pending resolution of these proceedings.

[16] There has already been a preliminary proof in this case. I delivered an *ex tempore* judgment on 15 June this year immediately after hearing evidence and submissions, and found that Simon had acquired a habitual residence in Scotland well before the order of the Kentucky court made in late September 2022. By that time Simon had been living in Scotland for two years and nearly 10 months. I was satisfied that he had continued to be habitually resident in Scotland. LB entered the process as minuter after the preliminary proof.

[17] Simon currently has one two hour session of indirect contact with HS each week, in which LB joins.

[18] This opinion deals with the questions of residence, relocation to the United States, and contact. I heard evidence and submissions on 18, 19 and 20 July 2023.

Simon's views

[19] The court obtained information about Simon's views by appointing child welfare reporters. Simon said that he wanted to live with TP and AP in the United States. He wanted to live near his paternal grandparents, who live in Kentucky. He understood that he

would not be living with Jonathan. He appeared to believe that Jonathan would be living in Ohio. He wanted more video calls with HS and LB.

[20] He said he loved both HS and LB and that they did fun things together. He wanted to see them together. He told the child welfare reporter that his dad had told him not to call LB mom. He said that his dad had said, "She's not your mom", so he did not call her that anymore.

Evidence

[21] A number of witnesses were interposed in the case of another party in order to accommodate their availability to give evidence.

[22] HS gave evidence and led evidence from Ms White and Ms Black. Both gave evidence by Webex video link.

[23] TP gave evidence and led evidence from Mrs Green, social worker; DP; Dr Gray, consultant paediatrician; and Mr Brown, Simon's foster carer. Dr Gray and Mr Brown gave evidence by Webex video link.

[24] The minuter gave evidence in her own case.

[25] Parties were agreed that the affidavit evidence of another social worker involved in the case should be evidence in the case, although none of them came to rely on it in submissions.

Evidence for pursuer

HS

[26] HS's position in evidence was that she believed that it would be better for Simon to remain in Scotland than to return to the United States. She understood that if the court

refused to grant the specific issue order, the immediate result would be likely to be that Simon would require to move to foster carers, and that they would probably be different foster carers from those with whom he was accommodated between June 2022 and March 2023. It was likely that Simon would again become the subject of Children's Hearings, with arrangements for his care regulated by CSOs. She intended to work towards having both Simon and Jonathan rehabilitated to her care. She said that she regretted not having "reached out" to services at an earlier stage. She would do things differently now. She had made several mistakes in the past.

[27] Her relationship with Pamela Green, Simon's social worker, had been rocky at first. She felt she could not trust her and that she was not being heard. She felt that she, HS, was saying the wrong words, or asking the wrong questions, so that she was not understood. HS had come to appreciate that Mrs Green had gone well beyond what was required of her as a social worker. It had taken HS a while to change her attitude and behaviour because of the feeling that she was not being heard or understood, and she required to "get the nerve" to tell Mrs Green how she was feeling.

[28] HS felt that her insight had improved since her conviction. She was still working out some of the finer details of what went wrong. There were things (which she did not specify) that even she "questioned". Working with her criminal justice social worker and her personal reflections she was seeing where she could have done better, with or without support. She should have been willing to accept advice from family who were only a phone call away.

[29] HS was working with her advocate (advocacy worker) to identify parenting classes. It was difficult to find a suitable class. She and LB had made changes to the property they lived in. They had, for example, obtained a new washing machine. Some of the odour

observed on Simon's clothes when he was taken into care happened because the water was not fully expelled from the old machine. She had replaced a sofa and flooring, and carried out some redecoration. It was not her fault that social workers had not reviewed the improvements. She had tried to arrange home visits. She and LB had sat at home on 16 March 2023 expecting a visit from Mrs Green, but she had never arrived. She was sure Mrs Green had not come, because she had been watching from the window. HS's advocate had led her to expect a parenting assessment over a 12 week period but she was offered only seven appointments of which six took place. She had declined appointments on occasions when her advocate was unable to be present.

[30] HS suggested in her affidavit evidence that TP had told her from the time after he first became involved in Simon's life (when Simon was 18 months old) that he did not have the resources to provide her continually with financial assistance. She was asked about a court order pronounced of consent, and signed by her, dated 7 November 2018 which provided that child support would be held in abeyance for two years. The order recorded that at the time of the order no child support was outstanding and that that had been verified with the child support office. HS said she did not remember consenting to child support being held in abeyance. She had read the document before she signed it but did not remember the provision being there. She had not been legally represented in the mediation that led to the agreement because she could not afford to instruct an attorney.

[31] HS was referred in her evidence to a letter from the solicitor representing her in criminal proceedings, dated 19 May 2023. It related to her appearance at the Sheriff Court on 5 May for a second review of the community payback order. It explained that the review report from the social work department was in very much better terms than on the previous occasion. She had attended all of her arranged supervision appointments, her engagement

with unpaid work had improved markedly and her overall co-operation had improved. The sheriff had allowed the order to continue, but reminded her that she must maintain that level of progress, and had fixed a further review for a date in August 2023.

[32] HS accepted that she had breached the order, and explained that she done so because she had not understood some aspects of what was required of her. Again, she referred to a “rocky start”. She was struggling to understand the process, although she had understood what was outlined in the court. Sometimes her criminal solicitor was not “the best at explaining” things to her. Some of her reasons for not being present at appointments may have been “actual reasons”. She thought they might even have been acceptable to social workers but she now understood they would never satisfy the court. Initially she had been supervised by a student social worker, but his supervisor had taken over in March 2023. She was much easier to talk to.

[33] She had been unable to feed the children adequately because of lack of funds. She could not work in Scotland but was now considering obtaining remote work in the United States to earn money. She could not explain why she had not done so before. At the time of the proof she still had no income. She had learned from her social worker that the information she had received to the effect that she could not register the children for school or medical services because of her immigration status was inaccurate. She accepted only that the children had been dirty and unkempt on the day they were removed from her care, which was the single day to which her conviction related. She generally tried to keep her children looking “very clean”. When it was put to her that the foster carer might speak to Simon’s having smelled bad, and to having required several baths to dispel that, she said she could not dispute that, but attributed the bad smell to the condition her home had been in at the time.

[34] The children's clothing had been inadequate only because she been asked to provide a bag with a very few outfits. She had retained clothing for them that fitted them properly and had never been asked to provide it. She did accept that Simon was malnourished for a protracted period. She did not accept that he was not educated. She did not accept that she had missed fifty per cent of contact sessions with the children in the period June to December 2023.

[35] The trainee criminal justice social worker had explained things to her better after the order was breached than he had done before. He had started working through the details to understand the reasons for the breach, whereas he had previously just asked her why she had been absent from appointments.

[36] HS did not accept that she had told Dr Gray, the paediatrician who examined Simon in June 2022, that Simon's father was of small stature. She had said that only in relation to Jonathan's father.

[37] HS now used an app to remind her to take out the trash and perform other essential chores. She was still working with her criminal justice social worker to identify what the barriers were to her engaging with household necessities. If something felt like a burden she would try to resist doing it. She was working towards identifying manageable tasks, rather than struggling, for example, to clean all of the kitchen in a single session. If more supports had been provided to her she might not have struggled as she had done. She recognised that she was at least partly to blame in that she had not herself sought support when she needed it.

[38] She had attempted to obtain legal advice about her immigration status but had not been able to "get clarity" about the issue. She understood that she would require to stay in Scotland until she had completed her community payback order. The supervision

requirement would not expire for several more months. She said that she hoped, once she had “more answers” about her immigration situation, to make long term plans.

[39] HS gave evidence about an occasion in late June 2023 when she was on a bus with Jonathan, Jonathan’s paternal grandmother and LB. TP, DP and Simon were at a bus stop. When TP and DP saw her, they “physically yanked” Simon off the bus. It was clear that the conduct of TP upset and confused Simon.

[40] She did not trust TP to facilitate contact as he had promised he would do so at the final Children’s Hearing in March 2023, but had not allowed any direct contact. If Simon were to be returned to the United States she would wish to have indirect contact twice a week for two hours. On one occasion Simon had asked for five minutes more and she heard him being told, “No”. Sometimes he would lose concentration over a two hour session. If matters eventually had to be considered by a court in the United States, she would be in a position to instruct legal representation. She now had the services of a legal aid attorney.

[41] HS considered that Simon should continue to have contact with LB. She had known him since he was an infant and was a constant in her life. She used to be a chef, and she and Simon shared a passion for cooking. Simon’s name for LB was “Momma”.

Ms White

[42] Ms White gave evidence that she had known HS for 13 years, and had fulfilled a pastoral and supportive role towards. She had never met Simon, but had seen him in the course of video calls. In her opinion Simon and Jonathan were as well cared for as possible when they were in the United States. There was little by way of support available to single mothers in Ohio and Kentucky. HS was motivated to go to Scotland in part in the hope of finding a better place to live. Ms White had less contact with Simon by video when he was

in Scotland, as there was a significant time difference between Scotland and Colorado, where she lives. She felt the children were happy and well cared for although she noticed that Simon had lost weight. She thought DP played a more significant role in Simon's life than TP did, and was concerned that TP would not promote HS's bond with Simon.

[43] In cross-examination she said she was aware that HS had been convicted of wilful neglect. HS had told Ms White her side of the story. HS had shared with Ms White that she believed she had been wrongly accused and wrongly convicted. There was more to the story, particularly regarding allegations made by neighbours. Ms White had seen some video footage of what the neighbours were doing.

[44] She accepted generally that her evidence as to HS's parenting was based on what she knew of HS when HS was in the United States.

Mrs Black

[45] Mrs Black fulfilled a parental role towards HS during her teen years, because HS's mother had difficulty caring for her. It was not a formal fostering role. There was a period, which included the first 18 months of Jonathan's life, when Mrs Black and HS were not in touch, because HS believed that Mrs Black retained ties with HS's mother. When she saw HS and the children, the children were well presented and well fed. She provided evidence about medical care they had received in the United States. HS had intended to return to the United States to seek a further visa, but had been prevented from doing so because of the Covid pandemic.

[46] She was aware of HS's conviction, but said she was not aware of the circumstances reflected in the terms of the libel. She understood that the charge was serious, but believed that with the proper support HS would be able to care for the children as well as she had

done in the United States. HS had intended to create a stable home in Scotland. Mrs Black regarded what had happened in Scotland as a “blip”. When it was put to her that Simon had been deprived of adequate nutrition over a substantial proportion of his life, she said that a lot of people had struggled during Covid. HS was unable to receive assistance although she asked for it, because she was past her visa term. If she had been allowed to get a job the difficulties would not have arisen.

Evidence for defender

TP

[47] TP normally lives in Kentucky and is employed as an airport ramp assistant.

[48] TP’s evidence was that during the time Simon was in Scotland with HS, he experienced difficulty in maintaining indirect contact with him because HS ignored his calls. HS complained to him about Simon stealing food during the night, and sent messages to him and to his mother on a similar theme. HS did maintain regular video contact between Simon and DP, and sometimes TP would visit his mother in order to be included in the contact. TP could see that Simon was becoming skinnier. In the two months before Simon was taken into care video calls became less frequent. HS would not answer calls, and would say that the phone was dead or that Simon was napping. TP became aware on 13 June 2022 through a third party that Simon was in care, and he contacted the local authority. He attended all CORE group meetings and Children’s Hearings for Simon remotely. In February 2023 social workers advised him that they would be asking the Children’s Hearing to terminate the CSO so that Simon could live with him in the United States. TP arrived in Scotland on 14 March 2023. The plan had been to travel to the United States on 25 March, but HS obtained an interdict which prohibited that.

[49] TP had insurance through his employer to meet Simon's dental, health and optical needs. His employer had kept his employment open for him, but he had been unable to work since March 2023. He had contacted the elementary school that his other children attend. The school would assess Simon to make sure he entered the correct grade for his needs. TP's older children had met Simon before, and all of his children had interacted with him, so far as they possibly could, in video calls. One of the children was close in age to Simon. AP worked part-time on TP's days off. TP's wider family were available to provide help when needed. One of the consequences of TP being away from the United States was that AP had had to reduce her working hours, as TP was not there to share childcare responsibilities with her.

[50] Since TP arrived in Scotland he had taken part in various trips and activities with Simon, and in activities involving Jonathan and his grandmother. Those had been funded by TP's parents. He had maintained contact with Simon's foster carers. Simon and Jonathan had continued to see each other regularly either in person or on video calls. TP and DP had become close to Jonathan and his grandmother during their time in Scotland.

[51] In relation to the incident on the bus that HS described in her evidence, he said that it had taken place on 20 June 2023. He, DP and Simon had been waiting for a bus. They were early for the bus ride. TP looked on the bus and saw Jonathan and LB. He did not see HS. He said to DP, "Let's wait for the next bus". She asked why, and he replied, "They are on the bus". TP, DP and Simon were not near the bus doors, and it was untrue that they had yanked Simon off the bus. He blocked Simon's view and walked back to the bus shelter. TP told Simon it was not the right bus, and that they would catch the number 7. Simon had no clue that LB and Jonathan were there. He did not see a need for Simon and Jonathan to meet

at that point because they had a good deal of contact with each other. He was concerned that there might be conflict.

[52] TP gave evidence about recent indirect contact with HS. On 14 June contact had been due to take place, but after waiting for half an hour did not want to wait longer. HS said that there was a problem with the internet. The week before the proof there was no contact. At around 4.55pm TP sent HS a messages saying that the phone was not working for Simon. He received a reply from HS at 6.55pm saying that she had only just received his message, and that there were again internet issues. She requested contact on a different day, but the family already had arrangements to be out of town on the day she requested. The phone Simon was using was one provided by social workers for the purposes of contact. On one occasion when that phone was not working, TP had used his own phone for contact which he was not "supposed to do". If HS had contacted him earlier than she did, he would have again facilitated contact on his own phone. He thought that two hours twice a week would be too much for Simon. He denied having scolded Simon in the course of a video call for calling LB "Momma". He believed the child welfare reporter might have misunderstood what Simon said to her about calling LB "Momma". He had told Simon that it was up to him what he called LB. He said that he did not have any difficulty with the sexuality of HS and LB, but was concerned about the way that they had treated Simon.

[53] TP accepted that HS and Simon loved each other. He was concerned that HS lied to Simon, because she used promises of being able to play with particular gaming devices which she had at her home, if he were staying with her. He had heard her saying these things during calls. He did not think it would be in Simon's interests for LB to have a right to contact with Simon separately from HS. He would support indirect contact between Simon and HS and LB together, but not separately. He could not see why LB would have

contact with Simon if she were to break up with HS. He felt that Simon needed to continue to have a relationship with HS and LB, but until a lot of work had been done that should be indirect contact only. Simon had never asked for more extensive indirect contact.

[54] TP found that Simon had engaged well with the video contact with him that took place when he was living with foster carers. He would do colouring in, sing, dance and be involved in cooking and reading during the calls. Sometimes he would become distracted.

[55] Simon was healthy and thriving. He loved his food, and would “ask about the next night’s dinner the night before”. He had recently made a disclosure to TP. When they were walking through the local park, Simon said he was worried he would get hurt if he rode his scooter downhill. TP referred to him riding a bike and asked him if he had a bike. Simon said he had had a bike, but that it broke. TP asked him what else he remembered. He said, “I remember we had a bunch of flies.” He said that his brother took care of him by getting food from the garbage or from the neighbours. After that TP did not “get much more from him”.

[56] TP confirmed that he had no right to remain in the United Kingdom and was visiting on a tourist visa. He had no home, employment, or right to work in the United Kingdom and all of his family were in the United States.

[57] TP was asked about having given assurances to the Children’s Hearing on 20 March 2023, and he said that he had done so, but denied having said he would facilitate direct contact. He accepted that Mrs Green had offered to include Simon in direct supervised contact. He had asked what would happen if HS tried to take Simon away from contact with her, and Mrs Green had said she would not be able to prevent that. He was worried HS would leave with Simon, and that it would be difficult to get him back. That would give rise to unnecessary distractions and conflict which would not be in Simon’s interests. That

discussion had taken place in March or April 2023. Although HS gave an undertaking to this court on 4 May 2023 not to remove Simon from TP's care, he would not have been prepared to accept and rely on it. The matter was not discussed again after 4 May.

[58] He accepted that there were occasions when he did not respond immediately to WhatsApp messages from HS, but said that he had responded to her messages. Most messages were about video contact. If there was a request to pass on an item, Mrs Green assisted with that.

[59] TP did not accept as genuine HS's evidence of having recognised that she had been at fault, and of an intention to change her behaviour in the future. If in the future Simon expressed a wish to see more of his mother or live with her, he would be listened to and TP would have a discussion with him.

[60] Counsel for HS put to TP that separation from Jonathan would have an impact on Simon and it was uncertain whether Jonathan would return to the United States. TP responded that it was Jonathan's wish to live with his grandmother in the United States, not far from TP's home. It was suggested to TP that he and AP would have difficulty caring for Simon in the context of their working lives, when contrasted with the situation in which TP and DP were with Simon all the time in Scotland. He responded that Simon would be in the same situation as his other children.

[61] At the point of taking Simon out of school, TP expected to be returning imminently to the United States. TP had agreed with social workers that Simon should not return to school in Scotland after having left. That had also been the advice of Simon's teacher, although there had been a discussion about his being re-enrolled. There were concerns that returning to school in all the circumstances would be confusing for him, and TP and DP decided to home school him.

[62] When Simon was living with HS and LB, it was DP who exercised the most consistent video contact with him. TP explained that that was because HS would deny him video contact for protracted periods if he made any request for Simon to return to the United States. That was why he had had to resort to joining in his mother's video contact in order to see Simon.

DP

[63] DP is Simon's grandmother. During times that Simon lived with TP in the United States, she supported TP and his family as much as possible. She saw Simon frequently in person in the United States. When he came to Scotland she maintained contact with weekly video calls. Quite often HS cancelled or rearranged them, but DP was always available for him on a Monday. She and her husband built their schedule around the calls and anticipated them eagerly. TP's calls with Simon were often denied, and he would come to DP's house to participate in contact. Simon's great grandparents were also involved in the calls. DP and TP became concerned about Simon's appearance as he was unkempt, skinny and pale. HS said that Simon was stealing food, and asked DP to talk to him about it. She did so, and he did not have much to say. In retrospect, having learned that Simon was kept short of food, she felt sick and regretful that she had spoken to him about the matter.

[64] Her evidence was that TP and AP made their working arrangements with the children in mind so that one was at home while the other was at work. AP's grandmother helped out, and so did DP and her husband when asked to do so. There was a large extended family living locally. She was committed to ensuring that Simon had contact with his mother. She regarded HS as manipulative because she sent him gifts. She regarded that as an attempt to buy his loyalty or affection. HS had told Simon that his father did not love

him, which was not true. She thought HS told Simon she had an Xbox at her home with a view to encouraging him to come to her home.

[65] She gave evidence about a number of occasions on which Jonathan and Simon had contact between April and July 2023, some by video, and others in person along with different combinations of those caring for them, including former foster carers and Jonathan's grandmother.

[66] DP remembered the incident on 29 June. TP said, "Don't get on this bus". She replied, "Don't get on this bus?" He had confirmed what he said, and she took his word for it, went back over to the bus stop and sat down. Simon was with her. TP said to her that he had seen "them" on the bus. DP told Simon that they were going to catch the next bus, and he said, "Okay" and went and sat down.

[67] Simon had not spoken to DP about his experience of living with HS and LB. DP denied telling Simon off for calling LB, "Momma".

Mrs Green

[68] Mrs Green is the allocated social worker for Simon and Jonathan. She personally received a call made on 7 June 2022 from a neighbour of HS and LB reporting concerns that the children were neglected. The report was that Jonathan had climbed out of a bedroom window and had been in her garden. He told her that he and his brother were hungry and they had not had dinner the previous night or breakfast that morning. She had given him food. This was not the first time that people in the community nearby had given the children food. The children were never seen out of the house, and the caller could hear females shouting at the children.

[69] That was not the first time the social work department had received reports of concern about the household. Two other social workers attended the house, and Mrs Green later attended with one of them. The home was in a poor condition, and smelled of urine and faeces. There were animal faeces on the floor. There were takeaway boxes around the property. The state of the property was such that it must have been in a poor and unhygienic condition for a significant period of time. A Child Protection Order was sought and granted.

[70] Mrs Green had discovered from mental health professionals that LB might be impulsive and angry, and that LB had expressed a concern that that might lead to harm to the children. Police reported a previous conviction of LB for robbery and battery of an 11 year old child in 2014. LB told Mrs Green she had not assaulted a child, but admitted that she had stolen a bike.

[71] Mrs Green prepared Simon's assessment and plan in March 2023 for an early review of the CSO relating to him. That assessment recorded that Simon had struggled to express his needs, wants and feelings. Mrs Green said that although that had improved in some respects, he continued to close down when asked about his life before he came into care. She would not persist in asking questions. She thought that Simon was eager to please and might try to give answers he thought the questioner wanted if the questioner persisted.

[72] Simon and Jonathan had supervised contact with HS and LB in social work premises between June 2022 and 2023, with some contact involving trips out of the building to a park, or more extended trips.

[73] Mrs Green prepared two assessments of parenting in respect of HS and LB, in March and June 2023. When Simon first came into care, social workers attempted unsuccessfully to engage with them to carry out such an assessment. In 2023, after finding out that the social

work department were recommending that Simon live with his father, HS and LB said they wanted to engage, so social workers restarted the process. The preparation of the March report involved three meetings. Mrs Green had attempted to carry out a home visit on 16 March. She attended HS and LB's home and knocked on the door. No-one answered. She left a note asking for contact. There was no response to that note.

[74] For rehabilitation to be considered it was important to consider how committed or resistant HS and LB had been. They had demonstrated dissent or avoidance behaviours, and had passively disengaged from the process. It was fundamentally important for parents to engage in the process to see whether it would be possible to establish change. HS maintained that she had been "caught on a bad day" and that home conditions were not normally as they appeared to be on 7 June 2022. Mrs Green's recommendation in the March report, prepared for the Children's Hearing, was that Simon should not return to the care of HS and LB as they had not demonstrated a capacity to change, and that he should live with his paternal family in the United States. She considered that contact with HS and LB would expose Simon to risk of emotional harm, and her recommendation was that any contact should be supervised.

[75] Jonathan remained subject to a CSO, and had direct supervised contact with HS and LB supervised by social workers. He was living with his grandmother.

[76] Mrs Green had never suggested to HS that the process of assessment would involve twelve appointments. Her updated report of 30 June 2023 indicated that she had offered eight appointments of which six had been attended. Following the failed home visit on 16 March she had been advised by HS that her legal team had told her she could not meet with Mrs Green unless her advocate was present.

[77] When asked to reflect on their care of the children, HS and LB cited lack of funds and neighbour disputes as the causes of the difficulty. Feedback from criminal justice services was to the effect that HS was unable to reflect on her parenting struggles or deflected from those struggles during discussion during her supervision sessions. She appeared to be unable to accept or acknowledge the fact she neglected her children and take responsibility for that. Mrs Green had consulted criminal justice social work records when preparing her report. She had learned that in recent months HS's engagement with criminal justice social work had improved and she was attending her work and supervision sessions. The most recent risk assessment assessed HS as being at low risk of reoffending as the children were not in her care. The risk could increase if they returned to her care.

[78] Mrs Green and HS's criminal justice social worker had proposed that they have discussions with HS together, but HS told the criminal justice social worker that she had to seek advice as to whether she could do that without her advocate present. HS had previously agreed to a meeting with both Mrs Green and the criminal justice social worker. HS had a right to have an advocate present if she wished.

[79] During the family time Mrs Green had observed, it was difficult for the children to relax, although that had improved over time. HS and LB closed the children down if they tried to talk about the past. The children needed to be heard and validated, and to understand their feelings were validated by those important to them. Between June and December 2022 the take up of family time sessions by HS and LB was only fifty per cent of those offered. She had no concerns about LB's interactions with Simon during contact. Simon appeared happy to attend and leave contact sessions. There was a bond between him and LB. HS's interactions with Simon in family time contact sessions were less natural than those of LB. HS spent the majority of the time standing up and looking over the children

and was less inclined to interact with them physically than LB was. She was “sergeant major-like” and tried to manage activities rather than engaging in them. Mrs Green accepted that the supervision of contact had the potential to put parents on edge, and make the atmosphere less relaxed.

[80] At the point that Simon’s CSO came to end, Mrs Green made it clear to HS and to TP that she was happy for Simon to continue attending supervised direct contact with HS and LB along with Jonathan.

[81] Mrs Green continued to engage with Simon on the basis of her responsibilities under section 22 of the Children (Scotland) Act 1995. She had been in contact with TP since about July 2022, initially with a view to finding out more about Simon’s wider family. In all cases she would look to see whether a child could be placed with another parent or a family member. She did not carry out a parenting assessment of TP. She would not routinely carry out such an assessment unless there were information to suggest a problem with parenting capacity.

[82] At an early stage in the process HS had said she had difficulty understanding the language used by social workers. Mrs Green tried to meet HS and LB to help them understand, but it proved impossible to meet with them except in structured meetings and at family time. Mrs Green accepted that it was helpful for advocacy services to be involved, and reasonable in general for HS to insist on an advocate being present. She did not, however, understand what language or jargon would be a barrier to a home visit to look at the condition of the property.

[83] Mrs Green continued to visit Simon once a week. If he had something he wanted passed to his mother, she would pass it on for him, and vice versa. He had never said to her that he wanted to see his mother. If he were to say that, she would say to him that she heard

him, but that she was not in a position to say that could definitely happen. If a CSO were in place with a requirement for contact, she would have a legal responsibility to ensure that it happened. When she saw TP discussions were about what had been happening in Simon's life. Simon had not returned to school, because he had his "ending" so far as school was concerned, with the plan at that time being for immediate return to the United States. He had been home-schooled.

[84] Mrs Green had not heard, before the suggestion was put to her in her evidence, that HS had made inquiries about parenting classes. She would regard that as a positive move.

[85] In re-examination Mrs Green explained that when she offered to include Simon in supervised contact, TP asked what would happen if HS tried to remove him. She explained to him that she would be unable to prevent HS from doing that as there was no order preventing her from doing so.

Dr Gray

[86] Dr Gray has been a consultant paediatrician since November 2018. There is no dispute that she is properly qualified to give evidence of opinion concerning the matters about which she gave evidence. Her evidence was not challenged in any respect by either the pursuer or the minuter in cross-examination.

[87] She examined Simon on 8 June 2022. Some elements of the history available to her came from a child protection adviser, and others from one of the social workers who had attended the family home. She had access to records uploaded by a school nurse who visited Simon at home in August 2020. According to the information uploaded by the school nurse, HS told her that Simon was at that time registered with a specified local medical practice and that he attended for asthma review there.

[88] The history obtained from the child protection adviser included an account that neighbours had reported that Simon and Jonathan were hungry and unkempt and had gone to the house of the neighbours looking for food. It also included an account that the children had said they were locked in cupboards and starved.

[89] Dr Gray obtained the following history directly from the foster carer with whom Simon had been placed the preceding day. Simon was obsessed with the fridge and very keen to look at the food in it. Simon had had a bath on the morning of the examination and the foster carer reported that the water had been brown after the bath. The carer reported that the clothing provided for the children was dirty and fitted poorly.

[90] Dr Gray spoke to HS on 12 June 2022. HS provided medical information on an electronic disk. That included information that Simon attended a clinic review at Pensacola Paediatrics in Milton, Florida, in September 2019. The record disclosed that he had been seen the previous week with an exacerbation of asthma and was given five days of oral steroids and an albuterol inhaler with good effect. He was using a preventer "controlled" inhaler once daily and an albuterol inhaler at night if symptomatic.

[91] Matters that concerned Dr Gray were that Simon had no NHS records. Social workers had recovered only one inhaler (the one for relief, rather than the one with a preventative function). Its expiry date was in 2019. She was provided with a mask intended for a child to use with an inhaler but it was dirty and broken. It was essential that such masks were washed and dried so they were ready for use. Use of a dirty device risked inhalation of matter that could cause respiratory irritation. Out of date medication carried with it a risk that it would be less effective than it should be. Social workers provided her with a bottle of polyethylene glycol which had an expiry date of December 2019, and an account that HS said she gave the children the substance daily as a laxative. HS was

reported to have said that she did so in the face of advice from her mother that it was harmful as it contained antifreeze.

[92] Simon was mildly dehydrated and was anaemic. Those findings were consistent with his not having free access to food and drink and a restricted diet. He had no bruising on his lower legs. She would normally expect to see some bruising on a child consistent with play. The absence of bruising was consistent with his having been confined and not allowed out.

[93] The various weights and measurements for Simon that Dr Gray had access to and which she regarded as significant were these.

Date	Height	Weight
27 September 2019	97.8cm (29 th centile)	17.69kg (83 rd centile)
August 2020	98.4cm (2 nd centile)	15.6kg (14 th centile)
8 June 2022	104.7cm (0.4 th centile)	17.9kg (6 th centile)
27 July 2022	106.8cm	20.4kg

[94] HS explained the small stature of both children to Dr Gray by reference to the short stature of their respective fathers. She said that one father was smaller than she was, and the other a little taller. HS was herself on the 25th centile of height for women. She gave Dr Gray an account that Simon and Jonathan were always hungry and asking for food. She wanted to know why, as she felt she fed them lots of food. As a result of the history provided by HS, Dr Gray ordered X-rays of the children's hands to determine whether the

children had a delayed bone age. The results of the X-rays indicated that the history given by HS was not accurate.

[95] Dr Gray's opinion was Simon's pattern of weight gain and growth between September 2019 and June 2022 was not normal. The pattern of relatively rapid growth and weight gain in the seven weeks after Simon was placed in foster care where he had an adequate calorie intake demonstrated that there was no medical reason for the pattern of poor growth and weight gain in the period 27 September 2019 to 8 June 2022. The pattern was suggestive of a prolonged period of inadequate nutrition and was consistent with nutritional neglect. She considered that Simon had experienced medical, educational, dental, physical and nutritional neglect as defined by the Royal College of Paediatrics and Child Health *Child Protection Companion* Chapter 11. A prolonged period of inadequate nutrition could have enduring adverse effects, including effects on brain development, learning potential, mental health, abilities to focus and concentrate. Deprivation of adequate nutrition was also a form of emotional abuse, which could have psychological consequences in the future. Simon's growth had made some recovery with adequate nutrition, which was encouraging, but he had been subject to a prolonged period when his growth had been significantly affected.

Mr Brown

[96] Mr Brown and his partner were the foster carers with whom both Simon and Jonathan lived between 7 June 2022 and 20 March 2023. Mr Brown was shocked by the boys' appearance when he first met them on 7 June. Both appeared much younger than their chronological ages. They both smelled very unpleasant. It took several baths over several days to get the smell out of their hair, and it took several washes to remove the

odour from their clothing. They did not have many clothes with them and the ones they had were ragged and did not fit well. Mr Brown attended medical examinations with both boys. He was told they were anaemic, and initially he and his partner gave them iron supplements. The issue sorted itself out once they started to get three meals a day with plenty of fruit and vegetables.

[97] Nurses came in every two weeks to monitor the height and weight of the children, initially at home, and then later at school. One of the things Mr Brown and his partner noticed about both children was their obsession with food. They wanted to look in all the cupboards and the fridge, and would sneak food upstairs. He had to explain to them that they could have food if they were hungry and they could ask for it whenever they needed it. The boys seemed unfamiliar with their neighbourhood, and in particular with K Park, a popular local park. They were unfamiliar with road safety, and Simon appeared not to have experience of travelling by car.

[98] Simon presented as an outgoing and playful child. He was, however, guarded about his experiences before coming into care.

[99] When Simon attended school for the first time in autumn 2022 he was years behind, but did not need assisted learning, as his class teacher was able to work with him in the mainstream class. He settled into school very quickly and enjoyed it. Mr Brown was never present at direct contact between Simon and HS and LB. A lot of the planned contact did not take place. By November 2022 HS's attendance at it was about fifty per cent. Simon was disappointed when contact did not take place. He enjoyed the contact that did take place.

[100] At first Simon was shy when contact with his father was introduced by FaceTime, but took to it and enjoyed spending time with his American family. At first Simon thought his dad did not like him. Mr Brown told him that was not true, and once Simon and TP

started talking, they got on like a house on fire. After TP arrived in Scotland, Mr Brown and his partner worked with TP and the social work department to plan for TP to take over Simon's care.

[101] Simon's school held a party for the event of his leaving to return to the United States. When HS started proceedings, and Simon was not allowed to return to the United States, Mr Brown explained to him that the paperwork for the plane was not ready yet. Things had got even better for Simon since his father arrived in Scotland. Simon was happy and clearly loved his father and grandmother. He still saw Simon frequently.

[102] The only matter about which Mr Brown was asked in cross-examination was this. He was in touch directly with HS over the Christmas period in 2022. Special consent had been given for the boys to use the phone that the social work department had provided for contact so they could speak to HS to exchange Christmas greetings. HS asked him if she could provide her contact details so that Mr Brown could communicate directly with her in case anything arose regarding the boys. He was willing to do that, but Pamela Green said that that would not be allowed.

Evidence for minuter

LB

[103] LB's evidence was that Simon looked on her as a mother figure and that they had an excellent relationship. During the pandemic she and HS got free school meals for the children. They did lots of things together, including playing video games, cooking and arts and crafts. She supported HS financially and made sure that everyone was fed.

[104] She believed that social workers had wanted to reduce her contact with Simon. After the CSO terminated, it had taken some time to get video contact up and running. Pamela

Green offered to take the phone that the foster carers had had for contact with HS to TP. LB was concerned that without an order, TP would not permit her to have video contact. In the event that Simon remained in Scotland, she wanted to have direct contact with him, and in the event that he returned to the United States, she wanted to have indirect contact with him. She did not remember any particular form of contact being mentioned at the Children's Hearing on 20 March 2023, but in her own mind thought that there would be both direct and indirect contact. LB and HS had sent planned activities for video contact, but had been told that they were too messy. Sometimes Simon was allowed to be active during calls and throw paper planes around. Generally LB anticipated sharing contact sessions with HS, although there was one imminent contact session she would miss because of a need to visit a sick relative.

[105] HS and Simon had a close mother and son relationship and enjoyed a range of activities together. It was hard for LB to see how upset HS was about being parted from her children.

[106] LB did not accept that that she had ever reported a concern that she might harm the children or be angry with them, although she had shared that she had not been coping well as a result of her past. She had shouted at the children but would always have had a good reason for doing so. She denied having a conviction, although she had been with someone who had stolen a bike from a child when she was about 21 years old, in England.

[107] She and HS had taken the children to D Park, but not to K Park, in the local area. She had cooked for Simon as much as she could. Both Simon and Jonathan had always been small. She would not really have noticed if Simon remained the same weight because he always looked the same. She had been concerned that he was not growing and that was why she tried to get him to a doctor, and why he was seen by a nurse in 2020. She and HS

had fed Simon as much as they could afford to. She accepted she had failed Simon seriously. The takeaway boxes that social workers observed were from meals the whole family had enjoyed. LB's parents would send money and when they did LB and HS treated the boys to takeaways.

[108] LB accepted responsibility for the matters narrated in the grounds of referral except for the allegation that there was a lock on the boys' bedroom door.

Submissions

Pursuer

[109] Counsel did not move that I should grant the conclusion for residence with HS. That would be premature and entirely without merit. Counsel asked me to grant an order for direct contact with HS at such times as was in Simon's best interests.

[110] I should refuse TP's conclusions for residence and for a specific issue order. The result of that would more than likely be that the Reporter would again become involved in Simon's life and he would be subject to a CSO. That would be in Simon's best interests. HS had been candid and admitted her mistakes. She was taking steps to improve her parenting and was co-operating with the criminal justice social work system. The behaviour that led to the removal of her children was an anomaly at a time when she was overwhelmed. Malnourishment was inextricably linked to poverty. Social services had not made appropriate adjustments to allow for her lack of understanding of the process and what was expected of her. Mrs Green had disregarded the need for the attendance of an advocacy worker.

[111] As soon as it became apparent that TP was interested in assuming care of the child, all services and resources shifted away from HS, along with any prospect that the child

would be rehabilitated to her. It would be premature to discount any prospect of rehabilitation.

[112] A CSO would enable social workers to make decisions in respect of Simon, which they could not presently do. If the CSO had been in place, that could have secured that direct contact with HS continue. Counsel acknowledged that her motions if granted would not offer any certainty for Simon, but would instead allow additional time for rehabilitation to be attempted. There was nothing to suggest that Simon would not return to the primary school he had been attending or that he would not be accommodated with his previous foster carer, although neither matter was certain. There was no certainty that Jonathan would return to the United States.

[113] Simon's life in the United States, where AP would be the principal carer, would not be similar to the life he had had for the past four months in Scotland with TP and DP devoting all of their attention to him.

[114] An order for contact should be made. There had been no meaningful direct contact since the CSO ended. HS had experienced difficulty in communicating with TP about contact. DP's allegations about manipulation were without substance.

Defender

[115] Counsel moved me to grant the residence order and specific order that TP sought. I should regard TP and DP as committed and loving so far as Simon was concerned. Neither HS nor LB provided credible or reliable evidence. HS did not genuinely accept responsibility for her neglect of Simon, and she routinely attributed responsibility to others for failings that were her own. HS's criticisms of TP related to minor issues and were misplaced in the context of her own culpability. It would not be in Simon's interests to

remain in Scotland within the Children's Hearing system. He would have a stable home and loving family in the United States. The only parent who could offer safe and stable care for Simon resided in the United States and the orders sought were therefore necessary.

There was no need to regulate indirect contact as it was not disputed. I should make no order in favour of LB. I should give limited weight to the child's views, given his age and his experience of neglect.

Minuter

[116] Counsel submitted that the evidence, including Mrs Green's observations of contact, demonstrated that there was a significant bond between Simon and LB. LB had been a constant in Simon's life for a significant period. It was necessary to make an order because TP had not in fact consistently supported contact, and there were grounds for concern as to his attitude towards LB. There was an issue as to whether TP had told Simon not to call LB "Momma".

Decision

Credibility and reliability

[117] In respect of HS, there are significant aspects of her evidence which I regard as lacking in credibility and reliability, for the reasons given below. Ms White and Mrs Black were doing their best to assist the court, although their views of HS were obviously coloured by their relationship with and affection for her. They were hampered in providing reliable and relevant (in the sense of being up-to-date) evidence about HS's qualities as a parent by their lack of recent direct contact with her and her children. Mrs Black seemed unwilling to

accept that HS might bear responsibility for the situation the children found themselves in in Scotland.

[118] I regard the evidence of TP as generally credible and reliable, save in relation to the matter detailed at paragraph 143. I regard the evidence of DP as credible and reliable. It was plain from her words and manner in evidence that she dislikes and distrusts HS, but I accept that, despite that, she regards contact between HS and Simon as necessary for Simon and supports it. I accepted the evidence of Mrs Green, Dr Gray and Mr Brown as credible and reliable.

[119] LB did not appear to be attempting deliberately to mislead the court. She appeared to believe that what she was saying was true. She accepted that she was unreliable on matters such as dates. There are parts of her evidence which are obviously incorrect. She did not, for example, “keep everyone fed”. My impression was that she minimised the very significant neglect Simon experienced, and dwelled on the positive aspects of her relationship with him. I noted that the allegation in the pleadings about events during a call on 21 June 2023 were not repeated in her affidavit. In the absence of an extract conviction I reached no conclusion in relation to the disputed allegation that she had a conviction for an offence of violence against a child.

The law

[120] There was no dispute as to the relevant law, which is to be found in section 11 of the Children (Scotland) Act 1995. The court must regard the welfare of the child as the paramount consideration and must not make any order unless it considers that it would be better for the child that the order be made than that no order should be made: section 11(7). The court must have regard to a range of factors which may arise in situations in which

there is abuse or a risk of abuse to the child or another person: section 11(7A-E). Decisions relating to relocation are “presumption free”: see eg *Donaldson v Donaldson* 2014 Fam LR 126, paragraph 27. Each case turns on its own individual facts. Like all section 11 decisions they require an evaluation of all aspects of a child’s welfare.

Residence and the specific issue order

[121] In the event that I do not grant the orders that TP seeks, he will have to return to the United States without Simon. He cannot stay in Scotland to look after him indefinitely. He has a job, a wife and children in the United States from which and whom he has already been parted for a significant period. He has no right to be in the United Kingdom other than on a tourist visa.

[122] When Simon was in HS’s care she neglected him. He was unkempt and dirty, and he was deprived of adequate nutrition over a prolonged period. He was not registered with a doctor or dentist. He did not attend school. There is no suggestion, even from HS, that she could look after him just now. She accepted that she would require to do a great deal of work before that could happen.

[123] It would not be in Simon’s best interests to remain in Scotland to await the possibility that he might be rehabilitated to his mother’s care. It was accepted on all sides that if that were to happen he could not remain in his father’s care, that arrangements for his care would have to be regulated by orders under the Children’s Hearing Scotland Act 2011, and that he would be placed in foster care. HS currently has no right to remain in the United Kingdom. I accept that she must have found herself in a very difficult position with the onset of pandemic restrictions around the time she planned to return to the United States to seek a further visa. She has, however, not yet obtained legal advice about the matter,

although she has now been in the United Kingdom without leave for more than 3 years. She has no income and relies on funds that her family send her from the United States.

[124] If Simon remained in Scotland he would be placed indefinitely in a position of uncertainty and instability. Neither of his natural parents has any right to remain in Scotland. He would be placed in foster care again, involving an immediate change in his carer from his father and grandmother to someone else. There is no evidence that he would be placed again with Mr Brown. He would be subject to Children's Hearings. I do not know where he would be placed, or where he would go to school. There is no evidence that he would even return to the primary school he previously attended. He would face upheaval in the short term, with nothing at all to give grounds for confidence that it would be of benefit to him in the longer term.

[125] I cannot make any finding as to when HS might become capable of caring for Simon herself. Such insight as she has comes late in the day, and is at best limited, taking her evidence at its highest. Her view that Simon would be better served by that course is itself indicative of the very significant limitations on her insight and her capacity to consider Simon's interests as interests that might differ from her own personal interests.

[126] I am not in any event persuaded that I should accept HS's evidence as to the extent of her insight and intention to change. The evidence of Ms White is of some significance. HS has tried to present herself to the court as someone who has gained an understanding as to why she was unable to take adequate care of Simon. She pleaded guilty to the charge of wilful neglect. It is clear, however, that in communications with someone in her life who is not a professional involved in court or social work processes she maintains that she has been wrongly accused and wrongly convicted. Looking at the evidence of Ms White in the context of other features of the evidence, including the evidence of HS herself, I have formed

the view that HS is keen to say what she thinks professionals involved in her case want to hear, and which she thinks are likely to serve her own interests, when in fact she continues to regard herself as wrongly accused and wrongly convicted of neglecting Simon and Jonathan. I accept the evidence that HS attended only about half the available family time contact sessions in the period to December 2022 and that she became interested in engaging with social workers only when she learned that they were recommending that Simon should live with TP.

[127] The following are some examples of matters in respect of which HS did not accept responsibility, in respect of which she accepted responsibility only to a limited extent, and/or in respect of which she did not give truthful evidence. They inform my conclusion that I cannot rely on HS's evidence as to the extent of her understanding of her own responsibility for the situation in which Simon found himself when in her care and as to her intention to modify her behaviour so as to avoid a similar situation in the future

- (a) She allocated responsibility for her breaching her community payback order to the solicitor who represented her in the criminal proceedings. She said he was not the best at explaining matters to her.
- (b) The trainee criminal justice social worker who had initially supervised her community payback order was not easy to talk to when compared to the social worker who engaged with her directly from March 2023.
- (c) She insisted that she had told Dr Gray only that Jonathan's father was of short stature, not Simon's father. I accept Dr Gray's account. She presented as a careful witness who for obvious reasons was interested in all matters that might have a bearing on Simon's growth pattern. I do not believe HS's evidence regarding her account to Dr Gray.

(d) She insisted that it was only in respect of the day Simon was taken into care that he presented as unkempt. She insisted that he had inadequate clothes when he was taken into care only because she was asked to pack a limited quantity of clothing, and she had not selected the items which fitted him better. I regard that as evidence as lacking in credibility for the following reasons.

(i) LB accepted in her evidence that Simon and Jonathan were not properly bathed and kept clean. She accepted that the children did not have adequate clothes;

(ii) I accepted Mr Brown's evidence that a number of baths and washes were needed in order to remove an unpleasant odour from Simon's hair and clothing. That account is indicative of a problem, so far as hygiene is concerned, of an enduring nature.

(e) I did not accept her account that Mrs Green failed to attend for a home visit on 16 March, when HS and LB were waiting at home. I accepted Mrs Green's evidence about what she did on 16 March. I noted that there was no account from LB of this incident.

[128] I note generally a pattern of attributing responsibility either expressly or by implication for her failure to make progress, or delay to make progress, to other people.

[129] It would be in Simon's best interests for him to live with his father in the United States. He has been in the care of his father since March 2023, and has, albeit for limited periods, lived with him in the more distant past. Mrs Green has been in contact with Simon, TP and DP weekly, and has no concerns in relation to the care that Simon has been receiving. Mr Brown's evidence was that Simon was thriving in the care of TP and DP. I

accept the evidence of TP and DP as to the supportive family situation in which Simon will be living when he returns to the United States.

[130] HS sought to cast doubt on TP's ability to care for Simon in the United States because he would be working full-time and AP working part-time, and she sought to cast doubt on the extent to which AP supported Simon's joining the family. There is no evidence to suggest that there is any substance to those concerns. TP and AP already care for four children in the context of their working lives. Very many families with children have similar patterns of employment. I did not hear any evidence from AP. I infer, however, in the context of TP's evidence about the consequences of his absence from home while caring for Simon in Scotland for much longer than he had expected, that AP has already provided very significant practical support for Simon's place in the family, and for TP's role as his father.

[131] TP has demonstrated his commitment to Simon. I accept that he attempted to maintain contact with Simon when Simon came to Scotland, and that HS did not always facilitate that. TP has attended (initially remotely) every significant meeting relating to Simon since Simon was taken into care. He has remained in Scotland with him for a protracted period and borne consequences so far as his ability to work and pursue other aspects of his family life are concerned. TP has a stable family life in the United States. He will be returning to his usual residence and his usual work there. Simon will benefit from living in that stable situation with one of his natural parents and his paternal half siblings.

[132] HS made a number of other criticisms of TP, which I also reject.

[133] I am not critical of TP's decision to remove Simon from school in Scotland, or that he should not return to school in Scotland. He took that decision after consulting with social workers, and on the basis that, having said a formal goodbye to his classmates with a leaving party held in his honour, a return to school would be confusing. It may be that,

given the time that has actually passed, it would have been better for Simon to be in school, but the decisions taken were, I accept, taken in good faith and with a view to serving Simon's interests, and not for any other reason.

[134] The prospect of removing Simon from direct contact with Jonathan for the immediate future is not a welcome one. I am not fully informed as to Jonathan's circumstances in this action. Where he will live in the future is a matter of uncertainty. He remains subject to a CSO, and is in the care of his paternal grandmother in Scotland for the time being. Her normal place of residence is in the United States, about half an hour's travel from where TP lives with his family. If Simon were to remain in Scotland he would be able to maintain direct contact with Jonathan in the short term, but I cannot find that he would be more likely than not to be able to do so in the longer term, given the uncertainty as to Jonathan's future. I am confident that TP will promote and maintain Simon's relationship with Jonathan. It was clear from the evidence that TP and DP had formed a good relationship with Jonathan and his grandmother.

[135] So far as the incident on 29 June is concerned, there are accounts from TP and DP on the one hand, and HS on the other. HS thought that Simon realised she was present on the bus, and was confused and upset to be pulled away from the bus. TP and DP maintain that he did not know why a decision was taken at a late stage not to board the particular bus, but accepted the adults' saying that they were not getting on the bus. I accept TP and DP's accounts both of what happened and of Simon's understanding of the situation. They were interacting directly with him at the time, whereas HS was inside the bus and forming a view on the basis of no direct interaction with Simon. I also reject HS's account that Simon was "yanked ... off the bus". I formed the view that HS's account was exaggerated and self-serving. Counsel for HS suggested that I should take a negative view of the decision by TP

not to board the bus. She suggested that I should regard it as indicative of a poor attitude generally towards contact between not just Simon and HS, but between Simon and Jonathan. TP's evidence was that he was afraid that there might be some unpleasant or upsetting interaction on the bus. I regard the decision not to board the bus as a decision taken very quickly, and necessarily so. There was very little time to take a reasoned decision about what to do. The decision was essentially a split second decision, and I am not critical of TP for making it. The incident was a trivial one, and HS placed a disproportionate emphasis on its significance in her case.

[136] I am satisfied that it is in Simon's best interests that he should reside with his father and that his father should be permitted to remove him to the United States for that purpose. It is better for Simon that I make the residence order and specific issue order that TP seeks than that I should make no order.

Contact

[137] The pursuer's evidence is that she cannot currently leave Scotland. In the short term she says she needs to remain here to complete her community payback order. As a result of her immigration status, and the fact that she has no right to be in the United Kingdom, if she were to leave it, she would be likely to encounter significant difficulties if she were to try to return to it. Her long-term aim is to marry LB and stay with her in the United Kingdom. She cannot leave the United Kingdom with any expectation of being allowed to return to it unless and until she regularises her immigration status. There is no evidence to support the proposition that direct contact could occur in the short to medium term in the United States, and no evidence as to how it could operate in Scotland in the short to medium term. I am

not satisfied on the evidence that it would be in Simon's best interests that I should make any order for direct contact during holiday periods.

[138] TP does not dispute that Simon should have indirect contact with HS and LB. He says an order is unnecessary because he would facilitate such contact without an order. He does not consider that it would be in Simon's best interest for there to be an order allowing LB contact.

[139] I consider that it would be in the best interests of Simon to have indirect contact with both HS and LB. TP and DP have expressed concerns about some things that HS has said during contact. These are that she has attempted to suggest to Simon that he would be able to play with desirable toys if he were at her home. I accept their evidence and the construction they put on her remarks. Despite those concerns there is no real dispute that Simon should have indirect contact with HS and LB.

[140] I have concluded that it is better to regulate contact by an order than not to do so. Contact to date has not proceeded without incident or dispute. It is better for Simon's interest that arrangements for contact are set out in an order in relation to which all parties can regulate their conduct. That should minimise the potential for any dispute in the future. Indirect contact by video call should take place twice a week for no less than one hour at each session, and to extend to no more than 90 minutes in the event that Simon expresses a wish for the session to extend beyond one hour. I consider that contact more frequently than once per week would be desirable, and that it would be better for Simon to have a shorter session than one of two hours, because he sometimes finds it hard to remain fully engaged for that whole period. My expectation is that contact will be with both HS and LB, but the order will permit one to attend without the other in the event that both are not available for the programmed session.

[141] Much of what HS asserted as a basis to mistrust TP so far as contact is concerned is without merit. There is no positive evidence that TP undertook to maintain direct contact between HS and LB and Simon at the Children's Hearing on 20 March 2023. It would have been surprising if he had done so. I accept that TP approached the issue of contact in the first instance on the basis of his understanding that, after the CSO came to an end, there was nothing stopping him from taking Simon to the United States. I accept that he undertook to maintain contact between Simon and LB and HS, but that when he did so he was doing so on the assumption that only indirect contact would arise at least in the short term.

[142] TP has taken a cautious approach to contact between HS and Simon. He did not accept Mrs Green's offer that Simon could come to the ongoing supervised contact involving Jonathan, HS and LB. His explanation was that he was concerned because Mrs Green had no power to stop HS from taking Simon home with her if she wished. There is no evidence that the matter was revisited after 4 May when HS provided an undertaking. Although TP's approach was perhaps overly cautious, I bear in mind that HS has a recent conviction for breaching a court order.

[143] What is of more concern to me is the information in the report from the child welfare reporter that Simon's understanding was that TP did not wish Simon to call LB "momma", because she was not his mother. I accept TP's and DP's evidence that they have never scolded Simon for calling LB "Momma" during a call with LB. I have no reason to think that the child welfare reporter misunderstood Simon. She recorded that "dad said not to" regarding his calling LB "Momma", but also that his father said "she's not your mom", so he did not call LB that any more. It is clear from TP's own evidence that he had some form of conversation with Simon about what he called LB. I am not satisfied that it was of as neutral a nature as TP suggested in his evidence. I cannot make any positive finding on the

evidence as to exactly what passed between TP and Simon in that conversation, but it may well be that what TP said, or how he said it, left Simon with the impression that TP did not wish Simon to call LB “Momma”.

[144] I do accept TP’s evidence that he understands and accepts that there should be contact with LB, and I also accept TP’s evidence that the fact that LB and HS are in a same sex relationship is not something that troubles him. I have nonetheless reached the view that TP does not fully grasp how important a figure LB became in Simon’s life. That was evident from the part of TP’s evidence where he said that he would support contact with LB only if LB and HS remained in a relationship, but not otherwise. It is entirely understandable that he should have reservations about any relationship between Simon and LB independently of the relationship between LB and HS, given the neglect that Simon experienced. However inadequate a parent figure LB was, she was a significant figure in Simon’s life over a significant proportion of his life, and there are, as Mrs Green observed during supervised contact, positive aspects of their interactions. It is notable that the social work department supported and facilitated supervised direct contact that included LB after Simon was taken into care. I have taken into account the views that Simon has expressed.

[145] Against that background I consider that I should make an order for contact that expressly provides for contact with not only HS but also LB.

Conclusion

[146] On issuing this opinion to parties on 21 July 2023 I invited further submissions to be made that day as to

- (a) the terms of the order I should make for indirect contact;

(b) whether I should require HS, LB, TP and any other adult involved in making arrangements for contact to communicate using an app designed for that purpose such as the Our Family Wizard app; and

(c) whether the names of any witnesses and locations should be redacted when this opinion came to be published.