



23 May 2012

## PRESS SUMMARY

**NJDB (Appellant) v JEG and another (Respondents) (Scotland) [2012] UKSC 21**  
*On appeal from: [2010] CSIH 83*

**JUSTICES:** Lord Hope, Deputy President; Lady Hale; Lord Clarke; Lord Wilson; Lord Reed

### BACKGROUND TO THE APPEAL

This appeal concerns a child, S, who was born on 1 April 2000. His father is the appellant, and his mother is the first respondent. The second respondent is a solicitor who was appointed as curator ad litem to S in respect of these proceedings. The issue between the parties is whether the appellant should have contact with S.

Following the end of their relationship, the appellant and first respondent engaged in protracted family proceedings to determine the issue of contact with S. The order giving rise to the appeal is set out in an interlocutor of Stirling Sheriff Court dated 22 January 2010. In a previous interlocutor the appellant had been granted parental rights and responsibilities with respect to S, as well as contact. On 22 January 2010, the sheriff recalled the previous interlocutor and withdrew all contact between the appellant and S.

On appeal to the Court of Session, the Inner House varied the sheriff's interlocutor so as to restore the appellant's parental rights and responsibilities, but otherwise refused the appeal. The present appeal is brought against the decision of the Inner House.

### JUDGMENT

The Supreme Court dismisses the appeal. The lead judgment is given by Lord Reed, with whom the other justices agree. Lord Hope adds a brief concurring judgment.

### REASONS FOR THE JUDGMENT

The Supreme Court notes that, where an appeal is taken to the Court of Session from the judgment of a sheriff proceeding on a proof, the judgment of the Court of Session is appealable to the Supreme Court only on matters of law: Court of Session Act 1988, section 32(5). The appellant's submissions were therefore confined to three points. First, it was argued that the sheriff had failed to address his mind to the appropriate legal framework, specifically section 11 of the Children (Scotland) Act 1995 and the case law providing guidance as to its application. Secondly, it was argued that the sheriff's findings could not reasonably warrant the conclusion which he reached. Thirdly, it was argued that the sheriff had failed to act judicially, and that his decision should not therefore be allowed to stand. In that regard, counsel contended that remarks made by the sheriff betrayed a lack of objectivity and impartiality [9].

In relation to the first argument, it is apparent that the sheriff had in mind the correct test. His findings demonstrate that he treated the welfare of the child as the paramount consideration, and considered whether it was in the child's best interests that an order for contact should be made. In those

circumstances, the sheriff's failure to make any explicit reference to section 11 of the 1995 Act, or to authorities, is of no consequence [11-12].

The second argument advanced on behalf of the appellant must also be rejected. Given his findings, the sheriff had a reasonable basis for his conclusion that contact would not be in the child's best interests [14].

There is force in counsel's submissions that the greater part of the sheriff's findings are concerned with peripheral matters. This however reflects the evidence which was led on the basis of the pleadings, and the sheriff's obligation to make findings in relation to that evidence [15, 39].

In support of his third argument, counsel submitted that the sheriff had made critical remarks about the appellant and the counsel who represented him, which were expressed in inappropriate language. The characters of the parties were however relevant, to some extent at least, to determining whether the order sought would be in the best interests of the child. They were also the subject of a great deal of evidence. It was therefore appropriate for the sheriff to make findings in that regard [16-17].

Although a judge must be careful to strike the appropriate balance between plain speaking and appropriate restraint, it is only exceptionally that the language used by a judge can give rise to an issue of law which might vitiate his decision. In the present case, the Supreme Court cannot detect an error of law in relation to this matter [17]. As to the criticisms of counsel, a judge is entitled to comment in his judgment on the conduct of counsel appearing before him. It could only be in exceptional circumstances that such criticisms could give rise to an issue of law falling within the jurisdiction of the Court. In the present case, the concerns expressed do not raise such an issue. If however, under current practice, counsel may have neither advance warning of such criticisms nor any opportunity to respond, that is a matter which any fair-minded sheriff or judge will bear in mind [18-19].

Before parting with the appeal, the Supreme Court considers it appropriate to comment on the duration of the proceedings and the costs incurred. It makes three observations. First, it questions whether traditional pleadings are the best means of identifying the issues in such cases. It notes that in the Report of the Scottish Civil Courts Review the introduction of an abbreviated form of pleadings, and of judicial control of any procedure for their adjustment or for the provision of further specification, was recommended (in Recommendation 116) [21-29, 40].

Secondly, further consideration might be given to the structure of a sheriff's judgment proceeding on a proof. The judgment will most clearly address the central issue if it focuses directly upon the factors which are relevant to the court's exercise of its discretion. Findings on any relevant facts can be made clear within the ambit of a judgment focused primarily upon the central issue; as opposed to the judgment being divided into findings of fact and law, and a note in which the findings are explained, as currently prescribed [30-33, 41-48].

Thirdly, it encourages the courts to make use of their existing case management powers [33-34, 40].

Finally, the Court notes a lack of clarity as to the role of the curator ad litem in the proceedings, and observes that a number of relevant recommendations were made in the Report of the Scottish Civil Courts Review [35-37].

*References in square brackets are to paragraphs in the judgment.*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)