

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT FORFAR

[2022] SC FOR 39

FFR-F233-19

JUDGMENT OF SHERIFF JILLIAN MARTIN-BROWN

in the cause

CM

Pursuer

against

PO or M

Defender

Pursuer: Masson (Sol); Blackadders LLP
Defender: Cartwright (Adv); Bell Brodie Limited

Forfar, 17 June 2022

Introduction

[1] This was a preliminary proof on the relevant date for the purposes of fair sharing of the net value of the matrimonial property. The pursuer was of the view that the relevant date was 12 May 2015 and the defender was of the view that it was 20 June 2017.

Findings-in-Fact

[2] The parties were married at Inverness on 8 March 2014.

[3] The parties ceased to cohabit on 12 May 2015.

[4] The parties resumed cohabitation on 11 July 2016.

[5] The parties ceased cohabitation on 30 April 2017.

Finding-in-Fact and Law

[6] The relevant date for the purposes of fair sharing of the matrimonial property is 30 April 2017.

Procedural History

[7] There have been considerable delays in this case for a variety of reasons, as outlined below.

[8] The action was originally raised in Tain Sheriff Court on 1 March 2019. The case was sisted for negotiations on 26 March 2019. The defender's solicitor withdrew from acting on 24 June 2019. On 15 October 2019, Sheriff Dickson granted the defender's opposed motion to transfer the cause from Tain to Forfar Sheriff Court.

[9] On 5 February 2021, Sheriff Murray assigned a preliminary proof on the issue of the date of the parties' separation on 12 March 2021. On 10 March 2021, Sheriff Murray granted a joint motion to discharge the preliminary proof due to coronavirus restrictions on persons attending court.

[10] On 11 March 2021, Sheriff Murray assigned a fresh date for the preliminary proof on 14 May 2021. On 13 May 2021, I discharged the proof *ex proprio motu* because the defender required the services of an interpreter, which was not possible via WebEx. I determined that the circumstances of the case were exceptional, necessitating an in-person proof. I also noted that the pursuer was resident in Azerbaijan and would require to provide his evidence by video link or alternatively, travel to Forfar for the proof.

[11] On 18 June 2021, I assigned a fresh date for an in-person preliminary proof on 3 September 2021. On 25 August 2021, I granted the defender's unopposed motion to

discharge the preliminary proof due to the defender requiring to self-isolate upon return from Russia.

[12] On 8 September 2021 I assigned a fresh date for an in-person preliminary proof on 26 November 2021 and ordered the pursuer's agent to make the necessary arrangements for the pursuer to join the proof remotely from Azerbaijan, including a suitable location for the pursuer to use WebEx and an appropriate person to act as a bar officer to provide the pursuer with productions if he was not to attend in person. At a pre-proof hearing on 20 October 2021, I appointed the pursuer to provide the court and the defender's agent with details of the lawyer who would act as bar officer in respect of the pursuer giving his evidence by WebEx and details of the legal office where the pursuer would be located to give his evidence by WebEx. On 26 November 2021, the pursuer gave evidence by WebEx. A second day for the preliminary proof was assigned for 13 December 2021.

[13] On 13 December 2021, I granted the pursuer's unopposed motion to discharge the continued proof due to the pursuer's agent being unwell and unable to conduct the proof.

[14] On 11 January 2022 I assigned a fresh date for the continued proof on 14 February 2022. On 14 February 2022, I discharged the continued proof *ex proprio motu* due to the pursuer's agent testing positive for coronavirus and being unable to conduct the proof and also having failed to instruct a shorthand writer.

[15] I assigned a fresh date for the continued proof on 14 March 2022. On 14 March 2022, I granted the defender's unopposed motion to discharge the continued proof due to the interpreter contracting coronavirus and Global Connections being unable to provide an alternative Russian interpreter.

[16] I assigned a fresh date for the continued proof on 25 April 2022. On 25 April 2022 the pursuer gave evidence by WebEx and the defender gave evidence in-person. Parties were

ordered to lodge written submissions by 20 May 2022 and I assigned a hearing on submissions by WebEx on 26 May 2022.

[17] On 26 May 2022, I heard the parties' oral submissions. I granted the defender's unopposed motion for sanction for junior counsel in terms of the preliminary proof of 20 October 2021; granted the pursuer's unopposed motion to continue consideration of the issue of sanction for junior counsel in terms of work carried out prior to 20 October 2021 to a hearing to be afterwards fixed; and made avizandum.

Background facts and circumstances

[18] It was not in dispute that the parties were married at Inverness on 8 March 2014 and had two children. The pursuer averred that after their marriage, the parties lived together until on or about 12 May 2015. On 10 June 2015 the pursuer sought legal advice as to his marital separation. The marriage had broken down irretrievably and there was no prospect of a reconciliation.

[19] The defender admitted that the marriage had broken down irretrievably and that there was no prospect of a reconciliation, but averred that the parties lived together until on or around 20 June 2017. The parties separated briefly in or around 2015 but reconciled in or around early 2016. Between early 2016 and 20 June 2017 the parties were fully reconciled and lived their life together as a couple as they had always done. Since 20 June 2017 they had not lived together as man and wife nor had marital relations.

Pursuer's Evidence

[20] The pursuer was 53 years old. He swore affidavits dated 22 November 2021 and 13 April 2022, which he adopted and elaborated on in oral evidence. He resided in Baku, Azerbaijan and was a Director of an engineering company serving the oil and gas industry.

[21] He indicated that he met the defender in Baku in 2006 and initially their relationship was good. That changed after their son J was born in Russia in November 2008. E was born in Dundee in January 2010. The defender struggled with depression and on occasion the defender moved out of the family home in Baku, but always returned after a couple of weeks. She became aggressive verbally and physically and was hot-headed. As an attempt to try and get things back on track, they decided to move to the UK and live in Inverness. The pursuer set up a satellite office for his company in Inverness and the parties married in March 2014.

[22] Ultimately, neither the move nor the marriage made things better. The parties argued about the defender going out socialising. On 5 May 2015, the defender threw all the pursuer's clothes out of the family home into the garden. He left home that day and had no physical contact with the defender for well over a year. The parties had not properly lived together as husband and wife since May 2015.

[23] After leaving in May 2015, the pursuer returned to Baku and had lived there since then. He had the children regularly for holidays. Though the parties communicated to make the necessary arrangements, they lived entirely separate lives.

[24] In 2016 there was an attempt to patch things up and the parties had a family holiday in Nairn from 11 July 2016 for a week. The defender and the children then came to Baku later that month for three weeks. The pursuer flew back to the UK in September, October

and November 2016, spending about four or five days each time with the defender and the children.

[25] A family holiday in Dubai over the festive period late 2016 into 2017 did not go well. The pursuer returned to Baku early January 2017 and the defender and the children returned to the UK. Thereafter the parties exchanged messages, which were generally quite argumentative and hostile. The pursuer visited the children in Inverness in Spring 2017 during the Easter school holidays. He did not see the defender.

[26] The pursuer had supported the defender and the children financially since May 2015. He was worried what would happen for the defender and the children once they were divorced and was worried the defender might return to Dagestan, which was dangerous. He supported her UK visa application to prevent her having to consider a return to Dagestan.

[27] The pursuer began a new relationship in February 2017 and continued to be in that relationship. He lived with his new partner.

[28] While giving his evidence, it appeared to me at certain points that the pursuer was looking at someone or something. He was asked not to do by his solicitor. He did so again and I specifically asked him if he was looking at a screen. He denied that he was doing so and indicated that all he had in front of him was a paper copy of his affidavit. However, when reference was made to productions which he did not have before him in paper format, it was evident that the pursuer had access to a screen of some sort while giving his evidence. I required to grant a brief adjournment for the pursuer to print off productions and stop looking at a screen while giving his evidence.

[29] In cross examination, the pursuer indicated that he was giving evidence from his office in Doha, rather than a solicitor's office in Baku as had been arranged by his solicitor. He had been in Doha for the past two months.

[30] The pursuer denied that he had returned to Baku due to the downturn in oil and gas work in the UK and maintained that he could have continued to work remotely from Inverness.

[31] I warned the pursuer that he was not required to answer questions about the defender's visa application due to the privilege against self-incrimination. He indicated that he understood and had discussed matters with his solicitor. While he declined to answer a number of questions, he did state that he was not living together with the defender on the date the form was completed on 26 September 2016 and that insofar as the form stated they were living together, it was not true. He accepted that it was possible that the signature on his affidavit and on the form might be regarded as similar by the court. He accepted that he had attended Birmingham with the defender.

[32] The pursuer accepted he had sent a message to the defender on their anniversary on 20 November 2016 telling her that he loved her. He had bought a pelvic floor muscle trainer for the defender in September 2016 but stated that he did not know what the trainer did and that the defender used his Ebay account to order things for herself. In January 2017 he had bought yoni eggs for the defender but stated he did not know what the eggs did.

[33] The pursuer indicated that the defender's spending was out of control, which was why he asked her to explain in detail how much the children's school uniform cost when she asked for money from him to pay for it. He denied that such attention to spending was incompatible with his lack of understanding of the purpose of the pelvic trainer and yoni eggs.

[34] He did not remember being in Inverness on 19 January 2017 for E's birthday, despite being presented with a photograph and messages about buying a sim card for his son's phone. He accepted he had been in Inverness in April 2017 and that the parties had exchanged messages about picking up the children from school, clearing the house and parking the car. He denied that the defender ever did his laundry.

[35] The pursuer denied telling the children that his new partner was a nanny when they visited Baku in April 2017. He would probably have married her by now if not for this divorce action being ongoing.

[36] The pursuer accepted that when the action had been raised in Tain Sheriff Court, he was not resident in Brora as stated in the initial writ, though he had property there. He had been resident in Azerbaijan at the time. He no longer had property in Brora.

[37] The pursuer also accepted he had subsequently raised divorce proceedings in Russia, designing the defender as resident in Russia rather than the town where he knew the defender and the children were residing. He also accepted that the pleadings in that case indicated the parties had not lived together for the past 18 months only.

[38] The pursuer denied being violent on occasions to the defender. He indicated that the defender was a violent person and on one occasion he had to protect himself from a physical attack carried out by her.

Defender's Evidence

[39] The defender was 42 years old. She swore affidavits dated 17 November 2021 and 9 March 2022, which she adopted and elaborated upon in oral evidence. She was not currently in employment, having been required to give up her employment in a shop when the schools closed during the coronavirus pandemic.

[40] The defender indicated that before the parties married, they rented a property in Inverness from 1 December 2013. They had moved there from Baku because the defender suspected the pursuer was cheating on her. The lease was in the pursuer's name until 31 May 2015. On 1 June 2015 it was transferred into the defender's name. The lease was terminated on 30 April 2017 when she moved with the children to Arbroath because the pursuer fell out with the landlord about dampness in the bathroom and there was a dispute as to who was responsible for repairs. Given the shortness of notice, she had to move to Arbroath to live with her aunt. The rent was paid by the pursuer's company until the termination date.

[41] The defender accepted that the parties initially separated on 12 May 2015. There had been arguments before that date. The pursuer's emotional abuse and threats to leave impacted the defender's mental health. She accepted she had thrown his clothes out and told him to go.

[42] After the parties separated in May 2015, the lease and utility bills were transferred into the defender's name. The pursuer paid the rent and bills, which amounted to around £1,200 per month, by transferring money to the defender when the bills fell due. When the parties got back together in April 2016, it seemed pointless to change the bills back into the pursuer's name and the financial arrangements remained the same.

[43] Between 12 May 2015 until around April 2016, the defender considered the relationship over. The parties were not living as a couple and the pursuer would come to collect the children to take them on holiday.

[44] Whilst the defender thought their reconciliation was before 11 July 2016, she had no difficulty accepting that as the recommencement date of their marriage because that was when the pursuer arrived back in the UK from Baku and the family went on holiday to

Nairn. The parties had stayed together for one night in April 2016, had sex and started speaking to each other better.

[45] During the holiday in Baku from 22 July 2016 until 27 August 2016, she slept with the pursuer, went for meals and had family days out. There was no doubt they were a couple in a loving and sexual relationship. The defender had planned to return to Scotland earlier than 27 August 2016 but the pursuer had been unwell and she had to stay to look after him and collect his medication.

[46] From August 2016, the pursuer needed to spend the majority of his time abroad in Baku and Kazakhstan due to the downturn in the North Sea oil industry. On 1 October 2016 the parties attended Birmingham for her visa renewal. The pursuer came over from Baku and they stayed in a hotel together, sharing a double bed. The forms were signed by the parties confirming that they were married, lived together and continued to live together. They were aware it was a criminal offence to provide false information.

[47] It was difficult to remember all of the times that the pursuer was back living at the matrimonial home in Inverness from July 2016. The defender thought that the pursuer must have been home on 29 September 2016 and 21 October 2016 in light of messages between the parties about ironing shirts and coming to bed. When in the matrimonial home, she had cooked for the pursuer, ironed his clothes, slept with him and visited his family.

[48] The pursuer often complained to the defender that their sex life was poor and referred to her as "frigid" and "used meat". To improve their sex life, the pursuer bought the defender a pelvic floor muscle trainer on 29 September 2016 and yoni eggs on 25 January 2017. He ordered the products using his work email address and arranged for them to be delivered to Inverness. In retrospect, the defender realised the pursuer was being disrespectful to her, but she wanted their relationship to work.

[49] On 20 November 2016 the pursuer wished her happy anniversary 10 years to the day since the parties first met and told her he loved her. That clearly showed their relationship was continuing. At the time, the defender did not find it suspicious that the pursuer would spend a few weeks in Scotland and then go back to Baku. However, looking back, the defender thought he was probably seeing other women in Baku and the arrangement suited him.

[50] The parties holidayed together with the children between 22 December 2016 and 5 January 2017 in Dubai, during which they had marital relations. After the holiday, the pursuer went back to Baku and she went back to Scotland. The pursuer then came to Inverness between 14 January 2017 and 22 January 2017.

[51] For Christmas 2016, the pursuer bought the defender a ring and a bracelet from Tiffany & Co, costing around £3,000. The defender did not think that the pursuer would have spent that type of money on her if they were not in a relationship or if the relationship was coming to an end on 5 January 2017.

[52] The pursuer came to collect the children in April 2017 and told the defender she would be better staying and emptying the property in Inverness, for which the lease was due to end on 30 April 2017. She moved to her aunt's house in May 2017 because the lease in Inverness was terminated. That move was temporary in order that the children could get back to school after the Easter holidays and the parties considered buying a house in Aberdeen. She then moved to Angus in September 2017. The property was in joint name but the utility bills were in her sole name. The pursuer continued to provide financial support.

[53] When the children got to Baku, they told the defender that a woman was living in the apartment and that the pursuer had told them she was a nanny. The defender realised the pursuer was in a relationship with JG.

[54] Throughout the relationship, even before they got married, the pursuer had other women. Even when she learned about JG, the defender thought the relationship would continue. The pursuer had said she was too young and the relationship would not last. She genuinely thought the pursuer would return to his senses.

[55] On 7 June 2017, the defender messaged the pursuer asking him to bring her clothes from the house in Azerbaijan. There were also messages about the pursuer obtaining medication for the defender's mother. In June 2017 the defender was still hoping that the marriage would work but at that time she had abnormal cancer cells and was waiting for test results and found the situation very stressful. The defender decided there was no way back for the parties and told the pursuer so. Shortly after that she received a letter from the pursuer's lawyers on 26 June 2017.

[56] Shortly after the pursuer instructed his lawyers, the defender received a separation agreement from the pursuer and discussed the implications of that agreement on her immigration status. She would have to let the Home Office know they were no longer together as a couple. The pursuer suggested not notifying the authorities but she declined to do so. She received a Biometric Residence Card on 18 March 2019 giving her indefinite leave to remain.

[57] On 12 July 2021 she went to Russia with the children to visit her mother. On 22 July 2021, she met the pursuer in Istanbul, who took the children to Azerbaijan. The defender returned to Russia from 23 July until 29 August 2021, when she met the pursuer in Dubai to collect the children. She then flew home to Scotland on 30 August 2021.

[58] On 14 November 2021 the defender received a message from her friend in Russia advising that there had been an attempt to serve legal papers upon her there. Whilst the pursuer had raised an action in Tain when he knew the defender did not live there, the defender did not for a moment think he was attempting to serve court papers in Russia. She telephoned the court in Russia to be advised that the pursuer had applied to dissolve their marriage. She was utterly shocked.

[59] The court documents showed the divorce action in Russia had been lodged with the court on 20 September 2021, over three weeks after she had left Russia. The Russian court stamped the document on 6 October 2021. The application stated that she did not object to the dissolution of the marriage but in fact, she did not know he had raised the application. The application also stated that it was only over the past 18 months that the parties had not been living together, which was not true. The pursuer knew the Russian address was not correct as he returned the children to her on 29 August 2021 to take back to Angus.

[60] The defender required to get a letter from Forfar Sheriff Court confirming the current action; a letter from the children's school; a copy of her lease; and other documents translated and stamped by the Russian Embassy in Edinburgh and to instruct a Russian lawyer to object to the application. The Russian court action was dismissed based on the current action.

[61] The defender was concerned about the pursuer's blatant dishonesty. He knew that she was not in Russia when the application was raised. An action was presented at Tain Sheriff Court when neither of them lived within the jurisdiction. The pursuer would lie about anything if he thought it would help or support him.

[62] In cross examination the defender denied that the parties never returned to living together as a family after May 2015. She maintained that even though they each maintained

separate homes, their day to day lives were not separate. The pursuer was just working abroad because there were no jobs in Inverness.

[63] The defender denied attacking the pursuer physically. On one occasion the parties argued over food and she had thrown chips at him because she was upset. By contrast, the pursuer had been violent towards her at times. On one occasion in 2009 the pursuer had strangled the defender. She had not phoned the police because the pursuer was the father of their children. She accepted being more emotional compared to Scottish culture but denied being aggressive towards the pursuer.

[64] The defender denied taking the pursuer's credit card without his permission. She indicated he spent money buying nice things for himself but she would often have to beg the pursuer for money, which felt humiliating.

Conclusions from the Evidence

[65] I did not find the pursuer to be a credible witness. He conceded averments drafted on his behalf in the initial writ were not true (he had been resident in Azerbaijan when the initial writ had been drafted stating he was resident in Brora); he conceded information contained in the Russian divorce action on his behalf was not true (the defender was designed as resident in Russia when she was actually residing in Angus and the parties had been separated for longer than the 18 months stated therein); and he indicated that information he had provided on the defender's visa application was not true. I did not accept his evidence that he did not know the purpose of the products purchased on Ebay. His answers to questions in cross examination were at times evasive.

[66] In contrast, I found the defender to be a reasonably credible and reliable witness. Though an interpreter was provided, the pursuer's English was of a high standard and she

was able to answer most of the questions without the assistance of the interpreter. She highlighted an error in her affidavit and made several appropriate concessions (such as the recommencement of cohabitation in July 2016 rather than April 2016 and that with the benefit of hindsight, she could see why 30 April 2017 might be considered the date when the parties ceased to cohabit). She was candid about problems in the parties' marriage and her role in those problems.

Legislation

[67] Section 10 of the Family Law (Scotland) Act 1985 provides:

Sharing of value of matrimonial property.

- (1) In applying the principle set out in section 9(1)(a) of this Act, the net value of the matrimonial property or partnership property shall be taken to be shared fairly between persons when it is shared equally or in such other proportions as are justified by special circumstances.
- (2) Subject to subsection (3A) below, the net value of the property shall be the value of the property at the relevant date after deduction of any debts incurred by one or both of the parties to the marriage or as the case may be of the partners —
 - (a) before the marriage so far as they relate to the matrimonial property or before the registration of the partnership so far as they relate to the partnership property, and
 - (b) during the marriage or partnership,
 which are outstanding at that date.
- (3) In this section "the relevant date" means whichever is the earlier of—
 - (a) subject to subsection (7) below, the date on which the persons ceased to cohabit;
 - (b) the date of service of the summons in the action for divorce or for dissolution of the civil partnership.

...

- (7) For the purposes of subsection (3) above no account shall be taken of any cessation of cohabitation where the persons thereafter resumed cohabitation, except where the persons ceased to cohabit for a continuous period of 90 days or more before resuming cohabitation for a period or periods of less than 90 days in all.

[68] Section 27(2) of the Family Law (Scotland) Act 1985 provides:

27 Interpretation

...

- (2) For the purposes of this Act, the parties to a marriage shall be held to cohabit with one another only when they are in fact living together as man and wife.

Authorities

[69] I was referred to the following authorities:

Bain v Bain 2008 Fam LR 81;
Banks v Banks 2005 Fam LR 116;
Brown v Brown 1998 Fam LR 81; and
HS v FS 2015 S.C. 513.

[70] Parties were agreed that in light of the authorities, the determination of the relevant date was a matter of fact, depending on the particular circumstances of a given case. Parties were also agreed that the intention of the parties and any communication of them to each other may be relevant factors in the equation, though not determinative.

Submissions for the Pursuer

[71] The pursuer submitted that the relevant date was 12 May 2015.

[72] The pursuer's position was that the parties had not resumed cohabitation when the visa application was made. His motive in supporting the defender's visa application was to maintain the status quo of the boys' and the defender's residence in the UK and minimise the potential of the defender leaving the UK to return to Dagestan with the children.

[73] The pursuer's commencement of divorce proceedings in Dagestan, and his failure to refer to that in the pleadings in this Scottish action, was not an indicator of an intention to withhold relevant information from the court. The application for divorce in Russia was not intended to defeat the defender's financial claims and had, in any event, been disposed of in the defender's favour.

[74] The pursuer was measured and objective in his approach to giving his evidence. He gave his evidence in a straightforward way. He did not present as dramatic, exaggerated or rehearsed. His recollection of material events was generally consistent throughout, and any inability to be precise on dates was a symptom of the passage of time, and therefore understandable.

[75] The evidence of the defender was to be treated with caution. She was an emotional person demonstrated by her approach to communication with the pursuer. She had displayed volatile behaviour. She was prone to exaggeration.

[76] After May 2015, the parties did not resume family living, occupying one home together with their children. Each party continued to maintain separate homes. The pursuer remained resident in Baku, residing in a property he had owned prior to the parties' marriage. Crucially, that property had not been his home after leaving Baku for Inverness in 2013, but became his home again after he left the family home in May 2015. That property in Baku did not become the home of the defender at any point again. The defender remained resident in Scotland, maintaining homes there for herself and the children.

[77] The defender's visits to the pursuer's property in Baku did not amount to a relocation and the constitution of a home there. The pursuer's visits to the UK could not be classified as a resumption of cohabitation because they were not living together as husband and wife. The parties often went on holiday together, staying in a caravan and in hotels,

each time with the boys. There was no return to living together as a family, day in day out. The holiday in Dubai could not be classified as a resumption of cohabitation. They were both temporary visitors to Dubai, arriving there from different parts of the world and departing to different parts of the world. They may have been intimate on occasions when together, but that did not equate to a resumption of cohabitation. There were no occasions when there was an arrangement to meet up and spend together in the absence of the boys.

[78] There was no evidence of any discussion about the parties resuming cohabitation. The defender's evidence about her move from Inverness to Arbroath was indicative of the nature of the parties' separate lives and living arrangements. She made that decision not as part of a married couple, but off her own back. At the very least that suggested a changed nature of the parties' relationship in April 2017, earlier than the June 2017 date suggested by the defender.

[79] *Esto*, in the event that there was a resumption of cohabitation in summer 2016, that cohabitation was short-lived and ended once and for all in January 2017. The parties had no direct contact after the holiday in Dubai in January 2017. The pursuer did not accept that the parties spent time together in the Inverness property thereafter.

Submissions for the Defender

[80] The defender submitted that the relevant date was 20 June 2017, or alternatively 30 April 2017.

[81] The parties' reconciliation, on the face of the pursuer's averments, was from 11 July 2016 until 5 January 2017, which was a period of 176 days. The evidence from both parties suggested it was longer than that.

[82] The evidence was that the parties resumed cohabitation on 11 July 2016 and ceased cohabitation in June 2017, although their relationship deteriorated significantly from April 2017 onwards. This was a period in excess of the 90 days permitted by section 10(7) of the 1985 Act for a resumption of cohabitation which did not affect an earlier cessation of cohabitation. While the way in which the parties lived together as “husband and wife” changed from 2016, that was explained in the immigration application as being due to the downturn in the oil and gas industry which necessitated the pursuer working abroad.

[83] The pursuer’s evidence was incredible and unreliable. He lied about numerous key facts, including the location from which he was giving evidence to the court. Having regard to the issues surrounding the pursuer’s credibility the court was invited to reject his evidence where it conflicted with the defender’s evidence.

[84] It was submitted that the defender’s evidence was wholly credible and reliable. Though there were difficulties with the interpreter and the defender ultimately had to give evidence in English, she did her best to give her evidence in a straightforward and honest manner.

[85] The changed nature of the parties’ cohabitation after 11 July 2016 was relevant. The court required to consider the evidence anent the cessation of cohabitation in the context of a relationship where the parties lived apart for lengthy periods of time as opposed to one where they lived in the same house.

[86] The court should not attach much weight to evidence regarding changes in financial arrangements because whatever the arrangement, the pursuer had continued to provide the defender with money and she continued to be financially dependent on the pursuer.

[87] The nature of the parties’ relationship was relevant. On any view, the parties’ relationship was abusive one. There was evidence of physical abuse (the attempted

strangulation), emotional abuse (the numerous affairs and derogatory language used to communicate with the defender) and financial abuse (the evidence of the defender having to account for every penny including money spent on the children's school uniforms). The court was invited to look at the determination of the relevant date through the prism of the domestic abuse. The defender's tolerance of behaviour which might be seen as objectively indicative of the relationship having ended was a relevant factor in the assessment as to when the parties separated.

[88] Between April 2016 and July 2016 the parties were working towards a reconciliation. The parties reconciled in July 2016 and remained living together as husband and wife until June 2017. From July 2016 parties lived together whenever the pursuer's work permitted. The pursuer determined when his work permitted him to live with the defender. When living together the defender did the pursuer's domestic chores (e.g. the ironing), they had sexual intercourse, they shared a bed and a bedroom, they socialised with family and friends and they exchanged gifts. When apart they communicated in a loving manner at least until late April 2017.

[89] The parties completed an immigration application in September 2016 in which they declared they were married and intended to live together permanently. The parties attended the immigration interview together and stayed overnight in a hotel together. The pursuer paid the fee for the immigration application and paid for legal advice in connection with same. Both parties knew that the defender could have renewed her right to remain in the UK under other immigration categories. The parties had no need to lie in the immigration application which would have been a criminal offence.

[90] Between the end of April 2017 and June 2017 the relationship was in terminal decline. Whilst the boys were in Baku the defender learned that the pursuer was having an

affair and their communication following this discovery was unpleasant and abusive. It was clear from the WhatsApp communications between the parties in late April 2017 that while the pursuer claimed the relationship was over, he was also ambiguous in his claims as to the durability of his new relationship and suggested that the relationship would not last. This was highly relevant evidence in the context of the parties' relationship where the defender's evidence was that the pursuer conducted numerous affairs but despite that the relationship continued.

[91] The pursuer unequivocally indicated his view that the relationship was finally over on 26 June 2017 when he instructed his lawyer to contact the defender to advise the relationship was at an end. By that time the defender herself had reached that conclusion. Objectively, while having regard to the parties' relationship it was submitted that the evidence indicated that the relevant date was 20 June 2017. By that time both parties had concluded unequivocally that their cohabitation had ceased.

[92] *Esto*, the parties ceased to cohabit on 30 April 2017 having regard to the WhatsApp messages between them. While defining this date as the relevant date involved a certain amount of hindsight analysis, the defender had accepted in her evidence that she could see why that date might be considered to be the date the parties ceased to cohabit.

Decision

[93] Both parties accept that they separated on 12 May 2015.

[94] Thereafter, the pursuer's position is that the parties attempted and failed to reconcile. The defender's position is that the parties did reconcile. In light of my findings on credibility and reliability, I preferred the evidence of the defender. Looking at the evidence objectively, I considered that the parties resumed cohabitation from the point of the holiday

in Nairn in July 2016 onwards. Though they had stayed together for one night in April 2016, had sex and started speaking to each other better, I did not consider that they resumed cohabitation as husband and wife until the pursuer arrived back in the UK from Baku and the family went on holiday to Nairn on 11 July 2016.

[95] From 11 July 2016 onwards, the nature of the parties' cohabitation changed. Like the situation in *Banks v Banks*, the parties' cohabitation involved the pursuer being away from home for the vast majority of a given year in light of the downturn in the oil industry. However, I considered that the parties continued to cohabit until at least September 2016, when they completed the defender's immigration application confirming that they were married, lived together and continued to live together. They were both aware it was a criminal offence to provide false information. Given that the defender could have renewed her right to remain in the UK under other immigration categories, there was no need for parties to lie on the form. I rejected the pursuer's evidence in relation to the visa application as lacking in credibility.

[96] From September 2016 until January 2017, I considered that the parties continued to cohabit as husband and wife, as demonstrated objectively by the pursuer's purchase of a pelvic floor muscle trainer for the defender in September 2016; visits to the UK in September, October and November 2016; Christmas gifts in December 2016; a holiday in January 2017; and the pursuer's purchase of yoni eggs for the defender on 25 January 2017. I rejected the pursuer's evidence in relation to his lack of understanding of the purpose of the products purchased on Ebay as lacking in credibility.

[97] The pursuer accepted he had been in Inverness in April 2017 and that the parties had exchanged messages about the day to day practicalities of married life, including picking up

the children from school, clearing the house and parking the car. I considered that the parties continued to cohabit as husband and wife until at least April 2017.

[98] Between April 2017 and June 2017, the parties' relationship was, similar to the situation in *Brown v Brown*, in a poor and declining condition. When the pursuer returned from Inverness to Baku with the children, the defender learned that the pursuer was having an affair and their communication was at times very hostile. However, at other times the communication was about the day to day practicalities of married life, including clothing and medication. The pursuer raised the possibility of an "annulment" on 10 April 2017 at 21:40, indicating that the parties could not divorce until after the defender had her passport. The defender repeatedly said she wanted to make the relationship work. On 25 April 2017 at 19:32 the pursuer indicated the relationship was over. The defender wanted to travel to Baku but on 27 April 2017 at 13:39 the pursuer told the defender not to come to Baku because it wouldn't change anything. Though the defender had hoped that the marriage would continue despite the pursuer's affair, she acknowledged with hindsight that the pursuer considered the marriage over in April 2017.

[99] Looking at matters objectively, in light of the repeated messages from the pursuer to the defender indicating that the relationship was over in April 2017, I thought it was realistic to conclude that the parties ceased to cohabit on 30 April 2017 when the defender moved out of the matrimonial home to live with her aunt in Arbroath. Though the pursuer did not consult solicitors until June 2017, he was clear in his communications that there was no prospect of reconciliation between the parties. On the balance of probabilities, I considered that they ceased to cohabit as husband and wife from 30 April 2017 onwards.

[100] Parties were agreed that I should fix a procedural hearing in order that submissions could be made in relation to expenses and further procedure.