SHERIFF APPEAL COURT

[2023] SAC (Civ) 36
OBN-F13-21

Sheriff Principal Murphy KC

OPINION OF THE COURT

delivered by Sheriff Principal S F Murphy KC

in Appeal by

KATIE CHARLOTTE ELLEN SMITH OR BRYCE

Pursuer and Appellant

against

DAVID MARK BRYCE

Defender and Respondent

Pursuer and Appellant: Ms Barbour, advocate; MacPhee & Partners LLP, Fort William
Defender and Respondent: Mr Laing, advocate; Corrigall Black, Dunoon

1 December 2023

Introduction

[1] The parties married at Oban on 25 May 2013 and separated on 7 March 2019. Decree of divorce was granted on 16 January 2023 after proof before the sheriff at Oban. There were no children of the marriage under 16 at that time. The parties had entered into a Minute of Agreement regarding matrimonial property which was registered in the Books of Council and Session on 25 April 2019. In the course of the proof the appellant's agent asked the sheriff to set aside the Minute on the basis that it was unfair and unreasonable but the sheriff

declined to do so. He refused to grant any of the financial orders craved by the appellant. Appeal has been taken against his decision.

Grounds of Appeal

[2] There are six grounds of appeal:

(1) the sheriff failed properly to apply section 16(1)(b) of the Family Law (Scotland) Act 1985 ("the 1985 Act") and failed to have proper regard to all of the principles set out within the case of *Gillon* v *Gillon* (No. 3) 1995 SLT 678;

(2) the sheriff erred in making finding in fact 9 which had no basis in the evidence and in failing to consider relevant evidence;

(3) the sheriff erred in law by not giving satisfactory reasons with regard to facts and law, did not properly assess the credibility and reliability of witnesses, exhibited defective reasoning, misunderstood parts of the evidence and failed to explain what he made of relevant considerations;

(4) the sheriff erred in law by failing to explain what he made of the (admitted) shared error within the parties' minute of agreement;

(5) the sheriff was plainly wrong and reached a decision no reasonable sheriff would have reached in relation to key matters; and

(6) the sheriff failed to make relevant findings in fact.

Submissions for the Appellant

[3] In terms of section 16(1)(b) of the 1985 Act a court may set aside or vary any agreement into financial provision on divorce which the parties may have entered into where the agreement or any of its terms "was not fair and reasonable at the time it was

entered into." The onus of establishing unfairness or unreasonableness rests on the party asserting it. The court must look at all the circumstances prior to and at the time the agreement was made which are relevant: *Bradley* v *Bradley* [2017] SAC (Civ) 29. The court should consider if some unfair advantage was taken of some factor or relationship between the parties so that the agreement was not made by a free agent, which would render it unfair or unreasonable: *McAfee* v *McAfee* 1990 SCLR 805. The approach is set out in *Gillon*. It is not necessary to show that it was both unfair and unreasonable: *Clarkson* v *Clarkson* 2008 SLT (Sh Ct) *2*. The taking of legal advice or not is relevant but not definitive: *Bradley*; while a party's mental health may not be sufficient by itself, that factor and others such as the taking of advantage of a party's vulnerability may be relevant and evidence of inadequate legal advice and of an unjustifiable and very unequal division of assets may indicate unfairness and unreasonableness, as would the application of undue pressure: *McAfee*. Where one party enters into an agreement unaware of material matters, such as pension rights, it may be challengeable: *Worth* v *Worth* 1994 SLT (Sh Ct) 54. *C* v *M* 2021 SLT (Sh Ct) 319 was commended to the court as a recent example of an unfair and unreasonable agreement which was set aside. All relevant factors arising from the circumstances of the case require to be considered together.

[4] The sheriff did not make sufficient findings in fact for it to be clear that he correctly applied the *Gillon* principles, he failed adequately to consider all of those principles, he placed weight on irrelevant considerations and ignored evidence which was relevant. The division of the matrimonial property was manifestly unequal which should have entitled him to set aside the agreement on that consideration alone: *C* v *M*. The agreement was entered into quickly, the appellant had received no legal advice, and there was an unfair power balance between the parties so that the respondent had taken unfair advantage of the

appellant during negotiations. The sheriff failed to consider all of the circumstances. He did not carry out a proper balancing exercise and failed to give proper reasons; see *Woods* v *Minister of Pensions* 1952 SC 529; *W* v *Greater Glasgow Heath Board* [2017] CSIH 58; *G* v *G (Minors: Custody Appeal)* [1985] 1 WLR 647.

[5] Finding in fact 9 was critical but is plainly wrong as it fails properly to apply the *Gillon* principles and is not supported by the previous findings in fact. Accordingly it is not reasonably explained or justified. Reference was made to *MacPhail, Sheriff Court Practice* at paragraph 18.153; *Millars of Falkirk* v *Turpie* 1976 SLT (Notes) 66; *Wordie Property Co Ltd* v *Secretary of State for Scotland* 1984 SLT 345.

[6] The sheriff misunderstood parts of the evidence and his assessment of the credibility of the witnesses was plainly wrong having regard to other evidence which amounts to an error of law: *Woods; Wordie.*

[7] The sheriff erred by misunderstanding the error in the agreement.

[8] He was plainly wrong in his assessment of the evidence and the inferences which he drew from it.

[9] He made insufficient findings in fact.

Submissions for the Respondent

[10] An agreement which creates an unequal division of matrimonial property does not give rise to an inference of unfairness or unreasonableness: reference was made to the five principles set out in *Gillon.* There must be an evidential basis to demonstrate a causal connection between the absence of legal advice and any purported unfairness or unreasonableness: *Bradley,* a case which sets out the obligations incumbent upon a party seeking to set aside an agreement.

[11] Where there is no error of law, an appellate court may only interfere where the decision cannot reasonably be explained or justified: *Henderson* v *Foxworth Investments* 2014 SC (UKSC) 203; it must be satisfied that the judge at first instance was plainly wrong in his assessment of the evidence: *Clarke* v *Edinburgh & District Tramways Co Ltd* 1919 SC (HL) 35; and it must be slow to reverse the trial judge's evaluation of the facts: *Piglowska* v *Piglowski* 1999 1 WLR 1360. An appellate court should be similarly cautious in its approach to inferences drawn at first instance from the evidence presented. Only rarely and on the basis of the plainest considerations would it be justified in finding that the trial judge had formed a wrong opinion on the facts: *McGraddie* v *McGraddie* 2014 SC (UKSC) 12; *PB* v *LM* 2023 SAC (Civ) 12.

[12] The sheriff identified the *Gillon* principles and addressed each in turn. Finding in fact 7, with regard to legal advice, was based on an inference from the evidence. The appellant had engaged with a support agency and could have sought legal advice in the time period. The evidence did not demonstrate a link between the parties' unequal relationship and the circumstances in which the agreement was made. The appellant had declined to obtain independent legal advice and had signed a disclaimer. The sheriff considered all the relevant circumstances and findings in fact were always surrounded by a penumbra of imprecision which may not permit of exact expression (*Piglowska).* The appellant had failed to discharge the burden of proving any causal link between the absence of legal advice and any purported unfairness or unreasonableness. The sheriff had addressed all the relevant factors in his Judgment at page 55.

[13] There was an evidential basis which supported finding in fact 9. The sheriff considered the relevant surrounding factors: the appellant's deafness; the role of the solicitor; the appellant's engagement with Women's Aid; and her reliability as a witness.

[14] The sheriff's Judgment should not be scrutinised in detail as if it were a conveyancing document. The sheriff saw and heard the witnesses and assessed their credibility and reliability. He made adverse findings in relation to the appellant's reliability. The appeal fails to specify the manner in which the sheriff was plainly wrong.

[15] The intention of the parties was that the respondent would make the payment of £10,000 which was to be divided between their two children. He testified that he would do so. The purported shared error in the agreement on this point does not vitiate it and no error of law arises.

[16] The high test for determining that the sheriff was plainly wrong has not been met. In particular the sheriff's findings in relation to the appellant's receipt of the letter from the appellant's solicitor was justified on the evidence and her acknowledgement that she had had an opportunity to take legal advice indicated that any imbalance was the result of her own actions and choices: she had failed to safeguard her own position.

[17] The test for re-examining the findings in fact (*McGraddie, PB)* has not been met and it has not been established that the sheriff's assessment of the facts was plainly wrong (*Clarke).* Accordingly the appellate court should decline to make the alternative findings in fact proposed by the appellant or to substitute its decision for that made by the sheriff.

Decision

[18] Orders for financial provision on divorce are contained within section 8 of the 1985 Act according to the well-known principles set out in section 9. According to section (9)(i)(a) the net value of the matrimonial property as at the relevant date should be shared fairly between the parties to the marriage; and section 10(1) states that it shall be

taken to be shared fairly when it is shared equally or in such further proportions as are justified by special circumstances. Subsection 6 contains the following:

> "(6) In subsection (1) above 'special circumstances', without prejudice to the generality of the words, may include-
>
> > (a) the terms of any agreement between the persons on the ownership or division of any of the matrimonial property …
> > (b) the source of the funds or assets used to acquire any of the matrimonialproperty… where those funds or assets were not derived from the income or the efforts of the persons during the marriage …"

In terms of subsection (5) the proportion of any rights or interests of either party in a life policy or in any benefits under a pension referable to the period of the marriage before the relevant date shall be taken to form part of the matrimonial property.

[19] The appellant seeks to have the court set aside the agreement over the division of matrimonial property which the parties entered into in the present case under reference to section 16 of the 1985 Act which includes the following provisions:

> "**16 Agreements on financial provision**
>
> > (1) Where the parties to a marriage … have entered into an agreement as to financial provision to be made on divorce … the court may make an order setting aside or varying- …
> >
> > (b) the agreement or any term of it where the agreement was not fair and reasonable at the time it was entered into.
> >
> > (2) The court may make an order- …
> >
> > (b) under subsection (1)(b) above, if the agreement contains neither a term relating to pension sharing nor a term relating to pension compensation sharing, on granting decree of divorce ..."

[20] Both parties referred to the case of *Gillon* in which Lord Weir extracted from previous cases the following principles in relation to section 16 of the 1985 Act:

(a) it is necessary to examine the agreement from the point of view of both fairness and reasonableness;

(b) the examination must relate to all relevant circumstances leading up to and prevailing at the time the agreement was made, including the nature and quality of any legal advice given to either party;

(c) evidence that one party had taken some unfair advantage of the other by reason of the prevailing circumstances at the time of the negotiations may have a cogent bearing on the determination of the issue;

(d) the court should not be unduly ready to overturn agreements validly entered into; and

(e) the fact that an agreement led to an unequal (and possibly very unequal) division of assets does not by itself necessarily give rise to any inference of unfairness and unreasonableness.

[21] In *Gillon* the court held that an agreement which had excluded the pursuer's right to a capital sum which been made before the (substantial) value of the defender's pension had been ascertained was fair and reasonable, despite there being an unequal division of matrimonial assets. However the facts in that case were very different from the present case because the court was able to identify substantial benefit to the pursuer, both parties had had separate legal representation and advice, and, at the time the agreement had been entered into, the existence of the defender's pension rights was known to both, albeit the value of those rights had not yet been ascertained.

[22] The sheriff's consideration of the *Gillon* principles begins at the final paragraph on page 60 of his Judgment where he makes the following statement:

> "It is necessary to examine the agreement from the point of view of both fairness and reasonableness. If that were the decisive criterion then it would be easy given the imbalance between the Pursuer and the Defender in terms of the outcome to say that the Minute of Agreement cannot stand. However another of the *Gillon* principles is that I am required not only to look at the outcome but at all of the relevant

> circumstances leading up to and prevailing at the time of the execution of the agreement."

The Minute of Agreement provided that the appellant received 8.5% of the value of the matrimonial property as at the relevant date and the respondent 91.5%, which is the imbalance referred to above by the sheriff. Those figures suggest an unfair and unreasonable agreement *prima facie.* The sheriff proceeded to consider the surrounding circumstances in accordance with the guidance given in *Gillon*. He considered that the disclaimer was one of the relevant circumstances. He was not persuaded that the defender had taken some unfair advantage. The pursuer did not have poor mental health or any intellectual impairment. The solicitor acted only for the defender and the pursuer was informed that she could obtain independent legal advice. Having considered these matters, the sheriff concluded that the Minute of Agreement should stand. His reasoning was based solidly upon finding in fact 9.

[23] It is clear from what is said in pages 60 and 61 of the sheriff's Judgment that he did give consideration to the *Gillon* principles and the essential question in this appeal is whether he erred in law in the way he applied those principles. I have come to the conclusion that he did.

[24] The sheriff repelled all of the appellant's pleas in law relating to financial provision including that which related to setting aside the parties' Minute of Agreement and upheld *inter alia* the respondent's first plea in law which pled that the said Minute should not be set aside "being fair and reasonable and having been entered into by the Pursuer in full knowledge and understanding of the terms thereof". However, he made no finding in fact and law that the Minute of Agreement was fair or reasonable despite that issue being the core of the dispute before him. In that respect he failed to make sufficient findings in fact to

support his decision. In *Wordie,* (at p 361) Lord Cameron expressed the view that a failure to make a necessary finding in fact was fatal to the reasoning of the related decision.

[25] The sheriff made no finding in fact that the appellant had signed the Minute of Agreement in full knowledge and understanding of its terms. In that respect he also failed to make sufficient finding in fact to support his decision. He found instead that it was the appellant's choice to enter into the Minute of Agreement in its terms, it was her choice not to take independent legal advice and that the imbalance in the executed agreement resulted from her failure to safeguard her own position.

[26] There are several factors which the sheriff does not appear to have taken into account in his application of the *Gillon* principles. The Minute of Agreement was signed on 23 April 2019 which is within a relatively short period of time after the parties had separated on 7 March. The respondent's solicitor accepted that it had been entered into quickly and that she did not have the financial vouching at the time (Judgment, page 46). The evidence indicated that in the period of time between separation and agreement the appellant had no fixed address and had been "sofa surfing" with friends before moving into her parents' home, all while still working (Judgment, page 4). Her position was that she had had no time in which to take legal advice, the situation was new to her and there was no time to think about what to do next. The sheriff considered that the appellant could have consulted the Citizens' Advice Bureau ("CAB") as the respondent had done, that she could have gone to see a lawyer and that she could have discussed the situation with her parents whom the sheriff categorised as "two very sensible people" (Judgment, page 58) and he concluded that she did not take any steps to protect her position (*ibid)*. He considered that as she had engaged with Women's Aid she could have turned to that agency for advice; however, it is not clear from the summary of the evidence whether she had gone to Women's Aid before

the Minute of Agreement was signed. It was the appellant's contention that she had not, in fact, contacted that agency until after it had been signed. The sheriff has made no finding in fact about the matter.

[27] The process seems to have been that the Minute of Agreement was drafted by the respondent's solicitor, Ms Crowe, on his instructions after he had spoken to the appellant about the arrangements. Ms Crowe met with the appellant early in April 2019 when they discussed a draft of the Minute of Agreement. Some changes were suggested, relating to the arrangements for making payments of £5,000 to each of the two children of the marriage. Ms Crowe testified that she made sure that the appellant knew that she was not acting for both parties and that the appellant ought to take separate legal advice. They met again on 23 April 2019 when the appellant signed a disclaimer indicating that she had had the opportunity to take separate legal advice and had chosen not to and that she understood what she was signing. Thereafter she signed the Minute of Agreement.

[28] While the appellant was a free agent at the time when she signed the agreement, there are serious questions about the appellant's understanding of her position at the time the Minute of Agreement was signed which the sheriff has failed to address. The appellant was anxious to recover £26,000 which she felt was her "inheritance", money from her family which she had contributed at the time of the purchase of the matrimonial home. The only figures which feature in the Minute of Agreement are that sum and the £10,000 to be paid to the children. The appellant's position was that she did not know the value of the matrimonial home or that she was entitled to a share in her husband's pensions (Judgment, page 6). The sheriff does not address either of these issues with clarity. At page 58 of his Judgment he distinguishes *McKay* v *McKay* 2006 SLT (Sh Ct) 149, a case in which one party had failed to declare the existence of a pension policy, from the present case because he

regarded the problem in the instant case as "a failure by the Pursuer to ask the right question at the right time". This must imply that he considered that the appellant did not know of her entitlement in relation to the respondent's pension at the time when she entered into the agreement and he is silent on whether he accepted that she did not know the value of the matrimonial home at the relevant date. These two issues are significant in relation to whether the Minute of Agreement was fair and reasonable at the time it was signed. In *Worth* an agreement was set aside on the grounds of unfairness when pension rights were not known to be part of the matrimonial property by either party despite legal advice having been obtained, when the solicitor who drew up the agreement did not raise the issue with them. In the present case the sheriff appears to have disregarded the appellant's ignorance of these matters because she had not taken independent legal advice.

[29] The court may set aside an agreement which does not contain any provision in relation to pension sharing (1985 Act, s. 16(2)(b)). The matter is therefore of significance. The sheriff has made no finding in fact in relation to whether the appellant was or was not aware of her rights in relation to pension sharing but the inference must be that he considered that she did not because she had failed to take independent legal advice.

[30] The sheriff found that the respondent's solicitor wrote to the appellant on 25 March 2019 suggesting that she take advice from a solicitor or from Family Mediation (finding in fact 7). He made no finding in fact that the appellant had received, read or understood the contents of that letter. It was sent to the former matrimonial home on the instructions of the respondent although he was aware that the appellant was no longer living at that address. The respondent testified that he did not know where his estranged wife was living at the time and he did not know her parents' full address or that of her place of employment. There was evidence that mail addressed to the appellant was left for her in a bag attached to

the gate outside the house but the respondent stated that the letter from the solicitor had been given to his son to deliver to the appellant when he saw her. The court heard no evidence from the son about what he did with the letter. The sheriff concluded (at page 55 of his Judgment) that it was probable that the appellant had received the letter. However, he also stated that it was possible that she had lost or mislaid or overlooked it. He made no finding in fact that she had received it or read it. The importance of this is that finding in fact 7 is of no value if the appellant did not receive or read the letter, yet it was a factor in the sheriff's conclusion that the appellant was the author of her own misfortune.

[31] At page 59 of his Judgment the sheriff stated that he accepted that the relationship between the parties was not an equal one because the respondent was verbally abusive towards the appellant and he belittled her in front of others. He did not consider that to be a factor which might contribute to rendering the agreement unfair or unreasonable because the appellant had corrected one aspect of the original draft and because she had had "the backbone" to leave him. His approach takes no account of the process by which the terms of the agreement were devised predominantly by the respondent. In the absence of any consideration of that aspect of the matter any assessment of the effect of any inequality in the parties' relationship with regard to the agreement must be incomplete.

[32] There was no evidence that the appellant was provided with a copy of the draft agreement before either of her meetings with the respondent's solicitor. It would be difficult to take advice properly without one. The sheriff was of the view that she should have been sent a copy by the respondent's solicitor who should have said that she could give no advice to the appellant as she was representing the respondent only (Judgment, page 60). However, the sheriff next states that the central difficulty was that the appellant failed to obtain legal advice when she ought to have done so. These two statements are not easy to

reconcile, particularly as the sheriff seems to accept (at page 60 of his Judgment) that the appellant might have held a mistaken belief about who Ms Crowe was representing.

[33] The effect of the Minute of Agreement was that the appellant received 8.5% of the value of the matrimonial assets at the date of separation and the respondent received 91.5%. The sheriff noted that the agreement on the face of it was not a fair division (Judgment, page 58). He considered that if fairness and reasonableness were the decisive criteria:

> "then it would be easy given the imbalance between the Pursuer and the Defender in terms of the outcome to say that the Minute of Agreement cannot stand."

The respondent's solicitor told the court that "she could not fathom why the Pursuer was signing this agreement" and she used the word "bizarre" (Judgment, page 43). The sheriff made his decision that the Minute of Agreement should stand because the appellant had failed to protect her own position by failing to take legal advice or to ask the right questions at the right time. That decision on his part fails to take proper account of her personal circumstances at the time, the possibility that she might have had a mistaken belief that the respondent's solicitor (who had acted jointly over the purchase of the matrimonial home) was representing them both, the uncertainty over whether she had received the letter advising her to take separate legal advice, her ignorance of her entitlement to any share in the respondent's pension, the fact that she had not been sent a draft of the Minute of Agreement in advance of the appointment to consider and the fact that the matter was proceeded with in haste as was demonstrated by the fact that the solicitor who drew up the Minute of Agreement on the respondent's instructions had not seen any financial vouching.

[34] In these circumstances I must conclude that the sheriff has erred in law in his application of the *Gillon* principles. The agreement was not fair because of the enormous imbalance in the division of property which was not counterbalanced by any significant

benefit to the appellant. It was not reasonable as it did not take any account of the value of the former matrimonial home nor of the value of the respondent's pension; indeed, it could not have done so as these had not been properly ascertained at the time of its signing. It was neither fair nor reasonable in that it was signed when the appellant had not received legal advice and was apparently under an erroneous impression that the respondent's solicitor may have been acting for both parties as she had previously done in relation to the purchase of the matrimonial home.

[35] The respondent referred to the requirements placed upon the party seeking to set aside an agreement by the Sheriff Appeal Court in *Bradley* at paragraph 36. In this case the practical financial consequences of the existing arrangement and its unfairness and unreasonableness may be inferred from the very unequal division of the matrimonial property. The very obvious imbalance in the division of the matrimonial assets was not compensated for by any significant advantage accruing to the appellant (*Gillon*, at page 683E) or comparable disadvantage to the respondent (*Bradley*, paragraph 36). The solution pled was set out in craves 3, 4 and 6 of the initial writ. The causal connection between the absence of legal advice and the unfairness and unreasonableness of the agreement may be inferred from the comments made by the solicitor who prepared it to the appellant's decision to sign it and from the sheriff's connection between the two when he decided that responsibility lay with the appellant because she had not taken legal advice timeously.

[36] I agree with the respondent that the various grounds of appeal contain a degree of overlap. The sheriff has set out his reasons for considering that the appellant was not a reliable witness and for accepting the evidence of the respondent in part despite the obvious problem that he had denied behaving towards his wife in ways in which he demonstrably

had when some of their messages were placed before him. These were matters for the sheriff to assess. While criticism may be made of his approach I do not consider that he was clearly wrong to the extent that an appellate court ought to interfere (*Clarke,* per Lord Shaw of Dunfermline at page 36). Similarly, I do not accept that his decision was not explained. His reasoning is clear: he based his decision on the appellant's failure to seek independent legal advice before she signed the Minute of Agreement. Accordingly the test in *Wordie* has not been met in this appeal in respect of the sheriff's failure to explain his decision. For the reasons given above I consider that he erred in law in his application of the *Gillon* principles and that he failed to make findings in fact which were necessary to support his decision, not that he was plainly wrong in his interpretation of the facts. It follows that the tests set out in *Foxworth, Clarke* and *McGraddie* (discussed by the Inner House in *AW* v *Greater Glasgow Health Board* [2017] CSIH 58, at paragraphs 46 – 50) for an appellate court to overturn the decision of a lower court on that basis have not been met in my view and the situation in the present case is not one of the type of imprecision referred to in *Piglowska.*

[37] Any issue arising from any misunderstanding of the part of the agreement which related to the payments to the parties' children is no longer relevant as the respondent had accepted responsibility for making those payments and the matter has been clarified by that concession.

[38] The sheriff did not consider that the appellant's deafness had a material bearing on the meeting with the respondent's solicitor on the basis that she had obviously lip read skilfully during the proceedings before him and had appeared to have no difficulty in following and participating in the proof. I see no reason to challenge that aspect of his Judgment.

[39] *C* v *M* was cited to the sheriff as an example of an extreme case in which the agreed division of matrimonial property was similarly very unequal but the sheriff was correct to place no reliance on it as the facts in that case were different from the present case in that the evidence suggested that the defender had been taking unfair advantage of the pursuer for many years and that he (the pursuer) had significant mental health issues at the time the agreement was entered into.

[40] The submissions and authorities presented to this court in relation to the revision of the findings in fact were of limited value as the real issue in the present case is the absence of findings necessary to support the sheriff's conclusion, not the correction of the existing findings on the basis that they were not supported by the evidence. The problem is that material findings were not made despite the sheriff appearing to accept the evidence relating to those matters.

[41] Accordingly I shall delete finding in fact 9 which fails to address the central issue of the fairness and reasonableness of the Minute of Agreement and add the following additional findings in fact, each of which is founded upon the sheriff's summary of the evidence as indicated above:

> 9. The agreement was negotiated and entered into approximately seven weeks after the parties had separated.
>
> 10. The pursuer was not provided with a copy of the draft agreement to consider before the date on which it was to be signed.
>
> 11. At the date of its signing the full value of the matrimonial property was not known to the pursuer or the defender's solicitor. In particular the value of the matrimonial home had not been vouched to the defender's solicitor and the value of the defender's pension was not known.

12. The pursuer mistakenly believed that the defender's agent was acting for both parties.

13. In terms of the agreement the pursuer received 8.5% of the matrimonial property and the defender received 91.5%.

I shall add the following finding in fact and law:

1. The agreement made by the parties was neither fair nor reasonable.

[42] Accordingly I shall allow the appeal in relation to the first, second and sixth grounds of appeal and repel grounds 3, 4 and 5. Accordingly I shall recall the sheriff's interlocutor of 16 January 2023 to the extent of upholding the pursuer and appellant's second plea in law and repelling the defender's first and second pleas in law; thereafter I shall remit the matter to the sheriff to proceed as accords.

[43] I sanction the appeal as suitable for the employment of junior counsel on account of its complexity and importance for the parties and find the respondent liable to the appellant for the expenses of the appeal procedure. If the parties cannot agree the question of expenses and so advise the court within twenty one days the court will assign a further hearing.