



SHERIFF APPEAL COURT

**[2023] SAC (Civ) 3
ABE-CA28-18**

Sheriff Principal C D Turnbull

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL C D TURNBULL

in the appeal in the cause

GORDON MACLURE TRUSTEE OF THE SEQUESTERED ESTATE OF THE LATE
PATRICIA ANDERSON

Pursuer & Respondent

against

RICHARD ANDERSON

Defender & Appellant

Pursuer & Respondent: Massaro, advocate; Dentons UK and Middle East LLP

Defender & Appellant: party

18 November 2022

Introduction

[1] The defender and appellant (“the appellant”) appeals against the decision of the sheriff at Aberdeen to grant summary decree, as craved, in the principal action and dismissing the appellant’s counterclaim. In accordance with rule 6.9 of the Sheriff Appeal Court Rules (“the Rules”), the pursuer and respondent (“the respondent”) has referred three questions of competency in relation to the appeal, namely:

1. Is it competent to remit to an appeal hearing the appellant's averments of bias and prejudice *et separatim* allegations of untruthfulness *et separatim* arrogance on the part of certain individuals absent any evidence or detailed pleading of the same?
2. Is it competent to remit to an appeal hearing any interlocutor other than the interlocutor of 29 July 2022 insofar as such earlier interlocutors have nothing to do with the merits of the interlocutor of 29 July 2022?
3. Is it competent to remit to an appeal hearing the statements of the note of appeal which do not narrate an error of law?

[2] Notes of Argument were lodged by both parties and, as procedural Appeal Sheriff, I heard parties on the reference. In light of the written arguments lodged, I do not propose to repeat what is stated therein.

Discussion

[3] To an extent, the references turn upon the requirements of rule 6.2(2)(b) of the SAC Rules. The rule in question sets out one of the requirements of a note of appeal, namely, the note of appeal must state the grounds of appeal in brief specific numbered paragraphs setting out concisely the grounds on which it is proposed that the appeal should be allowed.

The first question

[4] In his note of appeal, the appellant asserts that the court had previously been misled; that the sheriff who granted the summary decrees "was biased and prejudiced"; and that the appellant found the sheriff who presided at the hearing on 29 April 2022 to be "arrogant, condescending and insulting which was stressful".

[5] The matter raised is not one of competency. It is, in essence, a complaint of lack of specification. The question envisages that there ought to be “detailed pleading” of allegations such as those made by the appellant. In the context of that which is brought under review, the relevance of these assertions is, perhaps, somewhat difficult to ascertain. Nevertheless the respondent does not assert a failure to comply with the requirements of rule 6.2 and was unable to identify any provision which would entitle this court to exclude aspects of a note of appeal, such as those criticised. In the context of an appeal, the authorities cited by the respondent are not of assistance.

[6] I am not persuaded that the court does, in fact, have power to excise “averments” from the note of appeal. Nevertheless, even were such a power open to this court, I would decline to exercise it at this time.

The second question

[7] In his note of appeal, in addition to the interlocutor granting summary decree, the appellant seeks to bring under review six prior interlocutors. In terms of section 116(2) of the 2014 Act, in an appeal, all prior decisions are open to review. That provision addresses the pure competency point raised by the second question, however, the issue at the heart of the question is a slightly different one which, in practice, is frequently raised as an issue of competency when, in fact, it is not.

[8] The true question is whether, having regard to *McCue v Scottish Daily Record and Sunday Mail Ltd* 1998 SC 811 at 824 D - F, the court should countenance an appeal against the six prior interlocutors. I do not propose to rehearse the terms of the interlocutors in question. The equivalent rule in the Court of Session (RCS 38.6) was considered by the Inner House in *Keatings v Advocate General for Scotland* 2021 SC 329 at paragraph [68].

Section 116(2) falls to be interpreted in a like manner - prior decisions may only be reviewed in so far as they require to be opened up for the purpose of doing justice in respect of the decision which has been appealed.

[9] Applying the test set out in *Keatings* (and the prior authorities narrated in paragraph [68] thereof), I am satisfied that the six prior interlocutors do not require to be opened up for the purpose of doing justice in respect of the decision to grant summary decrees. Accordingly, the court will not countenance and will refuse the appeal in so far as it is directed against the interlocutors of 29 November 2019; 18 December 2019; 30 October 2020; 21 April 2021; 3 December 2021; and 29 April 2022.

The third question

[10] The respondent seeks to exclude from the note of appeal statements which it is said do not narrate an error of law. This point can be dealt with briefly. The requirements of rule 6.2(2)(b) are set out in paragraph [3] above. They do not require each statement in a note of appeal to narrate an error of law. Counsel for the respondent was unable to point to any provision of the SAC Rules (or to a provision of the rules governing appeals to the Inner House) which would permit the court to exclude statements in the manner argued for. The court will decline to do so.

Disposal

[11] In accordance with rule 6.10(1)(b) the court finds the appeal to be competent. For the reasons set out in paragraph [9] above, the court will not countenance and will refuse the appeal in so far as it is directed against the interlocutors of 29 November 2019; 18 December 2019; 30 October 2020; 21 April 2021; 3 December 2021; and 29 April 2022.

[12] The respondent's challenge to the competency of the appeal has been unsuccessful, however, standing the decision that court has reached in relation to the prior interlocutors, it will find no expenses due to or by either party in respect of the competency reference.

[13] In terms of rule 6.11(2), the issue of competency having been resolved, I will appoint the appeal to Chapter 8 procedure. There are no special circumstances to depart from the presumption in rule 6.11(4)(b)(iii) in relation to appeals against decisions granting summary decree.