



SHERIFF APPEALCOURT

**[2026] SAC (Civ) 45
DUN-A238-20**

Sheriff Principal A Y Anwar KC
Sheriff Principal N A Ross
Appeal Sheriff J F Kerr

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL AISHA Y ANWAR KC

in appeal in the cause by

CAROLANN CURRAN

Pursuer and Appellant

against

CHRISTOPHER SINCLAIR

First Defender and First Respondent

and

CHRISTINA MCINTOSH

Second Defender and Second Respondent

**Pursuer and Appellant: Party
First Defender and First Respondent: Party
Second Defender and Second Respondent: No appearance**

7 July 2026

Introduction

[1] The appellant's daughter, Katie McKenzie, and the first respondent were previously in a relationship. They separated prior to 2017. The first and second respondent are friends.

[2] In May 2018, Katie Mckenzie was convicted of an offence in terms of section 39(1) of the Criminal Justice and Licensing (Scotland) Act 2010 relating to her conduct directed towards the respondents in January 2017.

[3] These proceedings were raised in 2020. The appellant sought a non-harassment order in terms of section 8 of the Protection from Harassment Act 1997 ("the 1997 Act") with a power of arrest and £10,000 in damages from each of the respondents. The gravamen of the appellant's claim is that she has been subjected to harassment by the respondents who have made false allegations to the police about her conduct.

[4] Following a protracted procedural history spanning 4 years, a proof took place over six days. The proof was restricted to the following issues upon which the appellant relied in support of her craves (in terms of interlocutor of the sheriff dated 21 December 2023 as varied upon appeal on 15 March 2024):

- i. alleged false allegations made by the first respondent on 27 January 2017 (Article and answer [4]);
- ii. alleged false allegations made by the first respondent regarding stalking on 5 July 2017 (Article and answer [6]);
- iii. alleged false allegations regarding being followed in August 2019 (Article and answer [8]);
- iv. alleged false allegations regarding stalking in August 2020 (Article and answer [12]);
- v. alleged false allegations regarding reporting to police on 13 June 2021 (Article and answer [15]);

vi. alleged incidents involving Ms Penman and the first respondent between March 2022 and August 2022 which resulted in the appellant being arrested and charges subsequently dropped (Article and answer [17]).

[5] At the conclusion of the proof, on 7 February 2025, the sheriff granted decree of absolvitor in favour of the respondents. He found the appellant liable to the respondents in the expenses of the cause with an additional charge of 100% payable to the first respondent in terms of rule 5.2 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019. The appellant appeals against that interlocutor.

The sheriff's judgment

The findings in fact

[6] Following the conclusion of the proof, the sheriff issued his judgment but for the reasons given below, the sheriff was also directed by this court to provide a supplementary opinion to address the appellant's voluminous grounds of appeal. The salient findings in fact made by the sheriff in his judgment can be summarised as follows for the sake of brevity:

- i. On 27 January 2017, Katie Mckenzie drove a blue car along East Balgillo Drive in Broughty Ferry whilst the respondents were walking a dog. She then drove towards the first respondent's home at [address] and stopped so that she was there by the time they returned. She then drove off at speed. She was charged and convicted of an offence of stalking in May 2018;
- ii. On 5 July 2017, the appellant and Katie Mckenzie attended at an address neighbouring the first respondent's home. The appellant went to the neighbour's door and said she was there for a gardening job when no such job existed. The first

respondent stood in the driveway and video recorded the appellant and Ms Mckenzie as he had been advised to do by the police. The appellant then drove off in a circular route before passing the first respondent's home;

iii. On 19 August 2019, on the A90 dual carriageway, Ms Mckenzie overtook a vehicle being driven by the first respondent, pulled into a layby to let him pass, accelerated and overtook the vehicle again and pulled over again. The first respondent and his passenger, Leighanne Gallagher, reported this matter to the police. The first respondent recorded the incident on his mobile and Ms Mckenzie recorded the incident on a dash camera;

iv. On 13 June 2021, the appellant drove past the first respondent and his wife, Natalie Sinclair. This was a chance encounter. The first respondent did not deliberately look at or stare at the appellant;

v. On 13 June 2021, the first respondent and Natalie Sinclair noted Ms Mckenzie parked near to their car in a shopping centre. Both the first respondent and Ms Mckenzie video recorded each other. The first respondent reported the matter to the police as he had been advised to do so but did not wish to make a formal complaint;

vi. Kerri Henderson, a friend of the first respondent took three photographs of a car connected to the appellant and Ms Mckenzie parked outside the first respondent's place of work in 2022. She reported the matter to the police. She had not been asked to do so by the first respondent;

vii. In March 2022, Natalie Sinclair drove past the appellant's car which was parked outside the first respondent's place of work. She did so out of concern that the appellant was present at the first respondent's place of work. She had not been asked by the first respondent to do so;

viii. In August 2022, the first respondent reported to the police that there had been a number of sightings of the appellant's car parked near his place of work at times when he was working.

The sheriff's assessment of the facts

[7] The sheriff found that the complaint made by the respondents to the police (regarding Katie McKenzie's conduct on 27 January 2017 and 19 August 2019) did not relate to the appellant, was not directed at her and was not intended to harass her. These complaints, and that made by the first respondent relating to the appellant's conduct on 5 July 2017, were made for the purposes of preventing or detecting crime and were reasonable in the circumstances. The chance encounter between the appellant and the first respondent on 13 June 2021 was not directed at the appellant, was not intended to harass her, and occurred in circumstances in which it could not be said that it would appear to a reasonable person to amount to harassment of the appellant. The first respondent was not responsible for the actions of Natalie Sinclair or Kerri Henderson in 2022. In any event, their actions and those of the first respondent in taking photographs of the appellant's car parked near his place of work, constituted conduct pursued for the purpose of preventing or detecting crime and was reasonable in the circumstances. As such, there was no conduct directed against the appellant which would justify the granting of a non-harassment order and no cause of action giving rise to an award of damages in her favour.

The sheriff's assessment of the evidence

[8] The appellant gave evidence. She also led evidence from eight witnesses, including three police officers. The sheriff noted that the appellant treated all of her civilian witnesses

as “hostile”. She sought to portray them as dishonest. The sheriff assessed each of these witnesses as credible and reliable.

[9] The sheriff found the appellant’s evidence to be lacking in credibility and unreliable. He considered her evidence to be rehearsed. He concluded that she displayed an obvious animus towards the first respondent. She was reluctant to make straightforward concessions. He noted that she had not called her daughter, Katie Mckenzie, as a witness, despite her being central to the allegations of harassment. She did not lead dash camera footage of an incident on 27 January 2017 (being the incident which gave rise to Ms Mckenzie’s conviction). The footage required to be played during cross examination. The sheriff noted that the appellant struggled during cross examination to deal with questions that the footage was not genuine but was a “re-enactment” (paras [53] and [54] of his judgment). The sheriff referred to a Facebook post by the appellant, posted after a not proven verdict was returned in relation to a trial involving a complaint that the first respondent had verbally abused the appellant during the same incident for which Ms Mckenzie was convicted. He described the appellant as reluctant to take ownership of its contents. The post read as follows:

“Not proven doesn’t mean not guilty means big fat disgustingly ugly cunt of a witness lied on oath . . . just shows what a desperate fat fuck she is . . . next time snotters . . . next time.”

[10] The sheriff concluded that this post demonstrated the taint on the appellant’s evidence.

[11] He noted that while there were passages of the first respondent’s evidence (most notably, a derogatory response apparently intended to irritate the appellant) which gave the sheriff cause for concern, his evidence was generally reliable and credible. He noted that the first respondent’s derogatory response was made against a background of the appellant’s

questioning being constantly rude, demeaning and insulting to the first respondent. During the course of the proceedings she variously referred to him as “a domestic abuser”, a “narcissist” and a “pathological liar”. The sheriff formed the impression that the first respondent felt helpless and scared in the face of the appellant’s relentless conduct and that his derogatory response had been a reaction to that. However, the first respondent’s evidence on the detail of the alleged incidents was clear, concise and detailed. His account was spontaneous, honest and natural.

Grounds of appeal

[12] The appellant advanced 16 grounds of appeal. These are repetitive, prolix and are not easy to comprehend. Her oral submissions on appeal did not assist understanding these grounds. We have noted these below. Many were simply assertions that the sheriff made errors, had erred in law and had misdirected himself. Many challenged the sheriff’s conduct of the proof. As noted at paragraph [6] above, the sheriff was directed by this court to produce the supplementary opinion.

[13] The appellant’s note of argument sought to introduce additional grounds of appeal (namely, that the “judgment is incurably unsafe” and that there had been “catastrophic misdirections under the Protection from Harassment Act 1997”). These were not foreshadowed in the note of appeal. We refused to hear submissions in relation to any ground of appeal which extended beyond the 16 grounds specified in the note of appeal. The first respondent made oral submissions as far as he could, but the defective nature of the grounds of appeal meant that he could add little of assistance. The second respondent did not lodge answers to the appeal.

Decision

[14] This action, and appeal, have absorbed large amounts of court time and resources, to no benefit to the litigants, the public or the interests of justice. The courts operate at public expense and are under great pressure of business. This appeal was without merit, for the reasons we require to address individually, for each of the 16 grounds of appeal, below. The action amounted to little more than an extended squabble. It soaked up 5 years of procedure, 6 days of proof and a day of appeal, and considerable judicial attention and writing. We have commented further in the post-script below.

[15] It is unfortunately necessary to address each of the 16 grounds of appeal individually. As many of these fail to recognise the proper use of an appeal, we commence by setting out the general principles which apply to appeals on facts. It is well established that where a trial judge has enjoyed the particular advantages in having seen and heard the witnesses, an appellate court should only interfere with the findings of the trial judge if they are plainly wrong or unsupported by the evidence (*Thomas v Thomas* 1947 SC (HL) 45; *McGraddie v McGraddie* [2013] UKSC 58; 2014 SC (UKSC) 12). As explained in MacPhail, *Sheriff Court Practice*, 4th ed at paragraph 18.153 (with reference to *Henderson v Foxworth Investments Ltd* [2014] UKSC 41; 2014 SC (UKSC) 203; *Clarke v Edinburgh and District Tramways Co*, 1919 SC (HL) 35, per Lord Shaw of Dunfermline and *Thomson v Kvaerner Govan Ltd* [2003] UKHL 45; 2004 SC (HL) 1):

Where . . . the credibility or reliability of one or more witnesses is in dispute, the Sheriff Appeal Court attaches considerable weight to the conclusion or inference made by the sheriff with regard to the weight or balance of the evidence of the witnesses, whom the sheriff has had the advantage of seeing and hearing, and asks itself whether, not having itself seen and heard the witnesses, it is in a position to come to a clear conclusion that the sheriff was plainly wrong. In the absence of some identifiable error, such as the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, the Sheriff Appeal Court will

interfere with the findings of fact made by the sheriff on the basis that he has gone plainly wrong only if it is satisfied that his decision cannot reasonably be explained or justified. If it cannot be so satisfied, it will not disturb the sheriff's judgment."

Ground of Appeal 1 – the Facebook post

[16] This ground of appeal relates to the copy Facebook post referred to at paragraph [9] above. The Facebook post was put to the appellant during cross-examination. The appellant contends that the sheriff erred in law and misdirected himself by founding upon a production which he had excluded from evidence following an objection by the appellant.

Submissions

[17] The appellant submitted that there was no "provenance" to the production comprising the copy Facebook post and no explanation of how the first respondent came to be in possession of it. She submitted that the sheriff had not been entitled to find that the appellant had been the author. The Facebook post had been excluded from evidence following an objection by her and the sheriff had unfairly placed reliance upon the post to conclude early in the proof that the entirety of her evidence was unreliable and incredible. The sheriff had reserved resolution of the appellant's objection until the conclusion of the proof; however, his judgment failed to explain why her objection was not sustained. The appellant accepted, however, that she had not invited the sheriff to resolve this objection during her submissions following the conclusion of the evidence.

[18] The first respondent submitted that the sheriff had not made an error for the reasons he provided in his judgment and his supplementary opinion.

Decision

[19] This ground of appeal is without merit and factually incorrect. It is clear from the transcript (p445 to p450) that the sheriff did not exclude the Facebook post but rather he allowed questions to be put to the appellant under reservation and subject to relevancy. In any event, it is clear from the exchange between the first respondent's solicitor and the sheriff that the post was relied upon to test the appellant's credibility and to establish that the proceedings had been motivated by a desire to exact revenge for her daughter's conviction. The sheriff explains in his supplementary opinion that he inferred from the appellant's answers that she took ownership of the posts. He was entitled to draw that inference. He has made no finding in fact related to the post. He considered it as part of his assessment of appellant's credibility. At paragraphs [53] to [57] of his judgment, the sheriff set out at length, a number of compelling reasons for concluding that the appellant's evidence lacked credibility and reliability; the Facebook post being but one. In his supplementary note, he explained that the Facebook post was not in any way determinative of his assessment of the appellant's evidence; that is borne out by his careful and detailed assessment of many aspects of the appellant's evidence. The sheriff did not place undue weight on this adminicle of evidence or misdirect himself as to its evidential value. There is no basis upon which to conclude that the sheriff's assessment of the appellant's reliability or credibility was plainly wrong or disclosed an error on his part. This ground of appeal is refused.

Ground of Appeal 2 – failure to have regard to productions

[20] This ground of appeal related to the sheriff's finding that the appellant had not been present in the car with her daughter on 27 January 2017. The appellant contended that the

sheriff erred by preferring the evidence of the first respondent and by ignoring various productions.

Submissions

[21] The appellant submitted that the sheriff had ignored the productions (5/1/76 to 5/1/78 and 5/1/314 to 5/1/315) which she claimed demonstrated that the first respondent had been inconsistent in his evidence. The first respondent submitted that the sheriff had made no error and his judgment and supplementary opinion were correct.

Decision

[22] At paragraphs [53] and [54] of the judgment, the sheriff explained why he regarded dash camera footage of the incident on 27 January 2017 and lodged by the appellant, as fabricated. He stated:

“[The appellant] omitted to play dash cam footage in her evidence in chief which she claimed showed she was with her daughter on 27 January 2017. This had to be introduced in cross examination by the [first respondent’s] solicitor and the [appellant] struggled to deal with the points he raised in support of the argument that this footage constituted a ‘re-enactment’. . . . There was the fact that the footage showed a quiet road despite it being 7.45pm on a Friday night in a built up area; the ostentatious speech apparently between the [appellant] and Katie Mckenzie captured on an audio recording; . . . the fanciful claim that it was due to ‘swearing’ and private discussions that she switched the audio off (later innovated in her submissions to include the even more fanciful claim that it was due to ‘copyright’ issues when playing music in the car); and the fact that she appeared to ‘clean’ the camera at the critical point in the footage when it was said that [the appellant and Katie Mckenzie] came upon the [respondents]. All of this supported the claim that this footage did not capture the events of 27 January 2017.”

[23] The productions now relied upon by the appellant were her own police statement and the first respondent’s adjustments to the pleadings. Even if the sheriff had been persuaded that either of these documents undermined the first respondent’s credibility, it

does not follow that the sheriff erred in his assessment that the appellant had not been present during the incident on 27 January 2017. The sheriff clearly and carefully explained why he concluded that the appellant had not been present. This ground of appeal is without merit.

[24] We note also that the appellant did not refer the court, either in her note of argument or in her submissions, to any excerpt from the transcripts which might have persuaded us that the contents of the productions she now relied upon had been properly explored in evidence. The sheriff explained at paragraph [15] of the supplementary opinion that the appellant referred to item 5/1/76 (her police statement) in passing and gave no detailed evidence on its contents. He notes that as this production was her own police statement, having regard to his concerns in relation to her evidence, he would have been unable to attach any weight to its contents in any event. The second production was not explored in evidence and was not put to the first respondent. That being the case, the sheriff was correct not to have regard to these.

Ground of Appeal 3 – Leighanne Gallagher

[25] The appellant contended that the sheriff erred in his assessment of Ms Gallagher's evidence.

Submissions

[26] The appellant submitted that the sheriff erred in determining that Ms Gallagher was a credible and reliable witness standing the terms of an email she had sent to the procurator fiscal in 2019 in which she sought to depart from an earlier police statement. Her testimony

on oath contradicted the contents of the email. The first respondent submitted that there was no basis upon which the sheriff could be criticised as to his assessment of her evidence.

Decision

[27] The sheriff carefully and fully explained his assessment of Ms Gallagher's evidence at paragraphs [20] to [24] and [59] to [61] of his judgment. He recognised the discrepancy in her evidence and noted that

“there were awkward questions for her arising from the email but she dealt with them head on. No doubt she exaggerated her position in the email and whilst she did not acknowledge this outright she was at pains to say that it was not intended to be taken literally as a statement of evidence but rather as an attempt to get out of giving evidence since she no longer wished to be involved.”

He noted that Ms Gallagher's evidence of what occurred on 19 August 2019 was in any event supported by video footage of the incident on 19 August 2019. There is no basis to say that the sheriff erred. He had the advantage of seeing and hearing from the witness and was able to test the veracity of her account against other evidence available to him, namely the video footage of the incident on 19 August 2019.

Ground of Appeal 4 – events on 19 August 2019

[28] The appellant contended that the sheriff erred in making a finding in fact regarding events on 19 August 2019.

Submissions

[29] The appellant had offered to prove that the first respondent sought to harass her by making a false report to the police that her daughter, Ms McKenzie, had followed him on the Kingsway, Dundee and the A90. The appellant submitted that no evidence was led by the first respondent at proof that Ms McKenzie knew the first respondent's vehicle, nor did he

give any evidence to support his claim that she was allegedly “following” him. The first respondent submitted that the sheriff had correctly assessed the evidence and had been entitled to make the finding in fact.

Decision

[30] The sheriff explained in his supplementary opinion that Ms McKenzie’s repeated overtaking manoeuvres gave rise to an inference that she was aware that she was following the first respondent. Moreover, the sheriff accepted the first respondent’s evidence that he felt he was being followed and reported the matter to the police.

[31] In any event, the crux of the question before the sheriff was whether what the first respondent had reported to the police was accurate or was a false accusation designed to harass the appellant. In that regard, first, there did not appear to be any dispute that repeated overtaking manoeuvres had taken place. Second, and more importantly, in our view, this ground of appeal is irrelevant. The matter reported to the police by the first respondent related to Ms McKenzie and not the appellant. It was not conduct designed to harass the appellant.

Grounds of Appeal 5 and 14 – refusal of motion to call second respondent

[32] It is convenient to deal with these grounds of appeal together. The appellant contended that the sheriff erred by refusing to allow her to lead evidence from the second respondent. In terms of the interlocutor dated 6 June 2024, the appellant “had been allowed” to cite and examine the second respondent. The sheriff’s decision was unfair and contrary to the appellant’s right to a fair trial in terms of Article 6 of the European Convention on Human Rights.

Submissions

[33] The appellant submitted that evidence in support of her craves directed towards the second respondent had not been restricted to the six matters identified at paragraph [4] above. She submitted that any findings made by the sheriff with respect of craves directed at the second respondent were “procedurally incompetent and unsupported by evidence”.

[34] The first respondent submitted that the appellant had given an undertaking to the sheriff that Natalie Sinclair would be her last witness at a time when the second respondent had not yet been called. The sheriff had been correct to refuse the appellant’s request to allow further evidence to be led from additional witnesses on the penultimate day of proof, including leading evidence from the second respondent. The appellant had failed to give sufficient notice and failed to explain the relevance and purpose of the proposed evidence she sought to elicit from the second respondent.

Decision

[35] The sheriff dealt with this issue at paragraphs [103] to [107] of his judgment and at paragraphs [51] to [53] of his supplementary opinion. The interlocutor of 14 June 2024 noted that the appellant advised the court that she intended to call the second respondent and that she had been cited. However, the sheriff explained that the appellant had, of her own volition, moved at the bar of the court on the first day of the proof to amend her list of witnesses. She gave a clear indication of the witnesses she intended to call. She gave a clear undertaking that Natalie Sinclair would be her last witness. At the conclusion of the first respondent’s case, the appellant then sought to lead further evidence and in particular, from the second respondent. That motion was refused. The proof was conducted and timetabled

on the basis of the appellant's amended list of witnesses. Following the evidence from her last witnesses, her proof was closed. Thereafter, she was not entitled to lead any further witnesses, without leave of the court. We are unable to discern, either from the judgment, the supplementary opinion or from the submissions before us, any reason as to why such leave ought to have been granted. There was no cogent explanation placed before the sheriff or before this court as to why the appellant did not lead evidence from the second respondent before concluding her proof. These grounds of appeal are refused.

Ground of Appeal 6 - there were not two or more instances of conduct by the second respondent

[36] We are unable to comprehend this ground of appeal. The appellant appeared to both accept that she did not lead evidence of two or more instances of conduct by the second respondent which might constitute harassment for the purposes of the 1997 Act, and simultaneously criticised the sheriff for failing to find that a "course of conduct" in terms of section 8(3) had been established.

Ground of Appeal 7 – photographs of vehicle

[37] The appellant contended that the sheriff erred in fact and law by stating that the appellant knew: (i) the Anchor Bar was located on Gray Street, Broughty Ferry; and (ii) that the first respondent worked there.

Submissions for the appellant

[38] The appellant submitted that she made no admission of her knowledge on these matters during her evidence. The first respondent had not produced any photographs of

the appellant's vehicle on Gray Street at the material time. The first respondent submitted that the sheriff had correctly assessed the evidence.

Decision

[39] As we have observed, the assessment of the evidence is a matter for the sheriff. Having reviewed the terms of the transcript setting out the appellant's evidence on this matter (in particular p563), the sheriff was entitled to conclude that the appellant was aware that the first respondent worked at the location where she chose to park her car. During cross examination the appellant expressly stated that she was aware that the first respondent worked at the Anchor Bar. There did not appear to be any disputed evidence that the sightings of the appellant's car coincided with times when the first respondent was working. The question of who took the photographs of her vehicle was irrelevant to the question of whether the first respondent had made false allegations to the police as regards the parking of the appellant's vehicle.

Ground of Appeal 8 – had witness Kerri Henderson been reported for wasting police time?

[40] The appellant contended that the sheriff erred in law and fact in his treatment of the evidence of Ms Henderson.

Submissions for the appellant

[41] The appellant submitted that the sheriff's assessment of Kerri Henderson as a credible and reliable witness was perverse as the witness had admitted to making a false statement to the police on 4 August 2023. She submitted that Kerri Henderson was to be

reported to the procurator fiscal for wasting police time. The first respondent maintained that there was no error in the sheriff's approach.

Decision

[42] This chapter of evidence appeared to relate to an allegation made by Ms Henderson that the appellant had been stalking her. The appellant appeared to submit that Ms Henderson had received a letter from the Procurator Fiscal which she submitted related to Ms Henderson being reported for wasting police time. The appellant submitted that the sheriff had "ignored" this letter. We were not referred to any passages of the transcript on in support of this ground of appeal. Having reviewed the transcript, we note that no such letter appeared to have been put to Ms Henderson during examination by the appellant. We are unable to identify any admission during her evidence that she admitted to wasting police time. This ground of appeal is without merit.

Ground of Appeal 9 – the appellant's demeanour

[43] This ground of appeal was directed against the sheriff's assessment of the appellant's demeanour; the sheriff had erred in law and in fact in this regard; the sheriff's references to her demeanour amounted to procedural impropriety.

[44] The particular paragraph of the judgment which is challenged read as follows:

"[53] The [appellant's] evidence was incredible and unreliable. Her evidence was repetitive and seemed rehearsed. There was obvious animus towards the [first respondent] and his solicitor with her sometimes leaning forward, pursing her lips and narrowing her eyes. She fenced with the questions and made speeches during her answers. She was reluctant to make the most straightforward concessions. . . "

Submissions for the appellant

[45] The appellant submitted that her demeanour had been misinterpreted by the sheriff; she submitted that she required to narrow her eyes because she was very short sighted, that it would be impossible for her to purse her lips because of the lip filler she regularly applies, and that she only leaned forward when her view was obstructed by others in court. She submitted that she had not been issued with any warning by the sheriff regarding her demeanour.

[46] The first respondent submitted that the sheriff only stated what he observed through the appellant's body language during her cross-examination. He did not make derogatory or disrespectful statements in relation to the appellant's appearance.

Decision

[47] The sheriff had cause to comment upon the appellant's demeanour in his assessment of her evidence. Having seen and heard the appellant give evidence, his assessment requires to be afforded considerable respect. Even if he had been wrong in his assessment of her demeanour, the sheriff set out in comprehensive detail several reasons for finding the appellant's evidence lacking in credibility and reliability (to which we have already referred above). This ground of appeal is without merit.

Ground of Appeal 10 – "good for the gander"

[48] The sheriff had failed to note the significance of evidence which demonstrated a "grievance" on the part of the first respondent's father and "a retaliatory mindset". The first respondent's father had checked whether the appellant's daughter had paid her road tax. He had no reason to do so.

Submissions for the appellant

[49] When asked about his father's investigations, the first respondent had used the term "good for the gander" in his response. The appellant submitted that this demonstrated that the first respondent and his father were prepared to take retaliatory action against her. The sheriff failed to note the significance of that evidence. Moreover, due to the constant interruptions by the sheriff on the last day of the proof, the appellant was unable to ask questions regarding how and why the father of the first respondent was monitoring the appellant's daughter's vehicle to find out it was not taxed. The first respondent submitted that the sheriff had not erred in this regard.

Decision

[50] The appellant's recollection of this chapter of evidence did not accord with the transcript (p1017-1019). It does not appear that the use of the term "good for the gander" was further explored in evidence. The questions of what, if any weight to attach to the term, and how and whether it affected the sheriff's assessment of the first respondent's evidence were matters for the sheriff. Again, the sheriff carefully explained his assessment of the first respondent's evidence, noting that it was supported, in its material respects, by the evidence of other witnesses. We do not accept, having examined the transcript, that there is any support for the appellant's allegation that the sheriff's interruptions prevented her from posing relevant questions. The sheriff sought to manage the proceedings by instructing parties to focus on the issues which had been admitted to probation; he is entitled to do so. This ground of appeal is without merit.

Ground of Appeal 11 - “gaslighting the appellant”

[51] The appellant made a number of allegations of being “gaslighted by the sheriff”.

These are factually inaccurate, there is no support for these in the transcript, the allegations are lacking in specification and do not constitute an error in law or fact which translates to a ground of appeal. We do not propose to address these.

Ground of Appeal 12 - appellant was under pressure and rushed

[52] This ground of appeal was directed at the sheriff’s conduct during the proof.

Submissions

[53] The appellant submitted that she felt constantly under pressure and rushed. The sheriff repeatedly interrupted her and caused her to lose concentration and control over her questions and evidence. Relevant questions could not be asked because of the interruptions and intrusive questioning by the sheriff as to the relevance of the appellant’s questions. The sheriff’s conduct was unfair.

[54] The first respondent submitted that the sheriff allowed the appellant as much time as she required throughout the court proceedings. He offered the appellant breaks from proceedings. During cross-examination of the first respondent, the sheriff afforded her the opportunity to consider her position, which she declined to take.

Decision

[55] The sheriff set out in considerable detail at paragraphs [88] to [97] of the judgment, the considerable latitude which was afforded to the appellant. It is clear from an examination of the transcript that the sheriff’s interventions were measured and were

designed to ensure that questions were relevant and did not involve personal attacks on witnesses. His interventions to control the proceedings did not stray beyond what was necessary in the difficult circumstances of the case. This ground of appeal is without foundation.

Ground of Appeal 13 - “the need for fear and alarm”

[56] The sheriff had erred in noting that whether the first respondent had been placed in a state of fear and alarm by the appellant’s conduct was a matter for the criminal courts.

Submissions

[57] The appellant submitted that there was no basis upon which to conclude that the first respondent was in fear and alarm such as to report the appellant to the police in 2022 for stalking him; therefore, his allegations to the police were false. There was no corroboration of his evidence of experiencing “fear and alarm”. The first respondent again, submitted that the sheriff had not erred.

Decision

[58] The appellant appears to misunderstand the nature of the proceedings before the court. Put shortly, she claimed that the first respondent had engaged in a course of conduct which was designed to harass her and for which she should be afforded the protection of an order in terms of the 1997 Act. It was the first respondent’s position that he had been advised by the police to report encounters with the appellant. The relevant question before the court was whether the first respondent’s actions were for the purposes of preventing or detecting crime and/or whether they were reasonable in the circumstances (section 8(4)(b))

and (c) of the 1997 Act), or whether they were intended to amount to harassment or occurred in circumstances where it would appear to a reasonable person that they would amount to harassment. The sheriff, for the reasons he provided, concluded that the first respondent's actions fell into the former category. He was entitled to do so.

Ground of Appeal 15 – additional charge

[59] This ground of appeal was directed at the sheriff's decision to award an additional charge of 100% in terms of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019.

Submissions

[60] The appellant submitted that the sheriff had erred in granting an additional charge of 100% in favour of the first respondent. Such a charge is normally only awarded for complex cases. The sheriff had noted that, despite the prolix pleadings, the facts of the case were straightforward. If that was so, there was no basis for the first respondent to be awarded the additional charge.

[61] The first respondent submitted that the sheriff has fully explained the basis for the awarding of the additional charge. He correctly considered relevant factors in determining whether to award an additional charge, including: (i) the complexity of the proceedings; (ii) the length of time of the proceedings; (iii) the conduct of the appellant; and (iv) the importance of the proceedings raised against the first and second respondents. The solicitor for the first respondent had been required to prepare the Record; an obligation which should fall on a pursuer in terms of the Ordinary Cause Rules. The solicitor for the first respondent had also required to respond to extensive procedure, including preparation for a debate, amendments and numerous opposed motions.

Decision

[62] The appellant's submissions on this ground of appeal amounted to no more than a disagreement with the sheriff's discretionary decision on a matter of expenses. It was her position that an uplift of 100% is only awarded in complex cases.

[63] The sheriff set out at paragraphs [120] and [121] of the judgment the reasons for awarding an additional charge. These included (a) the complexity of the proceedings which had necessitated a Record of over 70 pages, submissions by the appellant of over 150 pages and the need for a restriction of the matters for proof; (b) the skill, time and labour required, which included the need to deal with multiple procedural steps and a substantial number of motions at the appellant's instance; (c) the number of documents which included voluminous productions lodged by the appellant; (d) the circumstances of the proceedings which included the appellant's challenging conduct which had been designed to prolong proceedings; and (e) the importance of the proceedings.

[64] We are not persuaded that there is any basis (and none was cogently advanced) upon which we might interfere with a discretionary decision on a matter of expenses.

Ground of Appeal 16 – the first respondent's evidence

[65] The sheriff had permitted the first respondent to attack the appellant by allowing him to describe feeling "physically sick" at the sight of the appellant and her daughter and had "deliberately" misconstrued the evidence.

Submissions for the appellant

[66] The first respondent's comment that the appellant and her daughter made him feel "physically sick" was deliberately taken out of context by the sheriff. The evidence did not support the fact the first respondent felt fear and alarm when encountering the appellant or her daughter. The sheriff took the first respondent's response out of context when justifying his description of the appellant.

Submissions for the first respondent

[67] The first respondent submitted that his evidence at proof expressed how he felt about the appellant and her daughter. The sheriff had correctly recorded that evidence and was entitled to take it into account.

Decision

[68] The appellant challenged the sheriff's assessment of this evidence (at para [113] of the judgment) as "an honest description of [the first respondent's] own feelings and tied in with the generality of his evidence and the supporting evidence that his encounters with [the appellant and her daughter] inspired fear and alarm." The sheriff explained that he was left with the impression that the first respondent felt helpless and scared in the face of the appellant's conduct towards him. While he tried to mask this, the sheriff was satisfied that the first respondent was very worried and very intimidated by both the appellant and her daughter.

[69] For the reasons already explained, considerable respect requires to be afforded to the sheriff who had the advantage of seeing and hearing the evidence. We are not persuaded

that there is any basis upon which this court can interfere with that assessment. This ground of appeal has no merit.

Disposal

[70] We refuse the appeal and adhere to the sheriff's interlocutor of 10 February 2025. We find the appellant liable to the first respondent for the expenses of the appeal, as taxed.

Post-script

[71] This action was founded on a series of relatively trivial events. The pleadings were bloated, repetitive and full of irrelevant material. The appellant repeatedly found insubstantial reasons to delay matters, resulting in 5 years of procedure. The evidence presented at proof took 6 days due to unfocused, insulting and largely irrelevant questioning by the appellant. The appellant's submissions lodged at the conclusion of the proof extended to a staggering 150 pages. The resulting appeal amounted to no more than a refusal to accept the result, with purported respectability through the inaccurate use of legal terminology.

[72] In such circumstances, the only remedy available to the court is supervision and management. These were lacking in the present case, particularly in the period to December 2023, leading to a lengthy and lamentable procedural history. The proceedings progressed at a glacial pace after the initial writ was warranted in December 2020. The latitude afforded to the appellant was unacceptably and unduly excessive. Such excesses must not be indulged, the effect of which is to permit the inordinate use of valuable court time and in turn to deny swifter access to justice for other litigants.

[73] The court has an inherent jurisdiction to manage proceedings before it. When faced with a litigant who is unable to maintain a balanced perspective, the court must intervene to assist and direct such an individual. In the present case, the appellant was permitted to dictate the pace of proceedings. She was permitted to make substantial and repeated amendments to her pleadings including by discharging a diet of debate on 6 August 2021. That represented a missed opportunity for the court to carefully consider the relevancy of the appellant's voluminous pleadings, which ran to 70 pages yet involved straightforward disputes of fact. The court ought to have intervened to direct that deliberately insulting material and averments which were clearly irrelevant to the craves, be removed. Three diets of proof were assigned by the court and subsequently discharged. A diet of proof ought not to be treated as a dress rehearsal nor discharged unless there are weighty reasons for doing so; every discharged diet represents both a missed opportunity to resolve the dispute and a consequent delay for other litigants awaiting a diet of proof. Approximately 30 procedural hearings and hearings on contested motions took place. The appellant made repeated complaints against sheriffs leading to unwarranted motions for them to be recused. The procedure was wasteful of time and resources. The appellant bears firm responsibility for that, however, the court ought to have refused to indulge her. These proceedings would clearly have benefited from firm case management at an early stage. While the proceedings were allocated to a specific sheriff between 2020 and 2023, it is difficult to understand what, if anything, he had done to manage the proceedings, beyond moving the cause from one diet to another. The carousel of diets finally came to a stop when the sheriff to whom the fourth diet of proof was allocated acted more decisively.

[74] The presiding sheriff felt compelled to provide a lengthy note on the appellant's conduct at the proof. That included references to the appellant's delaying tactics which

included: claiming to be apparently unwell and then recovering a short time later; failing to take steps to secure the attendance of witnesses; countermanding witnesses on the first day of the proof; making repeated motions to adjourn the diet of proof; lengthy protracted and repetitive questioning of witnesses; insisting that court staff provide copies of productions and then failing to collect them; repeatedly seeking to introduce inadmissible material; and her repeated and exaggerated accounts of the first respondent's conduct in court. Having reviewed the transcript of the proof, we find the demeaning and insulting language used by the appellant in her questioning of witnesses to be particularly concerning, notwithstanding repeated interventions by the presiding sheriff. It is difficult to escape the conclusion that the appellant sought to abuse the court process to continue a personal campaign against the respondents. She was regrettably permitted to conduct that campaign over a lengthy period by a failure on the part of the court to bring order to the proceedings at an early stage.

[75] We note from the sheriff's supplementary opinion that the appellant has acted as lay representative in a number of proceedings in the Sheriffdom of Tayside, Central and Fife and beyond. We would suggest that this postscript, together with the sheriff's judgment should be consulted when considering whether it is in the interest of justice to grant an application permitting the appellant to act, or to continue to act as lay representative for another party.

[76] Where a sheriff is faced with litigants who cannot or will not limit their demand on resources, the court should consider a number of potential remedies. It is, for example, open to a court to direct that written submissions should be limited in length; that authorities should not be cited unless the litigant has read, understood and lodged them; that a permitted amendment is a last and only opportunity to change the pleadings; that witness statements summarising the proposed evidence should be lodged; that expert reports

should be sought; that the proof should be restricted in scope; that diets of debate or proof should not be discharged without strong reasons; that further procedure should depend on payment of expenses already awarded and taxed, and other procedural directions. These are examples of initiatives available to the court in attempting to achieve a fair balance between access to justice and the interests of the parties. There are also the existing provisions of the Ordinary Cause Rules, such as the prohibition on discharging Options Hearings, which is intended to prevent an ordinary action falling into a procedural abyss. It is the court's duty to consider how best to make use of scarce resources in focussing and resolving every dispute. That duty should be at the forefront of the minds of the judicial office holder at every hearing, whether procedural or substantive.