

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT STIRLING

[2026] SC STI 84

STI-F73-25

JUDGMENT OF SHERIFF O'MAHONY

in the cause

L

Pursuer

against

I

Defender

Pursuer: Croman
Defender: Campbell

Stirling, 23 April 2026

Introduction

[1] This matter called before me for debate on the defender's Rule 22 note on the 17 April 2026. The defender seeks dismissal of the pursuer's action, insofar as it is directed to the setting aside of a post-nuptial agreement, on the basis that the pursuer's averments are irrelevant *et separatim* lacking in specification.

[2] I have considered the pleadings, the defender's Rule 22 note, submissions and the relevant authorities upon which parties relied.

Background

[3] This action is one of divorce and financial provision. The pursuer seeks, *inter alia*, decree of divorce on the basis of unreasonable behaviour, an order under section 16 of the

Family Law (Scotland) Act 1985 to set aside a post-nuptial agreement dated the 15 September 2021, and payment of a capital sum.

[4] The parties were married in 2016 and separated in 2024.

[5] At this stage it would serve little purpose to describe the precise detail of the postnuptial agreement. In general terms it seeks to clarify the purported financial rights and expectations of parties in the event of separation or divorce. The various schedules to the agreement list the significant financial assets of parties as at the date of the agreement and thereafter provides that each party, in the event of separation or divorce, shall retain their own separate property. The consequent financial balance significantly favours the defender.

[6] The defender has lodged a Rule 22 note urging dismissal of craves 2, 3 and 4, arguing that the pursuer's averments are irrelevant *et separatim* lacking specification.

Legal framework

[7] The starting point is section 16(1)(b) of the Family Law (Scotland) Act 1985, which permits the court to set aside or vary an agreement of the nature entered into in this case, where it was not fair and reasonable at the time it was entered into. Specifically, it provides:

"16 Agreements on financial provision.

(1) Where the parties to a marriage [or the partners in a civil partnership] have entered into an agreement as to financial provision to be made on divorce [or on dissolution of the civil partnership], the court may make an order setting aside or varying—

(a) any term of the agreement relating to a periodical allowance where the agreement expressly provides for the subsequent setting aside or variation by the court of that term; or

(b) the agreement or any term of it where the agreement was not fair and reasonable at the time it was entered into."

[8] As a brief aside I heard some argument on whether the assessment of fairness and reasonableness was an exercise to be done at the time the agreement was entered into or at the time the court was analysing the agreement. The statutory language is clear: the assessment is directed to the circumstances at the time of execution. That said, I accept that evidence of subsequent events may, in appropriate cases, bear upon that assessment — particularly where it is said to illuminate the parties’ circumstances at the material time (for example, in cases involving alleged abusive conduct).

[9] The record, as adjusted, contains the following averment in condescendence 4 –

“Against the background of the defender’s behaviour as hereinbefore condescended upon, the pursuer was under duress to agree to the terms of the agreement and to enter into the same. The terms of that agreement are neither fair nor reasonable”.

The use of the word “duress” caused the defender to suggest that a new legal thread was being raised, in particular that an argument based in the law of contract was now being deployed. The agent for the pursuer, however, was clear that there was no new argument before the court and sought to advance only an argument based on section 16 considerations and the fairness (or otherwise) of the agreement as seen through the section 16 lens. She offered to amend “duress” to “pressure” if it were going to cause confusion. Accordingly, my decision herewith is based exclusively on section 16 considerations.

[10] I was helpfully referred to some authorities. The central message of those authorities is that each case must be established on its own facts and circumstances. I undernote some additional general principles that can be taken from the leading cases.

[11] The leading authority is *Gillon v Gillon* (No 3) 1995 SLT 678 which establishes a number of points relevant for this court. The court must assess both fairness and reasonableness. The assessment is fact-sensitive and directed to the circumstances at the time of agreement. The nature and quality of legal advice is a relevant and probative factor

(it was accepted that legal advice was tendered to the pursuer in this case before the agreement was entered into). Evidence of unfair advantage may be significant, but inequality of outcome alone is insufficient to infer unfairness and unreasonableness.

[12] Further, as recognised in *Bradley v Bradley* 2017 SLT (Sh Ct) 201, a party seeking to set aside an agreement must aver and prove the consequences of the agreement, why those consequences were unfair or unreasonable at the time, and why that unfairness is not offset by other factors. Regarding the test to be used the following passage from paragraph 17 usefully summarises the position –

“[T]he 1985 Act does not set out any principle by which the unreasonableness or unfairness of a provision is to be judged for the purposes of section 16. The only test is whether the agreement was ‘not fair and reasonable at the time it was entered into’. This is a judgement to be made on the facts of each case. Such a judgement is not informed by any overarching principle other than that of fairness and reasonableness.”

[13] *Bryce v Bryce* 2024 SCLR 112 focused what the court should make of imbalance in the outcome of the agreement

“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 or comparable disadvantage to the respondent. 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.”

[14] Accordingly, while imbalance of outcome is not definitive, it is a factor to be considered when considering the question of fairness and reasonableness.

[15] At a previous hearing there had been some dispute as to the appropriate procedure to determine the preliminary plea set out in the Rule 22 note. The pursuer sought a proof

before answer, arguing that the preliminary matters raised should be considered “in the round” of all the evidence. The defender asked the court to appoint a debate. In fixing a debate the court added the following note to the relevant interlocutor:

“NOTE - parties were in dispute on the appropriate procedure to determine the Rule 22 note. The pursuer wished the court to continue consideration of the preliminary plea until the proof and consider it 'in the round'. The defender wished a diet of debate to be appointed. I informed parties I would provide a written note explaining my reasoning for preferring the defenders position which I undernote.

Parties helpfully referred the court to caselaw (*Gillon v Gillon* (No 3) SLT 1995 678; *Anderson v Anderson* 2015 WL 6655176 (2015); *Bradley v Bradley* 2017 SLT (Sh Ct) 201; *C v M* 2021 SLT (Sh Ct) 319)). The caselaw confirms that a section 16 challenge is ordinarily fact-sensitive, and often determined after evidence (proof, or preliminary proof on the section 16 issue), because the 'fair and reasonable at the time' test depends on the whole circumstances leading up to and prevailing at the time of execution of the document - including (potentially) pressure/coercion, vulnerability, legal advice, knowledge, and the practical consequences of the agreement etc. That is the approach in *Gillon* (where the court remitted the action to a preliminary proof on the merits of the section 16 question) which is echoed in *Bradley*, and in the sheriff's account of procedure in *C v M* (where parties accepted proof before answer was appropriate where issues overlapped and context mattered).

But, it is equally well established that the court can and should determine a pure relevancy challenge by debate where the point truly is 'even if proved, it cannot succeed' — because that is a question of legal sufficiency on the pleadings, taking the pursuer's averments *pro veritate*. The procedural message from *Bradley* is especially practical here: it underlines that a party seeking to set aside/vary must plead the consequence said to be unfair/unreasonable at the time and articulate the minimum corrective outcome sought; inadequate pleadings can prevent the court from properly performing its function. That is the kind of deficiency which is classically resolved at debate rather than proof. The Rule 22 note does not depend on a disputed factual evaluation - it asserts that even assuming all averments of pressure are true, the pleadings still do not meet the statutory test.”

[16] In other words, at debate, the test is whether, even if the pursuer's averments are proved, they are capable in law of supporting the craves. Such an approach identifies irrelevant pleadings and avoids unnecessary proofs.

[17] By reference particularly to chapter 9 of *MacPhail's Sheriff Court Practice* (4th edition), I remind myself of the general considerations to be considered when testing the proper specification of pleadings:

- Fair notice of the case to be met – Is the claim intelligible? Do the pleadings disclose what factual allegations are being made? Can these be investigated and a response prepared?
- Specification depends on context – the more complex the claim then the fuller and more precise specification will normally be required.
- A distinction is to be drawn between a lack of specification and evidential detail – a party should plead the facts that must be averred not the evidence by which those facts will later be proved (“The need for clear, concise and focused pleadings cannot be over-emphasised. Unsurprisingly, judicial exasperation is commonly expressed when the court is faced with poor pleadings. A regrettable practice of unnecessarily lengthy pleadings which obscure rather than clarify the issues has developed.” MacPhail, para 9.43).

Submissions

[18] The pursuer argued that the agreement was not fair and reasonable at the time it was entered into, founding upon alleged abusive and controlling behaviour by the defender, the giving of an ultimatum that the marriage would end if the agreement were not signed and the suggestion of a significant imbalance in the division of matrimonial property. There is proper specification and to go beyond what is pled risks pleading evidence, a practice discouraged by the courts. The defender argues that there is a lack of specification but fails to state what else, at this stage, the pursuer could have included in the pleadings. To uphold

this preliminary plea, the court will need to conclude that there could never be a successful outcome for the pursuer even if she managed to assert everything in the pleadings.

[19] On behalf of the defender, it was submitted that the agreement was fair and reasonable at the time it was entered into, it was entered into freely, the pursuer had independent legal advice and there was full disclosure of the extant assets. The averments of “ultimatum” and pressure are vague and insufficient. Even if established, such averments would not meet the statutory test as the pleadings failed to say how such actions had influenced the pursuer to sign the agreement and there is consequently a lack of fair notice. There is no properly pled case addressing the *Gillon* principles and accordingly, the action is irrelevant and should be dismissed insofar as it relates to craves 2, 3 and 4.

Decision

[20] The central question is whether the pursuer’s averments, if proved, are capable of supporting a case that the agreement was not fair and reasonable at the time it was entered into.

[21] **Nature of the enquiry** - A section 16 challenge is, by its nature, highly fact-sensitive. The authorities make clear that the court must consider the whole circumstances surrounding the agreement, including subjective factors such as pressure, knowledge, and legal advice. It will therefore only be in clear cases that such an action can be dismissed at debate.

[22] **Specification of averments** - The defender criticises the pursuer’s averments as lacking specification, particularly in relation to the alleged ultimatum. However, the pursuer clearly avers: -

- that she was told the marriage would be over if she did not sign;
- that she was under distress arising from the defender's behaviour;
- that the agreement conferred no meaningful benefit upon her; and
- that there was a significant disparity in financial outcome.

[23] In my view, these averments—taken together—provide fair notice of the case the defender must meet. They identify both the alleged circumstances at the time, and the alleged unfair consequence of the agreement. The pleadings, taken *pro veritate*, set out a coherent case under section 16. The pursuer avers pressure, imbalance, and lack of meaningful benefit. The circumstances—including alleged abuse and urgency—are relevant to fairness. The causal connection between the alleged behaviour of the defender and the pursuer entering the agreement (even if arguably not express) is clearly there for the court to infer, depending on its assessment of the evidence.

[24] **Relevancy of the case** - The defender's submission that the averments, even if proved, could not succeed is not well founded. Allegations of pressure or coercion, emotional vulnerability, imbalance in bargaining position and absence of meaningful benefit are all classically relevant to the section 16 test as articulated in the authorities.

[25] It cannot be said that such factors are legally incapable of rendering an agreement unfair or unreasonable. The defender places weight on the pursuer having obtained legal advice. That may ultimately prove to be a significant factor. However, the existence of legal advice is not determinative, and its adequacy and effect are matters for proof. That is a matter that can only be resolved by evidence.

[26] The pursuer's case may ultimately succeed or fail, but in my assessment, it is not bound to fail even if all averments are proved. The pursuer's averments are sufficiently specific to give fair notice, and they disclose a relevant case under section 16 of the 1985 Act.

[27] Accordingly, the defender's fourth plea-in-law is repelled, and the defender's Rule 22 note is refused.

[28] A procedural hearing is already fixed. I will reserve the question of expenses regarding the debate meantime, and the court will hear submissions on further procedure when the action next calls.

Postscript

[29] Nothing in this decision should be taken as expressing any view on the ultimate merits of the pursuer's case. The defender's arguments may yet prevail after proof. The present decision is confined strictly to the questions of specification and relevancy.