

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT STIRLING

[2026] SC STI 83

STI-F134-21

JUDGMENT OF SHERIFF O'MAHONY

in the cause

T

Pursuer

against

C

Defender

**Pursuer: Bhatti
Defender: Pollock**

STIRLING, 24 April 2026

The sheriff, having heard evidence, finds as follows:

Interlocutor

The sheriff, having heard evidence and submissions, finds that parties ceased to cohabit as husband and wife in 2003; determines that the relevant date for the purposes of section 10(3)(a) of the Family Law (Scotland) Act 1985 is 2003; appoints the cause to call by Webex for a procedural hearing on 12 May 2026 to consider further procedure; reserves all questions of expenses in respect of the proof procedure meantime.

Findings in fact

1. The parties were married on 18 September 2001.

2. Following their marriage, the parties resided together at address A.
3. In 2003, the parties' relationship broke down and they ceased to live together as husband and wife.
4. Following the separation in 2003, the pursuer entered into a relationship with GH and resided with him for a period of approximately 2 to 3 years.
5. During that period, the pursuer had children with GH.
6. After 2003, the pursuer had further relationships with other partners, including CS and KH, and had further children with them.
7. From 2003 onwards, the pursuer did not resume cohabitation with the defender as husband and wife.
8. The pursuer did not reside continuously or on any settled basis at the defender's property after 2003.
9. The defender resided continuously at address A from 1999 onwards.
10. From around 2011, the defender was in a relationship with AO.
11. From around 2015 or 2016, AO resided with the defender at address A.
12. The defender and AO had two children together, born in 2018 and 2020.
13. From at least 2011 onwards, the defender and AO conducted a relationship consistent with a domestic partnership.
14. The pursuer had intermittent contact with the defender after 2003.
15. That contact included occasional visits, social interaction, and isolated periods of proximity.
16. The parties socialised together on occasions after 2003. The parties did not establish a shared household after 2003. The parties did not maintain a stable domestic arrangement

characteristic of living together as husband and wife after 2003. Any contact between the parties after 2003 did not amount to cohabitation.

17. The parties have not cohabited as husband and wife since 2003.

Findings in fact and law

1. In terms of section 10(3)(a) of the Family Law (Scotland) Act 1985, the relevant date is the date on which the parties ceased to cohabit.

2. In terms of section 27(2) of the said Act, parties cohabit only when they are in fact living together as husband and wife.

3. The parties ceased to cohabit as husband and wife in 2003.

4. The relevant date for the purposes of section 10(3)(a) of the 1985 Act is therefore 2003.

NOTE

Background

[1] This action concerns divorce and financial provision. This is a preliminary proof which seeks to determine one issue - the identification of the “relevant date” for the purposes of section 10(3)(a) of the Family Law (Scotland) Act 1985.

[2] The matter was assigned to a preliminary proof due to a significant divergence in parties’ positions: the pursuer contending for a date in approximately June 2014, and the defender asserting that the parties ceased cohabitation in 2003.

[3] The determination of this issue is of material importance given its direct impact on the valuation of matrimonial property.

Summary of the disputed issue

[4] The court was required to determine when the parties ceased to cohabit as husband and wife.

[5] The pursuer's position was that, notwithstanding an initial separation in 2003, the parties engaged in a pattern of reconciliation and continued to live together intermittently as a couple until approximately 2014.

[6] The defender's position was that the separation in 2003 was final in substance, and that thereafter there was no resumption of cohabitation, only intermittent contact.

Summary of the pursuer and her witnesses' position

[7] The pursuer's case was that the relationship was "on and off" following 2003, with periods of reconciliation involving cohabitation.

[8] The pursuer gave evidence of a continued emotional and physical relationship after 2003, a shared holiday (a family holiday in 2008) and shared social activities and periods where she returned to the defender's home. She also relied on works that were carried out to the property at address A which she suggested were carried out to accommodate her and her children.

[9] DL, cousin of the pursuer, described the relationship as turbulent but ongoing after 2003, with the parties presenting as a couple on occasions and living together intermittently. Her partner, BL, gave evidence which was limited and largely derived from what he had been told by others. He had contact with both parties after 2010. He spoke to a single event of seeing parties together when they had attended his house. His knowledge of their relationship came exclusively via what his wife had informed him.

[10] TH, daughter of the pursuer, spoke to the defender acting as a father figure during her early childhood and described the relationship as continuing after 2003. She last saw the defender with the pursuer on her 11th birthday, which would have been in 2016. She spoke to a family holiday being taken around 2008 when both the pursuer and defender were present. She described living at address A “on and off” from 2005 to 2009 or 2010.

Ultimately, she suggested the relationship continued until potentially 2017. Given that she was a very young child during the relevant period the court must treat her evidence with some hesitation.

[11] The pursuer’s position was that, taken cumulatively, this evidence demonstrated continued cohabitation until approximately 2014. On record, the pursuer’s position was that the relationship ceased in June 2014. Her position in evidence, however, was that the relationship had ended around the time of the birth of her child M, which was in 2011.

Summary of the defender and his witnesses’ position

[12] The defender’s case was that the parties separated finally in 2003 and never resumed cohabitation.

[13] The defender gave evidence that the pursuer left the matrimonial home in 2003 following an affair and she thereafter went on to live with other partners and form separate family units. She never returned to reside with him and their contact thereafter was sporadic and incidental. He had assisted the pursuer on one occasion following the removal of one of her children. He denied this was indicative of an ongoing relationship and was simply a desire on his part to help the pursuer. He relied upon his relationship with AO as evidence that his relationship with the pursuer had ended. He denied that the pursuer’s children had ever lived with him including TH. He claimed that the renovation to the

property was simply because he wished to make the property larger for his then girlfriend who also had a child.

[14] The defender's position was supported by AB, a neighbour of his since 2011, who had no knowledge of the pursuer attending his property.

[15] DP is a close associate who was frequently present at the defender's home and stated that the pursuer never returned to live there after they separated "maybe 20 years ago".

[16] AO confirmed a relationship with the defender from around 2011 and frequent presence at his property, without the pursuer being present or being connected to the defender in any way.

[17] Ultimately the defender's case was that any contact with the pursuer after 2003 fell far short of cohabitation.

Legal framework

[18] Section 10(3)(a) of the Family Law (Scotland) Act 1985 provides that the relevant date is the date on which parties ceased to cohabit.

[19] Section 27(2) provides that cohabitation exists only where parties are "in fact living together as husband and wife".

[20] The authorities establish that:

- the determination is one of fact (*Banks v Banks* 2005 FLR 116);
- no single factor is determinative;
- the court must consider the totality of circumstances objectively;
- intermittent contact or ongoing association does not equate to cohabitation (*Bain v Bain* 2008 FLR 81);

- a holistic evaluation is required (*Gacek v Gacek* [2022] SC ABE 22, *McLeish v McLeish* [2022] SAC (Civ) 12).

Submissions

[21] It was submitted for the pursuer that the relationship continued beyond 2003 in substance with periods of resumed cohabitation. The parties functioned as a family unit on occasions. The defender's witnesses were limited in their ability to speak to the full nature of the relationship

[22] It was argued that the court should prefer the evidence of the pursuer and her witnesses and conclude that cohabitation continued until approximately June 2014.

[23] The defender submitted that the separation in 2003 was final in substance. The pursuer thereafter lived separate and independent lives with other partners. Any ongoing contact was insufficient to amount to cohabitation. The pursuer's evidence was vague, inconsistent, and unsupported by objective indicators of shared domestic life.

[24] It was contended that the evidence did not meet the statutory test of living together as husband and wife.

Discussion and analysis

[25] The central task for the court is an objective assessment of whether, following 2003, the parties resumed cohabitation in the sense required by statute.

[26] The court accepts that the parties maintained some level of contact after 2003. However, the authorities make clear that such contact, even where involving intimacy or social interaction, is not determinative.

[27] The question is whether the parties were, in fact, living together as husband and wife.

[28] The pursuer's evidence was characterised by a lack of specificity as to dates and duration of alleged cohabitation. There was a conflation of contact and cohabitation. Significant reliance was placed on what were undeniably isolated events (a holiday and social outings).

[29] DL spoke to an "on and off" relationship. That evidence lacked any specificity re dates, duration, nature of relationship and activities undertaken together. It was entirely vague and insufficient to establish the existence of a shared household or consistent domestic arrangement.

[30] By contrast, the defender's evidence was internally consistent, generally supported by independent witnesses with proximity to the property and corroborated by the broader factual context, including the pursuer's relationships with other partners and occupation of separate residences.

[31] Particular weight is attached to the absence of evidence re timescales and approximate duration of the pursuer residing at the defender's home after 2003; the defender's established relationship with AO from at least 2011; the lack of evidence of shared financial or domestic arrangements; and the pursuer's relationships with a further three partners during the period under dispute.

[32] The pursuer's case, at its highest, demonstrates a continuing personal connection. It does not establish cohabitation within the meaning of section 27(2).

[33] Applying the guidance in *Bain v Bain*, the situation is more consistent with parties living separate lives while maintaining intermittent contact.

[34] Balancing all factors, the court is satisfied that cohabitation ceased in 2003 and was not resumed thereafter.

Decision

[35] The court finds that the parties ceased to cohabit as husband and wife in 2003.

[36] The defender's position is preferred.

[37] I have not identified a precise date in 2003 as to the date of separation. The evidence does not allow me to do so and I suspect that a precise date is academic in any event. If I am incorrect on this parties will no doubt let me know and further discussion can be had.