

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT STIRLING

[2026] SC STI 1

STI-F154-24

JUDGMENT OF SHERIFF O'MAHONY

in the cause

F

Pursuer

against

T

Defender

STIRLING, 10 October 2025

The sheriff, having resumed consideration of the cause

Finds in fact:

1. That the pursuer is F. He is 53 years of age. He is presently unemployed. He resides in Glasgow with his mother.
2. The defender is T. She is 47 years of age and employed as an educator with the local authority. She presently resides at the matrimonial home which is the subject of this dispute.
3. F and T were married at Stirling on 24 August 2007. There are two children of the marriage. One of the children is an adult. The other, J, is 14 years of age having been born on 10 May 2011. J resides with the defender, his mother, T at the matrimonial home.

4. F and T separated on 24 August 2022 and have not resided together since. Since separation the pursuer has not resided at the matrimonial home.
5. The marriage has broken down irretrievably. There is no prospect of reconciliation.
6. The pursuer exercises regular contact with J.
7. The matrimonial home is owned in the joint names of the pursuer and defender. As at the date of proof the said property was valued at £300,000.
8. Both parties have financially contributed to the mortgage payments and maintenance of the matrimonial home.

Finds in fact and law:

1. That the action, being related to the tenancy of a property located within the territorial jurisdiction of this court, this court has jurisdiction in the cause.
2. That the marriage of the pursuer to the defender has broken down irretrievably as established by 2 years non-cohabitation.
3. That the property is a matrimonial home as defined by section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (the Act).
4. That parties are therefore entitled to the rights conferred by section 19 and section 3 of the Act.
5. That none of the considerations provided for in section 3 of the Act prevent the court making an order for division and sale of the property, nor do they justify a postponement of the order.
6. That having regard to all of the circumstances of the case, the court considers that an order for division and sale of the property should be made.

THEREFORE; the court returns the case from avizandum, and having resumed consideration of the cause, sustains the first plea-in-law for the pursuer and accordingly divorces the pursuer from the defender; sustains the second plea-in-law for the pursuer and makes an order in terms of section 11(2)(d) of the Children (Scotland) Act 1995 that the pursuer shall be entitled to contact with the child J, born on 10 May 2011, every second weekend from Friday after school until Sunday at 6.00pm; repels the third plea-in-law for the pursuer as no longer insisted upon; sustains the fourth plea-in-law for the pursuer and thereby grants an order for sale of the parties property at [...] and for that purpose appoints [...] to (a) inspect the property with a view to reporting on an appropriate market price for the property (b) undertake marketing of the property (c) to sell the property by private bargain (d) orders the defender to execute and deliver to the purchaser or purchasers of the property such dispositions and other deeds as shall be necessary to transfer the defenders right, title and interest in the property (e) in the event that the defender refuses or delays to sign the required deeds dispenses with her signature and directs the sheriff clerk to sign said deeds and (f) finds and declares that the proceeds of sale of said property, less any debts and burdens affecting it and all other expenses attending the sale be equally divided between the pursuer and defender; repels the first, third and fourth plea-in-law for the defender and repels the second plea-in-law for the defender as no longer necessary; reserves the question of expenses meantime.

NOTE

Background

[1] This matter proceeded to proof on 8 August 2025. The court heard all the evidence and submissions in a single day.

[2] The court heard evidence from:

- The pursuer
- The defender

[3] The pursuer was represented by Mr Moss. The defender represented herself.

[4] The issues in contention had crystallised at earlier hearings and on the morning of proof. In essence the following matters were resolved with evidence:

- that parties should be divorced on the basis of 2 years non-cohabitation;
- the principle of contact was not opposed;
- that residential contact should take place every second weekend was not opposed;
- the pursuer no longer sought a capital payment from the defender as originally third craved;
- the defender was not seeking any financial orders against the pursuer.

[5] Therefore, the only matter left at large for the court is what orders are appropriate re the matrimonial home. The pursuer seeks sale and an equal split of proceeds. The defender is opposed. The defender hinted at a possible capital sum payment proposal but offered no detail on how that might be achieved.

The law

[6] Section 19 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 provides:

“19 Rights of occupancy in relation to division and sale.

Where a spouse brings an action for the division and sale of a matrimonial home which the spouses own in common, the court, after having regard to all the circumstances of the case including—

- (a) the matters specified in paragraphs (a) to (d) of section 3(3) of this Act; and
- (b) whether the spouse bringing the action offers or has offered to make available to the other spouse any suitable alternative accommodation, may refuse to grant decree in that action or may postpone the granting of decree for such period as it may consider reasonable in the circumstances or may grant decree subject to such conditions as it may prescribe.”

[7] Section 3(3) provides:

“The court shall grant an application under subsection (1) (a) above if it appears to the court that the application relates to a matrimonial home; and, on an application under any of paragraphs (b) to (e) of subsection (1) or under subsection (2) above, the court may make such order relating to the application as appears to it to be just and reasonable having regard to all the circumstances of the case including—

- (a) the conduct of the spouses in relation to each other and otherwise;
- (b) the respective needs and financial resources of the spouses;
- (c) the needs of any child of the family;
- (d) the extent (if any) to which—
 - (i) the matrimonial home; and
 - (ii) in relation only to an order under subsection (2) above, any item of furniture and plenishings referred to in that subsection, is used in connection with a trade, business or profession of either spouse; and
- (e) whether the entitled spouse offers or has offered to make available to the non-entitled spouse any suitable alternative accommodation.”

Evidence of the pursuer

[8] The pursuer gave evidence. He stated he had not spoken to his wife since the date of separation. He wishes to be divorced on the basis of 2 years non-cohabitation. He does not wish to have further contact with his wife. He considers that the marriage had broken down irretrievably.

[9] On the question of contact he has good quality contact with the child. He sees the child every second weekend. Holiday contact has been good. He has lost contact with his daughter since the date of separation. He fears further contact both with his daughter and his wife may lead to false allegations being made against him.

[10] At the date of proof the pursuer was residing with his mother in Glasgow. The child has a separate bedroom there which he uses during contact.

[11] He gave evidence that the matrimonial home is valued at £300,000. It had been purchased for £148,000. He believes that it would realise in excess of that value. The outstanding mortgage is around £65,000. He is not in a position to buy a property of his own unless and until the matrimonial home is sold.

[12] He gave general evidence that both he and the defender had contributed financially to the property. He highlighted that the deposit which had been used to purchase the property had been a gift of £50,000 given to him by his mother. Notwithstanding that significant investment he gave evidence that he does not wish to seek the return of that money or a portion of that money and asked the court to disregard it in its consideration of the issues.

[13] The pursuer believes the “fairest” way to resolve the issues it is simply to allow for the property to be sold and the proceeds split equally between himself and the defender. He believes that would allow both he and the defender to move on with their lives as well as the child. His evidence was to the effect that the defender, on receiving her share of the proceeds, would then be in a position to buy a new property suitable for both her and the child. He has not received any detailed financial offer from the defender to buy his share of the property. He knows of no reason why the defender would not be in a position to buy a house within the catchment area of the child's current school.

[14] He describes his son as emotionally intelligent but he had of course been “caught in the middle of a really unpleasant marriage breakup”. He had spoken to the child in relation to the prospect of moving. He believes the child will cope well with moving and highlighted that many children move house during the course of their childhood with no

adverse impact on their education. He believes that the child would have more stability if an order was made to sell the property as that would mean that the pursuer and defender could sever all ties from one another.

[15] The pursuer acknowledged that he had been the subject of criminal prosecutions following allegations made by the defender. His position was that he had been admonished three times in relation to various allegations of breach of the peace and breach of bail conditions.

[16] The pursuer has received advice that he would due a balancing payment of £10,419 from the defender in relation to their respective pension interests. He does not wish to receive that money and is not insisting on payment.

Evidence of the defender

[17] The defender gave evidence. She also wishes to be divorced on the basis of non-cohabitation.

[18] J enjoys contact with his father. She said that the child gets on well with his father. She was not opposed to ongoing contact between father and son.

[19] She described the £50,000 payment as being a gift to the family rather than specifically to her husband. It had been the pursuers mother's idea that they use the money as a deposit to buy a house. Since separation she described irregular and small payments made by the pursuer to her as maintenance payments. She described her adult daughter as desperately wishing to be in contact with the pursuer but that he continually rejected her.

[20] The defender confirmed that she had made criminal allegations against the pursuer and that he had been prosecuted. These were events that occurred at the time of or following separation.

[21] The defender is opposed to the sale of the house and outlined why. She described her daughter as returning to the property on occasion and that it is to be regarded as her daughter's home address even though she now lives elsewhere. But more importantly she described how J is entering a "crucial stage" in high school. She emphasised that it is J's home. It is in the catchment area of his current high school and is on the bus route. He has friends nearby. He is "gutted" at the prospect of having to move. It is also a short commute from her own workplace. They also have cats and dogs there.

[22] The defender does not know if she could buy a house in the catchment area of the school but doubted she would be able to do so. She stated she may have to move "down south".

[23] The defender suggested she could buy the pursuers interest in the matrimonial property from him. However, she was unaware of how much money she could put towards this and stated she does not know the amount that the pursuer would want.

[24] As I understood it her *esto* position is that any order for sale of the property should be deferred until the child is 18 years of age. She conceded having applied for and received a mortgage offer.

Decision

[25] The legislation requires the court to make an order that is just and reasonable in all the circumstances of the case. I shall look at the matters referred to in section 3(3) below.

[26] Conduct of the spouses - There are allegations of criminal conduct. The details are vague and unclear to this court. There is no evidence which would allow the court to conclude that that conduct of itself would be sufficient to prefer the defenders position as to final orders and I was not specifically invited to do so. If there has been criminal conduct

by the pursuer towards the defender then repetition seems less likely if orders are made that allow for a complete severance of their relationship. As regards financial conduct, the evidence shows that both parties have contributed financially to the property in numerous ways over numerous years. It is of note that the pursuer used the £50,000 gift from his mother as a deposit for the family home. He does not seek full or partial repayment on sale of the property. In relation to a balancing of pension interests again he does not insist upon that. That approach potentially puts the pursuer in a financially loss-making position overall, but is clearly of benefit to the defender and the child.

[27] The respective needs and financial resources of parties - both parties “need” somewhere to live. Neither has any specific need (such as a disability of some kind) that renders certain properties unsuitable for them. There was no evidence that either party has any significant capital.

[28] The extent to which the matrimonial home is used in connection with a trade business or profession - on the evidence this does not apply.

[29] Alternative accommodation - neither party is in a position to make an offer of alternative accommodation.

[30] The needs of the child - this is the crux of this action. Would sale of the property adversely impact the needs of J in such a significant way that an order should either not be made or be delayed? I am not persuaded there is any evidence of that.

[31] The defender argued:

- J as entering a crucial stage in his education. There was no evidence as to why at the age of 14 this particular chapter of his education should be regarded as more crucial than any other chapter. There was no evidence that he required any special educational input. There was no evidence that

the child had begun to fail educationally at the possibility and prospect of having to move home. Children are often involved in house moves as part of family relocations. There is no reason to conclude that being involved in such a move inevitably results in an educational disadvantage or slump.

- She was unsure if she could buy a property in the catchment area but doubted it. It was surprising the defender had not researched the possibility of moving house given the ongoing litigation. That would have allowed her to draw some conclusions about the availability of housing in the catchment area, its suitability for her family and the general prices. Moreover, the defender went on to say that if forced to sell she may have to move “down south”. I found that an odd remark. It is difficult to conceive of why the defender would move a considerable distance away when, given her evidence, she is keen for J to stay as close to his current school and friends as possible. It seems to me that comment was more likely intended to indicate a possibility that she will remove the child from the pursuers life if she is not allowed to remain within the matrimonial address. That, of course, is a matter for her but is difficult to see why a large geographical move would be in the interest of J when the defender is adamant a local one would not.
- As regards evidence of her own commute time and the presence of cats and dogs - I was not persuaded that these should have any substantive influence on the court’s decision.
- The property is also her daughter’s home. Her daughter is an adult and in any event now lives elsewhere with a partner.

- The defender had no detailed proposals behind her suggestion that she “buy out” the pursuer. She was not able to identify any capital she could use to do this nor what she considered to be a reasonable sum given the valuation. It would therefore be impossible for the court to make any order in that regard.

[32] The acrimony between the pursuer and defender was palpable. In this action there is value in allowing them to sever contact by resolving the shared property and financial matters. That will also reduce scope for allegation and counter allegation and allow emotion to subside. Making no order, or deferring an order, will allow issues to linger and prevent parties from moving on with their lives. Making an order will have significant financial consequences for both parties - even if the property sells at valuation then parties can expect around £117,500 each from its sale. It is within judicial knowledge that it will likely sell for more than valuation. Those amounts will allow choice when considering new properties. The defender will be able to utilise the mortgage offer she has received.

[33] More importantly a final order now will allow J some certainty and finality of his own. I am unpersuaded that the mere fact he is at school is reason to delay an order. I see no reason why a careful review of available property would not allow the defender to remain at the same school which will mean least disruption to him.

[34] I am satisfied on the evidence that having regard to the interests of all parties, it is just and reasonable that I make an order for sale and equal sharing of proceeds.

Expenses

[35] If parties wish further procedure to be fixed to consider expenses then they should advise the court in writing of their reasons for that within 14 days of receiving this

interlocutor. If no representations are made then I shall simply make an order that no expenses are due to or by.

Postscript

[36] The pursuer's craves seek appointment of a solicitor who does not practice conveyancing and therefore cannot be appointed. I am therefore not in a position to circulate the final interlocutor at this stage. The pursuer is ordered to intimate the name and designation of any alternative solicitor to the sheriff clerk within 14 days so the finalised interlocutor can be issued.