



**SHERIFF APPEAL COURT**

**[2022] SAC (Civ) 16  
ELG-SM2-20**

**OPINION OF THE COURT**

delivered by SHERIFF PRINCIPAL D C W PYLE

in appeal by

**JULIE ANNE STRACHAN SMITH**

Appellant

against

**GORDON DUNCAN**

Respondent

**Appellant: S Mountain, Solicitor, Brodies LLP**

**Respondent: H Macandrew, Solicitor, Grant Smith Law Practice**

2 May 2022

**Introduction**

[1] This is an appeal under section 82(1) of the Courts Reform (Scotland) Act 2014 from the decision of the sheriff in a simple procedure action. It raises an important point of principle and practice about what should properly be the content of the sheriff's appeal report in terms of rule 16.3, schedule 1 of the Act of Sederunt (Simple Procedure) 2016, SSI 200 of 2016.

### **The Action**

[2] The action concerns a dog which was purchased when the parties were living together as a couple. When they separated a dispute arose about who should have possession of it. The appellant sought an order for delivery, the dog having remained with the respondent after the separation. The appellant claimed that she was the owner, while the respondent claimed that it was jointly owned. The sheriff found in favour of the respondent and dismissed the claim.

[3] After sundry procedure the sheriff fixed an evidential hearing. Evidence was heard over two days with a further day for submissions.

[4] The sheriff does not discuss what parole evidence she heard, although during the course of the appeal hearing it was confirmed that a considerable number of witnesses were called. In her list of witnesses, the appellant named five, including a clinical animal behaviourist; in his list, the respondent named seven, including a dog behaviouralist [*sic*]. In their respective lists of evidence, the appellant lodged 45 documents; the respondent 12, including a video of the dog. Before the sheriff were reports by the experts as well as numerous messages between the parties, including a Facebook message wishing the dog a happy birthday. More importantly, there was produced what purported to be a contract between the appellant and the then owners of the dog for its purchase. Various authorities are also with the papers, including an article in an academic journal on the apparent emergence of pet custody disputes in family law. The purpose of the latter is unclear.

### **The Sheriff's Appeal Report**

[5] The sheriff's appeal report is short and can be repeated in full:

“1. The dog (Martha) was not owned by the appellant, having been purchased by both parties for £1200, with each party paying £600 in June 2019.

2. The dog (Martha) is classed as corporeal moveable property and was owned jointly by the appellant and the respondent.

3. A contract of ownership was signed by the appellant and one of the sellers of the dog (Martha). I did not consider that this of itself was sufficient to establish ownership in the whole circumstances. The respondent had been present but had not signed the contract on the basis that he was unaware of what the contract was for and that the appellant had been in charge of the ‘paperwork side of things’ in their relationship. The second seller had not signed the contract either (although his name appeared on the document) although he had also been present when the parties had attended to purchase the dog (Martha). The document to my mind, a contract of sale to the extent only that a puppy was provided and payment was made. [sic] By her own evidence, the dog breeder stated that she hadn’t considered speaking to the respondent about the contract and, as far as she was concerned, the dog (Martha) was going into the household consisting of the parties and, at that time, another dog (Stella) and not to any particular individual. Law of contract only applies in a peripheral way insofar as the relevance of the contract to purchase Martha is concerned. I do not consider that there was a ‘contract’ of any sort between the parties in the purchase of Martha.

4. The dog (Martha) resided with both parties and was a ‘family pet’. Expenses in relation to the dog (Martha) were jointly met, albeit the appellant met most of these. That, however, was against the background that the appellant made a greater financial contribution in relation to most things in the relationship with the respondent until their separation.

5. The dog (Martha) has been in the possession of the respondent since parties separated in July 2020. Since then the respondent has met the costs in relation to the dog (Martha) solely.

6. The appellant’s action was raised on the basis that she had had sole ownership of the dog (Martha).”

[6] The simple procedure rules relevant to appeals, as contained in schedule 1 of the Act of Sederunt, provide that the sheriff in the appeal report must set out the factual and legal basis for the decision which the sheriff came to (rule 16.3(2)) and then set out legal questions for the Sheriff Appeal Court to answer. The rules also provide for a period of adjustment of the draft report, similar to the provisions for stated cases in summary cause actions.

[7] Simple procedure is a court process which is designed to provide a speedy, inexpensive and informal way to resolve disputes (rule 1.1). The general principles which are to be applied include that “cases... be resolved as quickly as possible, at the least expense to parties and the courts” (rule 1.2(1)) and that the approach of the court is to be “as informal as is appropriate, taking into account the nature and complexity of the dispute” (rule 1.2(2)). Unlike in summary cause actions, there is no requirement to state a case. Nevertheless, in my opinion the principles which apply to stated cases and, indeed, judgments in ordinary actions apply equally to simple procedure appeal reports, no matter the informality required. The principles are that the sheriff must establish the facts, whether stating them as findings in fact or in the narrative (as is done in the Court of Session), and should summarise the evidence and give reasons for accepting some evidence and rejecting other where there is a conflict. The sheriff should then discuss the parties’ submissions on the law, reach a reasoned conclusion thereon and then apply the law to the facts, preferably by way of findings in fact and law or findings in law. To do otherwise is to leave the appeal court in the dark as to the basis for the decision.

[8] In this appeal it is by no means clear whether the sheriff found as a matter of fact that there was a contract between the appellant and the owner (or owners) of the dog and if so the effect in law of that finding. There is no discussion at all of the evidence. Nor is there any discussion of the law which applies to contracts for the sale of corporeal moveables and, if relevant, the law where a party is in possession of them.

### **Disposal**

[9] Parties accepted that the appeal could not be dealt with properly without a fuller appeal report from the sheriff. This court has the power to remit the cause to the sheriff

with an order to produce a supplementary report. (There is no express power in the Courts Reform (Scotland) Act 2014, but section 47(3) grants to the Sheriff Appeal Court the inherent powers possessed at common law – see also section 111(2)(1) and Macphail *Sheriff Court Practice*, (3<sup>rd</sup> edit), para 18.86(6).)

[10] The instruction to the sheriff is to prepare (within 21 days) a supplementary report setting out (a) findings in fact, findings in law and, if appropriate, findings in fact and law; (b) a summary of the evidence; and (c) the law upon which the sheriff relied. Parties were agreed that it is unnecessary to make findings in respect of any evidence about the behaviour of the dog, that being irrelevant to the present dispute which is about only the short point: whether the appellant owned the dog at the date of the parties' separation. In the discussion before me a number of questions arose, such as the proper manner to approach the construction of commercial contracts, the role of prior communings and the relevance, if any, of the actings of the parties post contract (in the event, which at this stage cannot be assumed, that the sheriff finds that the written purported contract is indeed the contract between the seller or sellers and the appellant or the appellant and the respondent jointly). These are matters for the sheriff and upon which I express no view at this stage.