



OUTER HOUSE, COURT OF SESSION

[2020] CSOH 76

F62/19

NOTE BY LADY WISE

In the cause

YI

Pursuer

against

AAW

Defender

**Pursuer: Mr McAlpine; Morton Fraser
Defender: Mr Hayhow; Beveridge Kellas**

8 July 2020

[1] The parties married on 17 January 2011 in Dubai where they continue to reside. YI is Russian and AAW is a domiciled Scot, who has lived abroad for many years in connection with his employment. This court has jurisdiction to determine the matter of the parties' divorce by virtue of the defender's Scottish domicile, the proceedings not being covered by EU Council Regulation 2201/2003. YI wishes to be divorced in Scotland and AAW would prefer to be divorced in the courts of Dubai, United Arab Emirates, where he has raised proceedings. I allowed a proof on the merits of the divorce (irretrievable breakdown of marriage on the basis of alleged unreasonable behaviour on the part of the defender) and on the relevant date, the date of the parties' separation, which was contentious until close to

proof, a matter of some significance as I will later explain. The relevant date was agreed as 5 September 2018 by way of Supplementary Joint Minute of Admissions tendered at the proof, which proceeded remotely using video conferencing facilities due to the ongoing Covid-19 emergency.

[2] Six witnesses had sworn affidavits to be taken as their examination in chief at proof, three for each side, although Counsel for the pursuer declined the opportunity to cross examine of one of the defender's witnesses (Mr KA) and the defender then rested on the affidavit of that witness.

Undisputed Facts

[3] YI is 45 years old and is a qualified medical doctor and pathologist in Russia. She and the defender met on an internet dating site. They met in Dubai and later holidayed in Prague, at New Year 2011. They married very quickly thereafter. AAW is 65 years old and has been married previously. He has adult children of that marriage including a 26 year old son AW, who lives and works in Germany and who gave evidence in his father's case. AW has a good relationship with his half-brother JW and he stayed at the parties' home each year during the marriage. He stayed with the pursuer and JW at the former matrimonial home in November 2018 after the parties had separated.

[4] In 2019 the defender raised divorce proceedings in Inverness sheriff court in which it was averred that the parties' marriage had broken down irretrievably as established by their non-cohabitation as husband and wife for a period in excess of two years. It was averred that they had not had marital relations since the birth of JW in September 2012. The defender did not live within the sheriffdom and Inverness sheriff court did not have jurisdiction to entertain the case. The pursuer then raised these proceedings and the sheriff

court proceedings were dismissed. The defender raised divorce proceedings in Dubai, which are ongoing.

[5] YI has not undertaken any remunerative employment since the parties married. On 22 September 2012 she gave birth to the parties' son, JW, who is now aged 7. She has always been JW's primary carer. The child has continued to live with her after the parties' separation and has contact with the defender, who lives in separate rented accommodation once per week. YI is a loving parent to JW and cares for him physically and emotionally. The former matrimonial home in which she and JW live is a two storey villa with a swimming pool, owned by the company of which the defender is CEO. JW attends an English speaking school in Dubai. The present arrangements for his care are eminently satisfactory.

[6] Both parties agreed in evidence that they have not lived together as husband and wife since 5 September 2018, that their marriage has broken down irretrievably and that there is no prospect of reconciliation.

Disputed evidence

[7] The disputed evidence concerned the relationship between the parties during the marriage and the reason for their ultimate separation. There were a series of allegations and counter allegations, although it is primarily the defender's behaviour that is relevant to the question of whether he has behaved in such a way that the pursuer can no longer reasonably be expected to reside with him.

[8] The pursuer adopted her two affidavits as a truthful account. Her complaints about the defender's behaviour fell into four categories. These were; 1) her husband's controlling and domineering behaviour towards her and the undermining of her confidence, 2) his

speaking derogatorily to her including in a sexually inappropriate manner, 3) his sexual conduct towards her generally and 4) his behaviour towards the end of the marriage when he started being absent from home and the pursuer said she discovered condoms and email pictures of young women in his car and on an electronic device respectively. All of these were expanded on in her supplementary affidavit and she was cross examined on each.

[9] YI had described an incident early in the marriage when she and her husband had a row about the defender's son AW's behaviour. She said the defender told her to "shut up" and called her a "stupid bitch". In cross-examination she was pressed about the circumstances of AW's behaviour and challenged about a passage in her affidavit stating that she had no conflicts with AW. YI explained that she had not complained to AW about his behaviour, she had complained direct to her husband. She agreed that she had lost her temper but it was due to AW's behaviour and her husband's dismissive response to her complaint. There had been one occasion when she had shouted at AW when he was with her son and JW's leg became stuck in a piece of furniture. In a panic she thought that AW was responsible and she thought JW had broken his leg. She agreed she had what could be described as a tantrum on that occasion. When pressed further on the 2011 incident and what had caused it, the pursuer explained that she and her husband had come home from a trip away to find condoms, dirty towels and other signs of AW having had women in the house. He had been only 16 years old. The pursuer thought his father had organised or encouraged the use of prostitutes. It was in that context that she confronted the defender and he said "It's none of your business you stupid bitch". She said that in addition to speaking to her regularly in a derogatory manner he would make unpleasant and unfounded remarks about her family. He did not let her return to Russia with JW to see her

mother who has since died. He made wholly inappropriate and rude sexual jokes about her consorting with Pakistani taxi drivers, which she found upsetting and offensive.

[10] YI complained that her husband did not encourage her to try to work as a doctor in Dubai, although she accepted that he had organised the translation of some of her qualifications. She had not seen a document no 7/15 of process, which appeared to be part of an application for recognition of qualifications, only one of seven pages had been produced. She agreed that the handwriting on the document was that of her husband. She did not dispute that he had helped her initially when she was exploring whether she could work in Dubai but she did not regard it as encouragement. She would have had to spend two years abroad to be able to qualify to work as a doctor in Dubai and her husband said that it was fine if she became a housewife instead. She had found it scary to risk leaving her job and family in Russia but the defender had assured her that it would be fine. She disputed that her motivation in marrying the defender was to have a child, be kept in good style and get out of Siberia although she agreed that she had wanted to have a child.

[11] On sexual matters, it was suggested to the pursuer that she would not have discussed the details of her private sexual life with family and friends but she said that, while some details were too horrible to share, her family and close friends did know what was happening. She said the parties' sex life was fine until she was pregnant with JW. Then the defender put emotional pressure on her to have sex far more than she would have wanted and sometimes in inappropriate situations. He demanded sex every day, sometimes three times per day. He would grab her sexually even while she was breastfeeding her son. Usually she felt she had no choice and could not refuse and rejected his advances only a few times. When she said with some emotion in evidence that her husband wanted
“ ... constantly sex sex sex, when I was breastfeeding all he wanted was sex – I couldn't

even take a shower”, counsel for the defender suggested to her that she was the one who was obsessed with sex and had an unhealthy interest in it. She retorted that it was her husband who was so obsessed. The line that it was the pursuer who was obsessed with sex was persisted in and YI reiterated that it was her husband who had effectively forced her to have sex every day. In 2017 the defender sent her an article about the menopause and HRT (produced at 6/12 of process) and told her this might increase her desire for sex. When she refused sex he became angry and would blame her constantly, saying she didn’t love him, and was neglecting him. Sometimes he said it was her duty and that she had to do it because he suffered without sex. He would descend into a bad mood if she refused and would insist on sex even if she was tired or busy with JW. She felt she had no choice but to give into his demands and described it as “too unbearable”.

[12] The final months of the marriage were characterised by the defender being away at weekends, claiming that he was working; something the pursuer said he never did more than twice a year previously. He also started spending too much time on his mobile phone and computer. In July 2018, she was with JW who when playing with her husband’s computer accidentally opened his emails. There the pursuer saw emails and pictures on his computer or iPad (she said it was a small tablet) from young women who looked about 25 years old. Then she found condoms in her husband’s briefcase in his car. She thought that the young women were prostitutes and assumed that although he wouldn’t use condoms with her he would if with a prostitute.

[13] YI said that she became depressed as a result of her husband’s behaviour and stopped menstruating due to stress when she was 42 years old, but didn’t seek help from a psychologist until after September 2018. She disputed that she simply had an early menopause. In recent months her husband had brought her vodka, which she doesn’t drink

when he came to collect JW. She was concerned that he was trying to entrap her into doing something that could be reported to the authorities because he had previously said to her that he will keep her out of the country. She has no right to reside in UAE other than as his wife and she was afraid that the defender's actions could result in her losing her visa, her child and "everything". She denied that she had lost objectivity by describing her life as "a sort of slavery". When living with the defender she had no money and could not live independently, she had to explain whenever she spent money and she had to have sex every day and cook for the family and look after her son and husband. She had stayed in the marriage only for the sake of her son. The defender would say that if she disagreed with him he would kick her out and she would have to go to Russia and he would have JW.

[14] When it was suggested that she did not communicate with her sister, EI, during the marriage, the pursuer stated that she did but did not disclose to her husband that she was in regular contact with her sister because of the unpleasant remarks he made about her family. There was a considerable amount of evidence about the pursuer's love of cats and about the extent to which she had permitted cats into the matrimonial home despite her husband having a cat allergy. This chapter was of limited assistance to my determination of whether the defender had behaved unreasonably. In short the pursuer's position was that since about 2015 the cats were allowed to sleep in the utility room of the house at night but that she tried to keep them out of the house during the day. She didn't think her husband's symptoms were too serious when he suffered from his allergy but his eyes would be irritated and he would sneeze. Regardless of whether there were animals around she had noticed that he was sometimes short of breath. He didn't like her having cats but he reluctantly agreed to it. JW loved the cats. She denied that her refusal to rid the house of cats, her withdrawal of affection and her temper tantrums had caused the breakdown of the

marriage. The marriage broke down when she confronted her husband about the emails on his electronic device and he walked out. He found his current accommodation and moved to it on 5 September 2018.

[15] NM is a 37 year old Russian women living in UAE. She has been a friend of the pursuer since 2011 when YI and her husband frequented the yacht club in Dubai where NM was working. She had remained a close friend of the pursuer throughout the time the parties were together, although she has worked away from Dubai for certain periods. In her affidavit evidence she stated that when the parties were together the pursuer would confide in her about her married life with the defender. She went on "AAW is a difficult character. I mean he was not easy to live with". NM understood that however much the pursuer did for the defender and her son the defender would criticise her. The pursuer confided that her husband regarded only his opinion as the right one and that her own views and wishes were never considered in making family decisions. YI told her of the rude and inappropriate jokes the defender made about sexual matters. As early as the end of October 2012, the pursuer had confided in her about the defender's demands for daily sex, telling her that she should put the child down to sleep and have sex with him whether she was tired or not. Over time, NM observed her friend's distress. She said "I know she was very upset emotionally about what was happening in her marriage. She was suffering. It was clear something was wrong. She was very lonely". NM was aware that the defender would not give his wife permission to visit Russia with their son or to obtain a Russian passport for JW. The defender was always very welcoming to her when she visited the matrimonial home and the issues the pursuer told her about were never discussed in his presence.

[16] Under cross examination NM agreed that she knew that the defender had assisted with the translation for some of the pursuer's qualifications with a view to her working in

Dubai. NM had a contact with a local GP and suggested to the pursuer that she send her CV to that practice but the pursuer did not do that. When they later discussed it, the pursuer said that the job would be ten hours daily and that AAW had insisted that she be at home. She did think, however, that the pursuer also wanted to stay at home after she had JW. When asked about whether Russian women would discuss intimate matters with friends, NM said they would not if they were happy but they would if unhappy. The pursuer had opened up to her from the time they became close, 2012 onwards. There had been periods when she and the pursuer could not have such regular contact because of NM's working hours but they were always in touch and spoke on the phone if they couldn't see each other.

[17] It was specifically put to NM that nothing she saw at the parties' home made her think it was impossible for her friend to live with the defender and she said "She lived many years with him. He was tough - he do what he likes. She already lived too many years with him - I expected it to continue". She knew her friend well and her impression was that she never complained to her husband, despite her unhappiness. NM didn't seem to think her friend had allowed cats to sleep in the parties' villa and had seen her throwing them out if they got into the house through an open door during the day. The pursuer had told her that the defender had an allergy and so the cats couldn't stay. NM had last visited the parties as a couple in 2018. When she visited the pursuer the following year there were cats in the house.

[18] In July 2018 the pursuer said to NM "He has gone elsewhere" and told her about finding condoms in his bag. NM knew that the defender would go to the yacht and sometimes to Saudi (Arabia) at weekends and the pursuer did not know what he did there. In August 2018 the pursuer told her about finding the emails on the defender's iPad when JW had been playing with it and that she had seen pictures of "very bad women". She could

not be certain whether she was told these were on an iPad or a computer/laptop, she just knew she had been told they were seen on a device. While she was not present when her friend discovered these, NM recalled that the pursuer was very upset at the time and “felt disgusting”. NM asked her how she could continue a sexual relationship with the defender in these circumstances and the pursuer said that she could not. The pursuer told NM that she had confronted the defender about what she had discovered and that the defender was angry.

[19] EI, the pursuer’s sister, lives in Spain. She is ten years older than the pursuer, but they have always been close. She speaks reasonably good English but her affidavit was also translated into Russian for her to check. During the marriage they did not speak quite as much as they had previously. The pursuer told her sister that her husband was jealous and controlling. She complained to her sister early in the marriage, before JW was born, that they had gone to visit Scotland and that it was a hard time, she was cooking and cleaning every day for guests and she didn’t even have time to go outside. She called her sister and cried. The pursuer also confided in her sister about the defender’s demands for sex at inappropriate times.

[20] Under cross examination EI agreed that she had no contact with the defender after meeting him at New Year 2011 in Prague. She had not liked his behaviour on that occasion. During the marriage she and her sister would send messages to each other and YI would telephone her once her husband had left the house for work. She would do so about once a month, sometimes several times a month. WhatsApp videos are forbidden in UAE and so they only managed face to face conversations two or three times. She agreed that the defender usually wouldn’t know she and her sister were in touch, but she recalled that on one occasion the pursuer had telephoned her when her husband was at home and he had

been angry. In the English version of her affidavit EI had said her sister described her husband as “evil and arrogant”. She was asked to say those words in Russian for the interpreter to translate and the correct English translation was “arrogant and mean”. EI was specifically asked when her sister had told her all these things about the defender and she confirmed that it was mostly during the three years leading up to September 2018. During that time she understood that the defender was angrier and the relationship was even more difficult, something she thought she had been told in 2017.

[21] EI was a little sceptical of the defender’s complaints about the cats. She herself has a cat allergy and she said she knew the pursuer had cats from about 2013 and there had been no mention of the defender’s allergy, something she had only heard about recently. She thought that someone with a serious cat allergy would not have been able to have cats around the house for that length of time.

[22] In his evidence, the defender disputed that he and his wife had arrived home after a weekend when his son AW was in their home to find used condoms, dirty towels and other signs of sexual activity. He agreed there had been a row with his wife in 2011 but said it was because she had been smoking next to the garbage chute and a neighbour had complained. When confronted the pursuer had a tantrum and threw a lamp. He couldn’t calm her down and so went to spend the night elsewhere. He understood that the police had attended the house, but that was after he had left.

[23] Under cross-examination, the defender accepted that he had changed his position on the date on which the parties had separated. When asked why he did not just consent to divorce on the basis that he and his wife had lived separately since September 2018 and both sought divorce, he first said that it was on the advice of his legal team. Later in his evidence he said it was because he wanted to defend the allegations made against him by his wife

which he regarded as unfounded and against his character. Then he said he only found out a week before the proof that he could consent to divorce and avoid the need for contested witness evidence. When it was put to him that he sought to divorce in Dubai because it would be to his financial advantage at first he said “no, - I hadn’t thought about that actually”. He said he had been happy in 2019 to be divorced in Scotland because he thought it would be straightforward and that in Dubai he would have to maintain his wife for three years. Then he said “OK so maybe there is some financial advantage but that’s not the main reason”. The initial writ in the Inverness action (no 6/3 of process) was put to the defender and it was suggested that the averment there that he and his wife had agreed care arrangements for JW (prior to that action) was untrue, to which the defender responded “well I haven’t signed it, have I?”.

[24] The defender disputed that his wife had wanted to work and that he told her she didn’t need to, although he accepted that her Russian qualifications did not permit her to work in Dubai. He agreed that he had been in control of the finances and his wife’s residential status in Dubai but denied emphasising to her that she had no money and no job in a domineering way. The defender denied all of the pursuer’s allegations about his derogatory and inappropriate language and his accusations, in jest or otherwise, that she had consorted with Pakistani taxi drivers. He denied criticising her work within the home or her physical appearance. When it was put to him that he had described himself as his wife’s “friendly rapist” he said that was not a term he would use. He then accepted that he had used that term in an email to his wife (no 6/12 of process) but said it was “part of friendly banter” and alleged that it was his wife who had instigated the term “rapist” herself. AAW disputed that he had wanted sex daily or more than once per day. He denied that he would find it difficult to accept his wife’s refusal to have sex, or that he would sulk

and become difficult if she refused. All of the sexual allegations were denied, although the defender accepted he had sent his wife an article about the menopause in 2017.

[25] When it was put to him that he and his wife were still having sexual relations in 2017 the defender answered “intermittently”. He said that marital relations had been intermittent from 2014 and that he couldn’t recollect whether or not they last had sex in April 2018, which was the pursuer’s position. He accepted that it would be false to say there had been no sexual relationship since JW was born and that it was not correct to say sexual relations had ceased in 2014, two years after JW was born. He accepted he had sworn an affidavit stating there had been no sex after that but said that what he meant was that it had been “more intermittent”. He said he had no idea how it came about that the pleadings in these proceedings had stated a position on his behalf that he and his wife had ceased having a sexual relationship in 2012 and that he had no explanation to offer. Neither did he recollect stating that position for the purpose of the Inverness action.

[26] The defender agreed that JW had not slept well as a baby but said that his wife “made a rod for her own back – she didn’t train the child” and would feed him when he woke. He agreed that he kept JW’s passport and when asked if that was a feature of him being in control he said “I don’t trust her”. He said that he would “absolutely not” let his wife have a Russian passport for JW and when asked why he should make the decision about JW’s passport his first reaction was “Why not?” Subsequently, in answer to a question from me he said he thought it might not be possible for JW to have dual nationality, perhaps as a matter of Russian law. In re-examination he changed that to suggesting that it was prohibited by the law of one of the two countries, the UK or Russia. There was no reliable evidence at all about any impediment to dual nationality for JW.

[27] On the final breakdown of the relationship, the defender denied that his wife had found pictures and messages from other women and/or condoms and that they had argued as a result. His position was that he had challenged his wife about the cats on a number of occasions but that she continued to let them in the house. His wife's relationship with his son AW had been "barely polite" and he knew she had lashed out at his son after the incident when JW had an accident in the house. He thought that AW had stayed in the matrimonial home in November 2018 only because he was so close to JW. On why his wife would tell her sister and her friend NM about his behaviour during the marriage as it was happening, the defender said at first that his wife had told those witnesses those things after divorce proceedings were raised. Then he said they were lying if they said they had been told such things earlier than that.

[28] In re-examination the defender was asked what the cause of the final argument was that had made him leave the house and he said he couldn't remember, but that his wife had been shouting and screaming, mostly in Russian. He said that he would be very concerned about JW going to Russia because it was a tough country and it would be very difficult for him to maintain a relationship with his son. Then he said "It's not going to happen because I will keep his passport".

[29] The defender's son, AW gave evidence in his father's case. He is 26 years old and had sworn an affidavit which he adopted as his evidence in chief. He disputed that his father had paid for or encouraged him to use prostitutes and said he didn't recall an occasion when his father and step mother came back to the house and found signs of him having done so. His position generally was that the pursuer had been somewhat cold and distant to him, other than an incident in 2014 when he had accidentally caught JW's leg in a piece of furniture when she came and lost her temper at him. He said she spat at him and

kicked him. Thereafter he thought that her behaviour could be unpredictable and his father confirmed that to him. He thought that the marriage was unhappy and that in early 2018 when he visited he noticed they were barely speaking. YI would sometimes speak in Russian.

[30] Under cross-examination, the witness was asked why he had referred in his affidavit to the pursuer's friend NM. He said that he knew who the other witnesses were from his father's solicitor and had been answering a question about who the parties socialised with and he recalled a friend called NM. He said that from what he could see the pursuer and NM were not close and the pursuer would make fun of NM when she was not there. He agreed that the pursuer would cook for the family when he was there and agreed that he could not know what the sleeping arrangements were when he was not there but saw the pursuer sleep in a room with JW when he was visiting. He agreed that he had continued to visit after the pursuer had lost her temper with him in 2014, but said that it was his father who made him feel welcome and not the pursuer. He clarified that it was when he visited in November 2018 that he saw the cats roaming free in the house. In the three years or so before that, there were fewer cats but he had seen them in the house.

[31] A colleague of the defender, Mr KA, gave unchallenged affidavit evidence that from about 2013 he had the impression that the parties' marriage was unhappy. His contact from that time was with the defender only. AAW would complain to him from time to time that he and his wife argued and were unhappy. He mentioned the cat issue on several occasions. In September 2018 the defender told him that he was moving out of the house and was going to rent an apartment. The reasons he gave Mr KA were the cats and YI's behaviour.

Discussion

[32] The parties gave very different accounts of their marriage and the reasons for its breakdown, requiring an assessment of the credibility and reliability of each witness. As with most relationship disputes, only the parties to it really know what went on between them at home and so they are the two witnesses whose evidence requires the most careful scrutiny.

[33] Dealing first with the pursuer, I found her to be a generally credible witness. Her position about the timing and circumstances of the marriage breakdown has been consistent. There were one or two adminicles of contemporaneous material that supported her position. For example, she had lodged a copy of the email sent to her by the defender in November 2014 in which he referred to himself as her friendly rapist, a term he said he would not use until reminded that there was such an email. There was also the email about the menopause when the defender sent to his wife in 2017, consistent with her account about him complaining about the changes that were taking place in her. While she was not cross examined on some of the specific sexual allegations she made, the line that seemed to be taken with her was that she was the one obsessed by sexual matters, not her husband, and that she was a fantasist, but this was not a view advanced by AAW in evidence at all, a point to which I will return. The parties' sexual relationship was an important aspect of the case because their accounts diverged so much. I have no hesitation in relying on the pursuer's account of that chapter which was detailed and consistent on what was clearly an emotive subject for her. It was a subject about which she had confided in her close friend NM and her sister EI during the marriage.

[34] On one or two specific matters I find the pursuer's account less reliable than that of other witnesses. In relation to the cats, for example, I conclude that she understated the

extent to which the cats were in the house and the impact that had on her husband who was allergic to them. The defender's son's evidence suggested a larger number of cats were in the house after separation but there is little doubt that their presence was a problem before that. As already indicated, the cats issue is not material to the question of the defender's behaviour. I accept the pursuer's account that the final argument in August was about what she had seen on her husband's electronic device coupled with his absences from home at weekends and not about the number of cats in the house. On the issue of whether the defender stopped her from securing employment in Dubai, it seemed to be accepted that there was a difficulty with recognition of her qualifications. The evidence of NM was that the pursuer did not follow up her offer of sending a CV to a local medical practice and she seemed to think that there was more than one reason behind the pursuer's lack of employment. But that issue arose early in the marriage and the situation changed once JW was born. What I do accept is the pursuer's evidence that the defender would remind her that she had no job and no visa but for him and that he could keep her out of the country without JW. He used her dependence on him as an instrument of control.

[35] The clear picture that emerged from the pursuer's evidence was of a woman who had considered that, while it involved risk, it was worth leaving her family and work as a medical practitioner in Russia for the emotional security of an older man and the hope of children. She was prepared to put up with quite a lot of unpleasant behaviour, such as offensive remarks about her family and the defender's control over her child's citizenship and travel in return for that stability. It became clear, however, that her views on any matter were totally disregarded and that the defender viewed her worth as merely the object of his excessive sexual demands. That, coupled with her lack of financial independence and the relegation of her role to cooking and looking after her husband and son, led the pursuer to

become unhappy and upset and feel trapped in “a sort of slavery”. Her husband’s refusal to countenance her travelling to Russia with JW to visit her elderly mother and/or to secure a Russian passport for him added to that feeling of entrapment.

[36] The defender’s version of events does not withstand scrutiny. He averred in divorce proceedings raised by him in Inverness Sheriff Court that the parties had not engaged in marital relations since JW’s birth in 2012. He claimed that 22 September 2012 was the date of separation not just in those proceedings but before this court until 28 May 2020 when he eventually adjusted his pleadings to concede a relevant date of 5 September 2018. The pursuer had initially contended that he moved out on 7 September 2018 but when it was clarified that his lease started on the 5 September she agreed the date two days earlier. The defender’s initial position appeared to be that he was advised that he could contend that the date of separation was the date on which he and his wife started living separately within the family home. That was departed from because he conceded not just ongoing sexual relations but also family meals, trips and other aspects of routine family life as a couple for many years after his initial date. His inconsistent and developing position on the issue of the parties’ sexual relations has contributed to my rejection of his account on other matters. Even during the course of his cross examination he moved from sexual relations being “intermittent” until 2014 when they ceased (the position in his affidavit but not his pleadings) to being “even more intermittent between 2014 and 2017”, a new date offered for the last time he and his wife had sexual relations. Despite there having been no challenge to his wife’s contention that they had engaged in sexual relations until April 2018 he seemed to deny that later date. His evidence of sexual relations having petered out did not sit well with the line taken in cross examination of the pursuer that she was the one obsessed with sex.

[37] There were other matters about which the defender's position was highly unsatisfactory and indicative of the very behaviour about which the pursuer complained. His evidence on a passport for JW illustrated that it had never occurred to him that his wife, the child's primary carer, should have a say in what passport or passports the child should hold. His assertion that he would make sure his wife never managed to take the child to Russia (even for a visit) by keeping his UK passport away from her was indicative of the controlling behaviour described by the pursuer. His evidence that he hadn't thought about the financial advantage he would gain from being divorced in Dubai was nothing short of ridiculous, perhaps something he realised and so changed his position on that too.

[38] In light of the defender's inconsistent and unbelievable position on these important matters, I am even more inclined to accept the pursuer's version of events. She was upset by her husband's constant demands for sex and the emotional pressure he brought to bear if she refused. Her distress at the situation was observed by her friend NM at the time. I accept NM's evidence in its entirety. She had no complaint to make about the defender's behaviour to her or in her presence. The fact that his welcoming behaviour to NM and the absence of incidents when the parties were socialising with her, far from supporting the defender's version of events, is consistent with the pursuer's account that it was when they were alone that he denigrated and objectified her. NM was in no doubt about the truth of the pursuer's confidences. She formed the impression that her friend had lived with this man for too many years already and so, despite his behaviour, she expected that the situation would simply continue. Against that background, matters did come to a head between the parties because the pursuer became suspicious of her husband being away more at weekends and then found emails with pictures from other women on his electronic device. Whether or not those young women were paid escorts doesn't matter. Whether the

device was a laptop, iPad or other tablet is a matter of description and not of substance. The pursuer immediately told her friend and confidante, NM about the emails and about condoms she had found. She became enraged and confronted her husband.

[39] I accept also the evidence of EI, the pursuer's sister, that during the marriage she and her sister had to communicate without the defender knowing about it and that when on one occasion the pursuer had called her when the defender was at home he had become angry. EI was the pursuer's second confidante and the person to whom she described the defender as "arrogant and mean" complaining that he was becoming more so as the years went on, particularly during the last three years of the marriage. EI was clear that she was told over a period that the defender was becoming more difficult to live with.

[40] The defender's own evidence supported that in August 2018 there was a momentous row in which his wife was shouting and screaming mostly in Russian, an easily understandable response to the discoveries the pursuer had made. Oddly, both in his affidavit and in oral evidence, the defender said that he couldn't recall the cause of the last major row with his wife in August 2018, despite his having left to go and stay in a hotel that night. In my view the pursuer's position makes more sense because the discovery of messages from unknown women was the ultimate insult from a man whose controlling behaviour she had endured for the sake of their son. When she confronted the defender in anger he withdrew from the situation and thereafter it was inevitable that the relationship was at an end, albeit that the final departure by AAW to his new accommodation was not until 5 September 2018.

[41] It should be understood that behaviour after the date of the parties' separation is not irrelevant. The defender's actions in raising divorce proceedings in Inverness sheriff court with false averments about his residence, whether care arrangements for JW had been

agreed and about when the parties last lived together are consistent with his determination to control matters and to say what he deems to be necessary to secure financial advantage. The act of dropping off a bottle of vodka to his estranged spouse when she does not drink that spirit and lives as a foreign national without a licence to have alcohol in a country like UAE is further behaviour that has no reasonable explanation other than a desire to cause difficulties for the pursuer's already precarious right to reside there. Standing the derogatory terms in which the defender spoke of his wife and the lengths to which he has gone to divorce her in a country where she is unlikely to secure any financial provision on divorce, I reject his evidence that it was a gesture of kindness.

[42] There were other chapters of evidence about which I should comment but which are not so material to my decision. The episode involving the defender's son early in the marriage when the pursuer said she found evidence of him having sex with women in the house while they were away was not about AW's behaviour. It was an example of the defender refusing to support his wife and speaking derogatorily to her. AW was not asked directly whether he had engaged in such behaviour, he was asked whether he recalled such an incident and he said he did not. The pursuer was clear that she had not challenged AW directly as she considered it more appropriate to tell his father, his parent, about this matter. Nothing AW said in evidence led me to reject the pursuer's version of events. On the incident when JW was about 2 years old and there was an accident when he was with AW which the pursuer thought at the time was more serious than transpired, it is clear that her first reaction when panicking was to blame AW and scream at him. I reject that she also lashed out physically on that occasion, at least not to the extent he claimed. In any event, it was an isolated incident between her and AW and at all other times his complaint seemed to be that she was a little cold and distant towards him. That was not the pursuer's perception,

but given the unhappiness in the parties' marriage and the defender's lack of support for her when she raised the issue of AW's behaviour when he was 16, it is hardly surprising that she and AW may not have been close. It was undisputed that AW has a close relationship with JW and the pursuer has facilitated that, having agreed to AW staying in the family home with her and JW in November 2018 after the parties had separated. Much of AW's evidence was about the cats, a topic that was undoubtedly the source of annoyance for the defender. While he was clearly supportive of his father's position, his knowledge of the parties' relationship was limited to annual holidays in Dubai and it is not surprising that as a very young man he did not observe or understand the dynamic in the couple's relationship. He was not close to the pursuer and would never have been her confidante. His evidence was of very limited assistance.

[43] The evidence of the defender's colleague Mr KA, supports that the defender complained about the cats from time to time at work and also that he indicated the marriage was becoming unhappy. That does not detract from the pursuer's case about the defender's behaviour. I conclude that while the defender behaved in the way the pursuer described, he too was becoming discontented with the relationship. He accepted in his supplementary affidavit (at paragraph 19) that he had at least tolerated the cats being in the utility room of the family home from about 2015 and so his allergy did not prevent him being in the same property as the cats if they were separate from the couple's living and sleeping accommodation. The pursuer appears to have become less careful in later years to ensure that the cats were restricted to that area, although her evidence that she kept them outside other than at night suggests that she did not let them roam around the house deliberately. AW noticed a contrast between pre separation and post separation in relation to the number of cats. The defender's position on the cats and how much they troubled him and that he

would argue with his wife about them sits uneasily with his position to this court until 28 May that he and his wife were not living together as a couple from September 2012. It is more consistent with the pursuer's position of remaining in an unhappy marriage for the sake of her son.

[44] It was submitted on behalf of the defender that it would be particularly difficult to assess credibility of the parties and their witnesses in this case because the proof had been conducted remotely on video screens. While there were some technical difficulties from time to time with witnesses' wireless connectivity and/or sound quality, I have no hesitation in rejecting that submission. My vision and ability to hear the witnesses was clear and unimpeded. The pursuer came across as emotional and a little fraught, speaking as she was in her second language. She sometimes used hyperbole to make a point – for example she said her son cried and did not sleep for 24 hours a day seven days a week as a baby, when she clearly intended to make the point that he was a particularly wakeful and demanding infant, not that he literally did not sleep. That type of linguistic nuance was as easy to pick up on screen as it would have been in the courtroom. So far as the defender is concerned, I have assessed his lack of credibility on the inconsistencies in his different accounts and the documentation and concluded that these illustrate his willingness to make false statements to secure a desired result. However, insofar as relevant, my conclusion on that is fortified by the way in which he gave his evidence as video recorded. On one occasion in cross examination when it was asserted to him that he had used foul and derogatory terms to his wife he leant forward towards the camera to state his denial in what I noted at the time was an aggressive manner. He rolled his eyes more than once when he was asked questions about the sexual allegations and he folded and unfolded his arms. He became noticeably red in the face when he denied calling his wife her "friendly rapist" and then appeared to

admit it but said that his wife had instigated the term. He laughed when it was suggested that he would sulk and become difficult if his wife refused to have sex with him and when he said he couldn't recollect having had sex the last time in April 2018 in the parties' kitchen. My observations of his behaviour were noted just as I would have done had he been appearing in a physical court. The connectivity and sound difficulties had no bearing on that assessment, or on my ability to assess the credibility and reliability of NM, EI and AW. It was a little unsatisfactory that NM and EI gave evidence using mobile telephones but again that does not have a bearing on my assessment of credibility and reliability.

Application of the law to the facts

[45] The sole legal basis for granting decree of divorce is the establishment of the irretrievable breakdown of the marriage – section 1(1)(a) of the Divorce (Scotland) Act 1976. One of the bases that a pursuer can rely on for establishing such irretrievable breakdown arises if –

“ since the date of the marriage the defender has at any time behaved (whether or not as a result of mental abnormality and whether such behaviour has been active or passive) in such a way that the pursuer cannot reasonably be expected to cohabit with the defender” (section 1(2)(b))

The test of reasonableness is not an objective one in the sense that one requires to assess what is reasonable for the party or parties concerned taking into account their particular circumstances. While the requirement for corroboration in civil proceedings was abolished generally with the coming into force of the Civil Evidence (Scotland) Act 1988, a special rule applies for actions of divorce, separation, declarator of marriage and declarator of nullity of marriage. For those specified actions, section 8(3) of the 1988 Act provides that the evidence “...shall consist of or include evidence other than that of a party to the marriage.” In

Taylor v Taylor [2000] Fam LR 78 an Extra Division of the Inner House rejected a contention that the law requiring corroboration of material facts had been retained for proceedings of this type. The court acknowledged that section 8(3) required evidence from outside the marriage to be led and that it provided a further safeguard against collusion, adding

“But that subsection must, in our opinion be interpreted in its own terms: reference to the familiar doctrine of corroboration could easily have been made, if Parliament had intended that doctrine should be applied.”

[46] The evidence of the pursuer’s witnesses comprises mostly hearsay and so the weight of that evidence requires to be considered carefully. I have already indicated that I accept the evidence of NM and EI as providing support for and being consistent with the pursuer’s account on important matters. In any event, two aspects of NM’s evidence in particular go beyond what she was told by the pursuer. First, she observed her close friend’s reaction, her considerable upset at the events in the home she was describing. Secondly, NM formed her own impression that the pursuer had put up with the defender’s behaviour longer than should be required, citing that as the reason why in the Spring of 2018 she had expected that the marriage would continue. In other words, accepting as she did that her friend was truthful, she viewed the situation as more than the pursuer could reasonably put up with, whether or not the marriage in fact continued. EI’s evidence that the defender was angry when she telephoned the pursuer when he was at home is also evidence of the pursuer’s account on which I have relied. I conclude that there is ample evidence from outside the marriage to satisfy the requirements of section 8(3).

Conclusion

[47] I am satisfied that the evidence of the pursuer on the four material areas listed as disputed issues is credible and can be relied on. There is also sufficient credible and reliable

supporting evidence as required by section 8(3) of the Civil Evidence (Scotland) Act 1988. I find that the parties' marriage has broken down irretrievably and that the defender has behaved in such a way that the pursuer cannot reasonably be expected to cohabit with him. I am satisfied that the current arrangements for the care of JW, the child of the marriage, are in his best interests and present no impediment to decree being granted. Accordingly, I will grant decree of divorce.

[48] In terms of section 12(1)(b) and 13(1)(b) of the Family Law (Scotland) Act 1985 and on the motion of the pursuer, I will defer decisions on financial provision for the pursuer for a specified period. Mr McAlpine on her behalf has asked for a 12 month delay but I consider that to be too long, even allowing for any perceived difficulties with disclosure of the defender's financial circumstances. I expect parties to fix a proof on financial provision orders for no later than the Spring of 2021.