

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CA11-471

CLAYTON COKER

APPELLANT

V.

SAMANTHA HESS COKER

APPELLEE

**Opinion Delivered** DECEMBER 7, 2011

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[NO. DR 2010-287-III]

HONORABLE LYNN WILLIAMS,  
JUDGE

REVERSED AND DISMISSED

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**ROBIN F. WYNNE, Judge**

Clayton Coker appeals from a decree entered by the Garland County Circuit Court granting Samantha Hess Coker an absolute divorce. On appeal, Clayton argues that (1) there was insufficient evidence to support the circuit court's award of a divorce to Samantha on the grounds of general indignities and (2) the circuit court erred in awarding Samantha attorney's fees in the decree. We reverse and dismiss.

The parties were married on July 1, 1991, and separated on March 28, 2010. On March 29, 2010, Samantha filed a complaint for divorce. In the complaint, Samantha alleged that during the marriage, Clayton offered such indignities to her as to render her condition in life intolerable. The complaint does not list any other grounds for divorce. Samantha requested that she be awarded attorney's fees.

At the hearing on the complaint, which was held on November 22, 2010, Samantha testified that she filed her complaint alleging general indignities because Clayton had an on-



oing, long-term affair with another woman. Samantha first discovered the affair while the couple was living in Wynne. The couple reconciled and moved to Hot Springs. Clayton admitted to the affair during his testimony and stated that he resumed the affair after his wife moved out of the marital residence. Samantha also testified that Clayton lied to her about the affair and that he had been frequently absent from home, demeaned her, and menaced her. In addition, Samantha testified that Clayton took out loans against his retirement account that amounted to approximately \$80,000, and she received no benefit from the loans. Samantha's mother, Thyra Lynn Sullivan, testified that Clayton seemed inattentive and uncaring toward Samantha. She also testified that there was one occasion during which she heard Clayton being loud and rude to Samantha.

Following the hearing, the parties submitted proposed findings of fact and conclusions of law to the circuit court. Samantha's proposed findings of fact included a finding that Clayton was having an ongoing affair that led to her condition in life becoming intolerable. In a decree entered on January 13, 2011, the circuit court stated that it was adopting Samantha's proposed findings of fact and conclusions of law with one exception that is not relevant to this appeal. The circuit court found that Samantha was entitled to a decree of divorce from Clayton upon her complaint. The circuit court also awarded Samantha attorney's fees in the amount of \$11,376.12. This appeal followed.

We review domestic-relations cases de novo on the record, but we will not reverse the circuit court's findings unless they are clearly erroneous. *Hunter v. Haunert*, 101 Ark. App. 93, 270 S.W.3d 339 (2007). A circuit court's finding is clearly erroneous when, although there



is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed. *Id.* We give due deference to the superior position of the circuit court to view and judge the credibility of the witnesses. *Id.*

Clayton's first point on appeal is that there was insufficient evidence to support the circuit court's award of a divorce to Samantha on the grounds of general indignities. Divorce is a creature of statute and can only be granted upon proof of a statutory ground. *Gunnell v. Gunnell*, 30 Ark. App. 4, 780 S.W.2d 597 (1989). Appellee's action for divorce was based on the ground of general indignities. See Ark. Code Ann. § 9-12-301(b)(3)(C) (Repl. 2009). In order to obtain a divorce on that ground, the plaintiff must show a habitual, continuous, permanent, and plain manifestation of settled hate, alienation, and estrangement on the part of one spouse, sufficient to render the condition of the other intolerable. *Poore v. Poore*, 76 Ark. App. 99, 61 S.W.3d 912 (2001). In addition, it is well settled that a petition for divorce will not be granted on the testimony of the complainant alone, even if the defendant admits the allegations, but it must be corroborated by other evidence to establish the truth of the assertion. *Goodlett v. Goodlett*, 206 Ark. 1048, 178 S.W.2d 666 (1944).

Clayton argues that Samantha failed to either prove or corroborate the ground of general indignities. We agree. Samantha testified at the hearing that she was seeking a divorce on the ground of general indignities based on Clayton's affair with another woman. The problem with this contention is that adultery is a separate ground for divorce. See Ark. Code Ann. § 9-12-301(b)(4) (Repl. 2009). Samantha never pled the ground of adultery. Even assuming, strictly for the sake of argument, that an adulterous affair could fall under the



category of general indignities, there is no corroboration of the affair. Samantha points to other testimony she gave, as well as the testimony of her mother in arguing that she did establish the ground of general indignities. The other testimony consisted of a statement by Samantha that Clayton lied to her about the affair and that he had been frequently absent from home, demeaned her, and menaced her.<sup>1</sup> Samantha's mother testified that Clayton seemed inattentive and uncaring and that she had heard him being rude and loud with Samantha one time. This evidence does not demonstrate a habitual, continuous, permanent, and plain manifestation of settled hate, alienation, and estrangement on the part of one spouse, sufficient to render the condition of the other intolerable. Furthermore, the findings of fact adopted by the circuit court do not mention any of this other evidence when discussing the grounds for divorce. Only Clayton's affair is mentioned. We hold that the circuit court clearly erred in finding that Samantha proved that she was entitled to a divorce on the ground of general indignities.

Samantha argues that Clayton should be barred from arguing that she failed to prove a ground for divorce because he came before the circuit court with unclean hands. Samantha never raised the issue of unclean hands before the circuit court. It is well settled that we do not consider arguments raised for the first time on appeal, as it is incumbent upon the parties

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<sup>1</sup>In her brief, Samantha argues that she also showed that Clayton subjected her to general indignities by dissipating marital funds. Our review of the record reveals that this testimony was offered not to establish a ground for divorce, but to demonstrate why Samantha should be entitled to a greater portion of the marital estate. Even when this testimony is added to the other testimony put forth to establish grounds, there was no showing of general indignities.



Cite as 2011 Ark. App. 752

to first give the trial court an opportunity to consider and rule on them. *Norman v. Alexander*, 2011 Ark. App. 327. Therefore, we cannot consider that argument now on appeal.

Clayton's second point on appeal is that the circuit court erred in awarding Samantha attorney's fees. Because appellant failed to prove her grounds for divorce, resulting in the decree being reversed and dismissed, there is no basis for the award of attorney's fees to her in the decree. The decree of the circuit court is reversed and dismissed.

Reversed and dismissed.

ABRAMSON and BROWN, JJ., agree.

*J. Sky Tapp*, for appellant.

*Hilburn, Calhoon, Harper, Pruniski & Calhoun, LTD.*, by: *Sam Hilburn* and *Mary Claire McLaurin*, for appellee.