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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-171

Opinion Delivered October 27, 2010

ELIZABETH ANN HICKMAN
APPELLANT

V.

JERRY DON HICKMAN
APPELLEE

APPEAL FROM THE POPE COUNTY CIRCUIT COURT
[No. DR-2008-353]

HONORABLE WILLIAM M. PEARSON, JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Elizabeth Ann Hickman argues two points on appeal. First, she claims that the trial court erred in granting appellee Jerry Don Hickman an absolute divorce because sufficient grounds were not established. Second, she claims that the court erred in calculating her rehabilitative alimony. We find no merit in her claims of error and affirm the decision of the trial court.

The parties were married in 1990, and their son was born in 1995. In 2008, Mr. Hickman filed for an absolute divorce on the grounds of general indignities and sought full and complete custody of the parties' minor child. Mrs. Hickman answered and counterclaimed, also seeking a divorce and custody of the minor child. Subsequently, she withdrew that counterclaim and filed a substituted counterclaim seeking only a legal separation, custody, and spousal support.

Following a two-day trial, the circuit court entered a decree of divorce after finding that Mr. Hickman had suffered indignities perpetrated by Mrs. Hickman of a sufficient degree to constitute a valid ground for divorce. The court also found that the alleged grounds were corroborated by the parties, their minor son, and Mr. Hickman's co-worker, Jeffrey Don Maggard. Finally, the trial court awarded Mrs. Hickman rehabilitative alimony and granted Mr. Hickman full custody of the minor child. It is from this decree Mrs. Hickman appeals.

Appellant first claims that the trial court erroneously found that the ground of general indignities was proven by Mr. Hickman at trial. In order to grant a divorce on these grounds, the court must find that the offending spouse is guilty of conduct amounting to rudeness, contempt, studied neglect, or open insult, and that the conduct has been pursued so habitually and to such an extent as to render the conditions of the complaining party so intolerable as to justify an annulment of the marriage bond. *Price v. Price*, 29 Ark. App. 212, 216, 780 S.W.2d 342, 345 (1989). This finding must be based on facts testified to by the witness and not upon beliefs or conclusions in order that the court may be able to determine whether those acts and conduct are of such a nature to justify the conclusions reached by the witness. Furthermore, it is not necessary that the person to whom the divorce is granted on the ground of indignities be wholly blameless. *Coffey v. Coffey*, 223 Ark. 607, 610–11, 267 S.W.2d 499, 501 (1954); *Harpole v. Harpole*, 10 Ark. App. 298, 664 S.W.2d 480 (1984).

In *Griffin v. Griffin*, this quantum of proof surrounding a showing of general indignities was expressed as follows:

It is obvious that the court cannot grant a divorce because the parties have become

> dissatisfied with the marriage yoke. In such cases the parties must by mutual concession make the yoke lighter. On the other hand, constant abuse, studied neglect, and humiliating insults and annoyances, which indicate contempt and hatred by the offending party, amount to such indignities to the person as to render his or her condition in life intolerable within the meaning of the statute.

166 Ark. 85, 85, 265 S.W. 352, 353 (1924). There also must be corroboration of the testimony concerning the indignities. It is a rigid rule of continuous application in this state that in an action of divorce a decree will not be granted upon the uncorroborated testimony of one of the parties. *Smith v. Smith*, 215 Ark. 839, 223 S.W.2d 776 (1949). But the purpose of the rule requiring corroboration is to prevent the procuring of divorces through collusion, and when it is plain that there is no collusion, the corroboration may be comparatively slight. *Kirk v. Kirk*, 218 Ark. 880, 239 S.W.2d 6 (1951). It is not necessary that the testimony of the complaining spouse be corroborated on every element in a divorce suit. *Morgan v. Morgan*, 202 Ark. 76, 148 S.W.2d 1078 (1941).

The evidence of general indignities shown in this case is ample. The testimony established that Mrs. Hickman was verbally abusive to Mr. Hickman by calling him names such as "fa**ot," "c** sucker," "asshole," "co**sucker," "piece of s**t," and "c** drinker." In fact, Mrs. Hickman admitted that she had many arguments with Mr. Hickman—yelling profanity at him, calling him "ass," "asshole," and "SOB." Mr. Hickman also introduced recorded phone conversations, where Mrs. Hickman could be heard speaking in an elevated, angry voice and uttering profanities directed toward Mr. Hickman such as "sick f**k," "asshole," and "piece of s**t bum." She also told him that she hated him and accused him of being a homosexual and having sex with his father, his mother, his nephews, his customers, and his co-workers. There was also a recorded

conversation admitted into evidence where Mrs. Hickman accused Mr. Hickman of sleeping with other men during the marriage.

The evidence also showed that Mrs. Hickman was physically abusive. She hit the minor child with a hair brush and a horse whip. In one incident described at trial, when Mr. Hickman attempted to intervene on his son's behalf, Mrs. Hickman began hitting her husband with the whip. There was testimony of another beating episode in a car, after Mrs. Hickman told her minor son that "he stunk." There was also evidence that Mrs. Hickman threw dishes at Mr. Hickman, chased him around the house with a steak knife, called him at work and put him in the middle of heated phone exchanges in front of co-workers, and interrupted a closed-door business meeting. Finally, testimony of Mrs. Hickman's own witness, Dr. Paul Deyoub, demonstrated that she had been classified as highly histrionic with a high level of somatization. He diagnosed Mrs. Hickman with Cyclothymia (a mood disorder that is one rung below bipolar disorder).

Based on Mr. Hickman's trial testimony, which was corroborated by his minor child and a co-worker, we are satisfied that he suffered general indignities during the pendency of his marriage. That proof is more than sufficient, standing alone. However, when combined with the recorded phone calls and the opinions of Dr. Deyoub, the proof is overwhelming. Furthermore, our case law dictates that a baseless charge of promiscuity or infidelity is the most offensive allegation one spouse can make against the other spouse; as such, this allegation alone constitutes sufficient indignity to support a divorce. *Relaford v. Relaford*, 235 Ark. 325, 328, 359 S.W.2d 801, 803 (1962). We see no error in the trial court's decision to grant Mr. Hickman a

divorce on the ground alleged and affirm.

Mrs. Hickman next complains that the trial court erroneously relied on Administrative Order No. 10 in setting the amount of alimony she was to be paid. An award of alimony is not mandatory, but is instead discretionary, and the trial court's decision regarding any such award will not be reversed absent an abuse of discretion. *Powell v. Powell*, 82 Ark. App. 17, 110 S.W.3d 290 (2003). The purpose of alimony is to rectify, insofar as is reasonably possible, the frequent economic imbalance in the earning power and standard of living of the divorced parties in light of the particular facts of each case. *Holaway v. Holaway*, 70 Ark. App. 240, 16 S.W.3d 302 (2000). The primary factors to be considered in awarding alimony are the need of one spouse and the other spouse's ability to pay; secondary factors that may also be considered in setting alimony include (1) the financial circumstances of both parties, (2) the amount and nature of the income, and (3) the extent and nature of the resources and assets of each of the parties. *Id.* As this court explained in *Mitchell v. Mitchell*, 61 Ark. App. 88, 964 S.W.2d 411 (1998), neither this court, nor the supreme court, has ever attempted to reduce the amount of alimony to a mathematical formula. Presumably, it has been thought that the need for flexibility outweighs the corresponding need for relative certainty. *Id.* at 90, 964 S.W.2d at 412. In setting the amount of alimony, the trial court may consider a range of acceptable alternatives. *Jackson v. Jackson*, 2009 Ark. App. 238, at 6, 303 S.W.3d 460, 463–64.

The trial court specifically referenced Arkansas Code Annotated section 9-12-315 (a)(1)(A) in making its determination to award rehabilitative alimony. The court further considered that Mr. Hickman was the primary source of income and looked at his four-year

income picture. The court noted that Mr. Hickman's income had declined due to the current economic climate and would likely continue to decrease due to declining sales and accounts on which his commission was based. The court noted that Mr. Hickman had monthly expenses for himself and the minor child of $1500 and that his net-monthly wage was $2600. The court also considered Mrs. Hickman's alleged physical limitations due to a prior car accident, but noted that she had worked as a substitute teacher long after the accident and that she made approximately $50 per day doing so. Finally, the court also used Administrative Order No. 10 as guidance when making its rehabilitative-alimony calculation.

Mrs. Hickman argues that by relying on Administrative Order No. 10, the trial court abused its discretion. In her brief she highlights the language of section III(e), which states "for the purposes of temporary support only, a dependent custodian may be awarded 20% of the net take-home pay for his or her support in addition to any child support award." She contends that because she is not a custodial parent, it was error for the trial court to consider Administrative Order No. 10 in its calculation.

The language upon which Mrs. Hickman relies is specifically directed to temporary-support orders, yet the order on appeal is final in nature. In making a final determination relating to alimony, the trial court was required to consider only "all relevant factors" relating to spousal support. Here, Administrative Order No. 10 was but one of many factors considered by the trial court before ultimately ordering the alimony. Considering the extraordinary discretion trial courts are afforded when making alimony awards, we see no error with the decision to award alimony or the amount of the award. As such, we affirm on this point as well.

Affirmed.

PITTMAN and HART, JJ., agree.