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ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-17-343

SHERMAN HIATT

APPELLANT

V.

SHEILA HIATT

APPELLEE

Opinion Delivered December 5, 2018

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
GREENWOOD DISTRICT
[NO. 66GDR-15-272]

HONORABLE JIM D. SPEARS,
JUDGE

REVERSED AND DISMISSED

N. MARK KLAPPENBACH, Judge

This appeal stems from a divorce case between Sheila Hiatt and Sherman Hiatt. On appeal, Sherman contends that the circuit court erred by allowing Sheila to reopen her case to present additional proof of grounds for divorce. He also argues that, because Sheila initially failed to prove and corroborate her grounds for divorce, the circuit court erred by denying the motion for directed verdict that he made at the conclusion of her case-in-chief. We conclude that the circuit court abused its discretion by allowing Sheila to reopen her case and that Sheila initially failed to corroborate her grounds for divorce. Accordingly, we reverse and dismiss.

I. *Background*

In September 2015, after nine years of marriage, Sheila filed a complaint for divorce against Sherman based on general indignities. Sherman answered her complaint and later

counterclaimed for divorce based on general indignities. A temporary order issued by the circuit court required Sherman to pay Sheila \$1600 a month in spousal support.

The final trial of the matter was initially scheduled for August 26, 2016. On that day, Sheila presented her case. Her witnesses included herself, her friend Mary Whitten, appraiser Ken Colley, and accountant Rickey Leding. The bulk of the testimony related to the division of the parties' property.

After Sheila rested, Sherman moved for a directed verdict,¹ claiming she failed to prove grounds for divorce and failed to corroborate grounds for divorce. In the colloquy that followed, the circuit court indicated that it was caught "by surprise" and that it considered the motion a "total waste of the court's time." During the discussion, Sherman's counsel advised the circuit court that he had notified Sheila's counsel in advance of the trial that he was contesting grounds for divorce. The circuit court denied Sherman's motion, and in ruling so, it emphasized the time and effort that had been spent to get to this point in the proceedings. The court then stated that it would entertain a motion to treat this case as an action for separate maintenance. Sheila's counsel requested the relief proposed by the court. The hearing was adjourned with the understanding that it would be reset after the parties had lived separate and apart for eighteen months so that the divorce could be granted on these grounds. Notably, this ground was not raised by either party in the pleadings.

¹Sherman's motion was properly a motion to dismiss, not a motion for directed verdict. Arkansas Rule of Civil Procedure 50(a) provides that "[i]n nonjury cases a party may challenge the sufficiency of the evidence at the conclusion of the opponent's evidence by moving either orally or in writing to dismiss the opposing party's claim for relief." Nonetheless, the circuit court uses the same legal standard in evaluating a motion to dismiss as it would in evaluating a motion for a directed verdict. See *Griffin v. Griffin*, 2018 Ark. App. 122, 545 S.W.3d 212.

Four days later, on August 30, 2016, Sheila filed a motion asking the circuit court to reconsider and uphold its ruling to deny the motion for directed verdict or to alternatively reopen her case, alleging that she could “prove additional facts to corroborate the grounds for divorce.” On October 4, 2016, the circuit court entered an order that denied Sherman’s motion for directed verdict, finding that Sheila proved and corroborated grounds for divorce at the August 26 trial. The order also granted the alternative relief requested by Sheila and reopened the case.

Following the entry of the October 2016 order, further testimony was taken at a hearing on November 1, 2016. At that hearing, Sheila offered additional evidence in support of her claim for divorce based on general indignities. At the conclusion of the hearing, the circuit court granted Sheila’s request for divorce based on general indignities. The circuit court took the remaining issues, which primarily related to the disposition of property, under advisement.

In a letter opinion filed on December 16, 2016, the circuit court announced its decision in this case. The circuit court’s rulings were incorporated into a decree of divorce, which was filed of record on December 28, 2016. Sherman timely appealed.

II. *The Motion to Reopen the Case*

We begin our analysis by considering whether the circuit court erred when it granted Sheila’s motion to reopen the case. From the outset, it is important to acknowledge that Sherman moved for a directed verdict on the basis that Sheila failed to prove and corroborate her grounds for divorce. Had the circuit court granted his motion, the case would have

been dismissed as corroboration of grounds is a necessary requirement for obtaining a divorce in Arkansas. *Lundy v. Lundy*, 2014 Ark. App. 573, 445 S.W.3d 518.

Our court evaluates a circuit court's order to reopen for whether there has been a manifest abuse of discretion. *Gilbow v. Crawford*, 2015 Ark. App. 194, at 6, 458 S.W.3d 750, 754. We confer on our circuit courts considerable discretion in the control and management of court proceedings. *Lagios v. Goldman*, 2016 Ark. 59, at 14, 483 S.W.3d 810, 819. Nevertheless, this latitude is not without limitation.

A circuit court should not reopen a case except for good reason and on proper showing. *Aceva Techs., LLC v. Tyson Foods, Inc.*, 2013 Ark App. 495, at 8, 429 S.W.3d 355, 362. Evidence should be reopened when to do so would serve the interests of justice and cause no undue disruption of the proceedings or unfairness to the party opposing the motion to reopen. The exigencies of each particular case have much weight in controlling the discretion of the court. *Id.* Additional factors taken into consideration in allowing a party to reopen a case include (1) failure to introduce evidence because of inadvertence, calculated risk, or the court's mistake; (2) surprise or unfair prejudice inuring to the opponent by the new evidence; (3) failure to prove a basic element of a crime; (4) diligence of the party seeking introduction of the new evidence; (5) admissibility, relevance, and lack of cumulativeness of the new evidence to the proponent's case; (6) time or state of the proceedings at which the motion is made; (7) time and effort expended upon the trial; (8) effect reopening the proof will have on completing the trial, considering the opponent's right to respond to it; and (9) any cogent reasons that justify denying the request. *Id.* at 8–9, 429 S.W.3d at 362.

In this case, the colloquy that occurred after the motion for directed verdict was made is particularly important to our evaluation of whether the order to reopen amounted to an abuse of discretion. The circuit court was clearly frustrated by the motion as it anticipated that grounds were not contested despite Sherman's advance notice to Sheila that they were. In what was certainly an effort to achieve judicial economy, the court immediately began attempting to fashion a remedy that would allow it to maintain jurisdiction of the case. In fact, at one point, the court seemingly took on the role of an advocate and suggested that a motion to treat this as a matter for separate maintenance be made. Sheila's counsel promptly made such a motion.

The circuit court's order to reopen also emphasizes judicial economy. The order mentions that the case has been pending for over a year, the accommodations made to get the matter set for trial, and that the parties remain separated.

Although judicial economy is a consideration in deciding whether a motion to reopen is proper, it is not the only proper consideration. When we fully evaluate this case, considering the exigencies of it and the factors set forth in *Aceva Techs.*, *supra*, we conclude that the circuit court abused its discretion by granting Sheila's motion to reopen her case.

The trial was held on August 26, 2016. Sherman had been requesting a trial setting since January of that year. As such, Sherman prepared for the August 26 trial. At the conclusion of Sheila's case-in-chief, Sherman determined that she failed to satisfy the statutory requirements necessary to grant a divorce and made a motion for directed verdict claiming that Sheila failed to prove her grounds for divorce and failed in her corroborating witness proof. The circuit court had a responsibility to evaluate and rule on Sherman's

motion. But instead, the circuit court refused to consider the merits of the motion and fashioned a remedy that would allow the case to remain open. Thereafter, sixty-seven days passed from the date of the first trial—August 26—to the date of the second trial—November 1. During that time, Sherman had financial obligations to Sheila based on the circuit court’s temporary order. Sherman was also required to prepare for another trial on November 1. This sixty-seven-day lapse certainly disrupted the proceedings in this matter. It was also unfair to Sherman and failed to serve the interests of justice.

Moreover, no good cause was put forth to reopen the proceedings. In her motion, Sheila merely stated that she wished to “prove additional facts to corroborate the grounds for divorce.” Sheila already had an opportunity to do so, and the discussion of the motion for directed verdict indicated that Sheila’s counsel was on notice that grounds were contested. Thus, she could not claim that she was unfairly surprised by Sherman’s motion. Sheila should have been prepared to properly prove and corroborate those grounds on August 26.

The facts of this case cause us to conclude that the circuit court abused its discretion when it granted Sheila’s motion to reopen the case.

III. *The Denial of the Motion for Directed Verdict*

Because we have determined that the circuit court abused its discretion by reopening the case, we now consider whether the circuit court erred when it denied Sherman’s motion for directed verdict, finding that Sheila proved her grounds for divorce and corroborated her grounds for divorce at the August 26 hearing.

Sheila sought a divorce based on general indignities. To prove general indignities, she had to show (1) habitual, continuous, and permanent hate, alienation, and estrangement (2) pursued with the purpose and effect of causing an enduring alienation and estrangement (3) that rendered her condition intolerable. *Coker v. Coker*, 2012 Ark. 383, 423 S.W.3d 599. In addition, our law requires Sheila to corroborate her testimony with other evidence, which had to be based on factual testimony and specific acts and language, not general or conclusory statements. *Id.* Finally, the corroborating evidence had to be based on the witness's own experience, not what Sheila had told him or her. *Id.*

With these standards in mind, we hold that the circuit court erred by denying Sherman's motion for directed verdict. Assuming arguendo that Sheila proved her grounds for divorce, she certainly did not corroborate her grounds. Only two witnesses even potentially corroborated her grounds. Mary Whitten testified that Sheila lived with her for approximately three months, told her the marriage was over, and that it was Sherman's fault. Any testimony by Whitten that could possibly corroborate Sheila's grounds is based on what Sheila told her. Thus, Whitten's testimony is insufficient to corroborate grounds for divorce. The only other possible corroborating testimony came from Ken Colley, who testified that Sheila was denied access to the marital home while he was conducting an appraisal for the purposes of this litigation. This, too, is insufficient to corroborate Sheila's grounds for divorce. Neither Whitten's nor Colley's testimony, individually or collectively, satisfies the requirement of showing habitual, continuous, and permanent hate, alienation, and estrangement. Sheila failed to prove grounds for divorce at the August 26 hearing. Accordingly, the circuit court erred by denying Sherman's motion for directed verdict.

IV. *Whether Sherman Sought Inconsistent Relief*

As a final matter, we must briefly address an alternative argument to affirm presented by Sheila. She contends that Sherman is barred from seeking dismissal of her complaint because he cannot seek inconsistent relief. This argument was not raised before the circuit court. Sherman's answer to Sheila's complaint for divorce denied the allegation that she should be granted a divorce on the ground of general indignities, and he opposed her grounds at trial and on appeal. While Sherman had filed a counterclaim alleging that he was entitled to a divorce from Sheila, he did not prosecute the counterclaim, he sought to dismiss it, and he abandoned it in his notice of appeal. Had he pursued the counterclaim, the proof of grounds offered to entitle him to a divorce would have necessarily been different than that proof offered by Sheila. We do not agree with Sheila that Sherman is now seeking relief on appeal inconsistent with the relief he sought below.

V. *Conclusion*

Therefore, based on the record before us, we reverse and dismiss, holding that the circuit court abused its discretion in reopening the record for additional evidence and that the circuit court erred in failing to grant Sherman's motion for directed verdict made at the end of Sheila's case on August 26.

Reversed and dismissed.

WHITEAKER and HIXSON, JJ., agree.

Brett D. Watson, Attorney at Law, PLLC, by: *Brett D. Watson*, for appellant.

Dusti Standridge; and *Cullen & Co., PLLC*, by: *Tim Cullen*, for appellee.