

Cite as 2024 Ark. App. 339  
**ARKANSAS COURT OF APPEALS**  
DIVISION I  
No. CV-23-427

KYLE MCCANDLIS

APPELLANT

V.

SARA MCCANDLIS

APPELLEE

Opinion Delivered May 29, 2024

APPEAL FROM THE IZARD  
COUNTY CIRCUIT COURT  
[NO. 33DR-22-90]

HONORABLE DON MCSPADDEN,  
JUDGE

AFFIRMED

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**RAYMOND R. ABRAMSON, Judge**

Kyle McCandlis appeals from the divorce decree entered by the Izard County Circuit Court. On appeal, Kyle argues that the circuit court erred by granting Sara McCandlis's counterclaim for divorce because Sara did not provide corroborating evidence of her residency or of a ground for divorce. Kyle additionally argues that the circuit court erred by awarding Sara primary custody of their minor children. We affirm.

Sara and Kyle married on June 13, 2009. They have two minor children, MC1, born in November 2009; and MC2, born in March 2013. On August 5, 2022, Kyle filed a divorce complaint against Sara and alleged the general-indignities ground. He further stated that he anticipated reaching a mutual agreement concerning child custody, but he alternatively requested joint custody. On August 23, Sara answered and counterclaimed for divorce. She alleged the general-indignities ground and requested primary custody of the children.

The court held a hearing on February 28, 2023. Kyle testified that he has lived in Izard County, Arkansas, his entire life, including when he filed for divorce. He stated that he is a basketball coach and teacher at Izard County High School and that Sara is a counselor at the school. Kyle explained that he and Sara had “problems on and off” for about five or six years before their separation. He specified that the problems included “yelling and screaming, the fighting, cussing, name calling.”

Kyle explained that he and Sara separated in March 2022 and that he moved to his parents’ home in Oxford, which is also in Izard County. He stated that from March through August 2022, he and Sara shared time with the children. However, after August 2022, the children resided primarily with Sara. He stated that MC1 last spent the night with him in September 2022 and that MC2 last spent the night with him in February 2023. Kyle testified that he asks to see the children, but Sara responds that the children do not want to see him.

Kyle testified that he has had a girlfriend since May 2022. On cross-examination, Kyle acknowledged that he had communicated with his girlfriend since December 2021, and he stated that he introduced his girlfriend to his children in July 2022. He also admitted that he had threatened to “slit [Sara’s] throat” over the phone. He stated that his threat “was stupid” and noted that he apologized to Sara and his children. He additionally explained that he shares a bedroom with MC1 and MC2 when they visit him at his parents’ house.

Kyle’s mother, Lauren McCandlis, testified that she has witnessed Kyle “explode” on Sara and Sara “explode” on Kyle. Lauren also stated that Kyle has been living with her in

Izard County since he moved out of the marital home. She specifically stated that he had been living in her home for sixty days before he filed the divorce complaint.

Sara testified that she lives in their marital home in Izard County. She testified that Kyle left her and that, initially, she did not want a divorce. She stated, however, that she is entitled to a divorce.

Sara testified that Kyle's relationship with his girlfriend started before their separation. She specified that before their separation, Kyle's girlfriend attended his basketball games. She further stated that Kyle and his girlfriend had "long in-depth conversations, and multiple calls over and over and over." She noted that Kyle would call her for a minute and "then immediately hang up and call [his girlfriend] for an hour."

Sara discussed a February 2022 incident in which she and the children took their family dog to be euthanized. She testified that Kyle did not participate and that during the euthanization, Kyle ignored her because he was talking to his girlfriend.

Sara also discussed an incident in July 2022 in which Kyle had taken the children on a boat trip with his girlfriend and other friends. Sara testified that Kyle drank alcohol and drove with the children in the car. She stated that when they arrived home, she and Kyle had an argument concerning his girlfriend's presence on the boat and his alcohol use.

Sara testified that Kyle had not physically harmed her, but he had grabbed her by the arm and had pinned her against a glass door. Sara further discussed the incident wherein Kyle threatened to slit her throat. Sara also stated that during one argument, Kyle retrieved his firearm and cocked it. Sara testified that Kyle had cursed and yelled at her in her school

office. She specified that Kyle had been “inappropriate” to her at school on ten occasions and that he had threatened to ruin her career.

Sara stated that joint custody would not be best for the children. She explained that she had been the primary caretaker and that the back and forth is difficult on both children. She testified that MC1 struggles developmentally and that MC2 is emotional. Sara further testified that the children fear Kyle and that MC2 stopped spending time with him after he threatened to slit her (Sara’s) throat. She noted that the children had not visited Kyle for longer than three consecutive days. She also explained that Kyle frequently spends the night with his girlfriend and that he works late due to his coaching schedule. She stated that since their separation, Kyle had missed the children’s activities and had instead attended social activities with friends and his girlfriend.

MC1 testified that she is angry with Kyle for ending the marriage. She stated that Kyle began a relationship with his girlfriend during the marriage and that he left Sara for his her. MC1 discussed the July 2022 boat trip, and she stated that “it was kind of obvious that something was going on” between Kyle and his girlfriend. She noted that Kyle stays at his girlfriend’s house and that she had attended her grandfather’s birthday party. MC1 further testified that Kyle has anger issues and that he becomes angry when she and her brother do not interact with his girlfriend during their visits. She noted that during aggressive episodes, Kyle cracked a cellphone screen and sped while driving the car. MC1 stated that she wanted to live with Sara and visit Kyle on the weekends.

MC2 testified that he wants to live with both Kyle and Sara but that he does not like Kyle's girlfriend. He testified that Kyle is replacing Sara with his girlfriend.

On March 9, 2023, the court entered the divorce decree awarding Sara a divorce on the grounds of general indignities and adultery. The court found that both parties had engaged in domestic abuse; however, it found that Sara's abusive behavior occurred before the marriage. The court also found by clear and convincing evidence that joint custody was not in the children's best interest, and it awarded Sara primary custody. The court noted the following reasons:

- a. Threat of physical harm on multiple occasions by [Kyle] towards [Sara].
- b. [Kyle]'s angry demeanor through the course of trial.
- c. The oldest child's preference as well as expressed fear of [Kyle].
- d. [Kyle]'s coaching schedule which requires him to work nights and evenings is not conducive to caring for a small child.
- e. [Kyle] has not been with the children at times when he could have been.
- f. [Kyle]'s lack of suitable housing
- g. [Kyle] has introduced the children to his girlfriend while still married which was not in their best interests.
- h. [Kyle] drinking alcohol then driving his boat and vehicle with the children in his care. [Kyle]'s girlfriend also drank alcohol on the boat.

The court ordered Kyle to complete an anger-management class prior to exercising visitation.

Kyle appealed the divorce decree to this court.

We conduct a de novo review in appeals from decrees of divorce. *Rocconi v. Rocconi*, 88 Ark. App. 175, 196 S.W.3d 499 (2004). Under our standard of review, this court will not reverse the circuit court's findings unless they are clearly erroneous. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

On appeal, Kyle first argues that the circuit court erred by granting Sara's counterclaim for divorce because her residency was not corroborated. Kyle, however, acknowledges that his residency was proved and corroborated.

To obtain a divorce, the plaintiff must prove a residence in the state by either the plaintiff or defendant for sixty days next before the commencement of the action and a residence in the state for three full months before the final judgment granting the decree of divorce. Ark. Code Ann. § 9-12-307(a)(1)(A) (Repl. 2020); *Evtimov v. Milanova*, 2009 Ark. App. 208, 300 S.W.3d 110.<sup>1</sup> Thus, the statute requires proof of residency by either party, and in this case, as Kyle acknowledges, the record includes proof and corroboration of his residency.

Kyle next argues that the circuit court erred by finding that Sara corroborated her grounds for divorce. He claims that Sara was the only witness to testify with firsthand knowledge of her divorce claim.

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<sup>1</sup>Residency must be proved and corroborated in every instance. Ark. Code Ann. § 9-12-306(c)(1) (Repl. 2020); *Evtimov*, 2009 Ark. App. 208, 300 S.W.3d 110. Where it is plain that there is no collusion, corroboration of residency need only be slight. *Id.*

To obtain a divorce on the general-indignities 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). Such manifestations may consist of rudeness, unmerited reproach, contempt, studied neglect, and open insult. *Ransom v. Ransom*, 2009 Ark. App. 273, 309 S.W.3d 204. Conditions arising from adultery give rise to indignities. *Coker v. Coker*, 2012 Ark. 383, 423 S.W.3d 599.

Evidence of the grounds for divorce must be corroborated, but the evidence of corroboration need only be slight when a divorce case is sharply contested, and it is not necessary that the testimony of the complaining spouse be corroborated on every element or essential fact. *Id.*

In this case, we hold that Sara proved and corroborated the general-indignities ground. Sara testified about Kyle's violent behavior and his relationship with his girlfriend during the marriage, and the children's testimony corroborated Sara's statements. MC1 testified that Kyle has anger issues and that Sara and Kyle had disagreements during which they screamed, cussed, and called each other names. She further stated Kyle left Sara to be with his girlfriend, and she specified that she realized that Kyle had a girlfriend during the July 2022 boat trip. MC2 also testified that Kyle is replacing Sara with the girlfriend. Given the lenient standard for proving and corroborating grounds for divorce, we cannot say the circuit court clearly erred.

Kyle next argues that the circuit court erred by awarding Sara primary custody of the children. He claims that Sara failed to prove by clear and convincing evidence that joint custody is not in the children's best interest.

We perform a de novo review of child-custody matters, but we will not reverse the circuit court's findings unless they are clearly erroneous. *Hamerlinck v. Hamerlinck*, 2022 Ark. App. 89, 641 S.W.3d 659. We recognize and give special deference to the superior position of the circuit court to evaluate the witnesses, their testimony, and the child's best interest. *Id.*

Arkansas Code Annotated section 9-13-101(a)(1)(A)(iii) (Supp. 2023) provides that joint custody is favored in Arkansas. In an action concerning an original custody determination, there is a rebuttable presumption that joint custody is in the child's best interest, but this presumption may be rebutted if the court finds by clear and convincing evidence that joint custody is not in the child's best interest. Ark. Code Ann. § 9-13-101(a)(1)(A)(iv)(a) & (b)(1). Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *Zihala v. Staley*, 2024 Ark. App. 269, \_\_\_ S.W.3d \_\_\_.

While there is a statutory preference for joint custody, this preference does not override the ultimate guiding principle, which is to set custody that comports with the best interest of the child. *Hanson v. Hanson*, 2023 Ark. App. 363, 676 S.W.3d 8. We refuse to reweigh the evidence and find differently than the circuit court regarding the appropriateness of joint custody and the credibility of the witnesses. *Grimsley v. Drewyor*, 2019 Ark. App. 218,



at 10, 575 S.W.3d 636, 642. Each child-custody determination ultimately must rest on its own facts. *Cunningham v. Cunningham*, 2019 Ark. App. 416, 588 S.W.3d 38.

In this case, we hold that the circuit court did not clearly err in finding that Sara rebutted the presumption for joint custody by clear and convincing evidence. In its written order, the court found that joint custody was not in the children’s best interest due to Kyle’s work schedule, his alcohol use around the children, his multiple threats of physical harm toward Sara, MC1’s preference for living with Sara, and MC1’s expressed fear of Kyle. Significantly, the court noted its observation of Kyle’s angry demeanor during trial, and it ordered him to complete anger-management classes before exercising visitation.<sup>2</sup> Recognizing the superior position of the circuit court to evaluate the witnesses, their testimony, and the children’s best interest, we find no error.

Kyle additionally claims the circuit court erred by applying Arkansas Code Annotated section 9-13-101(c) because the evidence does not establish that he engaged in a pattern of domestic abuse.<sup>3</sup> Kyle misconstrues the circuit court’s order. The circuit court did not apply

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<sup>2</sup>The record additionally includes an email to the attorneys in which the court stated that Kyle “could barely hold his temper. He clenched and gritted his teeth throughout the trial. His entire demeanor was anger.”

<sup>3</sup>Section 9-13-101(c) provides:

(1) If a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and

subsection (c). The court merely noted the domestic abuse in determining that joint custody was not in the children's best interest under Arkansas Code Annotated section 9-13-101(a)(1)(A)(iv)(b)(1).

Affirmed.

GRUBER and WOOD, JJ., agree.

*Law Office of Shannon Briese, PLLC*, by: *Shannon Briese*, for appellant.

*Taylor & Taylor Law Firm, P.A.*, by: *Tory H. Lewis, Andrew M. Taylor, and Tasha C. Taylor*, for appellee.

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circumstances as the circuit court deems relevant in making a direction pursuant to this section.

(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases in which there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse.