

EARNEST *v.* EARNEST.

5-1990

329 S. W. 2d 543

Opinion delivered December 14, 1959.

DIVORCE — THREE YEARS SEPARATION, WEIGHT AND SUFFICIENCY OF CORROBORATING TESTIMONY. — Testimony showing of appellee, corroborated by his sister, showing that he had lived separate and apart from appellant in different apartments for more than seven years, held sufficient to sustain award of divorce on grounds of three years separation.

Appeal from Garland Chancery Court; *Sam W. Garratt*, Chancellor; affirmed.

*R. Julian Glover*, for appellant.

*Earl J. Lane*, for appellee.

SAM ROBINSON, Associate Justice. Appellant, Laura Earnest, has appealed from a decree granting a divorce to appellee, Francis B. Earnest. The parties were married in Hot Springs in November, 1948, and lived together at appellee's sister's hotel until the fall of 1949,

when appellee moved into a separate room in the hotel. In 1950 appellee moved to the Ross Apartments, at another location. In the same year appellant moved to the Colonial Apartments. In October, 1950, appellee moved back to his sister's hotel and has lived there since that time.

On January 3, 1957, appellee filed suit for divorce, alleging three years' separation without cohabitation. Appellee testified that he and appellant had been separated since 1950 and had not lived together since that time; that appellant had not been to his room in the hotel and he had not been to her apartment except on one occasion when he went there on a business matter, but only went to the front door. His sister, Mary Taylor corroborated his testimony regarding the separation. On the other hand, Mrs. Earnest, appellant, testified that over a period of about seven years appellee had been to her apartment on numerous occasions, at which times they indulged in sexual relations.

On appeal Mrs. Earnest contends that there is no corroboration of Mr. Earnest's testimony that they had not cohabited as man and wife for the past three years. In *Wicker v. Wicker*, 223 Ark. 879, 269 S. W. 2d 311, the appellant made the same argument. There the witness, E. S. Blease, testified that the Wickers had not lived together for more than four years. On appeal Mrs. Wicker argued that cohabitation could have occurred without Blease's knowledge. This Court said: "Obviously the same argument could be made in every case; to sustain it would be to abolish three years separation as a ground for divorce." Not only is appellee corroborated as to the separation by the testimony of Mrs. Taylor, but also by the circumstances of living separate and apart at different apartments for more than seven years.

Affirmed.