

HALE v. HALE.

Opinion delivered June 17, 1929.

1. APPEAL AND ERROR—TRIAL OF CHANCERY CASES.—Chancery cases are tried *de novo* on appeal, and the findings of fact of the chancellor will not be disturbed unless they are clearly against the weight of the evidence.
2. DIVORCE—CRUELTY—INSUFFICIENCY OF EVIDENCE.—In a suit by a husband on the ground of cruelty, conflicting evidence held to sustain a decree dismissing the complaint for want of equity.

Appeal from Grant Chancery Court; *William R. Duffie*, Chancellor; affirmed.

STATEMENT OF FACTS.

This is a suit for divorce brought by the husband upon the statutory ground that the wife was guilty of such cruel treatment as to endanger his life, and offered such indignities to him as to render his condition intolerable. The wife filed an answer, in which she denied the allegations of the complaint.

According to the testimony of the husband, he was thirty-nine years of age, and was a mechanic. The parties to the suit married in Grant County, Arkansas, on

October 16, 1910, and separated in the same county on August 26, 1928. They had seven children, one of whom was a mere infant. The plaintiff was asked to state the cause of separation, and answered, "Jealousy was the main reason, and continual nagging and fault-finding and continual abuse and cursing." He was then asked to state just what occurred on the date of the separation, and answered:

"My brother and his wife were rooming with a neighbor—he had been sick on account of an accident. I frequently went over to visit with him and keep him company. On the date of the separation I had been over to see him, playing the victrola and talking with him. When I returned home my wife stated that if I loved that damn son-of-a-bitch, or durn bitch, take her and get out of here. I remonstrated with her, telling her I had only been to see my brother as before, and she became very angry and commenced to abuse me again. I tried to reason with her, but could not. I finally told her that I had put up with her abuse as long as I could or intended to. She stated she didn't give a darn for me leaving, and to go ahead, to get my duds and pull out, and I did. I didn't want the children to be brought up under such circumstances, and I personally could not put up with her conduct longer."

He further stated that he was contributing \$50 per month to the support of his wife and children, and expected to keep that up. He took a pistol from his wife about two weeks before their separation, when she accused him of writing letters to another woman. She frequently threatened to strike and kill him, and at one time hit him in the face.

Mrs. Belle Womack was also a witness for the plaintiff. According to her testimony, the defendant was jealous of the plaintiff, and had no cause for it. The defendant frequently cursed and abused the plaintiff.

The brother of the plaintiff also testified that the defendant was jealous of the plaintiff, and frequently cursed and abused him on that account. She thought

that he had been intimate with other women, when such was not the case.

The parties first signed an agreement to submit the case upon the above testimony to the chancellor in vacation. The chancellor on his own motion, however, continued the case until term time, and caused the defendant to be examined in open court. According to her testimony, she thought all the domestic trouble between herself and her husband was caused by Mrs. Belle Womack. On one occasion she came upon her husband and Mrs. Womack in a dark room, and at another time she saw them conversing in a secluded spot. She wishes that plaintiff be granted a divorce. She first filed an answer to his complaint for divorce, but afterwards withdrew it because her husband threatened to withdraw the \$50 a month with which he had been furnishing her, if she resisted the divorce proceedings. Mrs. Belle Womack recently secured a divorce from her husband, and the plaintiff was one of her witnesses. Plaintiff and the defendant have seven children, who are dependent upon the defendant for support. The abusive language she used towards her husband was merely in protest against his conduct with Mrs. Womack.

It was decreed that the complaint should be dismissed for want of equity, and the plaintiff has appealed.

Sidney J. Reid, for appellant.

HART, C. J., (after stating the facts). It is the settled rule of this court that chancery cases are tried *de novo* upon appeal, and the findings of fact of the chancery court will not be disturbed unless they are clearly against the weight of the evidence. *Leach v. Smith*, 130 Ark. 465, 197 S. W. 1160. Tested by this rule, we do not think it can be said that the finding of the chancellor is against the clear preponderance of the evidence. It is true that the husband testified that his wife continually cursed and abused him, and that at one time she came upon him with a pistol, which he took away from her. In this he is corroborated by the testimony

of other witnesses; but, according to his own testimony and that of the corroborating witnesses, the wife was jealous of the husband because of his conduct with another woman. The husband knew that this was her ground of complaint against him. He knew that she had borne him seven children, and that the last child was born after she had begun to be jealous of him. It is fairly inferable that her jealousy was caused by her nervous condition, brought on by her pregnancy and by the care and attention she had bestowed upon the six other children. These facts should have made the husband more careful about his conduct; and, whether there was any ground for her jealousy or not, he should have refrained from any attention whatever to other women while his wife was in her nervous state.

In this connection it may be stated that the wife might have had some grounds for jealousy, because the woman of whom she was jealous secured a divorce from her husband, and the plaintiff was the principal witness for her. This woman was also a witness for the plaintiff in the present case.

The result of our views is that the decree of the chancellor was not against the weight of the evidence, and it will therefore be affirmed.
