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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6201

In the
Supreme Court of Appeals of Virginia
at Richmond

MARY COOKE KINCAID SHEFFIELD

v.

LAWRENCE BROWNING SHEFFIELD, JR.

FROM THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6201

VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Friday the 10th day of September, 1965.

MARY COOKE KINCAID SHEFFIELD, Appellant,

against

LAWRENCE BROWNING SHEFFIELD, JR., Appellee.

From the Law and Equity Court of the City of Richmond
Robert Lewis Young, Judge

Upon the petition of Mary Cooke Kincaid Sheffield an appeal is awarded her from an order entered by the Law and Equity Court of the City of Richmond on the 2nd day of February, 1965, in a certain chancery cause then therein depending wherein the said petitioner was plaintiff and Lawrence Browning Sheffield, Jr., was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said Law and Equity Court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

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* * * * *

It is further ordered that the defendant shall pay to the complainant the sum of $90.00 each two weeks, until the further order of the court for the support of complainant and her two children; the defendant is further ordered
page 18] to pay to A. C. Epps, attorney of record for the complainant, the sum of $25.00 as fee, which said amount shall be in addition to the sums directed by order of February 27, 1952, and the decree of July 8, 1952.

* * * * *

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PETITION

The petition of Mary Cooke Kincaid Sheffield respectfully shows:

1. That she was and is the complainant in the above entitled cause.

2. That on the 24th day of February, 1953, the Court made and entered herein its certain decree wherein and whereby it ordered and directed that Lawrence Browning Sheffield, Jr., defendant, pay to your petitioner the sum of $90.00 each two weeks for support of complainant and their two minor children, whose custody was awarded by the Court to your petitioner, they being Glenn Dwyer Sheffield and Ellen Kay Sheffield.

3. That the said Lawrence Browning Sheffield, Jr., failed to make the payments required by said decree but has instead made payments in lesser amounts from 1954 through December 1, 1964, and for this period said defendant now is in default and in arrears to the extent of $13,360.00, and there is due and owing from the said defendant to complainant the sum of $13,360.00 under and by virtue of said decree aforesaid, computed as follows:

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Year	Amount in Arrears
1954	$1140.00
1955	$1140.00
1956	$1140.00
1957	$1140.00
1958	$1140.00
1959	$1140.00
1960	$1140.00
1961	$1140.00
1962	$1140.00
1963	$1340.00
1964 (Jan. 1-Dec. 1)	$1760.00
	$13,360.00

WHEREFORE, petitioner prays that the Court make and enter judgment for the amount of such arrearages.

* * * * *

STATE OF VIRGINIA
CITY OF RICHMOND, To-Wit:

This day personally appeared before me, a Notary Public in and for the City and State aforesaid, Mary Cooke Kincaid Sheffield, who, being duly sworn, made oath that the foregoing petition is true to the best of her knowledge and belief.

MARY C. K. SHEFFIELD

Subscribed and sworn to before me this 20th day of January, 1965.

My Commission expires: November 21, 1967.

GLADYS C. LANE
Notary Public

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* * * * *

NOTICE

To: Lawrence Browning Sheffield, Jr.
Stone Hall Farms
Route 3,
Carbondale, Illinois

You are hereby notified that on the 16th day of December,

1964, at 9:15 A.M., or as soon thereafter as she may be heard, the undersigned, by counsel, will move the Court in chambers on the Fourth Floor of City Hall, Richmond, Virginia, (1) for an order determining the amount of arrearages of payments which by order of the Court entered February 24, 1953, you were required to pay to the undersigned for the support and maintenance of Glenn Dwyer Sheffield and Ellen Kay Sheffield, the infant children of the parties, and (2) for an order reducing said arrearages to judgment.

MARY COOKE KINCAID SHEFFIELD
By Counsel

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page 25] STATE OF ILLINOIS
COUNTY OF WILLIAMSON, To-Wit:

This day personally appeared before me J. M. Basler (Name of Notary) a Notary Public in and for Williamson County, (City or County) State of Illinois, Frank Jeters (serving party), who, being duly sworn, made oath as follows:

1. That he is not a party to or otherwise interested in the subject matter in controversy.

2. That at ———— a.m. (p.m.) on the 21st day of November, 1964, he delivered a true copy of the foregoing notice of intention to seek judgment to Lawrence Browning Sheffield, Jr., a non-resident of the State of Virginia, at R3, Carbondale, (City, Town) Illinois.

FRANK JETERS
(Serving officer's signature)

Subscribed and sworn to before me this 24th day of November, 1964.

My commission expires:

J. M. BASLER
Notary Public

(AFFIX SEAL HERE)

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L. B. Sheffield, Jr.
Rt 3, Carbondale, Ill.
Jan. 9, 1965 62901

The Honorable Judge
Law & Equity Court
4th Floor, City Hall
Richmond, Virginia

Re: Support Case
Mary Cooke Kincaid Sheffield
vs.
Lawrence Browning Sheffield, Jr.
Your docket No. J-8850

Dear Sir,

I believe the above case has tentatively been set for Wednesday, January 20, 1965, at 9:15 A.M. in your court, and I have not received any notice indicating that I am required to be there.

I did receive a letter from a Richmond attorney stating that this was a most serious matter and that I was in contempt of court for my failure to abide by its mandate and that I could be extradicted from Illinois to Richmond for trial, and that in my behalf he had asked for a postponement of trial from December 16, 1964 to the above date in order to prepare for the trial. I thanked him for his interest in my case and told him not to proceed any further as I could not afford an attorney at this time.

I did receive an order to appear before the local Williamson County Judge A. R. Cagle on December 1, 1964 who heard my side of the case and suggested that I send $50 per month to Richmond until further notice, which I am doing.

I certainly do not wish to be in contempt of Court, nor do I wish to be extradicted, especially since it would be less costly to come to Richmond of my own volition.

Sir, may I present a few facts to the Court in my own behalf:

In 1952 I complied with the court order and sent $90 every two weeks to the complainant, totaling $1,990. My gross wages in 1952 were $4,190.

In 1953, I cut down in November to $100 per month as I was not meeting all of my expenses. I sent the complainant a

total of $1,780. My gross wages were $4,306. I remarried this year.

From January 1954 until September 1963, we sent $100 every month without exception—almost ten years. We also sent $50 just before Christmas in 1958 and 1960.

In June 1963 I became unemployed through a reduction in force of Government employees. In September I cut down to $50 per month as I was not earning any money. My wife is employed as a Secretary. In 1963 our joint taxable income was $6,139.

In 1964 I sent the complainant $400 which actually was a hardship to us.

page 29] In 1964 I started selling life insurance and earned commissions of less than $500 during the year. I actually operated at a loss considering car expenses and phone calls. I earned about $1,500 on the farm which we are buying — but state taxes were about $1,200 on the farm. My wife's job is really the only income to keep us meeting our expenses, and at the present, we are going in the hole.

Our real estate mortgages amount to about $44,000 and other debts about $7,000 — on two cars, farm equipment, and home repairs. Our Gross income for 1964 will be considerably less than in 1963 — I haven't figured it yet.

I have just started training in a new line to *suppliment* my life insurance sales. I also hope to sell part of the farm to help make the mortgage payments.

I was not aware that the complainant was really in need of money. She only permitted my 18 year old son to stay with us for a month this past summer (the longest visit ever permitted) and then she sent him money to fly home even though he preferred to stay longer and return by bus. Upon returning to Richmond he bought a motor scooter for $50, spent money for repairs and then traded it for a walkie-talkie plus $10. Then he bought another motor scooter for $50. He enjoys all the ball games and my Mother wrote me, "I see abundance and no emergencies, so of course I'm surprised at her (the complainant's) pettiness." My Mother asked my son if he'd like a new suit for Christmas and he said, "I have two." She asked about an overcoat and he said, "I have that too." On weekends my son often helps my Father and he pays him the same as he would pay other help. My son has also earned money from other jobs.

My parents, Mr. & Mrs. L. B. Sheffield of 2206 Monument Ave in Richmond have taken almost complete care of my daughter (15 years old and mentally retarded) for the past seven years. For the past two years my Father has driven

36 miles daily to keep her in the elementary school she was supposed to attend, and he has paid the $25 per month tuition. My Mother and Father have supplied her every need in sickness and in health and have loved doing it. Neither my parents nor I know how to figure what they have saved the complainant in providing almost constant baby sitting service, food, clothing, and love during the past seven years.

Judge, I honestly feel that I have done well toward my two children, and my parents have contributed substantially to their welfare. I hope the Court will see the unfairness and pettiness of the complainants charges.

Very sincerely,
L. B. SHEFFIELD, JR.

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In this divorce suit personal service of process upon the defendant was had. He appeared in person, and by counsel, and filed an answer. After bed and board decree defendant petitioned the Court to merge the same into a final decree of divorce, which was done on February 24, 1953, said decree providing that defendant pay the sum of $90.00 each two weeks for the support of the complainant and the two children of the marriage. The defendant removed to the State of Illinois many years ago. This Court is now asked, by petition, to adjudicate that defendant is now in arrears in the sum of $13,360.00, the plan being to take such judgment to Illinois, where it could be made a local judgment, no defenses allowable.

It is certain that "some sort of notice by personal or substituted service" of this petition must be given, otherwise there would be a want of judicial due process. *Griffin* v. *Griffin,* 327 U. S. 220, 90 L. Ed. 635, 640. This poses no problem as to substituted service. The question is, should this Court proceed in this manner. In Nelson, Divorce and Annulment, 2nd Ed., Vol. 2, p. 477, Sec. 16.40, the text is as follows:

"If a husband has become a nonresident of the state before application for a money judgment is made, there is some

doubt as to whether the decree can be effectively transmuted into a money judgment unless the husband can be served personally within the state."

I am referred to the Annotation in 168 A.L.R. 232, to the general effect that what is sought to be done here may be done. Unfortunately most of the cases cited deal with judgments for arrearages in New York under a special statute.

page 31] It is perfectly clear that this Court's decree of February 24, 1953, may be taken to the defendant's place of residence in Illinois and a gross judgment for the total amount of the arrearages obtained. *Loughran* v. *Loughran,* 292 U. S. 216, 78 L ed. 1219; Annotation 157 A.L.R. 173. It could probably even be enforced in equity there. *McKeel* v. *McKeel,* 185 Va. 108; Annotation 18 A.L.R. 2d 867.

In both the Loughran Case, *supra,* and in *Barnes* v. *Craig,* 202 Va. 229, at p. 234, the Virginia lower Court had entered judgment for arrears of alimony under a foreign decree against a husband resident within its jurisdiction and personally served with process, but the propriety of so doing was not reviewed. I have found no Virginia case holding that under our practice the divorce court has the power, or duty, to compute arrearages of alimony, or support money, whether or not the husband is still present within the jurisdiction. We have no statute on the subject. With us alimony is a judgment *in personam* and constitutes a lien. *Bray* v. *Landergren,* 161 Va. 699, 707. Installments past due are a vested property. *Eaton* v. *Davis,* 176, Va. 330.

In 27B C.J.S. 182, Divorce, Section 276, the text is, in part, as follows:

" . . . . in some jurisdictions, the court rendering a decree for alimony may, sometimes as a result of statutory authorization, enter a judgment or order for accrued arrearages . . ."

In many jurisdictions, especially where the divorce court may modify retrospectively, the wife has no lien, nor may she have execution, or garnishee, without a judgment for arrearages. This is not our law. We let wives have execution or garnishment process for amounts past due whenever they want it.

The present petition is, after all, an application in equity. Granted that the defendant is personally before the Court in this suit, I think that it would be bad practice to grant the prayer of the petition, even if the court might have jurisdiction to do it, which is not at all clear. A defendant husband

might have defenses, such as payment, accord and satisfaction, limitations, or the like. I do not think that the husband should have to come half way across the country to interpose defenses, if any he has, when what is sought is a local judgment at the place of his residence.

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In the Law and Equity Court of the City of Richmond, the 2d day of February 1965.

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ORDER

The complainant, pursuant to notice personally served upon the defendant without the State, appeared on the 16th day of December, 1964, and tendered her petition, praying that this cause be reinstated on the docket and leave to file the same, but the defendant came not. And the Court, having taken time to consider of its decision, doth order that the cause be placed upon the current docket and the petition filed, but that the prayer thereof be denied and said petition dismissed. It is further ordered that the papers herein be again placed among the ended causes.

Enter
R.L.Y.

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Counsel for Mary Cooke Kincaid Sheffield, the complainant in the above styled case, hereby gives Notice of an Appeal from a final order entered herein on February 2, 1965, pursuant to Rule 5:1, §4, of the Rules of the Supreme Court of Appeals of Virginia.

The said Mary Cooke Kincaid Sheffield, the complainant in the above styled suit, will apply to the Supreme Court of Appeals of Virginia for an appeal from said order of February 2, 1965, and herewith sets forth her Assignment of Error as follows:

1. In its order herein of February 2, 1965, which filed complainant's petition, the court erred in denying the petition's prayer that the court make and enter judgment for arrearages in alimony and support money.

2. In said order of February 2, 1965, the court erred in dismissing said petition.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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