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Clerk, Supreme Court of Appeals
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207 Va 927

Record No. 6377

In the
Supreme Court of Appeals of Virginia
at Richmond

ELIZABETH J. FEARON

v.

GERARD ANDREW FEARON

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

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. 6377

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 4th day of March, 1966.

ELIZABETH J. FEARON, Appellant,

against

GERARD ANDREW FEARON, Appellee.

From the Circuit Court of Fairfax County
Albert V. Bryan, Jr., Judge

Upon the petition of Elizabeth J. Fearon an appeal is awarded her from a decree entered by the Circuit Court of Fairfax County on the 16th day of July, 1965, in a certain chancery cause then therein depending, wherein the said petitioner was plaintiff and Gerard Andrew Fearon was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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ORDER

This cause came on to be heard on this the 23rd day of June, 1961 upon the Bill of Complaint filed herein, upon proof of proper service of process on the Defendant, upon the Answer of the Defendant filed herein and upon the Petition filed herein by the Complainant praying that the Defendant be Ordered to increase the support payments for the Complainant and the children born of the marriage of the parties hereto, upon the report of John H. Rust, Commissioner in Chancery to whom this cause was referred for report and upon the depositions taken on behalf of the Complainant after due notice to the Defendant, and said cause being regularly matured and was argued by Counsel.

And it appearing independently of the admissions of either party in the pleadings or otherwise that the said parties are members of the Caucasian Race and were married June 20, 1942 in Brooklyn, New York; that the Complainant has been an actual *bona fide* resident of and domiciled in the County of Fairfax, State of Virginia for more than one year immediately preceding the institution of this suit; that the Complainant and Defendant last lived and cohabited together as man and wife in Fairfax County, Virginia; that the Defendant is not in the military service of the United States; that the Defendant was guilty of constructive desertion of the Complainant on August 10, 1960; that three children were born of the marriage of the parties hereto, namely Gerard Andrew Fearon, Jr., born May 27, 1943; Joseph Francis Fearon, born July 16, 1945 and Philip Thomas Fearon, born June 8, 1950.

page 40 } IN CONSIDERATION WHEREOF, the Court doth ADJUDGE, ORDER and DECREE that the Complainant, Elizabeth J. Fearon, be and she hereby is di-

vorced *A MENSA ET THORO* from the Defendant, Gerard Andrew Fearon, with the privilege of merging the same into a divorce *A VINCULO MATRIMONII* at the end of the statutory period.

It is further ADJUDGED, ORDERED and DECREED that Elizabeth J. Fearon be and she hereby is awarded sole custody of the children born of this marriage, namely, Gerard Andrew Fearon, Jr., Joseph Francis Fearon and Philip Thomas Fearon; however, the said Gerard Andrew Fearon shall have the right to have each of the three children born of the marriage of the parties hereto in his custody on every other weekend from 6:00 o'clock P. M. Friday to 6:00 o'clock P. M. Sunday, commencing with the weekend of Friday, June 30, 1961, provided that he notifies Elizabeth J. Fearon in writing at least by the Wednesday immediately preceding the Friday on which he expects to take the children in his custody.

It is further ADJUDGED, ORDERED and DECREED that the Defendant, Gerard Andrew Fearon, pay to Elizabeth J. Fearon the sum of $200.00 on the 1st day of July, 1961 and a further sum of $200.00 on the 15th day of July, 1961 and a like sum of $200.00 on the 1st and 15th day of each and every month thereafter for the support and maintenance of the Complainant and the children born of the marriage of the parties hereto.

It is further ADJUDGED, ORDERED and DECREED that all contingent rights of the Defendant in the real and personal property of the Complainant, either now owned or hereafter acquired, shall be, and the same are now hereby extinguished, and that all of the contingent rights of the Complainant in the real and personal property of the Defendant, either now owned or hereafter acquired, shall be, and the same are now hereby extinguished.

It is further ADJUDGED, ORDERED and DECREED that Gerard Andrew Fearon pay to Barnard F. Jennings, Counsel for Elizabeth J. Fearon, a total sum of $68.00 within two weeks from June 23, 1961, said sum representing a $50.00 preliminary counsel fee and $18.00 initial court costs previously ordered to be paid by the Defendant.

page 41 } It is further ADJUDGED, ORDERED and DECREED that Gerard Andrew Fearon pay to Barnard F. Jennings, Counsel for Elizabeth J. Fearon, the sum of $150.00 as and for a final counsel fee together with the sum

of $40.00 representing funds advanced for commissioner's fee and stenographic fee in connection with this cause within 60 days from the date hereof.

AND THIS CAUSE IS CONTINUED.

Enter June 27, 1961.

CALVIN VAN DYCK, Judge.

* * * * *

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* * * * *

Filed Oct. 13, 1964.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

PETITION TO ENLARGE DECREE

To the Honorable Judges of the Circuit Court of the County of Fairfax:

Your petitioner, Gerard Andrew Fearon, respectfully represents as follows:

1. That on the 27th day of June, 1961, there was entered in this cause a decree granting to Elizabeth J. Fearon, Complainant in this cause, a divorce *a mensa et thoro* from the Petitioner and Defendant, Gerard Andrew Fearon, on the grounds of constructive desertion, said constructive desertion having occurred on August 10, 1960.

2. Said constructive desertion and the separation has continued, without interruption, since August 10, 1960, and that more than one year has elapsed since said constructive desertion of Complainant by Defendant.

3. That there were three children born of this marriage, namely, Gerard Andrew Fearon, Jr., born May 27, 1943; Joseph Francis Fearon, born July 16, 1945 and Philip Thomas Fearon, born June 8, 1950.

4. That there has been no reconciliation between your Petitioner, Defendant in this cause, and the said Elizabeth J.

Fearon, Complainant in this cause, nor is a reconciliation probable.

WHEREFORE, your Petitioner prays that this cause be reinstated on the active docket of this Court, that the decree for divorce *a mensa et thoro* be merged into a decree from the bond of matrimony (*a vincula matrimonii*), page 48 } and the said Elizabeth J. Fearon, Complainant, and Gerard Andrew Fearon, Defendant, be forever divorced from each other and that your Petitioner may have such other general relief in the premises as the nature of his case may require or to equity may seem meet and just.

GERARD ANDREW FEARON

* * * * *

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* * * * *

Filed Oct. 13, 1964.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

PETITION

To the Honorable Judges of the Circuit Court of the County of Fairfax:

COMES NOW the Defendant, Gerard Andrew Fearon, and due to a change in circumstances, requests that the amount of money that he was ordered to pay as a result of a Court order entered herein on June 27, 1961, be reduced from $400.00 a month to $200.00 a month. The said $400.00 a month was ordered to be paid to Complainant for the support of herself and three children of the parties. Two of the children of the parties are no longer living with Complainant, neither are they being supported by her. One of the said children, Gerard Andrew Fearon, Jr., is in college and Defendant is now helping both to support him and to send him through college. Defendant's financial situation is such that he is unable to pay any more than $200.00 a month.

The said previous Court decree entered herein was modified by a Court decree in the Municipal Court for the District of Columbia to $300.00; this being due to the fact that at that time one of the aforesaid children was no longer with Complainant and the Court therefore reduced, by $100.00, the amount ordered herein. Said Petition in the Municipal Court for the District of Columbia was initiated by Com-
page 50 } plainant.

Defendant further requests that the Court establish visitation rights which he may exercise during the vacation period of the minor son of the parties, Philip Thomas Fearon.

A copy of the divorce decree to be presented is attached hereto, Petition having been filed to enlarge the same to a final decree of divorce.

GERARD ANDREW FEARON

* * * * *

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* * * * *

SHOW CAUSE ORDER

This matter came on to be heard this 6th day of November. 1964, upon the attached Affidavit and after having been duly considered by the Court, it is hereby.

ADJUDGED, ORDERED and DECREED that the Defendant, Gerard Andrew Fearon, be brought before this Court on the 6th day of November, 1964, and to show cause why he should not be held in contempt of a previous order entered by this Court for support and maintenance of the Complainant and the children born of the marriage of the parties, and for counsel fees and costs.

Entered:

CALVIN VAN DYCK, Judge.

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* * * * *

The undersigned, having been duly sworn states as follows:

1. That heretofore, the Circuit Court of Fairfax County, Virginia, entered an order directing the Defendant, Gerard Andrew Fearon, to pay the sum of $200.00 on the 1st and 15th day of each and every month for the support and maintenance of the Complainant and the children born of the marriage, and to pay $150.00 counsel fees, plus $40.00 for costs for Commissioner and stenographic fees.
2. That since the aforementioned order, the Defendant, Gerard Andrew Fearon, has failed in part to make the payments as ordered by this Court.
3. The total amount due the Complainant for support and maintenance as ordered by the Court is $2,725.00.
4. The total amount due for counsel fees is $150.00, plus $40.00 for costs for Commissioner and stenographic fees as ordered by the Court.
5. That the Defendant, Gerard Andrew Fearon, has refused to pay the aforementioned amounts and has further refused to make the support and maintenance payments and counsel fees and costs as required by this Court after demand has been duly made by the Complainant and her Attorney.

WHEREFORE, the Complainant prays that a show cause order be issued against the Defendant that he be made to show cause why he should not be held in contempt of Court and further the Complainant prays that she be awarded counsel fees.

ELIZABETH J. FEARON

Filed Nov. 13, 1964.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

* * * * *

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* * * * *

PETITION FOR MERGER OF DIVORCE *A MENSA* INTO ONE *A VINCULO*

1. That on the 27th day of June, 1961, there was entered in this cause a decree granting to your complainant, Elizabeth J. Fearon, a divorce from bed and board from the defendant, Gerard Andrew Fearon on the ground of desertion;

11. That four years have elapsed since the date of the desertion and that there has been no reconciliation between the complainant and the defendant, nor is one probable, as will more fully appear and attached hereto marked Exhibit (A) and which is asked to be read as a part hereof:

WHEREFORE, your defendant prays that a decree or divorce from bed and board may be merged into a decree for a divorce from the bond of matrimony; and that the allowance for alimony heretofore made for the complainant be reduced to Three-Hundred dollars ($300.00) per month due to the fact that two (2) of the three (3) minor children are no longer in the care and custody of the complainant and have been emancipated. And your defendant will every pray.

GERARD ANDREW FEARON
By Counsel.

Filed Jun 18, 1965.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County. Va.

* * * * *

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SHOW CAUSE ORDER

This matter came on to be heard this 24th day of June, 1965, upon the attached affidavit and after having been duly considered by the Court, it is hereby:

ADJUDGED, ORDERED AND DECREED that the Defendant, Gerard Andrew Fearon, be brought before this Court on the 25th day of June, 1965, at 10 o'clock, A. M. and

to show cause why he should not be held in contempt of a previous order entered by this Court for support and maintenance of the Complainant and the children born of the marriage of the parties.

Entered.

PAUL E. BROWN, Judge.

* * * * *

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* * * * *

AFFIDAVIT

The undersigned, having been duly sworn, states as follows:

1. That heretofore the Circuit Court of Fairfax County, Virginia, entered an order directing the defendant, Gerard Andrew Fearon, to pay to the undersigned the sum of $200.00 on the 1st and 15th day of each and every month for the support and maintenance of the undersigned Complainant and the children born of the marriage.
2. That since the aforementioned order, the Defendant, Gerard Andrew Fearon, has failed in part to make the payments as ordered by this Court.
3. That the total amount due the Complainant for support and maintenance as ordered by the Court is $3650.00.
4. That the Defendant, Gerald Andrew Fearon, has refused to pay the amounts for support and maintenance as required by this Court.
5. Wherefore the complainant prays that a show cause order be issued against the defendant that he be made to show cause why he should not be held in contempt of court for his failure to make such payments.

ELIZABETH J. FEARON

Sworn to and subscribed before me on the 24th day of June, 1965.

EVELYN A. MEYER
Notary Public.

My commission expires: 11/25/68.

Filed Jun 25, 1965.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

* * * * *

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Fairfax County Court House,
Fairfax, Virginia
July 9, 1965.

Mr. Joseph L. Duvall,
Professional Building,
206 W. Main Street,
Fairfax, Virginia.

Mr. Owen S. Livsie,
Espaminonda & Meyer,
6269 Leesburg Pike,
Falls Church, Virginia.

Re: Fearon *v.* Fearon
In Chancery #15101

Gentlemen:

According to my calculations from July 1, 1961 through June 30, 1965, at $400.00 a month, Mr. Fearon should have paid $19,200.00. While there is no specific testimony from Mrs. Fearon on this, and the June 27, 1961 decree makes no apportionment, it appears that all parties considered the $400.00 to be divided equally among the three (3) children and Mrs. Fearon, or $100.00 apiece. This is borne out by the September 25, 1962 order of the District of Columbia Court. Consequently the support of Gerard A. Fearon, Jr., who became 21 on May 27, 1964, should stop as of that month.

The amounts stated by each party as having been paid directly by Mr. Fearon to Mrs. Fearon do not differ substantially. She states she has received $12,850.00. His ledger sheets, after certain payments are eliminated, total approximately $12,955.00. I will accept Mrs. Fearon's figures on this.

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While under the authority of *Cofer* v. *Cofer,*

205 Va. 834, 140 S. E. Ed 663 (1965), past due installments of support are vested and cannot be set aside, the Court is warranted, I believe, in giving a credit on those installments if support has been paid directly rather than through the mother.

Despite Mrs. Fearon's present claim for the full $400.00 per month, it appears that all parties have in the past, since February, 1962, considered Joseph's support as being paid directly by Mr. Fearon. The District of Columbia order certainly is consistent with this. The defendant is therefore entitled to credit for $100.00 per month since that date.

According to Gerard, Jr. he has since May, 1963, received support directly from his father. The defendant is therefore entitled to credit for $100.00 per month from that date.

A computation of the payments, in view of the foregoing is as follows:

Payments of $400.00 per month from July 1, 1961 to June 30, 1965		$19,200.00
Less:		
Credit for payments made ...	$12,850.00	
Credit for support of Joseph from February, 1962	4,000.00	
Credit for support of Gerard, Jr. from May, 1963	2,400.00	
	$19,250.00	

From this it is seen that the defendant is not in arrears nor in contempt. A decree will be entered to that effect as well as the merged divorce *a vinculo.*

Very truly yours,

Albert B. Bryan, Jr.

AVD/pms

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* * * * *

A. V. B.

DECREE

This cause came on this day to be heard upon the papers formerly read and the proceedings had therein; upon the affidavit filed by Gerard Fearon, Jr., that since the entry of the decree *A MENSA ET THORO* under the date of June 26, 1961, no reconciliation is probable, and that a separation has continued without interruption since the granting of such divorce, and upon the evidence heard *ore tenus;* It is therefore,

ADJUDGED, ORDERED AND DECREED that the decree for divorce from bed and board theretofore entered in this cause under the date of June 26, 1961, be and the same is hereby merged into a decree for divorce from the bond of matrimony, and the said Elizabeth J. Fearon, complainant, and Gerard Andrew Fearon, defendant, are forever divorced from each other. It is further,

ORDERED AND DECREED that the matter of permanent alimony and support be left open as well as the matter of attorney's fees, and in the meantime the support order of June 26, 1961 shall remain in effect.

page 68 } It is further,

ORDERED AND DECREED that both parties are restrained and enjoined from molesting, harrassing or in any way interfering with the other party. It is further,

ORDERED AND DECREED that the defendant shall have reasonable visitation rights with the minor child, Phillip Fearon.

THIS DECREE IS FINAL.

Enter:

ALBERT V. BRYAN, JR., Judge
Circuit Court of Fairfax
County, Virginia.

Date: July 16, 1965.

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NOTICE TO DEFENDANT PURSUANT TO RULE 5:1, PARA. 3(f)

To Gerard Andrew Fearon, 7000 Western Avenue, Chevy Chase, Maryland:

Pursuant to Rule 5:1, Para. 3(f) of the Rules of the Supreme Court of Appeals of Virginia, you are hereby notified that the undersigned will tender a statement of the oral testimony and other incidents of the trial in the above case to the Honorable Albert V. Bryan, Judge of the Circuit Court of Fairfax County, Virginia on September 13, 1965 for certification thereof as part of the record in said case. The said statement of oral testimony and other incidents of the trial can be examined at 6521 Arlington Blvd., Falls Church, Virginia, between the hours of 9:00 A.M. and 5:00 P.M.

Dated this 8th day of September, 1965.

THOMAS A. FORTKORT
Counsel for Complainant.

Filed Sep. 8, 1965.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

The Complainant, Elizabeth J. Fearon, hereby gives notice pursuant to the provisions of Section 4, Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, of her appeal from that certain final judgment entered in the above-styled cause on July 16, 1965, in which the court found the defendant not in contempt of its order to pay support to the complainant and the three children of the parties.

The following are errors assigned:

(1) That the court erred in allowing defendant credit for payments made to persons other than the wife where the

court order for support directed payment to be made to the wife without stating any method for division of the payment.

(2) That the court erred in allowing defendant credit for direct payments to the children contrary to defendant's testimony that payments were made to others for legal, medical, travel and for gift expenses for the benefit of the children.

(3) The court erred in allowing defendant credit for $4,000—in direct payments to his son, Joseph, where contrary to defendant's own testimony and evidence such payments and assignment of expenses paid by the father do not exceed $3500—.

(4) That the court erred in admitting into evidence checks and cash payments made by the defendant to others for the benefit of his son, Joseph, without showing what services were rendered or any other incidents of the expenses incurred.

Respectfully submitted,

ELIZABETH J. FEARON
By Counsel.

Filed Sep. 8, 1965.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

* * * * *

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CERTIFICATE OF TRIAL JUDGE

ALBERT V. BRYAN, Judge

Be it remembered that, the above action was heard *ore tenus* before me, the undersigned Trial Judge presiding at said trial on the 1st day of July, 1965, on the rule for contempt, was argued by counsel, and the complainant introduced the following testimony and evidence:

The complainant, Elizabeth J. Fearon, testified that she

was granted a divorce *a mensa et thoro* from the Defendant, Gerard A. Fearon, on June 27, 1961, and in the same decree was awarded $400 per month for the support and maintenance of herself and her minor children. She stated that the parties had three children, Gerard, age 22, Joseph, age 20, and Philip, age 15. She stated that she was now living in Venice, Florida, with her son Philip, and that her son, Joseph, was in custody of authorities at Culpepper, Virginia.

She offered into evidence her business records showing the amounts of money she had received from the Defendant on the first and fifteenth of each month since June 27, 1961, and that the total of such sums was $12,985.

She further testified that at all times since the date of the divorce decree, she had maintained a home for the use and benefit of her children. Mrs. Fearon testified that Joseph lived with her part of the time but he became a disciplinary problem and ran away from home. Thereafter, at different times Joseph resided with his father or mother for short periods but usually his whereabouts was unknown or in the custody of law enforcement authorities in Florida and Virginia.

The Complainant stated that Philip Fearon resided with her at all times except for visits with his father. She said that Gerard, Jr., attended the University of Virginia during the period of his parents' separation, worked summers as a camp counselor and resided in the Charlottesville area, except for visits with his father or mother.

Complainant stated that she worked as a school teacher until June of 1964 when illness made her resign. She further stated that during the time of her employment she sent Gerard Jr. up to one-half of the support money she had received to further his education.

The Defendant testified as follows:

Gerard A. Fearon, Sr., stated he now resided at 7000 Western Avenue, Chevy Chase, Maryland. He testified to and presented into evidence cancelled checks showing amounts paid directly to Mrs. Fearon, each of the three boys, and to others. He also introduced sheets of account showing the cancelled check numbers and cash payments, the names of persons to whom all checks and cash payments were made, for what purpose and for whose benefit these payments were made. Counsel for the Complainant objected to the introduction of any check not made payable to Elizabeth J. Fearon. Objection was overruled. Counsel further objected to the

presentation of defendant's sheets of account and was overruled.

page 82 } Defendant further stated that he was not required to pay Complainant over $300 per month after September 1962 and introduced a District of Columbia Court Order dated September 25, 1962 awarding $300 per month to Mrs. Fearon and her sons Gerard and Philip.

Upon cross examination, Counsel for the Complainant introduced a letter in the handwriting of the Defendant, addressed to the Complainant, stating that Mrs. Fearon had made contributions towards the tuition and expenses incurred by Gerard Fearon Jr. while in attendance at the University of Virginia. Defendant admitted he had written the letter and that the statements contained therein were true.

Witness Gerard A. Fearon Jr. testified as follows:

Gerard A. Fearon Jr. testified that he had received money from his father while attending college and that the sum of this money was about $100 per month for about two years. He also stated that he had received substantial sums of money at varying times from his mother.

COUNSEL'S CERTIFICATE

The undersigned counsels for Complainant and Defendant respectively, in the contempt case, Elizabeth J. Fearon *v.* Gerard Andrew Fearon, heard in the Circuit Court of Fairfax County on the 1st day of July, 1965, hereby affix our signatures to the foregoing statement of facts, testimony, and other incidents of trial provided by Rule 5:1, Section 3(e) of the Rules of the Supreme Court of Appeals of Virginia, to the end that the same become part of the record on appeal.

Given under our hand this 13th day of September, 1965.

THOMAS A. FORTKORT
Counsel for Complainant.

Tendered the 13th day of September, 1965, pursuant to notice.

A. V. B., JR., Judge.

Elizabeth J. Fearon.

* * * * *

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NARRATIVE STATEMENT OF FACTS

ELIZABETH J. FEARON,

The complainant, Elizabeth J. Fearon, testified that she was granted a divorce *a mensa et thoro* from the defendant, Gerard A. Fearon, on June 27, 1961, and in the same decree was awarded $400 per month for the support and maintenance of herself and her minor children. She stated that the parties had three children, Gerard, age 22, Joseph, age 20, and Philip, age 15. She stated that she was now living in Venice, Florida, with her son Philip, and that her son, Joseph, was in custody of authorities at Culpeper, Virginia.

She offered into evidence her business records showing the amounts of money she had received from the defendant on the first and fifteenth of each month since June 27, 1961, and that the total of such sums was $12,985 and there is now a deficit of $6350.

She further testified that at all times since the date of the divorce decree she had maintained a home for the use and benefit of her children. Mrs. Fearon testified that Joseph lived with her part of the time but he became a disciplinary problem and ran away from home. Thereafter, at different times Joseph resided with his father or mother for short periods but usually his whereabouts was unknown or in the custody of law enforcement authorities in Florida and Virginia.

The complainant stated that Philip Fearon re-
page 86 } sided with her at all times except for visits with his father. She said that Gerard, Jr., attended the University of Virginia during the period of his parents' separation, worked summers as a camp counsellor and resided in the Charlottesville area, except for visits with his father or mother.

Complainant stated that she worked as a school teacher until June of 1964 when illness made her resign. She further stated that during the time of her employment she sent Gerard, Jr., up to one-half of the support money she had received to further his education.

Gerard A. Fearon, Sr.

On cross examination Mrs. Fearon testified that the oldest son, Gerard, Jr., spent the summers with his father and had spent approximately one week per year with her for the last three years. She also testified that on September 25, 1962, she instituted a support action in the District of Columbia for herself, Gerard, Jr., and Phillip; that she has not had the custody of Joseph since March, 1962; and that on one occasion the defendant sent to her a one-way ticket for Phillip to come from Florida.

GERARD A. FEARON, SR.,

testified that he now resided at 7000 Western Avenue, Chevy Chase, Maryland. He testified to and presented into evidence cancelled checks showing amounts paid directly to Mrs. Fearon, each of the three boys, and to others. He also introduced sheets of account showing the cancelled check numbers and cash payments, the names of persons to whom all checks and cash payments were made, for what purpose and for whose benefit these payments were made. Counsel for the complainant objected to the introduction of any check not made payable to Elizabeth J. Fearon. Objection page 87 } was overruled. Counsel further objected to the presentation of defendant's sheets of account and was overruled.

Defendant further stated that he was not required to pay complainant over $300 per month after September, 1962, and introduced a District of Columbia Court Order dated September 25, 1962, awarding $300 per month to Mrs. Fearon and her sons, Gerard and Philip. He further testified that his son, Gerard Andrew, Jr., had in fact lived with him from June, 1962, until June, 1965, except for the periods when he was attending the University of Virginia; that upon at least four occasions he had mailed tickets to his son Philip in Florida for the son to visit him here in his home and that the complainant had refused to allow the son to visit with the father; and that the Juvenile Court of Valusia County, Florida, had awarded custody of Joseph to him on March 1, 1962.

Upon cross examination, counsel for the complainant introduced a letter in the handwriting of the defendant, addressed to the complainant, stating that Mrs. Fearon had made contributions towards the tuition and expenses incurred by Gerard Fearon, Jr., while in attendance at the University

Gerard A. Fearon, Jr.

of Virginia. Defendant admitted he had written the letter and that the statements contained therein were true.

GERARD A. FEARON, JR.,

testified that he had received money from his father while attending college and that the sum of this money was about $100 per month for about two years. He also stated that he received substantial sums of money at varying times from his mother.

He further testified on direct examination that page 88 } he was now living with his father and that in May of 1963 he called on his father for financial aid and since then has received support directly from his father. He graduated from college in June, 1965.

On cross examination Gerard testified that while at the University of Virginia he visited his mother once or twice; that he became twenty-one on May 27, 1964; and that the first two years he was at the University of Virginia his mother sent him all the money he received.

The foregoing narrative statement was compiled from a proposed narrative tendered pursuant to notice by counsel for complainant on September 13, 1965, from a letter from counsel for defendant submitting on September 20, 1965, his recollection of the incidents of the trial, and from the notes taken by the Court. The evidence was heard on July 1, 1965, following which the Court took the matter under advisement and announced its decision to counsel by letter dated July 1, 1965. The order dismissing the rule was entered on July 16, 1965.

Signed and filed this 23rd day of September, 1965.

G. V. B., JR., Judge.

Received and filed this 23rd day of September 1965.

EDWARD E. YOUNG
Deputy Clerk, Circuit Court,
Fairfax, Virginia.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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