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Record No. 6988

In the Supreme Court of Appeals of Virginia at Richmond

EDYTHE BAKER DIENHART

v.

WALTER ARGYLE DIENHART, JR.

FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

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. 6988

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 5th day of June, 1968.

EDYTHE BAKER DIENHART, Appellant,

against

WALTER ARGYLE DIENHART, JR., Appellee.

From the Circuit Court of the City of Virginia Beach
Paul W. Ackiss, Judge

Upon the petition of Edythe Baker Dienhart an appeal is awarded her from a decree entered by the Circuit Court of the City of Virginia Beach on the 5th day of December, 1967, in a certain chancery cause then therein depending, wherein the said petitioner was plaintiff and Walter Argyle Dienhart, Jr., 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 $300, with condition as the law directs.

RECORD

page 7 } STIPULATION AND AGREEMENT

THIS AGREEMENT, Made this 27th day of August, 1965, between EDYTHE BAKER DIENHART, party of the first part, and WALTER ARGYLE DIENHART, JR., party of the second part.

WITNESSETH

1. That the parties to this Agreement are husband and wife, having been married on February 9th, 1954, in the City of Chicago, County of Cook, State of Illinois, and, as differences have arisen between the parties hereto as a result of which they are now living apart and will continue to live apart for the rest of their natural lives, they desire to enter into this Agreement governing their separation.

2. That there were two children born of the aforesaid marriage, to-wit: James Howard Dienhart, aged 10, and William Craig Dienhart, aged 9; that the party of the second part hereby agrees that the custody of the children should be with the party of the first part, Edythe Baker Dienhart, she being a fit and proper person to care for the children.

3. That the party of the second part agrees that he will pay child support for the aforementioned children in the amount of Two Hundred Dollars ($200.00) per month for each child and alimony of One Hundred Twenty-Five Dollars ($125.00) per month, said payments payable at least one-half on or before the fifth of each month and the balance on or before the twentieth of each month beginning with the month of September, 1965. Payments for child support hereunder shall continue until the twenty-first birthday of each child or until each child shall no longer be enrolled in an accredited school or college or become self-supporting or marry, whichever shall first occur. The party of the first part agrees that she will not attempt to take the two aforementioned children as exemptions on her State and Federal income tax returns.

page 8 } 4. The party of the first part, Edythe Baker Dienhart, agrees to allow the party of the second part to see and visit with the children at all reasonable times, provided he gives reasonable notice to the party of the first part of proposed visits and she further agrees that the party of the second part shall have the right to have said children

visit with him for at least one month during the summer of each year, the exact dates to be determined by mutual agreement between the parties.

In addition, the party of the first part shall have the right for the two children of the party of the second part, Karen Elizabeth Dienhart and David Alan Dienhart, to visit with her for at least one month in each summer, which period of time shall not be the same month that James Howard Dienhart and William Craig Dienhart are visiting with the party of the second part.

The party of the second part shall be responsible for transportation of the children to and from the residence of the party of the second part.

5. The parties hereto mutually agree that the party of the second part shall receive the following items of personal property, to-wit: The high fidelity *steriophonic* record player and all records used in connection therewith; three beds, three dressers; one rocking chair and one television set. All other furniture and furnishings belonging to the parties hereto shall hereafter be the sole property of the party of the first part.

6. The party of the second part will transfer, unto the party of the first part, title to that certain Comet Mercury automobile which is in her possession.

7. The party of the second part will designate irrevocably each of his children, to-wit: Karen Elizabeth, David Alan, James Howard and William Craig as co-equal beneficiaries of his life insurance policy (Equitable Life Assurance Society of the United States group policy No. 13123H).

page 9 } In the event he is no longer insured under said policy, to the extent possible, he will provide a life insurance policy of at least equal benefits on behalf of said children. Further, he will continue to provide a medical insurance policy having benefits at least equal to the present, abovementioned, policy.

8. The party of the second part, Walter Argyle Dienhart, Jr., hereby assumes responsibility for all debts of the marriage incurred prior to the date of this Agreement.

9. The parties hereto desire that this Agreement should be made a part of any divorce decree which may hereafter be entered by a Court of competent jurisdiction. The party of the second part hereby agrees that he will pay attorney's fees to the attorney for the party of the first part in the amount of Three Hundred Dollars ($300.00) plus all costs of Court.

10. This Agreement is intended to sever all property rights, both real and personal, which were created by this marriage.

WITNESS the following signatures and seals:

EDYTHE BAKER DIENHART (SEAL)
Edythe Baker Dienhart

WALTER ARGYLE DIENHART, JR. (SEAL)

* * * * *

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* * * * *

DECREE OF DIVORCE *A MENSA ET THORO*

THIS CAUSE came on this day to be heard upon papers formally read and evidence offered in support thereof, and was argued by counsel.

Upon consideration whereof, it appearing to the Court from satisfactory evidence taken and filed herein that the parties hereto were married on the 9th day of February, 1954, in the City of Chicago, State of Illinois; that the parties were bona fide residents and domiciled in the State of Virginia for more than one year proceeding commencement of this suit; that respondent has accepted service of process and waived further process, return thereof and all notice; that on or about August 23, 1965, respondent, without just cause removed himself from the home in which he had been living with complainant, evidencing an intention not to return; that there has been no subsequent cohabitation between the parties nor is a reconciliation probable; that the parties, by written instrument dated August 27, 1965, and made a part of the record hereof, entered into an page 16 } agreement governing their separation; that neither party is a member of the Armed Forces of the United States and that both are members of the white race.

It is therefore DECREED that EDYTHE BAKER DIENHART and WALTER ARGYLE DIENHART, JR. be, and hereby are, divorced from bed and board on the ground of desertion by respondent; that complainant shall have custody of the children born of the marriage, to-wit: James Howard Dienhart and William Craig Dienhart; that respondent shall

have the right of visitation with said children at all reasonable times and after reasonable notice to complainant of his intended arrival and further shall have the right to have said children visit with him for one month during the summer of each year; that for support, education and maintenance, respondent shall pay to complainant the sum of Two Hundred Dollars ($200.00) per month for each child, said payments with respect to each of said children shall continue until his twenty-first birthday or until he shall no longer be enrolled in an accredited school or college or shall become self-supporting or marry, whichever shall first occur; that by way of alimony respondent shall pay to complainant the sum of One Hundred and Twenty-five Dollars ($125.00) per month; that said payments for support, education and maintenance and for alimony shall begin immediately and shall be payable at least one-half on or before the fifth of each month and the balance on or before the twentieth of each month; that, insofar as property rights are concerned the written agreement of August 27, 1965, between the parties hereto, is hereby ratified and confirmed.

It is further ORDERED that this cause be retained on the docket.

Seen: GEORGE F. DARDEN, JR., p.q.

CHARLES A. McDUFFIE, p.d.

Enter 9/28/66 RBK

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* * * * *

FINAL DECREE

This day came defendant, Walter Argyle Dienhart, Jr., by counsel, and filed his petition praying for merger of the decree of divorce from bed and board heretofore entered on September 28, 1966, into a decree of divorce from the bonds of matrimony;

And it appearing to the court from satisfactory evidence, the depositions filed in support of said petition and from argument of counsel that no reconciliation has taken place between complainant and defendant since the separation which commenced on August 23, 1965; that none is probable;

that the separation between the parties has continued without interruption since the granting of the divorce from bed and board by decree entered herein on September 28, 1966;

IN CONSIDERATION WHEREOF it is ORDERED, ADJUDGED and DECREED that the decree of divorce from bed and board heretofore entered on September 28, 1966, be merged into a decree of divorce from the bonds of matrimony; and that the provisions of the aforesaid decree of September 28, 1966, with respect to payments to be made by defendant to complainant, and affirming the settlement agreement entered into by the parties on August 27, 1965, be and the same hereby are continued in full force and effect.

Enter 10/13/66 RBK

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* * * * *

DECREE

THIS CAUSE came to be heard November 10, 1967, upon the papers formerly read, the Petition of Walter Argyle Dienhart, Jr. for elimination of alimony and reduction in child support payments and Notice returnable October 27, 1967, served on the complainant, Edythe Baker Dienhart, in person on October 26, 1967, and continued on motion of her counsel until November 10, 1967, the Petition of Edythe Baker Dienhart to increase child support payments, the parties appearing in their proper persons with their counsel, the evidence heard *ore tenus* and the matter was argued by counsel.

UPON CONSIDERATION WHEREOF, and it appearing to the Court that the complainant, Edythe Baker Dienhart, was unemployed when the Court entered its decree on September 28, 1966, requiring the defendant, Walter Argyle Dienhart, Jr., to pay to the complainant, Edythe Baker Dienhart, the sum of $125.00 per month, by way of alimony, and that it further appearing that the complainant, Edythe Baker Dienhart, is presently employed and taking home $73.95 every two weeks, it is

ADJUDGED, ORDERED AND DECREED, that the alimony in the decree of this court entered September 28, 1966,

be and hereby is, eliminated, to which action of the Court counsel for the complainant duly objected and excepted; and it is further

page 36 } ADJUDGED, ORDERED AND DECREED, that the defendant's Petition to reduce child support payments, be and hereby is, denied, to which action of the Court the defendant by counsel duly objected and excepted.

Enter: 12/5/67 P.W.A.

I ask for this:
BRUCE G. MURPHY

Seen & objected to:
GEORGE F. DARDEN, JR., p.q.

* * * * *

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* * * * *

ASSIGNMENTS OF ERROR

The Complainant, Edythe Baker Dienhart, hereby assigns the following error of the Court in this cause:

1. The Court erred in ordering that the alimony payable from Respondent to Complainant be eliminated.

EDYTHE BAKER DIENHART

By GEORGE F. DARDEN, JR.
Counsel

Filed 2/2/68 Phyllis Newman, D.C.

* * * * *

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* * * * *

ASSIGNMENT OF CROSS ERROR

The defendant, Walter Argyle Dienhart, Jr., hereby assigns the following error of the Court in this cause.

1. The Court erred in refusing to reduce child support payments.

WALTER ARGYLE DIENHART, JR.

By BRUCE C. MURPHY
Of Counsel

Filed 2-5-68 P. Newman

* * * * *

Dep.
page 1 } Depositions of Walter Argyle Dienhart, Jr. defendant in the case of *Dienhart* v. *Dienhart,* presently pending in the Circuit Court of the City of Virginia Beach, Virginia, before Elaine Lois Porter, a Notary Public in and for the City of Norfolk, State of Virginia, at the offices of Pender, Coward, McDuffie & Addison, Attorneys at Law, Suite 700 One Main Plaza East, Norfolk, Virginia, on the 30th day of September, 1966, commencing at 10 o'clock A.M. and conducted by Attorney Charles A. McDuffie of the firm of Pender, Coward, McDuffie & Addison. Depositions also taken of Clyde Sheffield Evans, witness. Attended by Edythe Baker Dienhart, complainant in the above cause, and her attorney, George F. Darden, Jr.

Mr. McDuffie: These depositions are being taken pursuant to notice duly served upon complainant as well as waiver of even date herewith executed by complainant and both of which are attached hereto to be filed herewith.

Oath of witnesses: Raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God? We do.

Question by Mr. McDuffie: Would you state your full name please sir?

Answer: Walter Argyle Dienhart, Jr.

Q. And you are the defendant in this cause in which Edythe Baker Dienhart is complainant, is that correct?

Clyde Sheffield Evans

A. Yes.

Q. Mr. Dienhart, when did you and your wife initially separate?

A. August last year.

Q. 1965?

A. Yes.

Q. A decree of divorce *a mensa et thoro* has been entered on the basis of your desertion which occurred on August 23, 1965. Have you and your wife cohabited or lived together since that date?

A. No.

Q. And has your separation been continuous and uninterrupted since that date?

A. Yes.

Q. Is there any probability of reconciliation between you and your wife?

Dep. page 2 } A. No.

Q. Are you desirous of the provisions of the settlement agreement of August 27, 1965 being continued?

A. Yes.

Q. Any questions Mr. Darden?

A. No questions.

Q. Mr. Dienhart are you desirous of having the *a mensa* decree entered on September 28, 1966, merged into a final decree of divorce from the bond of matrimony?

A. Yes.

Q. State your full name please sir?

A. Clyde Sheffield Evans.

Q. And where do you reside?

A. 3200 Blue Ridge Court, Virginia Beach, Virginia.

Q. Mr. Evans, are you acquainted with Mr. and Mrs. Dienhart, the complainant and defendant in this case?

A. Yes.

Q. And how long have you known them?

A. Approximately three and one-half years.

Q. Have you maintained your acquaintance with them since they separated on August 23, 1965?

A. Yes.

Q. Do you know from your own knowledge whether or not that they have lived together since that separation?

A. They have not.

Q. Their separation has then been continuous and uninterrupted since August 23, 1965?

A. Yes.

Clyde Sheffield Evans

Q. In your opinion is there any probability of a reconciliation between them?

A. In my opinion, No.

Q. Mr. Darden, do you have any questions?

Dep. A. No.

page 3 } Taken and transcribed by Elaine Lois Porter, a Notary Public for the City of Norfolk, Virginia, this 30th day of September, 1966.

My commission expires: August 4, 1970.

Elaine Lois Porter
Notary Public

Filed 10-6-66.

J. Curtis Fruit

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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