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Clerk, Supreme Court of Appeals
Richmond, Va.

211 VA 397

Record No. 7379

In the Supreme Court of Appeals of Virginia at Richmond

JUNE S. JENKINS

v.

ELMER C. JENKINS

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.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7379

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 3rd day of December, 1969.

JUNE S. JENKINS, Appellant,

against

ELMER C. JENKINS, Appellee.

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

Upon the petition of June S. Jenkins an appeal is awarded her from a decree entered by the Circuit Court of Fairfax County on the 3rd day of April, 1969, in a certain chancery cause then therein depending, wherein Elmer C. Jenkins was plaintiff and the petitioner and others were defendants; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said court below in the penalty of $300 with condition as the law directs.

RECORD

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page 61 }

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In Chancery No. 23583

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Commissioner's Report

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page 63 }

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Your Commissioner is of the opinion that the title to the subject property is vested an undivided one-half interest in the Complainant, Elmer C. Jenkins, and an undivided one-half interest in the Defendant, June S. Jenkins, subject to the liens that will be hereinafter set forth.

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page 66 }

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Your Commissioner is of the opinion that the net interest of the Complainant Elmer C. Jenkins, after paying the various liens against the property, should be held under the direction of this Court, as security for the future payments to the Defendant June S. Jenkins, for alimony and child support referred to in judgment B.

page 67 }

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and that no reimbursement be allowed to the Defendant June S. Jenkins for sums of money expended by her in preserving, repairing and maintaining the subject property and in mak-

ing the mortgage and other payments thereon, as prayed for in the cross-bill of the said Defendant.

* * * * *

Filed
Feb 16 1968

W. Franklin Gooding
Clerk of the Circuit Court
of Fairfax County, Va.

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page 75 }

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In Chancery No. 23583

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Exceptions Taken By June S. Jenkins,
Defendant and Cross-Complainant, To
The Report of Commissioner

Comes now the defendant and Cross-Complainant, June S. Jenkins, and files the following Exceptions to the Report of Commissioner, John H. Rust, to whom this Cause was referred by Decree entered on the 13th day of January, 1967, and which Report bears date on the 16th day of February, 1968:

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page 76 }

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SIXTH EXCEPTION: The Commissioner erred in recommending that no reimbursement be allowed defendant and cross-complainant for sums of money expended by her in preserving, repairing and maintaining subject property and in making mortgage and other payments thereon since the entry of the Decree of Absolute Divorce between the parties, unless complainant be required to convey his equity interest in said property to defendant and cross-complainant.

SEVENTH EXCEPTION: The Commissioner erred in concluding that defendant and cross-complainant was required to make mortgage payments on the house out of the monthly payments of alimony and child support after entry of the Final Decree of Divorce, there being no such provision contained in said Decree, and this Court having heretofore ruled to the contrary; and the Commissioner further erred in reporting that since the final decree of divorce the complainant has been denied any use of said property, or any rental therefrom, there being no evidence to support such conclusion of the Commissioner, all of the evidence being to the contrary, said property having been used to house complainant's five minor children as well as defendant and cross complainant, and complainant having left said former marital abode of his own free will and his absence therefrom having been voluntary on his part at all times; and that in fact, this Court took into consideration the fact that defendant and cross-complainant, and the five minor children of the parties would have the use of said property as a home when it fixed the amount of alimony and child support which it ordered the complainant to pay to the defendant and cross-complainant.

Wherefore, the said defendant and cross-complainant doth except to the Report of said Commissioner, and prays that her exceptions be sustained, and that the said Report be corrected denying complainant's request for partition of subject property, and requiring him to specifically perform his part of the aforesaid agreement by conveying his equity interest in subject property to the defendant and cross-complainant, or, in the alternative, if such specific performance be not decreed, that defendant and cross-
page 77 } complainant be awarded (a) judgment against complainant for one-half of the net proceeds of sale of Lots 54 and 55, Indian Spring Subdivision, (b) reimbursement for all sums expended by her in preserving, repairing and maintaining subject property, and in making all mortgage and other payments thereon, since the entry of the aforesaid Final Decree of Absolute Divorce between the parties, and (c) that complainant's request for a sale of subject property be denied as not being in the best interests of the parties, or either of them, since such a sale would deprive defendant and cross-complainant, as well as the five minor children of the parties, of their home, and would avail complainant nothing if his share of the net proceeds of sale be sequestered as security for future payments of alimony and child support, as it is submitted that it should be in the event of a sale of subject property.

Respectfully submitted this 23rd day of February, 1968.

June S. Jenkins,
Defendant and Cross Complainant,
By Counsel

* * * * *

Filed
Feb 26 1968

W. Franklin Gooding
Clerk of the Circuit Court
of Fairfax County, Va.

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page 80 }

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In Chancery No. 23583

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COMPLAINANT'S EXCEPTIONS TO
COMMISSIONER'S REPORT

Comes now the complainant and cross-defendant, Elmer C. Jenkins, and respectfully files his exception to the report of John H. Rust, Commissioner, to whom this cause was referred, and which report bears date of February 16, 1968, to-wit: he accepts to so much of the report as recommends that complainant's net interest in the property should be held under the direction of this court as security for the future payments to defendant for alimony and child support, the evidence having shown that such sequestration of complainant's interest is not required in light of complainant's compliance with the court order over an extended period of time and in view of the evidence that he has no interests outside the Northern Virginia area.

Elmer C. Jenkins

By Gant Redmon.
Counsel

* * * * *

Filed
Feb 28 1968

W. Franklin Gooding
Clerk of the Circuit Court
of Fairfax County, Va.

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page 82 }

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In Chancery No. 23583

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DECREE OF SALE

This cause came on to be heard on March 8th, 1968 upon the papers formerly read: upon the report of John H. Rust, Commissioner in Chancery, dated February 16, 1968, and filed in the Clerk's office on February 16, 1968, together with the depositions, taken after due notice, and exhibits therewith returned, and upon the exceptions heretofore filed by the complainant and cross-defendant Elmer C. Jenkins, by the defendant and cross-complainant June S. Jenkins, and by defendant First Federal Savings and Loan Association of Arlington, and was argued by counsel for Elmer C. Jenkins, June S. Jenkins, and L. M. Coyner, Director of Finance.

Upon Consideration Whereof, the Court does hereby overrule all exceptions filed by the respective parties and does hereby approve and confirm said report to which rulings the Defendant and Cross-Complainant June S. Jenkins does, by counsel, except.

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page 83 }

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Date: March 19th, 1968. A.V.B. Jr.
Albert V. Bryan, Jr., Judge
Circuit Court of Fairfax County

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page 94 }

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In Chancery No. 23583

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SCHEME OF DISTRIBUTION

The undersigned Special Commissioners, having executed and closed a contract of sale of the property which is the subject of this partition suit as authorized and directed by decree of this court dated September 3, 1968, herewith submit to the Court for ratification the deed and proposed scheme of distribution of the funds derived from said sale.

Charges for real estate commission as set forth in the contract heretofore submitted to the Court; preparation and recording of the deed from the Special Commissioners; settlement fee; taxes, penalty and interest for the years 1964, 1965, 1966, 1967, proration of 1968 taxes; sewer lien; termite inspection per the sales contract; payment of deeds of trust to First Federal Savings and Loan Association of Arlington, including principal, interest, pre-payment penalties and release fees; water pump; and cost of this proceeding (which sums represent costs chargeable to both the complainant and the defendant by virtue of the sales contract or as found by the report of the Commissioner) are reflected on the settlement statement which is attached hereto and made a part hereof.

page 95 } The balance after deducting the aforementioned charges amounts to $14,386.40, which the Commissioners propose to distribute as follows:

I. To June S. Jenkins (one-half of net proceeds per Commissioner Rust's report)	$7,193.20
Less: one-half of stenographer's fee due Frances G. Webb (page 4, item (e)(1) of Commissioner Rust's report)	$ 63.45
Net share payable to June S. Jenkins	$7,129.75
II. To Elmer C. Jenkins (one-half of net proceeds per Commissioner Rust's report)	$7,193.20

* * * * *

Wherefore, the Special Commissioners request the Court to approve the deed to be delivered in this cause page 96 } and the scheme of distribution set forth above and further request that the Court determine the distribution of the share of complainant Elmer C. Jenkins.

Respectfully submitted,

Paul Lee Sweeny,
Special Commissioner

Gant Redmon
Special Commissioner

Exception renewed insofar as reimbursement to debt June S. Jenkins for all mortgage payments and monies paid by her in repairing, preserving and maintaining said real property since the entry of the Decree of Absolute Divorce between the parties on May 8, 1966 is not provided for.

Paul Lee Sweeny
Counsel for June S. Jenkins

Filed
Oct 17 1968

W. Franklin Gooding
Clerk of the Circuit Court
of Fairfax County, Va.

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page 98 }

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In Chancery No. 23583

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NOTICE

TO:
June S. Jenkins
c/o Paul Lee Sweeny
1800 Valley Wood Road
McLean, Virginia

Please Take Notice that the undersigned will move the Circuit Court of Fairfax County at the Court House in Fair-

fax on Friday, January 31, 1969, at 10:00 a.m. or as soon thereafter as counsel may be heard to vacate the lien imposed upon the distributive share of the undersigned securing payment of alimony and support pursuant to order of the Court entered May 10, 1966, and further, that the undersigned will petition the Court to assess against the distributive share of defendant and cross-complainant June S. Jenkins the sum of two thousand, three hundred sixty-five dollars and seventy-eight cents ($2,365.78), representing real estate taxes paid from the proceeds of the sale of the property which is the subject of suit herein for the years 1964 through settlement on October 4, 1968; and further, that the undersigned will present to the Court for entry a decree confirming the sale of the property which is the subject of this litigation and for a final order of distribution in accordance with the foregoing.

page 99 } This notice is served upon you as the only opposing party inasmuch as the remaining defendants have been paid in accordance with the Scheme of Distribution heretofore submitted tothe Court.

Elmer C. Jenkins

By Gant Redmon
Counsel

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Filed
Jan 27 1969

W. Franklin Gooding
Clerk of the Circuit Court
of Fairfax County, Va.

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page 100 }

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In Chancery No. 23583

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TO:
Elmer C. Jenkins,
c/o Gant Redmon,
6011 Woodmont Road,
Alexandria, Virginia

Please Take Notice that the undersigned will move the Circuit Court of Fairfax County, Virginia at the court house

in Fairfax, Virginia, on Friday, January 31, 1969, at 10:00 A.M., or as soon thereafter as counsel may be heard, for the entry of an order herein re-imbursing defendant and cross-complainant June S. Jenkins, out of the proceeds of sale of subject real estate involved in this proceeding, for the total sum of $3,999.51 expended by June S. Jenkins in preserving, repairing and maintaining subject real property and in making the mortgage and other payments thereon for the months of June, 1966 through July, 1968, both inclusive, following the entry of a final decree of Absolute Divorce awarded to defendant and cross-complainant from the complainant and cross-defendant on May 8, 1966 in Chancery Cause No. 18917. The Court will be asked to assess one-half of the aforesaid sum of $3,999.51, or $1,999.75, against the share of the said Elmer C. Jenkins and to award the same to defendant and cross-complainant June S. Jenkins to re-imburse her for the aforesaid payments made by her, making a total amount distributable to June S. Jenkins herein of $9,192.95.

June S. Jenkins, Defendant and Cross-Complainant
By Counsel

* * * * *

Filed
Jan 29 1969

W. Franklin Gooding
Clerk of the Circuit Court
of Fairfax County, Va.

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page 112 }

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February 11, 1969

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Re: Jenkins v. Jenkins
Re: In Chancery No. 23583

Gentlemen:

I have considered your memoranda together with the record in both the above case and Chancery No. 18917.

The parties were divorced by decree entered on May 8, 1966. The property was sold on or about October 4, 1968. From the net proceeds the sum of $2,365.78 was deducted, representing real estate taxes, penalty and interest as follows:

1964	$ 506.26	
1965	514.61	
1966	487.06	
1967	502.07	
1968	355.78	(adjusted to date of sale)
	$2,365.78	

This sum has been charged equally against the share of each coparcener, and the question now to be determined is whether Mr. Jenkins is entitled to a claim against the other half, as allowed by Va. Code Ann. Sec. 8-514.1 (1957 Repl. Vol.) "for receiving more than comes to his (her) just share or proportion."

page 113 } Two other items of allowance to or claims against the share of one party or the other have already been decided: First, the claim of Mrs. Jenkins for an allowance for repairs and maintenance was denied when it was raised as an exception to the Commissioner's report; and second, the claim of Mr. Jenkins for allowance for mortgage payments made by him for the period subsequent to July, 1968 until the property was sold, was denied at the conclusion of the January 31st hearing on the ground of lack of evidence of such payments.

For the period May 8, 1966 to October 4, 1968, Mrs. Jenkins had exclusive use of the property. She paid nothing by way of rent and no demand on her for the use and occupancy was made by her former husband. Indeed, he still makes no such demand. Mrs. Jenkins made the mortgage payments during this period, at least through July, 1968.

Prior to the divorce the parties owned the property as tenants by the entirety with the common law right of survivorship. This was the equivalent of the pure pre-1787 (in Virginia) "joint" tenancy. Among its attributes were that each joint owner was seized and possessed of the entire estate and that both have one and the same interest. I do not think either of the parties is entitled to a claim against the share of the other for allowance or charges which might otherwise accrue during the period when the property was so held.

The divorce converted the tenancy to one in common. Va. Code Ann. Sec. 20-111 (1960 Repl. Vol.) While not techni-

cally "ousted", the use by Mrs. Jenkins of the property following the divorce is effect excludes Mr. Jenkins. She would therefore be accountable to him for the fair value of his interest in the property, *Early* v. *Friend*, 16 Gratt. (57 Va.) 21, 49 (1860). Although the record does not reveal the rental value of the property, its gross sale price was $32,000.00. Taxes for the years 1966, 1967 and 1968 averaged approximately $480.00 per year or $40.00 per month on the entire property. To charge Mrs. Jenkins with payment
page 114 } of all the taxes would be equivalent to charging her rent of only $20.00 per month. While she has paid, through mortgage payments, by way of interest and principal on the half of the property that was not hers, approximately $75.00 per month (that being approximately one-half of such payment), in the opinion of the court, the amount of this payment was included in arriving at the support and maintenance award. This was done specifically by the March 2, 1964 decree and certainly impliedly by the September 18, 1964, May 8, 1966 and January 31, 1967 decrees.

It is the ruling of the court that the entire real estate taxes, not just one-half, for the period from May 8, 1966 to October 4, 1968 be charged against the share of net proceeds of sale due Mrs. Jenkins.

Mr. Redmon should prepare a decree in conformity herewith and include therein the other rulings made on January 31, 1968, on the petition of each party. The decree should also recite that counsel for defendant has indicated her intention to appeal and leave blank the amount of the bond. I suggest the decree be presented after notice to Mr. Sweeny or, if the form can be agreed upon, it can be presented at any time.

Very truly yours,

Albert V. Bryan, Jr.

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In Chancery No. 23583

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DECREE CONFIRMING SALE AND
FINAL ORDER OF DISTRIBUTION

This Cause came on to be heard on October 22, 1968 upon the scheme of distribution presented by the Special Commissioners, upon the request of the said Special Commissioners for ratification of the deed to be delivered herein pursuant to contract of sale heretofore authorized by the Court, upon the request of the said Special Commissioners that the Court determine the distribution of the share of complainant Elmer C. Jenkins with regard to priority of the lien in favor of the Internal Revenue Service, and upon the exceptions of First Federal Savings and Loans Association of Arlington as to allowance of counsel fees pursuant to the deeds of trust reported as liens against the property which is the subject of this action, and was argued by Counsel.

This Cause again came on to be heard on the 31st day of January, 1969 upon the motions of Elmer C. Jenkins, complainant and cross-defendant, to vacate the lien imposed upon his distributive share securing payment of alimony and child support pursuant to order of this Court entered May 10, 1966, in Chancery No. 18917; to assess against the distributive share of June S. Jenkins, defendant and cross-complainant, the sum of two thousand, three hundred sixty-five dollars and seventy-eight cents ($2,365.78) representing real estate taxes paid from the proceeds of the sale of the property which is the subject of this suit for the years 1964 through settlement on October 4, 1968; and for entry of a decree confirming the sale of the property which is the subject of this cause of action and for a final order of distribution; upon the motions of June S. Jenkins, defendant and cross-complainant, for the entry of an order

page 118 } reimbursing her out of the proceeds of sale of the subject property the sum of three thousand, nine hundred ninety-nine dollars and fifty-one cents ($3,999.51) expended by her in preserving, repairing and maintaining the subject property and in making all mortgage and other payments for the months of June 1966

through July 1968, and to assess one-half of that sum, or one thousand, nine hundred ninety-nine dollars and seventy-five cents ($1,999.75) against the distributive share of Elmer C. Jenkins; upon the Record in Chancery Cause No. 18917; which is hereby made a part of the record in this case; and the testimony presented on behalf of Elmer C. Jenkins, complainant and cross-defendant, on the question of releasing funds from the defendant's lien for alimony and child support only, and the matter was argued by Counsel.

Upon Consideration of All of the Foregoing, it is Adjudged, Ordered and Decreed:

(1) That the request of First Federal Savings & Loan Association of Arlington for allowance of counsel fees is denied, it appearing that such request was disposed of by order of the Court entered March 19, 1968, overruling all exceptions filed by the respective parties, said order having been entered after due notice to all parties;

(2) That the sale of the real property which is the subject of this suit to John J. Phelan and Margaret A. Phelan, which sale was heretofore authorized by order of this Court, be, and it is hereby, confirmed, and the Special Commissioners are hereby authorized to execute a Special Warranty Deed conveying the said property to the said John J. Phelan and Margaret A. Phelan, as tenants by the entirety with common law right of survivorship expressly retained;

(3) That the proposed Scheme of Distribution heretofore filed by the Special Commissioners be, and it is hereby, approved insofar as the charges which are set forth in the settlement statement which was filed with the proposed Scheme of Distribution, with the exception of the charge of two thousand, three hundred, sixty-five dollars and seventy-eight cents ($2,365.78) representing taxes for the years 1964 through 1968, adjusted to the date of sale, October 4, 1968, the annual amounts being:

1964	$ 506.26
1965	$ 514.61
1966	$ 487.06
1967	$ 502.07
1968	$ 355.78
	$2,365.78

page 119 } The real estate taxes as set forth above for the period ending May 8, 1966, the date of the final decree of divorce between Elmer C. Jenkins and June S. Jenkins in Chancery Cause No. 18917 in this Court, shall be borne equally by both of the parties; the entire amount

of real estate taxes for the period from May 8, 1966 to October 4, 1968 shall be charged against the share of the net proceeds of sale due June S. Jenkins.

(4) That the claim of June S. Jenkins for an allowance for repairs and maintenance is hereby denied, in accordance with the order of this Court overruling her exceptions to the Commissioner's report with regard to the same claim;

(5) That the claim of June S. Jenkins for reimbursement for the entire mortgage payments, including principal and interest, for the months of June 1966 through July 1968, both inclusive, all of which payments were made by her, is denied;

(6) That the claim of Elmer C. Jenkins to assess all mortgage payments for the period subsequent to the month of July, 1968, until sale of the property, solely against the defendant June S. Jenkins' share in the distribution is denied; for lack of evidence of such payments;

(7) That the distribution to June S. Jenkins of six thousand, five hundred forty-two dollars and seventy-cents ($6,542.70) as her net distributive share of the proceeds of sale of the property be, and it is hereby, authorized and confirmed, said amount having been computed as follows:

One-half of balance due owners per settlement sheet		$7,193.20
Less:		
One-half of stenographer's fee	$ 63.45	
Remaining one-half of taxes from May 8, 1966 to October 4, 1968	587.05	650.50
Net Distributive Share due June S. Jenkins		$6,542.70

(8) That the lien of the *Unites* States of America, Internal Revenue Service, in the amount of one thousand four hundred fifty-two dollars and seventeen cents ($1,452.17) against the share of Elmer C. Jenkins shall be paid by the Special Commissioners from the share of Elmer C. Jenkins free of the lien of the judgment of this Court for alimony and child support to June S. Jenkins entered May 8, 1966;

(9) That the lien of the judgment of this Court for payment of alimony and child support to June S. Jenkins entered on May 8, 1966 in Chancery Cause No. 18917 against the share of Elmer C. Jenkins be, and it is hereby released as to all of the net distributive share of complainant and cross-defendant Elmer C. Jenkins except two thousand dollars ($2,000.00) which said sum of two thousand dollars ($2,000.00) shall be deposited in a savings account at a federally insured institution, in the joint names of Paul Lee Sweeny and Herman W. Lutz, Trustees, subject

page 120

to joint control of both, which principal sum shall be subject to the further orders of this Court in Chancery No. 18917, but the interest as and when earned shall be payable to the said Elmer C. Jenkins as long as he shall remain current in his payment of alimony and child support, which payments he shall not be relieved of making in any way as a result of this order; the balance of the net distributive share of Elmer C. Jenkins, amounting to four thousand, three hundred twenty-eight dollars and eight cents ($4,328.08) shall be distributed to the said Elmer C. Jenkins free of the lien of the above mentioned judgment for alimony and child support, the said sum having been computed as follows:

One-half of balance due owners per settlement sheet	$7,193.20
Less:	
Payment to Internal Revenue Service of lien against Elmer C. Jenkins' share	1,452.17
Balance	$5,741.03
Plus real estate taxes charged against June S. Jenkins for the period May 8, 1966 to October 4, 1968	587.05
Net Distributive Share	$6,328.08
Less amount held subject to lien of alimony and child support	2,000.00
Balance for distribution to Elmer C. Jenkins	$4,328.08

And It Appearing that by virtue of the foregoing, all of the issues in this case have been determined, and that, upon payment of the several sums as set forth in the Scheme of Distribution hereby confirmed and as further set forth in this order the partition and disbursement of the proceeds thereof shall have been completed, it is Ordered that, upon receipt by the Clerk of certification by the Special Commissioners that each of the aforesaid sums shall have been distributed as ordered, that the bond of Special Commissioner Gant Redmon and the surety thereon be thereupon released and this case be placed among the ended causes of this Court, properly indexed, and it is further Ordered that the Clerk provide counsel of record with certified copies of this order forthwith.

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However, the defendant June S. Jenkins, by counsel, having expressed an intention to present a petition for appeal to the Supreme Court of Appeals, the execution of this decree, insofar as payments to Elmer C. Jenkins are concerned, shall be suspended until such petition shall have been presented and acted upon by the Supreme Court

of Appeals, or until the time for presenting such a petition shall have expired, provided that a bond in the penalty of $1000.00 and containing all the conditions prescribed in Section 8-465 of the Code of Virginia shall be given within 21 days from the date hereof; and

The Complainant Elmer C. Jenkins, by counsel, having expressed an intention to present a petition for appeal to the Supreme Court of Appeals, the execution of this decree, insofar as payment of $890.16 of the share of June S. Jemkins is concerned, shall be suspended until such petition shall have been presented and acted upon by the Supreme Court of Appeals, or until the time for presenting such a petition shall have expired, provided a bond in the penalty of $1000.00 and containing all the conditions prescribed by Section 8-465 of the Code of Virginia shall be given by complainant Elmer C. Jenkins within 21 days from the date hereof.

Entered on the 3rd day of April, 1969.

G.V.B., Jr.
Judge of Said Court

Seen and Excepted to insofar as taxes for years 1964, 1965 and to May 8, 1966 are not charged against June S. Jenkins' share of the proceeds of sale and mortgage payment subsequent to July 1968 until sale of property.

Herman W. Lutz
Counsel for Complainant and
Cross-Defendant Elmer C. Jenkins

Seen and Excepted to insofar as the entire real estate taxes for period May 8, 1966 to October 4, 1968 are assessed solely against June S. Jenkins' share; insofar as June S. Jenkins' claim for reimbursement for all mortgage payments, repairs and improvements paid by her for the months of June 1966 through July 1968 are denied; and insofar as any part of the share of Elmer C. Jenkins is released
page 122 } from defendant and cross-complainant June S. Jenkins' lien for alimony and child support:

Paul Lee Sweeny
Counsel for defendant and cross-
complainant June S. Jenkins

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page 125 }

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IN CHANCERY NO. 23583

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Comes now the defendant and cross-complainant, June S. Jenkins, and hereby gives notice pursuant to Rule 5:1, subparagraph 4, of the Rules of the Supreme Court of Appeals of Virginia, that she will appeal the judgment entered herein against her on April 3, 1969, and apply to the Supreme Court of Appeals of Virginia for an appeal.

ASSIGNMENT OF ERRORS

Pursuant to the said Rule 5:1, subparagraph 4, of the Supreme Court of Appeals of Virginia, the defendant and cross-complainant June S. Jenkins assigns the following errors of the Trial Court:

1. The finding and judgment of the Court assessing the entire real estate taxes on the property which is the subject of this suit, for the period May 8, 1966 (the date of the Absolute Divorce between the parties) to October 4, 1968 (the date of the sale of subject real property) solely against defendant June S. Jenkins' share of the proceeds of sale of said real property, without requiring the other joint tenant of said real property, the complainant Elmer C. Jenkins, to pay any part of said real estate taxes, is contrary to the evidence and is without evidence to support it.

2. The finding and judgment of the Court assessing the aforesaid real estate taxes solely against defendant June S. Jenkins' share of the proceeds of sale of said real property, is without support in law and is contrary to law.

3. The finding and judgment of the Trial Court denying defendant June S. Jenkins reimbursement for
page 126 } mortgage payments, repairs and improvements, paid entirely by her for the months of June 1966 through July 1968, inclusive, is contrary to the evidence and is without evidence to support it.

4. The finding and judgment of the Trial Court denying defendant June S. Jenkins, joint tenant of subject real property, reimbursement for mortgage payments, repairs and improvements paid entirely by her on account of said real property, for the months of June 1966 through July 1968, inclusive, is without support in law and is contrary to law.

5. The finding and judgment of the Trial Court releasing $4,328.08 of the balance of the net distributive share of complainant Elmer C. Jenkins, free and clear of defendant June S. Jenkins' lien for alimony and child support, while retaining only $2,000.00 as security for future payments of alimony and child support, is contrary to the evidence and is without evidence to support it.

6. The finding and judgment of the Trial Court releasing all but $2,000.00 of complainant Elmer C. Jenkins' distributive share of the proceeds of sale of said real property free and clear of defendant June S. Jenkins' lien for future alimony and child support payments, is without support in law and is contrary to law.

7. The Trial Court erred in refusing to order defendant June S. Jenkins reimbursed, out of the proceeds of sale of said real property, in the amount of $3,999.51 paid by her in making all mortgage payments on said real property for the months of June, 1966 through July 1968, inclusive, and in refusing to assess one-half of said sum against the distributive share of complainant Elmer C. Jenkins, under all of the facts and circumstances of the case.

8. The Trial Court erred in charging all real estate taxes on said jointly owned real property, for the period from May 8, 1966 to October 4, 1968, solely against the distributive share of defendant June S. Jenkins.

9. The Trial Court erred in refusing to allow defendant June S. Jenkins reimbursement for the cost of repairs and improvements paid for by her on said jointly owned real property.

10. The Trial Court erred in ordering all but $2,000 of complainant Elmer C. Jenkins' distributive share of the proceeds of sale of said real property released to him free and clear of defendant June S. Jenkins' lien for future payments of alimony and child support, presently amounting to $450.00 per month.

page 127 } June S. Jenkins
June S. Jenkins, By Counsel

* * * * *

Filed
May 26 1969

W. Franklin Gooding
Clerk of the Circuit Court
of Fairfax County, Va.

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Depositions in the above-entitled cause were taken before John H. Rust, Esquire, Commissioner in Chancery for the Circuit Court of Fairfax County, Virginia, in the Courthouse, Fairfax, Virginia, on Thursday, July 13, 1967, commencing at 10:25 o'clock, a.m.

PRESENT:

Gant Redmon, Esq., on behalf of the Complainant;
Paul Lee Sweeney, Esq., on behalf of the Defendants.

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JUNE STIDLEY JENKINS was called as a witness in her own behalf and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Sweeney:
Q. State your full name.
A. June Stidley Jenkins.
Q. Where do you live?
A. 4420 Braddock Road, Alexandria.
Q. Fairfax County?
A. Fairfax County.
Q. That is the property involved in this pro-
page 36 } ceeding, is that correct?
A. Yes, it is.
Q. Who lives there with you?
A. My five children and I live there.

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By Mr. Sweeney:
page 45 } Q. Mrs. Jenkins, since May 8, 1966, which I

June Stidley Jenkins

think we have already covered that that is the date of the final divorce between you and Mr. Jenkins, have you paid any mortgage payments on this property?

A. Yes, I have. I have paid them each month.

Q. What do they amount to?

A. $147.16 a month.

Q. You pay them each month, commencing with the month of June, 1966 up to and including the month of July, 1967, is that correct?

A. Yes.

Q. And you are claiming the benefit of the half of that that would otherwise go to Mr. Jenkins, is that right?

A. Yes, I am.

Q. In this proceeding?

A. Yes.

Q. You have not been able to pay the taxes, is that correct? Since the divorce have you paid any taxes on the property?

A. No, I haven't.

Q. Have you made any improvements to the property since the divorce, Mrs. Jenkins?

A. Yes. I have made a few necessary repairs
page 46 } like broken glass in the house and the plumbing, things that have to be done immediately.

Q. What would be the total of the expenses for those things?

A. $73.35.

Q. Did you have to do anything to the furnace?

Mr. Redmon: I object to the leading nature of the question.

The Commissioner: Note the objection.

The Witness: I have replaced the motor three times, but I don't know if it has been since we were divorced. In May 1966 it was replaced once, I am sure. I don't have my bills here but it was something like $30.

By Mr. Sweeney:

Q. For the motor?

A. Yes. I spent roughly $100.

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John Stidley Jenkins

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JOHN STIDLEY JENKINS was called as a witness and, having been first duly sworn, was examined and testified as follows:

page 74 } DIRECT EXAMINATION

By Mr. Sweeney:

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page 76 } Q. Did he leave the home? Is that what happened? Did your father leave the Braddock Road home when they separated? What happened? How did they separate?

A. He was caught down at Richmond with this other lady.

Mr. Redmon: I object to the question and move the answer be stricken.

Q. That precipitated it, but my question is, he actually left?

A. He did.

Q. That was, to the best of your recollection, around what time that he left there?

A. I would say 1963.

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A Copy—Teste:

Howard G. Turner, Clerk.

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