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Record No. 7399

In the
Supreme Court of Appeals of Virginia
at Richmond

GEORGE P. JACKSON

v.

RACHEL JACKSON

FROM THE CIRCUIT COURT OF THE CITY OF SUFFOLK

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. 7399

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 19th day of January, 1970.

GEORGE P. JACKSON, Appellant,

against

RACHEL JACKSON, Appellee.

From the Circuit Court of the City of Suffolk
George F. Whitley, Jr., Judge

Upon the petition of George P. Jackson an appeal is awarded him from a decree entered by the Circuit Court of the City of Suffolk on the 12th day of August, 1969, in a certain chancery cause then therein depending, wherein Rachel Jackson was plaintiff and the petitioner was defendant; upon the petitioner, or some one for him, 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.

This appeal, however, is limited to the consideration of assignment of error No. 5, which reads as follows: "Awarding the sole use and benefit of real estate owned by appellant to appellee."

On further consideration whereof, leave is granted the appellant until February 16, 1970, to file an amended designation of the parts of the record to be printed and leave is granted the appellee until March 9, 1970, to file an additional designation of the parts of the record to be printed, such designations to be limited to those parts of the record germane to the consideration of assignment of error No. 5.

* * * * *

RECORD

page 1 }

* * * * *

BILL OF COMPLAINT

To the Honorable Judge of Said Court:

Your complainant, Rachel Jackson, respectfully represents:

1. That the complainant and defendant were lawfully married on the 4th day of September, 1949, in Suffolk, Virginia. A certified copy of the marriage license is attached hereto and marked exhibit "A".

2. That the complainant and defendant are *bona fide* residents of and have been domiciled in the State of Virginia for more than one year next preceding the commencement of this suit.

3. That both parties are members of the Caucasian race, over 21 years of age, and neither party is a member of the Armed Forces of the United States Government.

4. That there were two children born of this marriage, whose names and ages are, George P. Jackson, Jr., age 15, and Peter Cobb Jackson, age 6, who are with your complainant.

5. That the complainant and defendant last lived together in Suffolk, Virginia.

6. Your complainant further alleges that said defendant did wilfully desert and abandon your complainant on the 28th day of February, 1966, which desertion has continued uninterruptedly to the present time and for more than one year.

IN CONSIDERATION WHEREOF, your complainant prays that she may be granted a divorce *a vinculo*
page 2 } *matrimonii;* that your complainant be awarded the care and custody of the infant children; that the defendant be required to pay to your complainant alimony for her support, and that he be required to pay for the support and maintenance of the children, a reasonable sum of money: that the defendant be required to pay a reasonable attorney's fee and the cost of these proceedings.

Rachel Jackson

By Richard B. Bartlett p. q.
Of Counsel

Filed in the Clerk's Office the 25th day of May, 1967.

Teste:
Henry C. Murden, Clerk
Dorothy P. Rountree, D. C.

* * * * *

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* * * * *

ANSWER

(1) Defendant admits the allegations of paragraphs 1, 2, 3, 4 and 5 of complainant's bill.

(2) Defendant denies the allegations of paragraph 6 of complainant's bill.

In consideration whereof, defendant prays that the prayer of complainant's bill be denied and her bill dismissed.

CROSS-BILL

Praying affirmative relief in behalf of defendant against complainant, arising out of the same subject matter and between the same parties, defendant alleges that:

(1) Defendant and complainant are of the white race; were married on September 4th, 1949, in Suffolk, as will appear by certified copy of the certificate of marriage set forth as complainant's Exhibit A, which is here adopted.

(2) They are domiciled in and are and have been actual *bona fide* residents of the State of Virginia for more than one year next preceding the commencement of this suit; last cohabited in the City of Suffolk on February 28th,
page 5 } 1966; and are the parents of two children, namely, George Philip Jackson, Jr., age 16, and Peter Cobb Jackson, age nearly 7, both of whom reside presently with complainant.

(3) Complainant has been guilty of extreme cruelty to defendant, tantamount to desertion, over the course of the years by threats, intimidations, complaints, abuse, imprecations and feigned or avoidable sickness. Such conduct completely unnerved him and rendered further cohabitation impossible and a threat to defendant's peace and security physically and mentally, resulting in separation on February 28th, 1966. Since the separation of the parties, defendant has made every effort to have a mutual understanding and reconciliation between the parties directly, by intermediaries and every

other conceivable way, all which efforts have come to naught. He has offered to build her a new home and live with her under such terms and conditions as consonant with love and mutual respect, only to be rejected at every turn without reason.

(4) Defendant is presently providing for the maintenance and support of complainant and their infant children; they live in comfortable quarters in the best residential area of Suffolk and but for complainant's consistent, unrestrained, uninhibited and unusual conduct toward defendant as aforesaid, they would be living together today and defendant now offers to reconciliate with complainant on conditions conducive to their common welfare.

(5) Complainant is not a proper person to have the custody of the children.

In consideration whereof, defendant prays that he be awarded a divorce *a vinculo matrimonii,* the care and custody of the infant children, and such further relief as adapted to the nature of his case.

George P. Jackson

By Thos. L. Woodward
Counsel

* * * * *

Filed in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia, this 31st day of May 1967.
Henry C. Murden, Clerk.

* * * * *

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ANSWER TO CROSS-BILL

Complainant now comes and files this, her Answer to the Cross-Bill of Complaint exhibited by the defendant, and says:

1. That she emphatically denies each and every allegation contained in paragraphs three (3), four (4) and five (5) of said Cross-Bill of Complaint.

Now having fully answered said Cross-Bill of Complaint, complainant prays that the same be dismissed, and the relief

asked for be denied, and that she be granted the relief asked in the prayer of her Bill of Complaint.

Rachel Jackson

By Richard B. Bartlett p. q.
Of Counsel

* * * * *

Filed July 24, 1967.
G.F.W., Jr.

* * * * *

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OPINION

Rachel Jackson filed her complaint on May 25, 1967 charging her husband George Phillip Jackson with desertion on February 28, 1966, and praying a divorce, custody of their children, alimony, and child support. George Phillip Jackson filed his answer and cross bill on May 31, 1967 denying desertion by him, alleging constructive desertion by his wife, and rejection by her of his efforts for reconciliation without reason, and praying a divorce and custody of the children. An order was entered October 25, 1967 granting to complainant $400.00 per month as temporary maintenance and support for her and their 7-year old son Peter and providing for her use of an automobile and the home which is owned by the parties as tenants by the entirety with survivorship.

Depositions were taken by both parties on December 19, 1967, Feb. 27, 1968, March 12 and 25, 1968, April 1, 1968 and May 22, 1968. The transcript of the testimony totals 513 pages from 22 witnesses. The matter was argued by counsel on February 6, 1969.

Three years have elapsed since the separation and upon proper amendment of the pleadings the parties would be entitled to a divorce without reference to guilt or fault. However, since the question of alimony for complainant is involved the Court will decide the issues presented by the pleadings without amendment.

While the testimony is in direct conflict on numerous important points, much of the evidence as to background facts and circumstances leading up to the separation are page 69 } not in material conflict.

The parties were married on Sept. 3rd or 4th, 1949 in Suffolk and Mr. Jackson then went to Washington to the Stenotype Institute. In 30 days Mrs. Jackson joined him and they lived in Arlington until June 1951 when he finished his course. Mrs. Jackson during this period was employed at George Washington University doing general office work. After Mr. Jackson finished his training as a court reporter, the couple moved to Portsmouth, Virginia and he worked in the legal department of the Fifth Naval District in Norfolk from June 1951 until December 1956. For a brief time during this period he drove an airport limousine on week-ends. For 6 or 7 years he also sold business equipment to stores and service stations. In April 1957 they moved to Suffolk where they have since lived. While in Suffolk Mr. Jackson has been very active in court reporting at times working in as many as twenty counties from Goochland to Princess Anne and including such municipalities as Blackstone and Newport News. This of course required long hours in court as well as in travel. Preparing transcripts demanded many nights at his office. Since moving to Suffolk he has also been active in business and has acquired over 50 houses in Suffolk the renting and maintenance of which he supervises. He has also acquired a half interest in the Professional Building which was formerly the American Bank Building and is a multistoried structure. In addition he makes some small loans. Since January of 1968 Mr. Jackson has done little court reporting but now devotes most of his time to his business interests.

For most of their married years the parties have visited his family in North Carolina and her family near Holland, Virginia on alternate Sundays. When not so visiting Mr. Jackson frequently spends a part of Sundays with a business associate looking over real estate. For recreation together the parties would sometimes eat dinner out and occasionally go to dances. Mrs. Jackson complained that he was seldom home except to sleep and eat.

page 70 } Two children Phillip Jr. age 16, and Peter age 7 have been born to the couple. Phil Jr. has been living with his father and Peter with his mother. Both boys are healthy well adjusted youngsters who love both parents. Visiting back and forth between the parents has raised no problems of consequence. Both households are in Suffolk.

A few months after Peter was born, Mrs. Jackson had what she termed a physical and mental breakdown. She spent a week at Obici Hospital and on advice of her physicians entered Norfolk General Hospital for psychiatric treatment. After being there a day or two she and her husband decided

that she did not need shock or other psychiatric treatment and over the protest of her attending psychiatrist she left the hospital. When she arrived in Suffolk she did not wish to go to their home, where her mother-in-law and the children were, but spend a day and night or more at the Suffolk Hotel. Mr. Jackson contends that she would not go home because of noise made by passing vehicles throwing loose gravel from the street. She maintains that she just was not ready to go home. After being home a few days she began preparation to return to Obici Hospital and Mr. Jackson instead took her to a sanatarium near Washington where she stayed for two weeks and was seen by several doctors. Before she was discharged Mr. Jackson, with her approval, brought her home because of the heavy expense. She has received no further treatment for her emotional condition and states that she is well at the present time.

Sometime between January and Feb. 28, 1966 Mr. Jackson left and has not since returned to live with Mrs. Jackson. She is still in the same home at 512 No. Broad Street, Suffolk.

Except for the above related facts, the evidence is in conflict. Mr. Jackson, and his witnesses to some extent, maintain that Mrs. Jackson is a poor housekeeper, that she is careless about her dress, that she seldom prepared his breakfast, that she did not enjoy his relatives, that in page 71 } recent years she has not been as eager a partner in sexual relations as formerly. Mrs. Jackson and her witnesses give contradictory testimony though Mrs. Jackson admits less frequent marital relations in recent years which she attributes to Mr. Jackson's preoccupation with his work. As a result of Mrs. Jackson's conduct Mr. Jackson testifies his health was adversely affected and he was justified in leaving, she being guilty of constructive desertion. Suffice it to say that he has not made a case of constructive desertion in the opinion of the Court.

Mr. Jackson further maintains that he did not intend to leave permanently, that Mrs. Jackson assisted him in leaving, and that he intended to return after an appropriate interval. Mrs. Jackson denies assisting in or asking him to leave, but gives as his reason his infatuation with another woman. Mrs. Jackson testified to seeing another woman's automobile at his place of residence several times after the separation and seeing said woman going in his residence. Mrs. Jackson stated that she telephoned him and asked him not to leave the woman's car in the driveway and he promised not to. Mrs. Jackson further testified that Mr. Jackson told her of his love for the other woman and her love for him and gave details of the progress of their romance, including a state-

ment that he could not come back to her and the children because he had cut the other woman down like a flower. Mr. Jackson denied every accusation made by Mrs. Jackson relating to any affection, affair or romance with any other woman in his whole life. The lady likewise testified that Mr. Jackson was only a casual friend. There was no conflict in the evidence, however, as to the fact that a few weeks after the separation Mrs. Jackson went to Mr. Jackson's place of abode at night and remonstrated with him about the embarrassment he was causing her and the children. Because of her distraught condition Mr. Jackson brought her home. No effective reassurances were given her, however, page 72 } and Mr. Jackson did not stay.

Mr. Jackson offered evidence of his seeking a reconciliation at Mr. Jackson's request. Mr. John D. Eure, a mutual friend, called on Mrs. Jackson about six weeks after the separation and talked of a reconciliation. Mrs. Jackson did not appear interested saying she felt her husband was interested in another woman. In the summer of 1967, over 15 months after the separation, and after suit was started Rev. Robert B. Marr, their pastor, and Mr. J. Samuel Glasscock, a friend, made separate visits to Mrs. Jackson to explore the possibilities of a reconciliation. They were not encouraged. Mr. Jackson testified to three conversations with Mrs. Jackson relative to reconciliation. On the first he asked if she wished him back. She replied by asking how he had the gall to speak of it. On the second occasion he asked her to talk and she said she had to give the younger boy a bath and Mr. Jackson left. On the third occasion he came to the house and said he wanted to talk. She said there was nothing to talk about,—that any talking should be with her lawyer. It is not clear as to the dates of the three conversations between the parties relative to reconciliation.

Mrs. Jackson maintained that she had never received what she considered an offer of reconciliation.

After carefully considering the evidence it is my opinion that defendant deserted complainant. It is further my opinion that the evidence produced by defendant relative to reconciliation does not constitute a *bona fide* offer of reconciliation within the legal meaning of the term which would bar the complainant from a divorce and alimony. I will therefore enter a decree granting Mrs. Jackson a divorce and alimony when such a decree is submitted.

We come now to the question of amount of alimony and child support. Mr. Jackson is according to his own witness an exceptional business man. He is to be com- page 73 } mended for his industry. He has acquired real property which from his own evidence is worth at

least $208,300.00 and this does not include his half interest in the Professional Building and other assets. His income has been substantial. However, he has incurred a heavy burden of debts on which interest and principal payments must be made. His property is not of a type that can be easily disposed of. While the Court will require him to support his family to the best of his ability, no decree will be entered which will cripple him in his business affairs or cause him to impair his health through over work. Mrs. Jackson's needs are perhaps more than Mr. Jackson can supply. She has not been employed outside the home since the first year and a half of their marriage except for a short time in a part time position. It might be well for her to seek part time employment again. On application of either party further consideration as to alimony and child support will be given. However, unless and until further hearing the terms of the temporary alimony and support decree will continue in effect.

Custody of Peter will be granted complainant and custody of Phil, Jr. will be given defendant.

A fee of $750.00 will be allowed complainant's counsel.

March 6, 1969 George F. Whitley, Jr.

Filed in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia, this 10th day of March 1969.

Henry C. Murden, Clerk.

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DECREE

This cause, which has been duly matured, set for hearing, and docketed, came on this day to be heard upon complainant's bill, defendant's answer and cross-bill, complainant's reply thereto, complainant's motion for temporary support, and upon the depositions with exhibits, duly taken and filed with the Court, and was argued by counsel.

On consideration whereof, and it appearing that the parties are of the caucasian race; married September 4th, 1949, in Suffolk; and are and have been, domiciled in and actual *bona fide* residents of, the State of Virginia for more than one year next preceding the commencement of this suit and last cohabited in January of 1966, in Suffolk, Virginia, and

of their union two children were born, namely George Phillip Jackson, Jr., age 17, and Peter Jackson, age 8.

And it further appearing that the defendant without just cause deserted complainant in January of 1966, which status has ever since continued without interruption.

It is adjudged, ordered and decreed that complainant be, and she hereby is, awarded a divorce *a vinculo matrimonii* from the defendant upon the ground of desertion, and that defendant's cross-bill be, and the same is hereby dismissed.

It is further adjudged, ordered, and decreed,
page 78 } that the custody of the children of the marriage
be, and the same hereby is awarded to complainant with reasonable visitation privileges to defendant.

It is further adjudged, ordered, and decreed, that defendant pay to complainant the sum of $425.00 per month to be paid through the Clerk of this Court as alimony and for support for the children, which shall not constitute a lien on any property of defendant, and the use of the home in which complainant now lives.

It is further adjudged, ordered, and decreed, that defendant pay to complainant the Court costs incurred by her in this cause, and the sum of $800.00 for the services of her counsel.

To all which defendant and complainant, by counsel, duly objected and excepted.

Enter 12th day of August, 1969.

George F. Whitley, Jr.
Judge.

I ask for this:

Richard B. Bartlett
Counsel for Complainant.

Seen and excepted and objected to:

Thos. L. Woodward
Counsel for Defendant and cross-claimant.

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* * * * *

George P. Jackson hereby gives notice of appeal from the final decree rendered in this cause on August 12th, 1969, to the Supreme Court of Appeals of Virginia, and assigns the following errors:

That the Court erred in

* * * * *

(5) Awarding use and benefit of real estate to complainant owned by defendant.

You are further requested to promptly make up the record in this cause in accordance with Part 5, Paragraph 5, of the Rules of the Supreme Court of Appeals of Virginia.

George P. Jackson

By Thos. L. Woodward
Counsel.

Filed in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia, this 12th day of August 1969.

Henry C. Murden, Clerk.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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