215 Va. 447
CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
MAY 20 1974
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

740184

ANNA JEAN GAGLIANO,

Appellant

V.

ANGELO VINCENT GAGLIANO,

Appellee

APPENDIX

PHOEBE P. HALL
Hall, Hall & Warren
206 Heritage Building
1001 East Main Street
Richmond, Virginia 23219

COUNSEL FOR APPELLANT

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June 29 10 AM

V I R G I N I A:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

ANNA JEAN GAGLIANO Complainant

v. BILL OF COMPLAINT

ANGELO VINCENT GAGLIANO Defendant
Hunton Hall
Medical College of Virginia
Richmond, Virginia

TO THE HONORABLE JUDGES OF THE AFORESAID COURT:

Your complainant respectfully represents as follows:

1. That the parties are now and have been for more than one year next preceeding the commencement of this suit actual bona fide residents of and domiciled in the State of Virginia.

2. That the defendant is a resident of the City of Richmond, Virginia.

3. That the complainant and defendant are of the Caucasian race and over the age of 21 years.

4. That the parties were lawfully married in Palmyra, Pennsylvania on September 7 , 1963.

5. That one child was born as a result of this marriage, namely: Andre Gagliano, born March 13, 1967.

6. That on or about January 10, 1971, the defendant packed his personal belongings and left the home of the parties, stating his intention never to return; that said desertion has been continuous and uninterrupted, and without cohabitation since January 10, 1971.

7. The plaintiff alleges that she did not give the defendant any just cause or provocation for any of his actions and she is advised and, therefore, avers that she is entitled to a Decree of Divorce from Bed and Board on the grounds of willful desertion.

IN CONSIDERATION WHEREOF, the complainant respectfully prays that she be decreed a divorce from Bed and Board from the defendant on the grounds of Willful Desertion; that she be allowed to merge the same into a Decree of Divorce from the Bond of Matrimony after the expiration of the period provided by law; that the defendant be required to pay the complainant alimony, pendente lite and permanently thereafter, together with suit money and counsel fees with which to prosecute this suit; that the complainant be granted the sole care, custody and control of the infant child of the parties hereto, and that the defendant be required to pay for the support and maintenance of the said infant child of the parties.

Anna Jean Gagliano
Anna Jean Gagliano

HALL & HALL
1001 East Main Street
Suite 206 - Heritage Building
Richmond, Virginia 23219

By Rhoda P. Hall p.q.

VIRGINIA:

IN THE LAW & EQUITY COURT OF THE CITY OF RICHMOND

ANNA JEAN GAGLIANO

vs.

ANGELO VINCENT GAGLIANO
Hunton Hall
Medical College of Virginia
Richmond, Virginia

An Application for
Temporary Support and Alimony,
Attorney's fees and suit money

Plaintiff's Exhibit # 1

Amount of Support Requested by Plaintiff $ 525/m
Amount of Support Defendant is willing to pay $ 15-100

Children: 1 ; Age: 4

Income: none

Basic Living Expenses:			Monthly
Rent			$150.00
Food and Milk			100.00
Utilities:	Heat	$28.00	
	Electric	10.00	
	Telephone	7.00	
	Water & Sewer	5.00	
	Total		50.00
Medical, Dental & Drug			95.00
Laundry and Dry Cleaning			5.00
Clothing			50.00
Miscellaneous			25.00
	Total		$475.00

Transportation:

By Bus and Taxi		50.00
	Total	$525.00

Date: Feb. 17, 1971

I hereby certify that the above is correct:

Anna Jean Gagliano

APP. 4

V I R G I N I A:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

ANNA JEAN GAGLIANO)
v.) ON APPLICATION FOR TEMPORARY SUPPORT, ETC
ANGELO VINCENT GAGLIANO)

~~Plaintiff's~~/Defendant's Exhibit # 1

Amount of Support requested by Plaintiff $ _____ per week/month
Amount of Support defendant is willing to pay $ 150.00 per ~~week~~/month

CHILDREN:
Number of Children: 1
Ages of Children 3 1/2

EMPLOYMENT:
Employed by: Medical College of Va. - V.C.U.
EMPLOYED as: ANESTHESIA RESIDENT
When Paid: Monthly

	Weekly	Monthly
Gross Earnings:	$	$ 742.50
Less Deductions:		143.40
Net Earnings (take home pay)		599.10

BASIC LIVING EXPENSES:

Mortgage Payments or rent		$	$ 112.50
Food (including milk)			90.00
Heat (fuel)	$ 25.00)		
Electricity	10.00) Total		
Telephone	10.00) Utilities		
Water & Sewer	5.00)		50.00
Medical, Dental & Drug (self)			10.00
Medical, Dental & Drug (children)			
Laundry & Dry Cleaning			16.00
Insurance Policies (LIFE)			12.00
Other (Church, etc.)			74.50*
TOTAL		$	$ 365.00

TRANSPORTATION:
By Bus . . . . . $ _____ $ _____
Type of Car
Used for BUSINESS <TRAVEL TO WORK>
Monthly Payments . . . . . .
Average Expense of operation $ _____ $ 47.00

TOTAL UNPAID BILLS . . . . . $ 7500.00

MONTHLY PAYMENTS DUE:

		Total Balance		
(1)	*2 New York State Higher Ed. Loan	$ 3000.00	$	$ 30.00
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				
(8)				
			TOTAL	$ 442.00

40.00 misc.
* 5.00 dues, journals
25.00 clothing
4.50 barber
$ 74.50

FEB. 3, 1971
DATED

I hereby certify that the above is correct:

Angelo V. Gagliano, M.D.
Signature of the party.

Law and Equity Court
OF THE
City of Richmond

JUDGES
ROBERT LEWIS YOUNG
ALEX H. SANDS, JR.
A. CHRISTIAN COMPTON

RICHMOND, VIRGINIA
23219

CLERK
LUTHER LIBBY, JR.

February 18, 1971

Mrs. Phoebe P. Hall
Hall and Hall
Suite 206, Heritage Building
Richmond, Virginia 23219

Alfred J. Owings, Esquire
Spinella, Spinella and Owings
1727 Ross Building
Richmond, Virginia 23219

Re: Anna Jean Gagliano v.
Angelo Vincent Gagliano

Dear Madam and Sir:

The only thing the Court can do in a case like this is make a very temporary order sufficient for the wife to barely exist while the cause is being litigated and the parties work out their problems. It certainly can do no less than this. Draft of an order providing for temporary alimony and support at the rate of $350.00 per month, plus the usual attorney's fee and costs, may be presented.

Yours very truly,

Robert Lewis Young, Judge

RLY/jat

COPY

V I R G I N I A:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

ANNA JEAN GAGLIANO — Plaintiff

v.

ANGELO VINCENT GAGLIANO — Defendant

ORDER

This day came the plaintiff in person and by counsel, and came also the defendant in person and by counsel, and the court having heard the evidence and arguments of counsel, upon the plaintiff's motion for temporary support money, court costs, and attorney's fees.

It is ORDERED that Angelo Vincent Gagliano pay to Anna Jean Gagliano for the support and maintenance of herself and the infant child of the parties, the sum of $350.00 per month effective February 19, 1971, until further order of this Court; the payments shall be made on the 19th day of each month, beginning March 19, 1971, for the month immediately preceeding.

It is further ordered that the defendant, Angelo Vincent Gagliano, forthwith pay to Phoebe P. Hall, Attorney for the complainant, the sum of $40.00 court costs and the sum of $150.00 attorney's fees.

Enter: / /

B.R.J.
Judge
Feb. 10, 1971

I Ask For This:

Phoebe P. Hall p.q.

I Have Seen This:

_____ p.d.

Entered: O.B. 81, p. 362

ec: [illegible] 3-5-71

VIRGINIA:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

ANNA JEAN GAGLIANO, Plaintiff

v.

ANGELO VINCENT GAGLIANO, Defendant

CROSS-BILL

TO THE HONORABLE JUDGES FOR SAID COURT

As and for his cross-bill in this cause, your defendant, Angelo Vincent Gagliano, respectfully represents unto the Court as follows:

1. That the parties were at the commencement of this suit and for one year next preceding the commencement of this suit actual bona fide residents of and domiciled in the State of Virginia.

2. That the plaintiff and the defendant are of the Caucasian race and over the age of 21 years.

3. That the parties were lawfully married in Palmyra, Pennsylvania on September 7, 1963.

4. That one child was born as a result of this marriage, namely: Andre Gagliano, born March 13, 1967.

5. That the parties last cohabited together as man and wife in the City of Richmond on or about January 10, 1971.

6. That the separation of the parties on or about January 10, 1971, has continued without interruption since that day.

WHEREFORE, your defendant prays that he be granted a divorce from the bond of matrimony on the ground of separation for more than two years; which separation has continued without

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Testa: LUTHER LISBY, JR., Clerk
By [illegible] D.C.

interruption since January 10, 1971. Your defendant further prays that he be granted such other general relief as to equity shall seem meet.

ANGELO VINCENT GAGLIANO

By _____
Counsel

W. H. C. Venable
Venable & McCarthy
Caskie House
422 East Main Street
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that I have mailed a true copy of the foregoing Cross-Bill to Phoebe P. Hall, Esquire, counsel of record for the plaintiff herein, to her offices at Suite 206, Heritage Building, 1001 East Main Street, Richmond, Virginia, 23219, this 25th day of April, 1973.

_____
W. H. C. Venable

D-7516

APP. 9

VIRGINIA:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

ANNA JEAN GAGLIANO, Plaintiff

v.

ANGELO VINCENT GAGLIANO, Defendant.

NOTICE OF MOTION

TO: Dr. Angelo Vincent Gagliano
c/o W. H. C. Venable
422 E. Main Street
Richmond, Virginia 23219

PLEASE TAKE NOTICE that at 9:00 A.M., or as soon thereafter as counsel may be heard, on the 21st day of May, 1973, I shall apply to an honorable Judge of the Law and Equity Court of the City of Richmond for an order determining the amount of your arrearage of payments under the March 10, 1971 decree for temporary alimony and support and for an order reducing such arrearage to judgment; I shall move the Court to require security for its award of temporary alimony and support; and I shall move the Court to order you to show cause why you should not be held in contempt for failure to comply with the order of May 10, 1971 for temporary alimony and support.

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APR 27 1973
Teste: Lonnie Lost, JR., Clerk
By [illegible] D. C.

ANNA JEAN GAGLIANO

By Phoebe P. Hall
Counsel

Phoebe P. Hall
Hall, Hall & Warren
206 Heritage Building
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice was mailed to W. H. C. Venable, Esquire, counsel of record for the Defendant herein, to his office at Caskie House, 422 East Main Street, Richmond, Virginia, 23219, this 25th day of April, 1973.

Phoebe P. Hall
Phoebe P. Hall

D.25

VIRGINIA:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

ANNA JEAN GAGLIANO, Plaintiff

v.

ANGELO VINCENT GAGLIANO, Defendant.

NOTICE OF MOTION

TO: Dr. Angelo Vincent Gagliano
c/o W. H. C. Venable
422 E. Main Street
Richmond, Virginia 23219

PLEASE TAKE NOTICE that I shall appear in the Law and Equity Court of the City of Richmond at 9:00 a.m. on June 29, 1973, or as soon thereafter as counsel may be heard, to move the court for an order increasing the support which you are required to pay in this case, due to changed circumstances, and requiring security therefore.

ANNA JEAN GAGLIANO

By Phoebe P. Hall
Counsel

Phoebe P. Hall
Hall, Hall & Warren
206 Heritage Building
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Motion was mailed to W. H. C. Venable, Esquire, counsel of record for the Defendant herein, to his office at Caskie House, 422 East Main Street, Richmond, Virginia, 23219, this 11th day of June, 1973.

Phoebe P. Hall
Phoebe P. Hall

RECEIVED AND FILED
JUN 11 1973
Teste: LUTHER LIBBY, JR., Clerk
By ..... D. C.

6-11-73 pjd
LAW OFFICES
HALL, HALL & WARREN
206 HERITAGE BUILDING

Plaintiff's Exhibit 1

June 29, 1973
List of Payments Made Since Court Order

$350	February	1971	
$350	March	1971	
$350	April	1971	
$350	May	1971	Cash payment
$250	June	1971	Cash Payment
$250	July	1971	Check payable to Andre sent to Andre
$150	August	1971	Check payable to Andre sent to Andre
$250	September		Check payable to Andre sent to Andre
$250	October		Check payable to Andre sent to Andre
$250	November		Check payable to Andre sent to Andre
$250	December		Cash payment
$250	January	1972	Check payable to Andre sent to Andre
$250	February		Check payable to Andre sent to Andre
$250	March		Check payable to Andre sent to Andre
$250	April		Check payable to Andre sent to Andre
$250	May		Check payable to Andre sent to Andre
$500	July 29		Check payable to Andre sent to Andre
$500	September 26		Check payable to Andre sent to Andre
$500	November 20		Check payable to Andre sent to Andre
$500	January 29,	73	Check payable to Andre sent to Andre
$500	March 28, 1973		Check payable to Andre sent to Andre
$500	May 18, 1973		Check payable to Andre sent to Andre

Note: On May 18, 1973, also sent a check for $600 to wife Marked "Ford car Payment"

Total due from February 19, 1971 to June 19, 1973	$10,150
Total paid to Mrs. Gagliano	1,900
Total paid to Andre	5,400

Plaintiff's Exhibit II

INCOME AND EXPENSE STATEMENT
June 29, 1973

Amount of Income: $441.00 per month take-home salary

Children: 1 6 year-old boy (Andre)

Living Expenses: (Monthly)

$130	Apartment rent
125	Babysitting expense
35	Utilities (20 Electric; 15 Telephone)
20	Special uniforms, shoes and hose for work
125	Food and household supplies, excluding work or school milk
25	Meals at work
8	School milk for Andre
30	Medical, dental & drugs for self
20	Medical, dental & drugs for Andre
16	Laundry & DryCleaning
50	Clothes for self and Andre, excluding special work clothes
20	Entertainment and educational for Andre
10	Church
30	Personal expense
45	Insurance not deducted from salary
73	Car payments for 1973 Maverick
10	Auto insurance (approx. $120/year)
60	Expense of operating car, including 40 mile a day trip for work
40	Educational fund for Andre's college
$872	

Plan for the fall:

Anticipate reduction in income to approximately $200 per month take-home pay and increase in expenses for tuition upon return to school in the fall to work toward undergraduate college degree.

TRANSCRIPT 'A' OF A PORTION OF TESTIMONY TAKEN AT A HEARING IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, VIRGINIA, DIVISION I, JUNE 29, 1973

Hearing before The Honorable Richard L. Williams on June 29, 1973.

All witnesses having been duly sworn the following testimony was taken.

* * *

Anna Jean Gagliano

(T-A 6) MR. WARREN: Mrs. Gagliano, did the Court finally enter an order, in fact, requiring the payment by your husband to you of temporary support monies?

MR. VENABLE: We can stipulate on March 10th an order was entered for $350.

THE COURT: I have it right in front of me, Mr. Warren.

BY MR. WARREN:

Q Mrs. Gagliano, since that time have you kept a record for yourself of the payments you have received?

A Yes, sir, I have.

Q You have in your hand a document which says June 29, 1973--

MR. VENABLE: To save the Court time, the document as to payments received runs February '71 through May 18, 1973, and we are perfectly willing to stipulate that

is the money Dr. Gagliano has paid to Mrs. Gagliano.

MR. WARREN: You are willing to stipulate?

MR. VENABLE: Stipulate one hundred percent as to that extent.

MR. WARREN: That the fashion the way the

(T-A 7)

payments are --

MR. VENABLE: The fashion of the payments, we are willing to stipulate that. That is the amount of money with one exception, Your Honor, I forgot that which was August of 1971.

THE COURT: What is her testimony? What gross figure does she attest has been paid during this period of time, Mr. Warren?

MR. WARREN: Testified that she received $1,900, that her son received $5,400, and by our computations we suggest to the Court the total due to June 19th of this year was $10,150.

* * * * *

(T-A 10)

BY MR. VENABLE:

Q In August of 1971 a check, or sometime near then, a check from an apartment complex written to Mr.

Gagliano was received by you; is that correct? It was sent to your address rather than to Mr. Gagliano?

A Yes, I received a check. It was the deposit from the house we were renting. The lease was in both our names, and I think that that check was made out in both our names. It was a check of an $80 deposit returned.

Q And as a result of the conversation with Mr. Gagliano, you agreed to deposit that check in your account and agreed to credit him to his account for that check on the support, is that not so?

A He asked me to do it that way, yes.

* * * * * * * * * * * * * * * *

(T-A 11) Dr. Angelo Vincent Gagliano

BY MR. WARREN:

Q Would you state for the record, please, your name and your address at present?

A Angelo Vincent Gagliano, M.D. I am a resident anesthesiologist at the Massachusetts General Hospital. I live at 90 Millway Street, Medway, Massachusetts.

Q Do you own that house?

A Yes.

Q Could you describe your duties at the hospital?

A Resident in anesthesia.

Q Could you state, please, what your salary is there?

A $10,900 a year.

Q Excuse me?

A $10,900 a year.

Q All right, sir. Could you state when you anticipate that you will finish your residency in anesthesiology

A Approximately 18 months.

Q Are you up for a salary review of any kind?

(T-A 12) A I will receive approximately $600 a year at the next salary raise. I don't know when that will be.

Q Within the next year?

A Probably, if Phase II does not cut that off.

* * * * * * * * * * * * * *

BY MR. WARREN:

Q Doctor, would you please state what the mortgage payments are on your house?

A $340 a month.

Q $340 a month. Do you own any dogs?

A I own two dogs.

Q What was the purchase price of each of those dogs, please, sir?

A I paid a hundred for one and a couple hundred for the other.

Q Are they show dogs?

(T-A 13)

A I don't remember the exact amount. Those are exactly what they are.

Q Are they thoroughbred animals?

A They are registered with the AKC.

Q Have you shown--

A I have one -- shown one of them obedience training.

Q Do you own any automobiles?

A Yes, I do.

Q Please tell the Court what kinds?

A I own a Datsun 1972, and I own the Ford that

was in question that was previously mentioned.

Q What kind of a Datsun?

A It is a 240Z.

Q What is the purchase price?

A $4,000.

Q How much?

A $4,000.

Q Is that car paid for?

A No, it is not.

Q What are your payments?

A $140 a month.

Q Did you tell the Court what your payments were on your mortgage?

(T-A 14)

A $340 a month -- $341.63.

Q For your mortgage?

A Yes.

Q And your payments on your car are $140. Could you explain to the Court why you find a need tohave two automobiles?

A Well, like I use one for pleasure and the other car is fairly well broken down. It is fairly run down.

It costs a lot to maintain it. It is worth right now a couple hundred dollars.

Q How much has it cost you to maintain it the past few years?

A Lately very very high. It has 80,000 miles. It is broken down.

Q Could you answer my question? How much it is costing you roughly on a monthly basis in the last couple of months?

A It costs me well over $200 to maintain a car that is barely worth $200.

Q All right, sir. What would you say your expenses associated with your job would be?

A With my job you have to wear a white coat but that is kind of minor. The biggest expenses are gasoline. I have to travel 30 miles each way to work every day.

(T-A 15)

Q Sixty miles round trip?

A Sixty miles.

Q How much would you say your expenses on operating your car are on a monthly basis?

A I really couldn't say. I couldn't say. I just recently moved and my expenses have really changed a great

deal. I was living in Rhode Island and the expenses were a lot different.

Q When did you move from Rhode Island?

A In the end of March of this year.

Q What year?

A Of this year, 1973.

Q When did you start your term of employment?

A April 1973.

Q April 1973?

A Yes.

Q All right, sir. Now, the home you bought, could you describe it to the Court just very briefly in general terms?

A It is an old brick house.

Q How many rooms does it have?

* * * * * * * * * * * *

BY MR. WARREN:

Q Mr. Lucy asked you the question and I am

(T-A 16)

quoting from the deposition on page 10.

"Question: What is your gross income, doctor

Answer: $10,900."

MR. VENABLE: We have established this previously.

BY MR. WARREN:

Q That is the gross income?

A That is what my gross income is.

Q Could you tell us what your utility bills are in this big old house?

* * * * * * * * * * * *

BY MR. WARREN:

Q You were going to tell us what your utilities are?

A As it happens, I have only moved there a couple of months.

Q Now, what bills have you paid?

A It is hard, very hard for me to say. They are the standard bills similar to bills when I was in Rhode Island so far as I have been able to recollect.

Q What would they be?

A Approximately $20 a month for electricity. Approximately $10 or $15 for telephone. Heating about $30 a month. I have not lived there in the wintertime. I expect it

(T-A 17)
to be the same kind of house.

Q All right, sir, now, what was the purchase price of the house, please?

A $40,000.00.

Q Now, could you simply state for the Court what your other personal expenses are of significance?

A Yes. My gross -- my net salary that I take home every month is $750, of which $340 is payment for the mortgage. Also $140 for the car payment and $250 for the child support, which leave me very little to get along with. And I have really tapered the rest of my expenses to meet what I can earn. The other expenses are pretty standard for insurance and things like this. I don't pay --

Q Give us a monthly sum of your insurance?

A What my heat and hot water and units would cost?

Q Insurance.

A Insurance back and forth and commuting to work.

Q Insurance, please, sir, what does it cost you

A Approximately $300 for both cars.

Q A yearly figure?

A Yes, that is right.

Q Do you have any other extraordinary expenses?

(T-A 18) A Extraordinary expenses? I have to eat once in awhile.

Q What do you think it costs you in a month's time?

A An average of about a hundred dollars a month

Q Do you employee a housekeeper?

A No, I don't.

Q Do you have any plans to rent any part of the house you now own?

A I may in the future. I don't plan to right now.

* * * * * * * * * * * * *

THE COURT: You contend the arrearage of $8,250?

MR. WARREN: We would except to any credit being given against the original temporary order of $350 a month beyond the $1,900 paid directly to her. However difficult it might be for the husband if he makes indirect payments on behalf of the wife and child, they are not made as support payments and in the form prescribed they cannot be included. And we would like to ask the Court for time to brief that particular point of law if it be the Court's pleasure.

We would ask the Court for an entry of arrearages of $8,250.

We will respectfully except and object to any other entry. I might add we would be willing to accept $80 credit that was discussed with regard to the rent deposit. It was returned and some discussion about whether it should be credited. It was not on the exhibit that we tendered. We would concede that.

* * * * * * * * * * * * *

TRANSCRIPT 'B' OF A PORTION OF TESTIMONY TAKEN AT A HEARING IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, VIRGINIA DIVISION I, JUNE 29, 1973

(T-B 6) THE COURT: I find that the decree entered by Judge Young on March 10, 1971, was never modified in the sense that it has to be modified to make a settlement agreement viable to change the effect of an outstanding award in a decree of the Court.

I find that Dr. Gagliano in reliance on what he thought was a bona fide agreement entered into in June of 1971 has made payments in the sum of $7,300.70 that comply with the dictates of Judge Young's decree and are creditable against a $250 award that was outstanding against him. Now, that means that from the date of the entry of that award until today he is in arrears of two hundred twenty seven, twenty seven.

Under the law I have no option but to enter judgment against him for that amount in favor of Mrs. Gagliano. I find that it was not a willful attempt on his part to frustrate an order of the Court. He was relying totally upon an agreement that had been negotiated by the same counsel for the plaintiff that now represents her and he was represented by counsel. So there will be no penalty attached to that sum. It will bear no interest except from the date of the entry of the judgment which is today.

Coming down to the next phase of the plaintiff's motion and that is for a change in the amount of the support money and alimony Dr. Gagliano is ordered to pay, I find from the evidence that originally it was $250 for the support of the child and that was not unrealistic and that due to the passage of two years there has been some modest increase in living costs and I am going to change that figure to $300 per month.

He is going to pay for the support of the child and that is going to remain in effect until the child is 18, at which time he is relieved by law of any further payments.

I find from the evidence that Mrs. Gagliano has not shown that the standard of living she had been accustomed to while she was married to Dr. Gagliano was

(T-B 8)

such that she does not have the capability of maintaining her own way in life and that she generates sufficient income to do that. I make no allowance of alimony in the case at all. I would ask counsel to defer submitting a decree until such time as the depositions have been finalized. At that time I want you to be able to represent to the Court that all arrears have been paid or arrangements made for them and that if you need time on that and will give me a note I will accept that as permissible.

I believe that under the law, this being a total money figure, that this is a deductible item for the doctor.

* * * * * * * * *

(T-B 9)

MR. WARREN: If your honor please, has the Court found that she is not entitled to alimony on default or it is zero?

THE COURT: The alimony is zero. She is not entitled to alimony. There was never any dependency for support on the doctor. She has worked most of the married life and is capable of supporting herself and I see no need for it.

MR. WARREN: I think there are two separate questions. One, the amount she is entitled to, the court set at zero. The amount she is entitled to on the matter of the separation, because of the fault of the parties. I take it this is an absolute requirement of the law and I would like for the record for the Court to say --

THE COURT: I will defer making a ruling on the fault, if you like, because I have not read

(T-B 10)

the original deposition.

MR. VENABLE: The point he is making is would it be like one dollar a year? Are you making any provision?

THE COURT: The award will be zero.

MRS. HALL: Will you reserve for her to request alimony in the future, for instance, should she become disabled and unable to work at all?

THE COURT: That is always a reserved right.

MR. VENABLE: It is not.

THE COURT: If the file establishes the question of fault, I think it is.

MRS. HALL: We would ask that be --

THE COURT: That is not before me. My order will speak as of the circumstances now. Now, if I ascertain that the fault of the separation was the defendant's but that I find she has no dependency upon him for alimony and therefore gets zero, that ends anything I can do with the case. Now, what the law is ten years down the road --

MRS. HALL: We would ask specifically if you make that finding, Your Honor, that you reserve to her the right of alimony in the decree.

THE COURT: I don't know whether I have

(T-B 11)

any authority to do that or not. I see no circumstances here that would justify it even if I had the authority.

MR. VENABLE: Thank you, sir.

MR. WARREN: The plaintiff would like to respectfully except and object to the award of zero alimony to the plaintiff for the reasons previously stated in the record.

(Hearing concluded)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I
CHANCERY SECTION

ANNA JEAN GAGLIANO, Plaintiff

v.

ANGELO VINCENT GAGLIANO, Defendant

CHANCERY NO. 2516

D E C R E E

This cause which has been regularly matured, docketed, and set for hearing, came on this day to be heard upon the Bill of Complaint and exhibit filed therewith; upon proof of proper and legal service of process upon the defendant, upon the Answer and Cross-Bill of the defendant; upon the depositions of witnesses on behalf of the plaintiff and the defendant, regularly taken after proper and legal notice and filed in accordance with law; upon testimony of the plaintiff and defendant; taken ore tenus before the bar of this Court; and was argued by counsel for the plaintiff and defendant.

UPON CONSIDERATION WHEREOF, the Court finds from the evidence, independently of the admissions of the parties in the pleadings or otherwise, the following facts: that the parties are members of the white race and over the age of eighteen (18) years; that they were lawfully married in Palmyra, Pennsylvania, on September 7, 1963; that there is one infant child born of this marriage, whose name is Andre Gagliano; that the plaintiff and defendant were and had been actual bona fide residents of the State of Virginia for a period of more than one year immediately preceding the commencement of this suit; that the defendant was a resident of the City of Richmond, Virginia, at the time of the commencement of this suit; that the parties last cohabited as husband and wife in May of 1971; that the allegations of the Cross-Bill have thus been fully proven.

WHEREFORE, the court doth ADJUDGE, ORDER and DECREE that the plaintiff, Anna Jean Gagliano, is now absolutely divorced from the defendant, Angelo Vincent Gagliano, from the bond of matrimony on the ground that the parties have lived separate and apart without any cohabitation and without interruption for a period of two years, and that the bond of matrimony created by the marriage between the parties hereto on September 7, 1963 is hereby dissolved.

The court further finds that the plaintiff was not responsible for the separation of the parties but disallows alimony on the ground that the plaintiff is able to support herself.

It is further ORDERED that the custody of Andre Gagliano, infant child of the parties hereto, be, and the same is hereby, awarded to the plaintiff, leave being granted hereby to the defendant to see and visit the said child at reasonable times; and it is further ORDERED that the defendant do pay to the plaintiff the sum of $300.00 per month on the first day of each month, beginning July 1, 1973, until the child reaches his eighteenth birthday, for the care, support and maintenance of said child.

It is further ORDERED that the defendant forthwith pay to Hall, Hall and Warren, counsel for the plaintiff, the further sum of $1,000.00 for legal services rendered the plaintiff and the sum of $141.33 in reimbursement of expenses and court costs herein incurred.

It is further ADJUDGED and ORDERED that the plaintiff recover of the defendant the sum of $2,770.00, for arrearage in support payments through June, 1973, judgment being hereby granted against the defendant in the amount of $2,770.00.

To which action of the court the parties, by counsel, objected.

And nothing further remaining to be done herein, it is ORDERED that this cause be stricken from the docket and the papers placed among the ended causes.

Entter: Richard L. Williams 10/29/73

ENTERED
O.B. 52 p. 365

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I
CHANCERY SECTION

ANNA JEAN GAGLIANO, Plaintiff,

v. No. D-2516

ANGELO VINCENT GAGLIANO, Defendant.

MOTION TO SET ASIDE THE
JUDGMENT AS CONTRARY TO THE
LAW AND THE EVIDENCE AND
WITHOUT EVIDENCE TO SUPPORT IT

Comes now the Plaintiff, by counsel, and moves the Court to set aside the decree entered on October 29, 1973 in the above-styled case as contrary to the law and evidence and without evidence to support it, and states as follows:

1. That the judgment for arrearages should be in the amount of $8,170.00 rather than $2,770.00 in that:

a) On March 10, 1971 the Court ordered the Defendant to pay to Anna Jean Gagliano for the support of herself and the infant child of the parties the sum of $350.00 per month, on the 19th day of each month until further order of the court.

b) That no order was entered modifying this decree.

c) That the decree for temporary alimony and support cannot be modified by a contract of the parties in pais. Capell v. Capell, 164 Va. 45 (1935), described and distinguished in Henbry v. Henbry, 185 Va. 20 (1946), nor can it be modified retroactively by the Court. Cofer v. Cofer, 205 Va. 834, 839.

d) That the evidence before this court established that the Defendant paid to the wife between February, 1971, and June 1973, the sum of $1,980.00 and paid to the child the sum of $5,400.00, whereas the amount due to be paid to the wife was $10,150.00.

e) That the voluntary payments made to the child

October 31, 1973

cannot be credited to the obligation to the wife where the Court has ordered the husband to pay to the wife certain amounts each month for the support and maintenance of herself and the child. Fearon v. Fearon, 207 Va. 927 (1967). Such payments are to be treated in the nature of a gift to the child and are not to be credited toward the husband's obligation under the Court order.

f) Since no credit should be given for the $5,400.00 paid to Andre Gagliano, judgment for arrears should be in the amount of $8,170.00.

2. That the evidence established Dr. Gagliano's ability to support and Mrs. Gagliano's right to support, and alimony should have been awarded or at least reserved to Mrs. Gagliano.

3. That all other objections raised during the course of the trial are hereby incorporated into this motion.

THEREFORE, the Plaintiff moves to set aside the decree as contrary to the law and the evidence and without evidence to support it.

Respectfully submitted,
ANNA JEAN GAGLIANO
By Counsel

Phoebe P. Hall

Phoebe P. Hall
HALL, HALL & WARREN
Suite 206--Heritage Building
1001 E. Main Street
Richmond, Virginia

CERTIFICATE

This is to certify that I have this 31st day of October, 1973, mailed, first-class, postage prepaid, a copy of the foregoing motion to W. H. C. Venable, Counsel for the Defendant, at his office, 422 E. Main Street, Richmond, Virginia.

Phoebe P. Hall

Phoebe P. Hall

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

ANNA JEAN GAGLIANO, Plaintiff,

v. No. D-2516

ANGELO VINCENT GAGLIANO, Defendant.

NOTICE OF APPEAL
AND
ASSIGNMENTS OF ERROR

To: Edward G. Kidd, Clerk
Circuit Court of the
City of Richmond, Division I
Richmond, Virginia 23219

COMES NOW, the Plaintiff, Anna Jean Gagliano, by Counsel, and gives Notice of Appeal from the final judgment of the Court rendered herein October 29, 1973, and assigns the following errors as required by Rule 5:6 of the Rules of the Supreme Court of Virginia:

1. The Court erred in setting the arrearage in temporary support and alimony at $2,770.00 rather than $8,170.00.

2. The Court erred in refusing to grant alimony to the wife or to reserve to her the right to alimony where the separation was without fault on her part.

3. The Court erred in granting a divorce to the husband where it was not proven by corroborated testimony that the parties had lived separate and apart without any cohabitation and without interruption since January 10, 1971, as required by law.

4. The Court's determination of the issues aforesaid was contrary to the law and the evidence.

RECEIVED & FILED
NOV 20 1973
EDWARD G. KIDD, Clerk
By ... D.C.

A transcript or statement of facts, testimony or other incidents of the case is to be hereafter filed.

Respectfully,

ANNA JEAN GAGLIANO

By Phoebe P. Hall
Counsel

Phoebe P. Hall p.q.

Phoebe P. Hall
HALL, HALL & WARREN
Suite 206--Heritage Building
1001 E. Main Street
Richmond, Virginia 23219

CERTIFICATE

This is to certify that I have this 20th day of November, 1973, mailed, first-class, postage prepaid, a copy of the foregoing notice to W. H. C. Venable, Counsel for the Defendant, at his office, 422 E. Main Street, Richmond, Virginia 23219.

Phoebe P. Hall
Phoebe P. Hall