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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 740381

FRANCES M. CARTER

V.

EDWIN R. CARTER, III

APPENDIX

John C. Lowe
F. Guthrie Gordon, III
Lowe and Gordon, Ltd.
111 West Main Street
Charlottesville, Virginia 22903

Counsel for Appellant

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Original pleading - Bill of Complaint filed by Appellee

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

EDWIN R. CARTER III Complainant	)	
v.	)	BILL OF COMPLAINT
FRANCES M. CARTER Davis Ward University of Virginia Hospital Charlottesville, Virginia Respondent	)	

To the Honorable George M. Coles, Judge of said Court:

Your Complainant, Edwin R. Carter III, respectfully represents as follows in support of this, his Bill of Complaint against Frances M. Carter, Respondent:

1. That Complainant and Respondent, formerly husband and wife, were divorced by final decree of the Corporation Court of the City of Charlottesville entered on February 15, 1972.

2. That by said decree, said Court further adjudged, ordered and decreed that a certain agreement between Complainant and Respondent dated February 14, 1971, was approved, ratified and confirmed, and by reference, made a part of said decree.

3. That, by paragraph (12) thereof, said agreement of September 14, 1971, provided: In view of the ages of the children, the fact that two of said children are female, and the desirability that all of said children reside

together, it is agreed that the Wife shall have custody of all of said children; however, Husband shall have partial custody of said children through the right to have said children visit with him as hereinafter set forth, and further provided that any of said children shall, after he or she attains the age of sixteen (16) years, have the right to elect the parent with whom he or she shall reside.

Either parent shall have the right, while the children are at home with the other parent, to take one or more of them out at reasonable time for meals, recreation, et cetera, provided that notice of the desire to do so is given a reasonable time in advance and that such visits shall not interfere with the education of said child or children. Either parent shall have the right to have said children, or any of them, visit with him or her, in the place of residence or otherwise, for reasonable periods of time provided notice of the desire to do so is given a reasonable time in advance, that such visits shall not interfere with the education of said child or children, that suitable accommodations have been arranged for them, that periods of travel shall not be disproportionate to the length of the visit, and that the expenses of transportation incident to such trips shall be borne by the parent exercising such right.

The parties agree to exert every reasonable effort to maintain free access and unhampered contact between the children and each of the parties and to foster a feeling of affection between the children and the other party.

4. That, by paragraph (15) thereof, said agreement of September 14, 1971, provided: As payment in lieu of alimony and as further support and maintenance of said children, Husband agrees to pay to Wife during the balance of the year 1971, the sum of $300.00 per month. Husband delivers to Wife six (6) postdated checks of $150.00 each to provide cash over the period until December 31, 1971, in satisfaction hereof. During the year 1972, as payment in lieu of alimony and as further support and maintenance for said children, Husband agrees to pay Wife the sum of $900.00 per month, commencing January 1, 1972, and thereafter the sum of $600.00 per month, commencing January 1, 1973, said payments to continue until the death or remarriage of Wife, or the emancipation, by attainment of majority or otherwise, of all of said children, whichever first occurs.

All payments of alimony shall cease if at any time any court decrees any increase in payments for the support and maintenance of said children over those provided herein, but otherwise the payments provided in this paragraph shall constitute and be an obligation of the estate of Husband and this agreement shall be binding upon his heirs, executors, administrators, successors and assigns.

5. That Respondent for some time has been, and is now, seriously mentally ill and, by reason of her said illness, unable to retain custody, in any respect, of the children of the parties and to provide for their care, and that Respondent is further unable to protect the property of said children and her own property and to manage the affairs of said children or her own affairs.

6. That Respondent was involuntarily committed as mentally ill to Arlington House or the University of Virginia Hospital by action of the General District Court of the City of Charlottesville on July 19, 1973, and that Respondent is now confined to Davis Ward of the University of Virginia Hospital.

7. That because of the facts recited herein, it is detrimental to the welfare of said children for Respondent to have custody, to any extent, of them.

8. That because of the facts recited herein, in addition to other matters which are undesirable to be set forth herein, but which will be proved to the Court by competent evidence if necessary, Edwin R. Carter III, as natural father and as parent with partial custody as set forth in said agreement, has, as has been done in the past under similar circumstances, taken custody of the infant children of the parties and is providing for their care and maintenance in his own home.

9. That the Complainant is financially unable to provide for the care and maintenance of said children while at the same time continuing payments to Respondent as set forth in said paragraph (15) of said agreement dated September 14, 1971.

10. That, under the terms of said agreement dated September 14, 1971, the payments provided by paragraph (15) were intended to cease if, for any reason, Respondent ceased to have care and custody of said children and further were expressly stipulated to cease if there was decreed any increase in payments for the support and maintenance of said children.

11. That because of the mental illness of the Respondent, your Complainant is unable to negotiate with her as provided in said agreement.

12. That by said agreement dated September 14, 1971, Respondent agreed to preserve and to protect certain articles of personal property, the property of your Complainant, which because of the facts set forth herein Respondent is unable to do and has not done, which articles remained in the custody of Respondent both for her use and enjoyment and for the use and enjoyment of the children of the parties.

WHEREFORE, your Complainant respectfully prays that a discreet and competent attorney at law be appointed guardian ad litem for Respondent, and for a decree awarding custody of Elizabeth Franklin Carter and Julia Finlay Carter to your Complainant, further ordering the termination of payments under paragraph (15) of said agreement dated September 14, 1971, to Respondent, further decreeing the right of your Complainant to take into his care and custody those certain articles of personal property described in said agreement, for the purpose as set forth therein, together with the personal property of said infant children, and for such other equitable relief as may be shown to be proper.

EDWIN R. CARTER III
By Counsel

s/Robert P. Boyle

Robert P. Boyle
Attorney for Complainant
420 Park Street
Charlottesville, Virginia

October 30, 1973

10:00 A.M.

The Circuit Court for the City of Charlottesville convened at 10:00 A.M. on October 30, 1973 in its courtroom at Charlottesville, Virginia, the Honorable George M. Coles, Judge, presiding.

The court reporter was duly sworn and the proceedings were as follows:

MR. LOWE: Your Honor, in capacity as retained counsel for Frances Carter and likewise her Guardian ad Litem, I spoke with Dr. Phil Collins who is her psychiatrist and under whose care she's presently medically being tended and I also spoke with Frances Carter and it was -- Dr. Collins shared my opinion and Mrs. Carter concurred that she only be present in the courtroom during the period of time that she's actually testifying because of the emotional strain it would put her under. She is in the witness room, she is available at any time that the Court or either party wants to call her as a witness and her mother is back there and I think that this is in her best interests and Dr. Collins concurs, so we're prepared to proceed whenever the Court is ready.

THE COURT: All right.

MR. BOYLE: May it please the Court, we summoned Mrs. Carter to testify and it's my plan to put her on as an adverse witness. However, before we get started, I would like to know

precisely what it is that we're litigating this morning and how much evidence is to be adduced. Mr. Lowe has brought a court reporter. As Your Honor well knows, we had considerable testimony several days ago. I don't know if it's Mr. Lowe's intent to make a complete record, but if it is and the Court wants to hear the testimony again that was heard several weeks ago, I would put Mr. Carter back on and testify along the lines that he testified at our last hearing. Now, I don't understand why we would have a court reporter otherwise because the court reporter could only pick up a partial record and, if the purpose of this is for a possible appeal, then I do want to put on the evidence that I have put on heretofore.

MR. LOWE: Your Honor, it's my understanding that very clearly the hearing we were at last time was a pendente lite hearing. It was in chambers so we had no court reporter. It's my intention to make a full record today. I fully anticipated Mr. Boyle would put on Mr. Carter and what else he feels sustains his case. So that we have a full record in the event either party wants to appeal, we did retain a court reporter. As Guardian Ad Litem, for one thing, I feel that a court reporter is necessary to protect her interests at this point. As her retained counsel, I feel that and, whether there's ultimately an appeal or not, this is a compulsion which I feel is necessary. We certainly intend to put on our whole case today. The point which I understand we're litigating is that we have made a motion on a Cross-Bill for $600 per month to be

1 reinstituted with the arrearages being paid and Mr. Boyle and Mr.
2 Carter have asserted certain defenses against that and claim that
3 it is not due. I would also add -- I've been on vacation last
4 week and I don't know what the status is of the order which I
5 tendered, whether that was actually entered regarding the custody,
6 whether it was satisfactory, and, if not, perhaps we ought to do
7 that before we get started.
8 MR. BOYLE: It was not. I had some objections to it
9 and I thought that we would have this hearing and then --
10 MR. LOWE: Well, I don't know how the Court wants to
11 deal with that issue, whether you want to take up that wording now
12 or wait until we get finished. I might point out that we only
13 received $125 instead of the $250 which the Court indicated and
14 I would like to take that up, also.
15 MR. BOYLE: Well, the reason for that, Mr. Lowe, is that
16 the Court had spoken in terms of $250 a month and set this trial
17 date, which would only be one-half a month from the time we had
18 that hearing.
19 MR. LOWE: I understood the Court ordered $250 to be
20 paid unless the mortgage was some problem and, of course, we
21 cleared that up.
22 MR. BOYLE: It was $250 per month --
23 MR. LOWE: Beginning back then.
24 MR. BOYLE: But we were to come back into court today
25 and in the event the Court ruled today that no such payment was

1 to be tendered, we certainly weren't going to pay $250 when only
2 $125 was owed, so $125 has been paid, bringing Mr. Carter current
3 to today, or I was depending on what the Court rules. If the
4 Court rules that further support is required, then further pay-
5 ments will be made.
6 THE COURT: Well, I don't think -- it looks like to me
7 the proper order is to take the overall picture first and then
8 we can work these details out. There's no use you going into
9 these details and then going back to the same question on the
10 merits and find that things may be different so I think that what
11 we want to do is get them in on the merits, but I'm a little con-
12 fused as to who has the merits and who has the opening and clos-
13 ing and just what are we --
14 MR. LOWE: Well, may I speak to that, Judge? First of
15 all, I think we should dispose of the issue of custody. I don't
16 think there's any factual controversy. There may be some wording
17 that Mr. Boyle wants to change, but I don't anticipate there
18 being any necessity of testimony or controversy about custody
19 today. If, as I think I indicated when I sent that order over to
20 you, you had some wording you wanted changed, let me know because
21 I'm sure the wording --
22 MR. BOYLE: For the record now, would counsel please
23 indicate his position with regard to custody?
24 MR. LOWE: My understanding is that there was going to
25 be no change in the present custody arrangement and that custody

1 will be in Mr. Carter until further order of the Court, although
2 the Court specifically states that it has made no finding of
3 present situations or anything else on the merits of the case, but
4 is simply relying on the agreement of the parties in that regard
5 and I think that's what I said in the order basically.
6 MR. BOYLE: I think basically you did. Now, this --
7 MR. LOWE: May you state that that is also your under-
8 standing?
9 MR. BOYLE: I think generally it is, yes, that Mr.
10 Carter is to have custody, that Mrs. Carter is not at this point
11 in time contesting that issue.
12 MR. LOWE: That she is content with the temporary order
13 of the Court until further order of the Court. I think that's
14 what we discussed last time and that's the way we ended up.
15 MR. BOYLE: It's all subject to further order of the
16 Court.
17 MR. LOWE: That's right.
18 MR. BOYLE: All right, now, I would ask the Court if
19 the Court wants to hear again the testimony that occurred at that
20 time or does it feel that its recollection of that testimony is
21 adequate. If Mr. Lowe is going to make a complete record, I think
22 I'm compelled to put on --
23 THE COURT: I think that was temporary information and
24 this is the permanent determination as I understand it and for
25 that reason I think Mr. Carter would have to testify again because

we've got to get his testimony on the record.

MR. BOYLE: All right, sir. Fine.

MR. LOWE: Your Honor, with respect to who opens and who has the burden, I think -- there is a bill asking for change of custody and I think that's disposed of so far as our controversy today is concerned. Our Cross-Bill indicated that the support payments were cut off and that there is an arrearage. I think we can stipulate that Mr. Carter made no payments during August, September and October. Obviously, it's in controversy whether he had an obligation to or not and it seems to me, upon that proof and with the tender of the agreement which is already in the court file, that the ball is in Mr. Boyle's court in terms of asserting his defense and raising his defense that no money is due. I suppose the Court could take the position that it is our burden to show that there is something due, but it seems to me the plain face of the agreement would show that until there is some matter of defense raised.

MR. BOYLE: Well, I don't agree with Mr. Lowe. I think the Court ruled last time that it was his burden. I think it's still his burden. He's taken the position that Mr. Carter should make payments to Mrs. Carter. Mr. Carter is not making payments, or was not until those pendente lite hearings. He has not made any payments to her since he had possession or custody of the children. Now, Mr. Lowe comes on saying that it's his obligation under that agreement to make those payments. We take the position

1 that it is not. I think that since he is asking for something -
2 namely, money, that it's his burden.
3 THE COURT: I'm inclined to think that Mr. Lowe has the
4 burden --
5 MR. LOWE: Fine, I'll be happy to take it, Your Honor.
6 THE COURT: Let me ask you this. You said-- a moment
7 ago some question was raised about the $250 or the $125 and you
8 all said that you had cleared up the question about the mortgage.
9 What is the status of the mortgage?
10 MR. BOYLE: Well, to say that it's cleared up I think
11 is an overstatement. I think the Court said to Mr. Lowe, "If the
12 payment is to be made, then Mr. Carter could go on and use that
13 $250 to pay the mortgage. If arrangements had been made whereby
14 it would be forgiven or waived for this month, it would not be
15 necessary." Mr. Lowe called me to state that he had talked to the
16 mortgagee and the mortgagee assured him that Mrs. Carter would not
17 be prejudiced in any respect by failure to make that payment this
18 month. Now, I'm not certain what the status of those payments is,
19 but I feel that it's probably several months behind. I don't
20 know that as --
21 MR. LOWE: Would you like me to enlighten the Court?
22 MR. BOYLE: Yes.
23 MR. LOWE: They are two payments behind. The mortgage
24 company was not all that concerned about it. They understood
25 that there was litigation and that there were proceedings going.

They said that there would be no press-- no issue made at this point and that it could be brought current with a payment of two months plus a small late charge. They said that they were not concerned at this point, that they were not going to take any action immediately and they were fully prepared to bide time until this thing was settled, as long as we didn't go several more months and I told them that we were anticipating having a hearing today and that we thought the situation would be cleared up one way or the other and would be able to do something about it and they indicated that there was no problem and not to worry about making a payment right now, and so that's the status on that. I think they're aware of the problems and they're being sensible to it and they've got plenty of security in the house. It's not a big high percentage mortgage right now.

THE COURT: All right, thank you. All right, do you want to make any opening statement, Mr. Lowe?

MR. LOWE: Yes, sir, I would like to. The issue today in a nutshell is the obligation of Mr. Carter under a certain agreement dated September 14, 1971 between Mr. Carter and my client, Mrs. Frances Carter, which purported to resolve various court - property division, custody and other matters which existed between them at that time. Specifically, under paragraph (15) of that agreement, there is a provision which in substance we contend requires that since January, 1973 Mr. Carter has had an obligation to pay to Mrs. Carter the sum of $600 per month which

1 includes both support for Mrs. Carter and for the children but
2 was not allocated as to any portion for one or the other and, in
3 fact, was intended by the parties to be a compromise figure which
4 would be designated as support for children and wife without
5 being allocated in order to give a tax benefit to the husband,
6 Mr. Carter. There is a provision in this paragraph which specific-
7 ally indicates that alimony is included where it says in the
8 second unnumbered paragraph of the numbered paragraph (15): "All
9 payments of alimony shall cease," et cetera, et cetera, which
10 certainly indicates on its face that part of this was alimony for
11 purpose of the agreement. In addition, the payments were to con-
12 tinue until the death or the remarriage of wife or the emancipa-
13 tion by attainment of majority or otherwise of all of said child-
14 ren, whichever first occurs." This we contend was the intent of
15 the parties at the time of the agreement, referring to age 21 as
16 the age of majority. This is an ambiguity on the face in the
17 sense that the law has been changed since that date making majority
18 18. The intent of the parties was clearly at the age 21. The
19 opening paragraph (15) says, "as payment in lieu of alimony and
20 further child support." This was not intended to be a waiver of
21 alimony. It is not intended to say that there is no alimony, but
22 merely that this payment was a payment for the support of the wife
23 and the children instead of the normal alimony arrangement. We
24 believe, under the plain language of paragraph (15), that Mr.
25 Carter bargained to pay Mrs. Carter $600 a month. There was no

1 stipulation as to what would happen if either of the children left
2 for other than emancipation. In other words, just a change of
3 custody or let's say went into a hospital or anything else, and,
4 by the nature of trying to arrange a tax provision like this, it
5 is our position that a husband can waive objection to a situation
6 where the circumstances of the parties may change with reference
7 to child support and be barred from or estopped from complaining
8 later. We assert equitable estoppel against Mr. Carter from now
9 denying that this money was at least in part alimony because he
10 clearly calls it alimony in the agreement and he obtained a tax
11 benefit by having it designated as alimony and he should not now
12 be heard to say there is no alimony in it.
13 It is our position that the Court cannot step in and
14 rewrite the contract for the parties. If the Court disagrees
15 with that position, then it's our position that the Court has the
16 power and Mr. Carter must make an election either to stand by the
17 contract and pay the $600 or he must allow the Court to open up
18 the entire provision and make a determination as to whether alimony
19 ought to be paid in view of the circumstances of the parties and
20 what amount, if any, should be paid to Mrs. Carter in the way of
21 alimony, but we basically say that he cannot now come in and ask
22 the Court to change the plain language of this provision under
23 the circumstances of this case. I think we can stipulate, as has
24 already been stated by Mr. Boyle, that no payments of $600 were
25 made in August, September and October. Mr. Carter stopped the

1 payments under a claim of right. Mrs. Carter asserts that they
2 were due so that there would be an arrearage of $1800 at this
3 point. I believe we can stipulate that. I'll ask Mr. Boyle to
4 comment on that when he makes his opening statement. We ask that
5 the Court order that the $600 per month be reinstated, that the
6 Court order the arrearage to be paid and the Court award reasonable
7 attorneys' fees and expenses in this matter. Now, if the Court
8 takes the position that the matter is open to judicial inquiry as
9 to how much ought to be paid, then we would offer evidence to show
10 the expenses and income of Mrs. Carter and her circumstances and
11 we expect to have Mr. Carter adduce either on direct or cross-
12 examination the same information, although it is our position that
13 that is done only after the Court rules, if the Court rules to
14 entertain that type of information.
15 THE COURT: All right, Mr. Boyle.
16 MR. BOYLE: May it please the Court, first, since Mr.
17 Lowe has raised the issue, I will not stipulate that no payments
18 have been made during August, September and October. I believe
19 those are the months that he mentioned. $600 payments have not
20 been made, but payments have been made, payments of bills, etc.
21 which would normally have been part of the $600. I will ask Mr.
22 Carter when he testifies to point out to the Court what payments
23 he has made.
24 Your Honor, it is our position --
25 THE COURT: But it can be stipulated that $1800 -- that

1 the full $600 has not been paid?

2 MR. BOYLE: The full $600 has not been paid, that's
3 correct. It is our position, Your Honor, that Mr. Carter is not
4 by any means waiving his rights under this contract. We are be-
5 fore Your Honor to have this contract construed insofar as it
6 relates to the issues before the Court; namely, support or alimony.
7 We concede, Your Honor, that the word "alimony" was used in the
8 subject paragraph, but we will show by Mr. Carter's testimony
9 that the use of the word was clearly designed to enable the parties
10 to take advantage of the lower taxation which would result as
11 the result of using that term. It is our position, Your Honor,
12 that the 4th paragraph in the agreement which was incorporated
13 in the Court's decree was designed solely for the benefit of the
14 children. It was designed for support of the children. This is
15 why it cuts off when the children are emancipated.

16 Further, Your Honor, although the word "alimony" was
17 used, I think that the paragraph begins with the words, "In lieu
18 of alimony." This is something which Mr. Carter intended to give
19 instead of alimony. There was no alimony. Alimony was not con-
20 templated, alimony was not discussed. There is not in that agree-
21 ment anything which says that Mrs. Carter was entitled to a specific
22 dollar amount, the reason being that it was never intended. It
23 was never intended by the draftsman who was Mr. Carter and one
24 of the signers of the document that she would receive any alimony,
25 but rather that this money should be available to her because she

had custody of the children and she needed this money to raise those children in this house, the house that is also named in this agreement. You will note, Your Honor, that in this agreement there are also provisions relating to the house which show clearly Mr. Carter's intention that she should not in any fashion alienate that property during the children's minority. There is a similar provision with regard to children. The whole agreement, the whole tenor of the agreement was that Mr. Carter intended to look out for his children so long as they needed help from him which was assumed to be until they were emancipated. I will ask Mr. Carter to testify to the Court precisely why he used the words that he did, what his understanding of these words were, why these words were chosen and to explain to the Court the degree to which Mrs. Carter participated in the formation of this agreement. I will ask Mr. Carter also and I think he will testify to Mrs. Carter's state of mind at the time, the position that she took with regard to the agreement, the position that she took with regard to their marriage, all of which I think is indicative of why no alimony was provided for in this agreement and I think that, after hearing this evidence, Your Honor will conclude that Mrs. Carter is indeed not entitled to any alimony, but that the $600 in issue was designed for support of the children in the house which Mrs. Carter occupied. Thank you, Your Honor.

THE COURT: All right.

MR. LOWE: I'm going to call Mrs. Carter as the first

1 witness. I would simply, without belaboring the point, mention
2 to the Court that she is on medication and she is under a great
3 deal of emotional stress. I trust that the Court will allow me
4 perhaps a bit more latitude in my questioning of her than would
5 be done within normal limits. I will try not to lead her exten-
6 sively. I do have a list of expenses which I have worked out
7 with her and the bills and everything and what I think I would
8 like to do is to give a copy to the Court and to Mr. Boyle at this
9 time and see if there are any questions before she gets on the
10 witness stand that might otherwise upset her just in the form of
11 specifics.
12 THE COURT: Well, now, first, before we bring her in
13 here, don't we have to resolve the question as to whether or not
14 any evidence should be heard at all?
15 MR. LOWE: All right, that's what I asked in opening
16 statement, Your Honor. I guess I'm jumping the gun a little bit
17 because of the manner in which our last hearing proceeded, but it
18 seems to me that the testimony, if we get past the question of
19 what the plain language is here, the Court is going to either rule
20 that we are entitled to $600 per month or is going to open up the
21 question of what the needs of the parties are. Perhaps the Court
22 could make some rulings or clarify how it wants to proceed.
23 THE COURT: Well, based primarily on what went before
24 and my recollection of the agreement -- let me look at it for a
25 minute here -- I feel that there is an ambiguity in here that

1 requires evidence to clear the matter up and it states in paragraph
2 (15), "as payment in lieu of alimony and as further support and
3 maintenance of said children." Down below it again refers to "in
4 lieu of alimony" and then you have a provision, "said payments to
5 continue until the death or remarriage of wife or emancipation by
6 attainment of majority of all of said children, whichever first
7 occurs." You've got this provision that's in unnumbered paragraph
8 2 of paragraph (15), "All payments of alimony shall cease at any
9 time the Court decrees any increase in payments for support and
10 maintenance." It seems to me that clearly we've got an ambiguity
11 that requires outside evidence to clear it up. I believe it's
12 your position that is not true?
13 MR. LOWE: Yes. I realize from our previous discussions
14 that you are going to rule that there is an ambiguity. I guess --
15 THE COURT: But your position, Mr. Boyle, is that the
16 Court is correct in thinking that there is an ambiguity and needs
17 outside evidence?
18 MR. BOYLE: Well, I must concede that there is in view
19 of what the Court has said. Of course, our position was that there
20 was no ambiguity, but that the Court should interpret the agreement
21 mean that this was solely child support. Now, in the absence of
22 the Court's willingness to do that, then there arises another issue.
23 I think we need not go into Mrs. Carter's needs. I don't think
24 that's even an issue at this point in time. Apparently, what
25 Mr. Lowe is saying is that there is $600 here which the Court is

to distribute in some fair fashion. I disagree with that position. I think that it should all remain in Mr. Carter's pocket. However, if that is the Court's permission, then there is under $600 and, if what Mr. Lowe is saying is correct, then he assumes the entire $600 should go to Mrs. Carter and I don't know where the child support is supposed to come from. I don't think that the Court indicated in our prior hearing that this did --

THE COURT: Well, I think we've got to go into what the intention of the parties was and all because I have ruled that there is an ambiguity, but then we get down to the question -- of course, if the Court rules that it's all alimony, as Mr. Lowe contends, then the question of what her expenses are or his expenses are won't make any difference. If the Court rules that it's all support, then her expenses won't make any difference. If it's only, it seems to me, though, if the Court rules that it's part support and part alimony, then we go to the question of what these various expenses are.

MR. LOWE: Let me clarify, Your Honor, our position as to what you've just said. I have not contended that it is all alimony. I have contended that it is a payment which is being made to wife in lieu of child support and alimony as a fixed sum. Now, the Virginia cases, particularly about a year or two ago, there was quite a flurry because the court ruled that,where it's a payment in lieu of alimony, the court could not adjust it; whereas, if the court has control over alimony, there was a whole series

1 of cases involving whether alimony would continue after remarriage
2 and everything. Our position is that this is an agreed on amount
3 which was going to be paid to acquit all obligations of every
4 nature as a settlement figure for the period up until the youngest
5 child attained majority and it was not called alimony or child
6 support, it was support and it was deliberately left vague for
7 tax purposes, but that part of it at least was intended for support
8 of wife. We contend that there should be no allocation and that
9 that would be rewriting the contract by the Court, but what I'm
10 saying is if the Court says, "Well, I find that part of it is
11 alimony and part is child support and now I want to receive evi-
12 dence as to what it should be - apportionment - then I think the
13 Court would want to have evidence and I was anticipating that be-
14 cause I thought the Court had sort of reached that position.
15 THE COURT: When you call Mrs. Carter in here, I want
16 to hear from her on just what she may know about the opening re-
17 marks and while she's in here she might as well testify --
18 MR. LOWE: Well, let's -- I'd like to make a record of
19 it in any event for whatever purpose we may have. I would also
20 like to ask the indulgence of the Court and cooperation of opposing
21 counsel that -- they subpoenaed Mrs. Carter for the purpose of
22 putting her on the stand. I would hope, because of Mrs. Carter's
23 situation, that we could conclude Direct, Cross on both sides
24 while she's on the witness stand even if it's a little out of
25 sequence in order not to bring her in and take her out and bring

her in again. I think that would put undue strain and I don't think there's any need to do that. We're in on an equity hearing and, under the circumstances, I would hope that Mr. Boyle would do the examination at that time.

THE COURT: Well, we'll have to see. I hope we can, too, but if Mr. Boyle -- of course, as stated originally that he would want to call her as an adverse witness, but if -- I don't know exactly what -- but I assume that he was then thinking in terms that he was going to have the burden.

MR. BOYLE: I cannot say, Your Honor. I'm aware of Mrs. Carter's situation and I'll try my best to conclude my interrogation of her when she makes her initial appeatance, but if it is necessary to call her back on to verify something, that's what I will do.

MR. LOWE: I understand that. I was just talking about --

THE COURT: But I don't foresee that there's a necessity for calling her as an adverse witness if you --

MR. BOYLE: No, sir.

THE COURT: Mr. Lowe has the burden here.

MR. BOYLE: That's right.

MR. LOWE: Right, sir. Let me get Mrs. Carter.

THE COURT: All right.

October 30, 1973

10:00 A.M.

FRANCES M. CARTER, the Respondent, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Lowe:

Q Would you please state your full name and where you're living?

A Frances Murray Carter, 1900 Greenbrier Drive.

Q And would you verify for the Court -- I think we can probably stipulate this -- that you are the Frances Carter that entered into this support agreement of September 14, 1971? You're familiar with this agreement?

A Yes.

Q Did you execute this agreement yourself at the time it was executed?

A Yes.

Q And did you read the agreement and discuss it with your attorney at the time you executed it?

A Yes.

Q Inviting your attention to paragraph (15) which calls for certain payments to be made at various times, there is a mention after January 1, 1973 of $600 per month. I'd like to have

1 you recall back at the time you signed this agreement what your
2 state of mind was at that point with respect to these amounts of
3 money that were paid at different periods of time and tell the
4 Court whether these amounts were intended to be all child support
5 or alimony or some child support and some alimony or just support
6 for you and the children or just what the nature of those payments
7 was.
8 A My understanding was that it was support for me and
9 the children.
10 Q Was there any allocation as to how much was for each
11 of you?
12 A No.
13 Q Do you know why it was done that way?
14 A No.
15 Q Was there any mention to you about tax considerations
16 that might give you a tax break or give Mr. Carter a tax break?
17 A Yes.
18 Q Did you fully understand all the ins and outs of why
19 that worked or how it worked?
20 A No, I did not.
21 Q Did you have any intention of waiving alimony; that
22 is, support for yourself by signing this agreement?
23 A No, I did not.
24 Q Was it your understanding that you were doing that
25 by signing this agreement?

A Not at all, no.

Q Did your lawyer ever tell you that you were waiving alimony or waiving any support by signing this agreement?

A No, he did not.

Q Did your lawyer ever tell you or did you ever think that this sum you got each month according to this paragraph was all for child support?

A No.

Q Now, at the time you all executed this agreement, was there any consideration or thought given to what would happen if the children were not in your custody for some reason or other?

A Not that I know of.

Q So that was just an -- when it happened recently, that was an unanticipated provision?

A Yes.

MR. LOWE: Your Honor, I'm not quite clear as to how to proceed at this point, whether it would be better to allow Mr. Boyle to cross-examine at this point, ask some questions on this narrow issue and see how much further we need to go. I don't know how much farther to go into some of these other areas. Do you want to go ahead and establish -- shall I go ahead and establish these for the record before we go further?

THE COURT: Unless Mr. Boyle would prefer to go ahead and cross-examine on what has already been testified to.

MR. BOYLE: I'd rather Mr. Lowe completed his examination.

1 THE COURT: All right, go ahead.

2 MR. LOWE: All right.

3 Q Mrs. Carter, I have prepared a document here which
4 shows or purports to show your income, your expenses and your bills.
5 Have you had a chance to look over a copy of this?

6 A Yes, I have.

7 Q And are these the figures that you and I went over
8 that you provided me?

9 A Yes, they are.

10 Q And I believe the medical and dental expenses partially
11 came from Dr. Collins and you're not aware of that? I talked with
12 him and he'll be here later.

13 A Yes.

14 Q All these bills that are shown here are presently due
15 by you, is that correct?

16 A Yes, that's correct.

17 Q And you're employed as a proofreader at Michie Pub-
18 lishing Company?

19 A Yes.

20 Q And you work from -- is it four-thirty 'til one in
21 the morning?

22 A Yes.

23 Q Five days a week?

24 A Yes.

25 Q And on this net earnings - the take-home pay - that

is after the taking out of taxes, is that correct?

A Yes, that's correct.

Q Do you have any other income from any other source?

A No, I do not.

Q All right, now, none of these living expenses are included for costs for the children at such times as they are with you at your home?

A No.

Q And these do not include any luxuries, any vacations, any expenditures for entertainment, movies, things of that nature?

A No.

Q This is just for bare bones living necessities?

A Yes, it is.

MR. LOWE: All right. I would ask this to be introduced, Your Honor - the Court has a copy - as -- I guess in this case we are the respondents although in the original divorce suit we were the complainants, so I would say Respondent's Exhibit #1. I would ask that to be introduced into the record.

THE COURT: All right, sir.

[List of income, expenses and bills of Mrs. Carter received in evidence and marked as Respondent's Exhibit #1.]

Q Now, prior to your executing this agreement, were there periods in which you and your husband were not getting along very well?

A Yes, there were.

Q Did you have fights?

A Yes, we did.

Q Did you get emotionally upset at times?

A Yes, I did.

Q At any time did you tell him prior to signing this agreement that you did not want any alimony?

A Only in moments of duress.

THE COURT: Wait a minute. I couldn't hear that.

A In moments of duress.

Q What type of duress?

A Physical cruelty and also when I was emotionally upset.

Q At the time you signed this agreement, did you have any intention that you would not seek or not want alimony or support for yourself?

A No.

Q Was that in your mind at all that this agreement would accomplish that?

A No, it was not.

Q And is your understanding and your recollection of your original intent then that Mr. Carter is supposed to be paying you $600 per month now, even though the children are not in your custody, as a result of this agreement?

A Yes.

MR. LOWE: All right. I believe that's all for right now, Your Honor, unless the Court has something else it wants to get into at this point. I think that's a prima facie case on this.

THE COURT: I don't believe I want -- all right, Mr. Boyle.

MR. LOWE: Mr. Boyle may have some questions for you, Mrs. Carter.

CROSS EXAMINATION

By Mr. Boyle:

Q Mrs. Carter, your answer to the last question put to you by Mr. Lowe was that it was your understanding that Mr. Carter is to pay you $600 per month even though the children are not in your custody?

A Yes.

Q Where did you get that understanding?

A Well, I didn't get that understanding from anywhere except my own mind. I didn't understand the separation agreement when it was drawn up, I didn't understand what was going on and I just took their word for it that it was proper and right.

Q Well, but where have you concluded -- how have you concluded that Mr. Carter is to pay you $600 a month even though he has the children?

A Well, I think he owes me some support.

1 Q Well, is it not correct that Mr. Lowe is the one
2 who has told you that he is to pay you $600 a month?
3 A No, Mr. Lowe has not told me that.
4 Q Well, how could you draw the --
5 MR. LOWE: Well, let me clarify it. I have advised
6 Mrs. Carter in discussing with her --
7 MR. BOYLE: If Your Honor please, I would object to Mr.
8 Lowe coaching his witness.
9 MR. LOWE: Well, I think he's asking for attorney-client
10 confidential relations and I think I can state my --
11 MR. BOYLE: I would ask the Court to allow Mr. Lowe at
12 some later date - later time to explain to the Court what his --
13 THE COURT: Well, I don't think that whether or not Mr.
14 Lowe may have told her - I don't think it's material because --
15 MR. LOWE: Well, that's what I was going to say, Your
16 Honor. In addition, that's something after the agreement and
17 it's not material.
18 THE COURT: Yes. I don't think that has anything to
19 do with what the intent was at the time of the execution. For
20 the record, you weren't representing Mrs. Carter at the time of
21 the --
22 MR. LOWE: No, sir, Mr. Michie was. I didn't even know
23 this agreement was being done at the time it was being executed.
24 Q (By Mr. Boyle) Was it contemplated, Mrs. Carter, at
25 the time of the execution of this agreement that you would have

1 custody or that Mr. Carter would have?

2 A That I would.

3 Q Was it contemplated at that time that you would ever

4 by any means relinquish custody?

5 A No.

6 Q All right, so there is no way at the time of the ex-

7 ecution of the agreement that it would have been contemplated that

8 you would receive $600 a month if Mr. Carter had the children,

9 isn't that correct?

10 A I can't say yes and I can't say no. I don't know

11 under those circumstances.

12 Q So you had no thoughts at the time of execution con-

13 cerning that matter?

14 A Of course not.

15 Q All right. Now, you said that you had from time to

16 time made statements that you did not want alimony in moments of

17 duress?

18 A Yes.

19 Q Now, would you please describe that descriptive

20 phrase to us?

21 A Well, when my husband was physically cruel to me, for

22 instance.

23 Q What would your husband do to you?

24 A Do you want me to go into detail?

25 Q I want to know what he did in order to get you to say

1 that you didn't want alimony, which I presume is what you're
2 saying.
3 A Oh, no, I'm saying we had such a turbulent relation-
4 ship and it was so frought with unpleasantness that I didn't know
5 what I was saying really half the time.
6 Q Well, now, was that only when you were in Mr.
7 Carter's presence or did you also tell people when Mr. Carter was
8 not present that you did not want alimony and were not asking
9 for any?
10 A I don't remember.
11 Q Did you not tell your own children, Mrs. Carter,
12 that you were not asking their father for any alimony and did not
13 expect to receive any?
14 A Not to my knowledge.
15 Q Did you tell any of your friends that?
16 A Not to my knowledge.
17 Q Well, to whom did you say it then if you said that in
18 moments of duress you stated that you did not want alimony and
19 did not expect it?
20 A To my former husband.
21 Q And was he at that time being cruel to you?
22 A Well, it depends on your definition of cruelty.
23 Q Are you saying that you divorced your husband because
24 he was cruel to you?
25 A Yes, I am. Indeed I am. Indeed I am.

1 MR. LOWE: Your Honor, I would object to this line of
2 questioning. This is not the issue before the Court. I think
3 that there's plenty of evidence on that and I would ask the Court
4 to rule this line of questioning irrelevant. Any further --
5 MR. BOYLE: If Your Honor please, on direct examination
6 Mr. Lowe opened the door to this line of questioning.
7 THE COURT: Well, on what basis - what grounds she ob-
8 tained her divorce -- of course, her divorce was obtained on
9 legal grounds and stated in the -- there were allegations and
10 there was proof and so on and what her opinion is I don't think
11 is --
12 MR. BOYLE: But I want to go, Your Honor, to the facts
13 that existed prior to the entry of the divorce decree and why it
14 is that Mrs. Carter wanted the divorce and the fact that she
15 wanted the divorce and not her husband.
16 THE COURT: Well, I think you can ask her if that's
17 true.
18 Q Mrs. Carter, is it correct that you were the one who
19 wanted the divorce?
20 A Indeed it is correct.
21 Q Is it not also correct that the reason you wanted
22 it was so that you could remarry?
23 A No.
24 Q Was it not your plan to remarry as soon --
25 MR. LOWE: Your Honor, this is highly inflammatory. It's

upsetting the witness, it's irrelevant and I must object as strenuously -- this is outrageous.

THE COURT: I don't see that what her plans were makes any difference.

MR. BOYLE: Your Honor, I think they do for this reason. If a wife wants a divorce from her husband to remarry another man, I do not think that it would be his inclination voluntarily to give her alimony. This is the reason that I'm going into this area. Mr. Carter testified to it in a previous hearing and --

THE COURT: Well, I think that would relate more to what Mr. Carter's intent was rather than her intent.

MR. BOYLE: And I think we've related it well, Your Honor, to her statement that she did not expect any alimony from Mr. Carter. She has admitted that she did not expect any, but she said that this statement was colored by duress and if our contention is so, they were not by duress. She didn't want any because she intended to remarry.

MRS. CARTER: That's not true.

MR. LOWE: Well, he can make an argument on that, Your Honor, but I think this is an entirely irrelevant and inflammatory line of questioning and I ask the Court to disallow it.

THE COURT: You can ask her if she told her husband, which I think might go to what the intent was on -- certainly on the part of Mr. Carter as to whether or not she intended to marry another man.

MR. BOYLE: Yes, Your Honor.

Q (By Mr. Boyle) Mrs. Carter, did you tell your husband that you intended to marry another man?

A No, I did not.

Q Did you not tell him that you intended to marry Sim LiGon?

A That was a figment of my imagination.

Q But did you tell him that?

A I may have.

Q Now, Mrs. Carter, you testified that the language in the agreement was chosen in order to give Mr. Carter a tax break?

A Yes.

Q All right, in what fashion would this give Mr. Carter a tax break?

THE COURT: Now, Mr. Boyle --

MR. LOWE: She's already answered that.

THE COURT: -- in fairness, she said she didn't understand all that, but she -- as I recollect, she understood it, but she didn't -- that that was the purpose, but I don't think she -- I thought she prefaced it by saying she didn't understand the details of it. I think she did state --

MR. LOWE: I asked the specific question, Your Honor, whether she understood what that was all about and she said no, she didn't.

MR. BOYLE: I would like to ask her if she did understand it, Your Honor.

MR. LOWE: She's already answered that question, Your Honor. He's badgering.

MR. BOYLE: I'm allowed to cross-examine her on the same point, Mr. Lowe. Mr. Carter tells me that she did.

THE COURT: I'll permit you to ask her what her understanding was.

Q (By Mr. Boyle) Mrs. Carter, was there any discussion between you and Mr. Carter concerning the tax consequences of this agreement?

A He said it would save him money.

Q And did he say how it would save him money?

A He said I would have to pay the taxes on the amount I received and that he would be able to take it as a -- I believe - I'm not sure what he said really, but I believe he said that he would be able to take it as a tax - whatever you call it -- a tax benefit.

Q In other words, the money that you were to receive, if the language in the instrument were used, would be taxable to you rather than to him, is that correct?

A Yes. Yes. Yes.

Q Was it explained to you that this is the reason that such language was used?

A It was, but I still didn't understand it. I couldn't

1 understand it.

2 Q Mrs. Carter, after the agreement had been executed,

3 did you ever state to your husband --

4 MR. LOWE: Your Honor, I would object to anything after

5 the agreement had been executed. It does not -- as not being

6 relevant as to construing the agreement as to the intent of the

7 parties at the time.

8 MR. BOYLE: Your Honor, the nature of the question is

9 such that it does relate to the intent --

10 THE COURT: Well, let's see -- let him finish the ques-

11 tion, but don't answer it until we find out just what the ques-

12 tion is.

13 Q Mrs. Carter, is it correct that,after the execution

14 of the agreement, on several occasions you have stated to your

15 former husband that you were aware that the agreement did not call

16 for any payment of alimony to you?

17 A No --

18 MR. LOWE: Now, hold -- just don't answer the question.

19 Your Honor, I would object to that --

20 THE COURT: She didn't state it.

21 MR. LOWE: Pardon?

22 THE COURT: She said she didn't make any.

23 MR. LOWE: I just don't want to open the door for that

24 type of thing.

25 Q Mrs. Carter, I'll ask you just a few questions about

1 your statement here. You have one entry - medical and dental
2 expenses of $205.00 a month --
3 MR. LOWE: It's $215.00.
4 Q Excuse me, $215.00. Do you know to what extent the
5 medical expenses are due to emotional difficulties?
6 A Yes, that is what they are.
7 Q So it doesn't relate to dental?
8 A No.
9 Q Your husband agreed to pay your dental expenses?
10 A Yes, he did.
11 Q And agreed to pay your medical expenses not related
12 to --
13 A To emotional.
14 Q -- emotional or mental illness?
15 A Yes, he did.
16 MR. LOWE: Your Honor, I'll agree to strike out the
17 word "dental." That was just an oversight. That's not intended
18 to show dental.
19 THE COURT: All right, sir.
20 Q Now, the bills that you have listed for $320.00 to
21 Keller & George - what's that for?
22 A One for a watch for one of my daughters and another
23 for setting a ring for one of my daughters and another for repair
24 to a ring for me.
25 Q When were these expenses incurred?

A In July.

Q In July?

A Yes.

Q Was there a birthday or something?

A Yes, there was a birthday for Elizabeth and for Finley both.

Q Now, the two at the bottom - Arlington House, and Dr. Collins, $500.00 and $180.00 respectively. Do you in fact owe these bills?

A Yes, I do.

Q Have they not been waived?

A No, they haven't.

THE COURT: You said, have they not been what?

MR. BOYLE: Waived.

Q Are you quite confident that they --

A Not to me they have not.

Q To you they have not?

A No.

Q Mrs. Carter, at the time that you and Mr. Carter executed this agreement, were you attending the University of Virginia to get your Masters Degree?

A I expect I was, yes.

Q And after you executed the agreement, did you continue to attend classes at the University in order to --

A I served an internship.

A In July.

Q In July?

A Yes.

Q Was there a birthday or something?

A Yes, there was a birthday for Elizabeth and for Finley both.

Q Now, the two at the bottom - Arlington House, and Dr. Collins, $500.00 and $180.00 respectively. Do you in fact owe these bills?

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THE COURT: You said, have they not been what?

MR. BOYLE: Waived.

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A Not to me they have not.

Q To you they have not?

A No.

Q Mrs. Carter, at the time that you and Mr. Carter executed this agreement, were you attending the University of Virginia to get your Masters Degree?

A I expect I was, yes.

Q And after you executed the agreement, did you continue to attend classes at the University in order to --

A I served an internship.

1 Q And did you obtain your degree?

2 A Yes, I did.

3 Q And was it not, Mrs. Carter, the purpose of that so

4 that you could be self-supporting?

5 A It was -- the purpose of it was so I could do some-

6 thing in a professional way.

7 Q But was it not so that you could earn money to sup-

8 port yourself?

9 A Well, it was -- certainly I needed to earn money.

10 Q And Mr. Carter agreed to pay your tuition for that

11 reason, did he not?

12 A He did not pay all of my tuition.

13 Q Did he not pay a considerable amount of it?

14 A Yes, he did.

15 MR. BOYLE: I have no further questions, Your Honor.

16 MR. LOWE: That's all I have, Your Honor, unless the

17 Court has some questions it would like to clarify.

18 THE COURT: What type of course were you taking at the

19 University?

20 A I was taking a Masters Degree in School Psychology,

21 Your Honor.

22 THE COURT: And what type of work are you doing now at

23 the --

24 A I'm proofreading.

25 THE COURT: I see. I notice here that the average

1 expenses of operating a car -- you drive 1000 miles every month.
2 A Yes, sir.
3 THE COURT: Where is that? That isn't -- that's more
4 than just going to and from work, isn't it?
5 A Oh, yes, sir. Well, this has been in the past. Last
6 year in my job I had to drive all over the county and this --
7 THE COURT: You mean in your job with The Michie Company?
8 A No, in my job with Albemarle County Schools.
9 THE COURT: Oh, I see.
10 A Yes, sir.
11 THE COURT: But, working with The Michie Company, you
12 probably wouldn't --
13 A I wouldn't drive that much, no.
14 THE COURT: I have no further questions. Thank you.
15 You may stand aside.
16 [The witness stood aside and left the courtroom.]
17 MR. LOWE: Your Honor, I didn't want to say anything
18 while Mrs. Carter was on the stand and I thought Mr. Boyle would
19 prefer I did not. I would like to explain on the Arlington House
20 bill and Dr. Collins' bill what has been said to me, but Mrs.
21 Carter has not been told - Mrs. Carter directly. We have been
22 trying to work it out. Mrs. Carter avoided medical treatment be-
23 cause of the fear that she was running up high bills. She stopped
24 seeing the doctor at one point and said she couldn't afford it.
25 Well, she couldn't afford not to see the doctor medically. The

1 Arlington House is a separate corporation from the organization
2 of doctors that were treating her and Arlington House has not --
3 as far as I know, never has offered to forgive any part of that
4 bill. Now, that was the actual hospital bill for the room charges
5 and so forth. The doctor's bill -- Dr. Collins said that he did
6 not want her to feel that any doctor's charges were going to pre-
7 vent her from getting treatment and said that he was not going to
8 put that as a condition to her further coming, that she had to
9 pay it. If she could, that's fine, but that they did not want her
10 to avoid it just because she didn't have the money and that I
11 have communicated to her so that she would and has, in fact, gone
12 back to Dr. Collins, but that's the only thing I know of as terms
13 of any waiver of any bills and her father -- this bill of $500
14 was $750 and part of it was paid by her father just recently and
15 that's why it is not higher than the $500.
16 THE COURT: This present medical bill here of $215.00 --
17 MR. LOWE: I'll have Dr. Collins who's just arriving --
18 I'll have him explain that, Your Honor.
19 THE COURT: That is Dr. Collins?
20 MR. LOWE: Yes. Will you take the stand, please, Dr.
21 Collins?
22
23 DR. PHIL COLLINS, called as a witness by and on behalf
24 of the Respondent, being first duly sworn, testified as follows:
25

DIRECT EXAMINATION

By Mr. Lowe:

Q For the record, will you state your name and where you are employed and the nature of your profession?

A My name is Phil Collins, and I'm employed with Central Virginia Psychiatric Associates which is a professional group of psychiatrists practicing psychiatry on Arlington Boulevard.

Q And how long have you known Frances Carter professionally?

A Approximately a year.

Q And what has the nature of your contact with her during that year been?

A It's been professional contact with me seeing her as a psychiatrist -- I'm trying to remember her first admission-- I think it was around August of 1972 and I maintained contact with her until January, then I recently began seeing her again approximately -- oh, two or three months ago -- a couple of months ago.

MR. LOWE: Mr. Boyle, I'll go into the details of qualifying Dr. Collins unless you have familiarity enough that you'd stipulate his qualifications as a psychiatrist.

MR. BOYLE: It won't be necessary. What -- I thought you called him to ask him questions concerning expenses.

1 MR. LOWE: Well, I want to qualify him as an expert and
2 my only question at this point is will you stipulate his qualifi-
3 cations or shall I go into them?
4 MR. BOYLE: I'll stipulate.
5 Q All right. During part of this year was she an in-
6 patient at Arlington House? Did you have close contact during
7 that period of time?
8 A Right. She was a -- I got away in kind of a hurry
9 so I'm not going to be able to give you any dates. They can be
10 substantiated, but she was an in-patient approximately -- oh, a
11 month or six weeks ago for approximately seven days - seven or
12 eight days.
13 Q Earlier this year was she also an in-patient?--or
14 was that last year?
15 A She --no, that was last -- oh, she was admitted to
16 Davis, I think, for approximately six weeks back in the summer
17 and that is the only -- those were the only hospitalizations that
18 she has had for 1973 that I'm aware of.
19 Q All right, in 1972 was she hospitalized at Arlington --
20 A She was hospitalized at Arlington House - our hospital-
21 for approximately - oh, I don't know - I'd say for a couple of
22 months back in the summer of 19-- summer and fall of 1972.
23 Q What is her present mental health? What is the
24 status of it? Can you just characterize it for the Court?
25 A Well, at the present time she's pretty depressed.

She's -- I saw her last week and I've followed her as an out-patient for probably three or four visits since her discharge from this last admission and she's significantly depressed, has feelings of sadness and blueness and not being wanted, sensations of worthlessness.

Q Does she suffer from mental illness that you can identify by name or state of mind, anything that's recurring or is the source of her problems basically?

A Well, that gets into psychiatric diagnosis which can sometimes be very confusing. Yes, she could be labeled probably as a manic depressive psychosis.

THE COURT: She'd be labeled what?

A As a manic depressive psychotic.

Q Is this disorder likely to terminate with proper treatment or is it likely to be recurring over a period for life or just what is the nature of it?

A I think it's a recurring type of thing. It can be controlled, much as diabetes can be controlled.

Q In recent weeks or recent months, was there a period of time when Frances Carter was going to see you but did not out of fear of financial problems?

A Shortly after she was discharged from the hospital on this last admission I arranged an out-patient appointment with her approximately a week after she had been discharged and she did not return for that appointment. I can't recall whether I

1 Q So that we're talking about somewhere between $160
2 and $200 a month for psychotherapy over the foreseeable future or
3 next couple of years?
4 A Approximately.
5 Q Now, you mentioned that you had agreed to see her
6 without charge. Can you relate for the Court how this is affected
7 by her ability to pay and whether this was an interim measure
8 until she could set something up or whether it's a long range or
9 just what your relationship is?
10 A Well, I guess it - over the past year there has been
11 something of a liaison established between Mrs. Carter and I and
12 I would have a personal interest in not seeing her hospitalized
13 if possible and I guess I would be pompous enough to think that
14 I could maybe achieve that if I could see her and maintain some
15 contact with her, so consequently - you know - as long as she is
16 willing to come by once a week, I would be able to spend some
17 time with her, perhaps not as much as I would like, but some time.
18 Our appointments recently have been averaging anywhere from twenty
19 minutes to thirty or forty-five minutes.
20 Q If she had an income, would you normally expect to
21 be paid for this or not to be paid for it?
22 A Absolutely.
23 Q Mrs. Carter has indicated about $15.00 a month for
24 drugs and medication. Based on what you know of her case and
25 what you have prescribed, is that a fair figure for what it's

1 called her or she called me and it was -- somehow there was con-
2 tact reestablished. Oh, I remember what it was now. It was - I
3 had the secretary call her because I had to rearrange another
4 appointment and Frances told the secretary that she would not be
5 coming back for her out-patient visits because of the expense.
6 Q Did you then and I have a conversation at some point
7 concerning this and the desire of having her see you and what
8 arrangements could be made?
9 A It seems as though we did. I don't recall much about
10 that. I do recall telling you at one point that I would be willing
11 not to charge her anything if I could maintain contact with her
12 because I was concerned about the state of her health.
13 Q In view of her not having any funds at that point?
14 A Right.
15 Q Now, in your professional opinion, what medical
16 treatment does she need now as a minimum for the foreseeable
17 future?--let's say for the next twelve months or the next two
18 years.
19 A I think that she's going to have to be followed reg-
20 ularly and I would see -- at a minimum she should be seen probably
21 an hour a week.
22 Q And what charge would that amount to for your services
23 in seeing her an hour a week?
24 A The standard rate for one hour of psychotherapy in
25 Charlottesville is $40.00.

1 probably going to cost her for various tranquilizers and things
2 you prescribe?
3 A She's presently taking three medications. Now, I
4 don't have any knowledge at all about the cost of drugs. These
5 types of drugs normally are rather expensive, however.
6 Q You say $15.00 a month would be a conservative figure?-
7 fair figure?
8 A I would think so.
9 MR. LOWE: Your Honor, we get into an area here where
10 I've objected to, but the Court allowed a question and I'd like
11 to just ask the Court's guidance on this. Mr. Boyle asked Mrs.
12 Carter whether she had told her husband or perhaps discussed with
13 some other people about her plans to marry Sim LiGon. Now, in
14 fact, Dr. Collins I think is aware that this was part and parcel
15 of her illness at that point and I'd like to clarify the record
16 on that, if the Court feels that that's at all relevant, while
17 Dr. Collins is on the stand. If the Court rules that's completely
18 irrelevant, then there's no need to go into it because this was
19 a -- one of the manifestations --
20 THE COURT: Well, I think it has some relevance, particu-
21 larly insofar as communication to Mr. Carter because --
22 MR. BOYLE: May it please the Court, I learned from Mr.
23 Carter after I sat down that I'd used the wrong name, so the
24 question of Sim LiGon was not a proper question and the response
25 was accurate because I had used the wrong name.

1 THE COURT: I see.

2 MR. LOWE: Could you state for the record what the name
3 is so we can clarify it while Dr. Collins is on the stand in case
4 it is relevant?

5 MR. BOYLE: Did Dr. Collins know her then?

6 MR. LOWE: Well, I think that the name may have come up
7 to where he knows if he can shed some light on that, but I'd just
8 like to clear the record up --

9 MR. BOYLE: Well, that doesn't make it possible he'd
10 know what she thought at that time. He didn't know her and he
11 wasn't treating her at that time.

12 MR. LOWE: Well, I think that --

13 MR. BOYLE: Or his best guess would be a mistake I think
14 to allow it in on this basis.

15 THE COURT: Well, maybe he knows what -- I think he's
16 going to have to base this on what she told him.

17 MR. LOWE: May we have the name, Your Honor, and then
18 we can decide - or the Court can make the appropriate rulings?

19 THE COURT: Well, if she didn't tell him that she
20 planned to marry anybody, then I don't think it makes any differ-
21 ence.

22 MR. LOWE: Well, if Mrs. Carter is called back on the
23 stand and asked the question after Dr. Collins goes back over to
24 Arlington House, we're not going to be able to get Dr. Collins
25 back over here to possibly shed some light on it. I'm trying to

be practical here.

MR. BOYLE: The question that I asked her was whether or not she had -- if I recall correctly -- was whether or not she had advised her husband that she intended to marry a certain individual, and I said Sim LiGon incorrectly. There's no way in the world that the doctor here would know whether she made such a statement to Mr. Carter.

MR. LOWE: But the doctor may be able to shed some light on her mental state.

THE COURT: You might attempt -- if she told him, it might shed some light on whether she might have -- on her state of mind at that time.

MR. BOYLE: You mean he would be able presently to tell what her state of mind was at that time?--several years ago? Is that your direction?

THE COURT: That's my -- what I'm thinking, yes.

MR. BOYLE: Howard Iseman.

THE COURT: What's that?

MR. BOYLE: Howard Iseman is the man's name.

MR. LOWE: Well, let me clarify it. I suspect I know what the answer is going to be.

Q (By Mr. Lowe) Did Mrs. Carter ever mention Howard Iseman to you?

A No.

Q All right, that's all. That's simple. One issue

1 which may come up -- you're aware, I believe, of Mrs. Carter's
2 training,and I believe she has a Master's Degree in counseling
3 or some field in any event, and she was teaching. In the fore-
4 seeable future, do you believe that she will be able to assume
5 teaching duties of the type that she's trained for with her
6 Master's Degree in order to support herself?
7 A I would see no reason why she shouldn't be able to.
8 Q So this is something you hope that she can start
9 working back into?
10 A [Witness nods head affirmatively.]
11 Q Could you relate to the Court your opinion as to the
12 need for Mrs. Carter to have recreations and vacations? In other
13 words, not to have a bare bones existence of a life in relation
14 to her depression or state of mind?
15 A Yeah, I think this would be particularly important
16 for her to have the potential of recreation and vacations, of
17 course. She's been under a fair amount of tension here recently -
18 you know - attempting to hold down her job, to deal with the
19 external features of these court proceedings and her mental status
20 also.
21 Q How about financial stress and not having enough
22 money to meet all of her payments and so forth? What can you
23 tell about -- I mean obviously nobody likes that, but how does
24 this affect her mental state and her health?
25 A Well, it's just another burden, of course. Of course,

she's - you know - worried about this aspect of her life. I mean it just seems to be another factor that is detracting from her making any progress.

MR. LOWE: I think that's all I have. Mr. Boyle may have some questions for you, Dr. Collins.

CROSS EXAMINATION

By Mr. Boyle:

Q You indicated, Doctor, that she could -- you saw no reason why she could not soon teach in the area of her competence. What do people in that area make generally?

MR. LOWE: I object, Your Honor. This doctor isn't qualified to make that statement, what teachers earn --

THE COURT: See if he is qualified. Do you know what such teachers make?

A I don't have the least idea.

Q You say you have no idea?

A I have no idea.

Q One other question, Dr. Collins. This last time that Mrs. Carter was hospitalized I believe was initiated by your calling Mr. Carter, is that correct?

A Actually, no. I haven't reviewed this, but it seems to me that she had been recently discharged from the Davis Unit at U. Va. and I had talked to her by phone while she was still in the hospital about making -- she had requested the psychi--

1 from her psychiatrist that she was seeing at Davis that an appoint-
2 ment be arranged with me on her discharge and I talked to her by
3 phone and I think I saw her once after her discharge and then she
4 appeared one morning at our hospital with her bags in hand and
5 asked for -- asked for admission.
6 Q Did you then call Mr. Carter?
7 A I think I did, yes. I think I did.
8 Q Do you recall discussing the cost of this hospital-
9 ization with him?
10 A Yes, uh huh. Let me see now. Let me get my thoughts
11 squared away. It seems as I called -- I called him on her admission
12 since he and I had had some association in the past as far as she
13 was concerned and we discussed -- my main concern was whether or
14 not she was -- if she had any potential for support as far as that
15 hospitalization was concerned and we discussed that to some degree
16 and he said that there were several areas that he'd like to look
17 into and that he'd be back in touch with me the next day. As a
18 matter of fact, we -- as I recall now, we had two or three tele-
19 phone conversations.
20 Q Well, was it ever determined that she would not be
21 charged for that?
22 A I don't think so. Well, this was a different thing
23 now. We were talking about her hospitalization versus her out-
24 patient treatment as I recall.
25 Q I see. I take it from your comment then that your

1 indication to Mr. Carter was that she would not be charged for
2 out-patient treatment?
3 A Well, this is what eventually evolved. This is what
4 eventually evolved. I don't think -- I don't recall talking to
5 Mr. Carter about that.
6 THE COURT: Are you referring -- when she would not be
7 charged for out-patient treatment, are you referring to Dr.
8 Collins' charges?
9 MR. BOYLE: It was my understanding, Your Honor, that
10 in this conversation Dr. Collins had stated that Mr. Carter need
11 not worry, that there would be no charges for this hospitaliza-
12 tion.
13 DR. COLLINS: Oh, that would be for professional
14 charges. In other words, my costs.
15 MR. BOYLE: I have no other questions.
16 MR. LOWE: Let me ask one or two more.
17
18 REDIRECT EXAMINATION
19 By Mr. Lowe:
20 Q Dr. Collins, are you aware of the present status of
21 Mrs. Carter's bill at the Arlington House? That is, the hospital
22 itself?
23 A I tried to get that information before I came over
24 here, but I was so rushed I didn't have a chance to do it. You
25 can make a -- well, I don't know what she's paid or what anybody

1 else has paid. It seems as though her father sent a check for
2 around $500 -- oh, I can't remember.
3 Q Well, whatever it is, there is a bill and you do not
4 have it in your power, do you, to forgive that hospital bill?
5 A No.
6 Q That is a separate corporation that owns the hospital
7 and gets those bills?
8 A That's right.
9 Q Do you know what the status of your billing was prior
10 to your graciously saying you wouldn't charge at this point?
11 A I really don't recall.
12 Q There was some statement?--some accounting?
13 A As far as I know. That information is easily obtain-
14 able if you need it, but I just don't have it at my fingertips
15 right now.
16 Q Okay. Also, you mentioned an hour a week as the
17 minimum. Would it be medically advisable for her to have more
18 frequent treatment than that?
19 A I think that would depend upon the nature of how
20 things evolved in the treatment process. In other words, in some
21 cases it's helpful and even necessary to meet, say twice or three
22 times a week. In other instances it's not.
23 Q How about right now?
24 A Right now I don't think that it would be that neces-
25 sary -- let's say desirable.

1 Q Okay. The only other thing I'd like to ask -- you
2 mentioned that at some point you would think she could resume
3 teaching duties. How about right now? Is she emotionally in a
4 state where she could do that now?
5 A No, I don't think so.
6 MR. LOWE: That's all I have.
7 THE COURT: Any more questions, Mr. Boyle?
8 MR. BOYLE: No, sir.
9 MR. LOWE: May Dr. Collins be excused, Your Honor?
10 THE COURT: Yes, thank you very much. You're excused.
11 [The witness was excused.]
12 MR. LOWE: By way of explanation, just to clear the
13 record and so that if later somebody looking back - they can figure
14 out how we did this, the $215.00 medical expense was $15.00 for
15 the drugs which Mrs. Carter told me. I expect that's a low
16 figure, but that's the figure she gave me - and the $200 was
17 based on Dr. Collins saying $40.00 per week or more and 4.3 weeks
18 would work out to something like $175 or something like that and
19 I just rounded it to $200 since he said it was a minimum and so
20 that can be taken into account as being a spread of $175 to $215
21 if the Court would like. Also, on the automobile expenses, she --
22 the only basis we had for arriving at a figure was to estimate.
23 She said that before she had driven about 1,000 miles a month and
24 she anticipated she would drive about the same amount. Obviously,
25 that could be somewhat lower, but on the other hand, we're trying

to project a figure that would be valid for the period of time we hope she can get back into teaching, too. Now, similarly, the income at this point is her present job and we don't know when she might be able to get into teaching or what her salary would be if she did. If the Court wants copies or Mr. Boyle wants copies of the bills to show all of these listings, I have them and I have a couple of huge bills she just paid off, some with the help of her parents, a couple of gas bills and a couple of clothing bills, but these bills as I understand it are the presently existing bills and I have - almost in each case I have a statement from the company. I believe that would be our evidence, Your Honor, and we wouldn't have any further witnesses at this point. We rest.

THE COURT: All right. Approximately how many witnesses will you have, Mr. Boyle?

MR. BOYLE: I think possibly just Mr. Carter. I wanted to talk to Mr. Carter about that. We have others that we may call. I would ask Mrs. Carter to come back for just one or two questions that I'm certain won't --

THE COURT: Suppose we take a five minute recess.

MR. LOWE: Do you want her to come now or will you wait until after Mr. Carter?

MR. BOYLE: We may as well wait until after Mr. Carter.

THE COURT: All right. Take a five minute recess at this point.

[There was a brief recess, after which the proceedings continued as follows:]

EDWIN R. CARTER, III, the Complainant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Boyle:

Q State your name, please, sir, for the Court.

A Edwin R. Carter, III.

Q Where do you live?

A Presently at 223 Collonade Drive, Charlottesville.

Q Is that an apartment?

A Yes, sir.

Q What is your occupation?

A I'm an attorney.

Q How long have you been an attorney?

A Since 1963.

Q All right. Now, Mr. Carter, specifically I direct your attention to that period of time immediately prior to the formation and execution of the agreement which has already been put in issue. I would like you to describe for the Court the course of the negotiations between you and your wife concerning the content of this agreement.

A Your Honor, in 1970, after a period of considerable

1 friction within the marriage --

2 THE COURT: Just one second, --just so there won't be

3 any problem about it. I don't know that this agreement -- probably

4 while it's attached to the Bill, I don't know that it's actually

5 been introduced in this hearing, but --

6 MR. LOWE: Can we stipulate that as Respondent's Exhibit

7 #2?

8 MR. BOYLE: Yes, I think we should --

9 MR. LOWE: That certainly should -- I knew it was in

10 the file. I think you're right, Your Honor. We stipulate that

11 as Respondent's Exhibit #2.

12 THE COURT: All right.

13 MR. BOYLE: So that - for further identification pur-

14 poses, what's the date of this agreement, Mr. Carter?

15 A September 14, 1971.

16 Q And what are the dates of execution by both you and

17 Mrs. Carter?

18 A The agreement was finally executed by me on September

19 14, 1971 and I believe I executed the preliminary copy of Septem-

20 ber the 12th. It was executed by Mrs. Carter on September 15th

21 of '71 according to the acknowledgments before the Notaries Public.

22 Q All right, sir. Now, if you'll go on in response to

23 the question that I asked when you first came on the stand.

24 A Your Honor, during 1970, after a period of consider-

25 able marital friction and trouble - a lot of it - my wife went to

1 Mr. Thomas Michie, an attorney, to see about getting a divorce.
2 Prior to that, we had been in counsel - marital counseling with
3 Dr. Leonard Curtis at the University of Virginia. Dr. Curtis had
4 indicated to me that both of us needed therapy, so I went down
5 to -- I didn't want a divorce - it was the last thing in the
6 world I wanted -- and so I went down to see Mr. Michie and per-
7 suaded him to call Dr. Curtis and repeated to Mr. Michie that both
8 of us needed therapy. I then told Mr. Michie that, if any divorce
9 proceedings were brought, that I would contest them, but that if
10 Mrs. Carter would go into therapy and she completed the therapy
11 and still wanted the divorce that I would not contest it. Mrs.
12 Carter insisted that I go into therapy, too, so we both went to
13 the University of Virginia Hospital and we talked first, I believe,
14 with a Dr. Harry Abrams who assigned Mrs. Carter to a Dr. Sim
15 LiGon and assigned me to Dr. William Sheppe. We then proceeded
16 with therapy. The following year, 1971, Dr. Sheppe, Dr. LiGon,
17 Mrs. Carter and I had a conference and for the first time in a
18 long time she indicated that she wanted a divorce. I didn't
19 really believe that she meant it at the time and it was some period
20 after that when I received a phone call from Mr. Michie saying
21 that he had been contacted by Frances and that she wanted the
22 divorce. I think that was in the early part of the summer of
23 1971. At that time Mr. Michie indicated that we should get to-
24 gether after he had talked with Mrs. Carter. Apparently he hadn't
25 done so at that time. He immediately contacted Mrs. Carter and --

1 Q Did you then enter into negotiations concerning what
2 a suitable property settlement and support agreement would con-
3 tain?
4 A Not initially with Mr. Michie. Now, I think Mr.
5 Michie, when he called, said that we should get together and I
6 think he jokingly said, "We'll see how much alimony we're going
7 to get from you." I indicated that, if that's what he had in
8 mind, there was no point in getting together, that he should go
9 ahead and file his pleadings. I think Mr. Michie was away with
10 the Legislature, a special session that summer. I may be incor-
11 rect about that. In any event, I did enter into negotiations
12 with Mrs. Carter and prepared a draft of a post-nuptial agreement,
13 it being roughly but not exactly the agreement that's before the
14 Court, down to paragraph (14). I think that -- I think that the
15 figure of $200 per month for discretionary charges prior to
16 December 31, '71 had not been negotiated.
17 Q That's in what paragraph?
18 A In paragraph (14). Now, there was no paragraph (15)
19 and (16) or (17) in my draft as I recall. I submitted that draft
20 of the agreement to Mr. Michie. I think it was -- in addition
21 to Mr. Michie being away - and I'm certain that this played a
22 part in it -- in addition to Mr. Michie being away so that we
23 could not devote ourselves entirely to the negotiation of the
24 entire agreement, I had -- my grandmother had just died and I was
25 beneficiary of her Will and the estate -- I think she died in

June of '71 - I'm not quite sure of that date. In any event, the estate was in the process of being settled and I had no idea what I would receive from the estate, so the arrangements negotiated with Mrs. Carter was that I would continue to pay the bills at the house just as I had been paying them and she represented that she would make no unusual charges and what-have-you.

Q Did Mrs. Carter make known to you at this time why she wanted that divorce?

A Not at this time. She -- I knew from what was going on around the house that she was corresponding with someone. She made known to me that she was very, very anxious for a divorce, wanted it as quickly as possible. She got very angry at the laws of the State of Virginia, the State of Virginia - because she could not have an instant divorce. She got very mad at Mr. Michie because he was involved with the Legislature and didn't change the law.

Q With whom was she corresponding?

A At that time I had no idea. I assumed it was a Dr. Howard A. Iseman. Mrs. Carter had gone back to school in 1968 which she subsequently told me was so that she could get a degree and support herself and get a divorce. In any event, in 1968, I think it was, she went back to school. While she was at the University and getting her Masters, she met a Dr. Iseman. She told me that she was in love with him. This was after I had found around the house a lot of love poems. There was a lot of

1 discussion. Dr. Iseman, I think, at the end of that school year
2 left town and Mrs. Carter rented a Post Office Box under the name
3 of Nancy Johnson in order to correspond with him. He went to
4 Chicago. She told me at one point that he had purchased a house
5 in Chicago so that she and the children could join him. At one
6 point she threatened to go out there and leave the children. That
7 was why I insisted on the provision in the agreement respecting
8 the sale and the encumbrance for the house.
9 Q What provision is that?
10 A That's in paragraph (8), the last internal paragraph
11 of paragraph (8) of the agreement,which provides that, "During
12 the minority of the children of the parties, wife covenants
13 neither to sell nor encumber said residential property or any
14 successor residential property unless all the proceeds of sale
15 or encumbrance are applied toward the purchase or improvement of
16 residential property for the use of wife and said children." Mrs.
17 Carter insisted on some provision being in there to permit her to
18 sell the house;in the event that she remarried, she wanted to be
19 able to -- she didn't think her new husband would live in the
20 same house that we'd lived in. She wanted to purchase another
21 house and so --
22 Q Was this the basis for your starting that paragraph
23 or that provision in paragraph (8)?
24 A That was the basis of inserting, "unless all the
25 proceeds of sale or encumbrance are applied toward the purchase

1 or improvement of residential property for the use of wife and
2 said children." There was another element playing into this. Mrs.
3 Carter told me that Dr. Iseman had gone into a publishing venture
4 and had put all of his money into it and one of the things that
5 I feared was that this house would be sold, her money would be
6 put into this publishing venture with his and that my children
7 would end up with no place to live.
8 Q Was this the house -- this house is located in
9 Charlottesville, is it not?
10 A It's at 1900 Greenbrier Drive and Mrs. Carter still
11 lives in it.
12 Q That's at the address where she lives?
13 A Yes.
14 Q And this house was owned jointly by the two of you,
15 was it not?
16 A As tenants by the entirety, yes.
17 Q Why was it you conveyed your interest in this house
18 to her?
19 A That's what Mrs. Carter said she wanted - was the
20 house.
21 Q What else did Mrs. Carter want?
22 A At the time Mrs. Carter was telling me -- the main
23 thing she wanted was as quick a divorce as possible.
24 Q What did she want that she might receive by way of an
25 agreement between you?

A Well, she indicated she didn't want any alimony. She told me that she was sorry to be taking from me as much as she was because, of course, in addition to the house, I left there all of the furniture virtually except for a few items so that the house would be furnished and this was done not as -- let me back up. There were two types of furniture in the house or three types. There were some very personal articles that belonged to me and these I took with me, specifically being my grandfather's chest of drawers and some things like that. It was not sufficient to furnish a one-bedroom apartment. The second class of personal property in the house was the property that Mrs. Carter and I had acquired during our marriage. Of course, there was no question - I wanted her to have that. And the third and probably most valuable of the property in the house was property that I inherited from my mother and this I felt very strongly should eventually go to my children and not to Mrs. Carter and that's specifically referred to in the agreement and in the appendix to the agreement and is to -- the agreement provides that that property "shall be the property of the husband, but shall remain in the custody of wife for the use and enjoyment of wife and the children of the parties so long as wife so desires or until the youngest of said children becomes twenty-one years of age, whichever first occurs." It was my desire that my children grow up around that personal property and in that kind of atmosphere, but not that Mrs. Carter get it, and that's why that provision was in the agreement.

1 Q You testified, Mr. Carter, that you and your wife
2 had a discussion concerning alimony and you've heard her testify
3 a few moments ago that she told you that she did not want alimony,
4 but this was in moments of duress. Would you attempt to explain
5 to the Court the best you can what she must have meant?
6 A Well, I vehemently and absolutely deny that I ever
7 applied any duress to Mrs. Carter in reference to this agreement
8 or in reference to anything else. Why she would so testify, I
9 don't know. I'm sure that she was upset at the time. I was very
10 much upset at the time. The entire situation was laden with
11 emotion, but she has told me that, not only prior to the agreement.
12 The day that I moved out of the house she apologized to me for
13 taking so much from me and cried about it. Since that time, on
14 several occasions the question of the tax treatment resulting
15 from the agreement has come up and on those occasions she has
16 told me that -- it usually came up this way. She would say, "I
17 didn't want any alimony and I've ended up with alimony and I've got
18 to pay tax on it. Would you explain to me why that is?" And this
19 I'd done before the agreement and several times after it.
20 MR. LOWE: Your Honor, I would object to these state-
21 ments and ask that they be stricken as to anything that was said
22 after the agreement. I've listened to try and hear if there would
23 be something that would be proper relating back, but these are
24 statements that were made after the agreement was entered into
25 and I don't think they're properly admissible to the agreement.

1 MR. BOYLE: If Your Honor please, I think they're
2 entirely admissible and quite relevant and germane. After all,
3 the statements that we are asking of these witnesses of right
4 now, today, are statements regarding their intent at the time of
5 the execution of the agreement. Why should statements that
6 indicate such an intent made today be any more admissible than
7 statements made a month ago or six months ago? They relate to
8 the time that they executed the agreement what was the intent of
9 the parties. Mr. Lowe in his opening statement said, "That's
10 what we're searching for" and indeed it is what we're searching
11 for and statements made subsequent to the execution of the agree-
12 ment shed light on the intent of the parties at the time of the
13 execution of the agreement. I think it's entirely admissible.
14 THE COURT: I'm inclined to think that anything that
15 she may have said would be admissible to determine what her in-
16 tent was at the time. Of course, if she came in court here today
17 and said, "I don't want any alimony" it would certainly be admis-
18 sible. She didn't say that, but, of course, any position taken
19 by her contrary to her position taken in court here today I think
20 is for whatever it's worth.
21 MR. LOWE: We would except.
22 Q Mr. Carter, let me back you up just a bit. Did you
23 have -- did or did you not have conferences prior to the executio
24 of the agreement concerning the tax consequences of your proposal?
25 A Yes.

THE COURT: Now, this is conferences with Mrs. Carter?

MR. BOYLE: I was just going to ask. Now, did you have such conferences with Mrs. Carter?

A Yes, both with her and with her attorney.

Q All right, would you please describe to the Court the nature of these conferences and how they relate to the agreement which is before us?

A Well, Your Honor, obviously our children were the innocent parties in this and I felt very strongly that they should not suffer any more than they would normally under the circumstances. It was my desire to attempt to provide for them the same kind of life that they had led before. At the same time, by virtue of my experiences as an attorney, I'm very well aware that there is no way that you can have two households on the same amount of money that you can operate one. It has been my vicarious experience that there is always a reduction in the standard of living. I did not want this to occur as to my children in this case, so what I undertook to do was to determine how much it cost to continue to operate the house in exactly the same fashion as it had been operated when I was there. In order to do that, I went back over cancelled checks, sometimes for four years, 1968, '69, '70 and '71, and sometimes for a lesser period of time, '69, '70 and '71, and I determined the average monthly expenditures for clothes, food and milk, house mortgage, taxes, insurance, medical and drugs, telephone, water and sewer, electricity, automobi

license tags, auto insurance, gasoline, auto repair, laundry and dry cleaning, appliance repair, TV cable, maid, personal property tax, income tax. The total figure came to $9,909.18 a year. This was more than I could provide and still live myself even though I had calculated that my living expenses would be $313.50 a month.

Q What was your income at that point in time, Mr. Carter?

A That was 1971. My gross income in 1971 was $11,220.16.

Q All right.

A It simply was more than I could afford, so every dollar then became very important. In order to - and I was determined to attempt this so that my children could have the kind of life I wanted for them -- I might add that I considered at the time striking from that all expenses - or that portion of all of the expenses which would be represented by Mrs. Carter. In other words, there were three children and her living there. I started to deduct one-fourth from those expenses. I did not do so because I considered that it would be impossible for the children to live with their mother on a different standard of living than she lived and it would be psychologically bad for them and I felt it probable that this would lead to difficulties with the children so I took an average of all the expenses and - including my own expenses because I figured that inflation would probably make it so it would cost as much - the house to operate with four in it as to operate with five in it. In order to try to save money, after

1 a conference with Mr. Michie, we determined that we would attempt
2 to split incomes by making all the payments taxable to Mrs. Carter
3 and deductible to me. We then added to the $9,909.18 $824.00
4 which we calculated would be the tax that would be imposed on
5 that income --
6 THE COURT: What are those figures again? $9,900--
7 A $9,909.18, Your Honor, was the total of the expenses.
8 THE COURT: How much did you add to that?
9 A We added $824.00 for the payment of income taxes and
10 that came to $10,733.18, which we rounded off to $10,800.00 and
11 divided by 12, providing $900 a month. Now, as I say, the reason
12 we did that was to split the income so that we would achieve the
13 lowest possible tax rate. In order to do that, it was necessary
14 to label these payments as being alimony or in lieu of -- payments
15 in lieu of alimony because under the Internal Revenue Code there
16 is no way of which I'm aware that child support payments can be
17 made taxable to the wife and deductible to the husband, so we,
18 after an investigation of the Internal Revenue Code and its reg-
19 ulations and cases, we determined to make these payments combined
20 payments in lieu of alimony and as support and maintenance for
21 the children, but I --
22 Q Is this, Mr. Carter, why the word "alimony" was used
23 in paragraph (15)?
24 A It's why alimony is referred to, yes, sir. Other-
25 wise, there would have been no alimony and I would have litigated

1 the case to the Virginia Supreme Court of Appeals. Mrs. Carter
2 wanted the house, I gave her that, and my feeling was if I had any
3 financial responsibility to her, the equity in the house more than
4 covered it.
5 Q What was the value of the house, Mr. Carter?--approx-
6 imately, if you can so testify.
7 A My testimony wouldn't be very good at that. I would
8 guess Forty-Five.
9 MR. LOWE: I would object to any guess, Your Honor.
10 MR. BOYLE: Well, I think an owner has some --
11 THE COURT: As an owner, you can -- if you are -- I mean
12 what is your best estimate? We won't --
13 MR. LOWE: Your Honor, if he says it's a guess, then I
14 would object to it - if he has no rational knowledge or basis for
15 making that.
16 A May I clarify my testimony? Your Honor, I'm aware
17 of houses that have been sold next door and two doors away and
18 three doors away and, while I cannot testify as to the actual sales
19 price of those houses because it meant nothing to me at the time,
20 based on knowledge of the sale price of those houses at the time
21 they were sold, I have the impression -- I would estimate the
22 house at 1900 Greenbrier Drive to be worth approximately $45,000
23 and perhaps more than that if it was put in good shape.
24 Q What is the encumbrance on that house approximately?
25 A It was refinanced - oh, several years prior to -- I

1 think about 1969 - and I think a loan was put on it of $26,000,
2 but I'm not absolutely sure as to those figures.
3 Q And so today that's paid down somewhat, is that right?
4 A Yes.
5 Q All right. Do you have any idea -- pretty recent
6 knowledge concerning the extent of the loan at this point in time?
7 A No, I don't, Mr. Boyle.
8 Q All right. Was this use of the word "alimony" ex-
9 plained to Mrs. Carter before the execution of the agreement?
10 A Absolutely.
11 Q Did you personally do this?
12 A I personally did that at the time. Before the pro-
13 vision was even written up, Mrs. Carter and I discussed this.
14 Q And you heard her state under oath this morning what
15 her understanding of the use of that word -- the purpose of the
16 use of that word was. Was what she stated on the stand basically
17 accurate?
18 A I'm afraid, Mr. Boyle, I'd have to hear what she
19 stated on the stand. I can't recall at the moment what language
20 she used, but I know that at the time she and I both understood
21 and knew that the only reason the word "alimony" was being used
22 was to make it taxable to her and to thereby achieve the lowest
23 possible tax so that we could all have enough to live on.
24 Q Now, would you take paragraph (15), please, sir, and
25 go through each provision therein and explain to the Court precisely

1 why the words were used in each of those provisions.

2 A Paragraph (15) reads, "As payment in lieu of alimony

3 and as further support and maintenance of said children." Now,

4 that phrase was used to specifically qualify the provision as

5 taxable to the wife and deductible to the husband in compliance

6 with the Internal Revenue Code.

7 Q Now, go on to the conditions which are set out in

8 that paragraph - each and every one of them.

9 A It goes on to say that "Husband agrees to pay to wife

10 during the balance of the year 1971 the sum of $300.00 per month."

11 It provides that I was to deliver to Mrs. Carter six post-dated

12 checks of $150.00 each to provide cash over the period December

13 31, '71 in satisfaction thereof. It goes on to say, "During the

14 year 1972, as payment in lieu of alimony and as further support

15 and maintenance of said children, husband agrees to pay to wife

16 the sum of $900 per month commencing January 1, 1972 and there-

17 after the sum of $600 per month commencing January 1, 1973."

18 Q What was the reason for the reduction, Mr. Carter?

19 A Well, at the time of the agreement, Mrs. Carter was

20 still enrolled at the University of Virginia seeking a Master's

21 Degree, serving internship - I think at that time - or getting

22 ready to serve one in the City of Waynesboro. She anticipated

23 being employed as a school psychologist in the City of Waynesboro

24 at a salary of $14,000 a year commencing the following September.

25 Q Was this the reason for the reduction?

1 A Yes.

2 Q All right, go ahead. You had agreed, had you not,
3 to carry her while she was being schooled?

4 A Well, it does not provide so in the agreement, but I --
5 after the agreement,even though it didn't provide it, I continued
6 to pay Mrs. Carter's tuition at the University and to pay for
7 special lessons that she was receiving from a Dr. White and, con-
8 trary to her testimony on the stand which I heard, I'm not aware
9 of any expenses connected with the education that I did not pay.
10 She was doing that, she told me, so that she could support her-
11 self and I helped her do it.

12 Q All right, go on with paragraph (15), the conditions.

13 A Paragraph (15) further provides that "said payments
14 to continue until the death or remarriage of wife or the emanci-
15 pation by attainment of majority or otherwise of all of said
16 children, whichever first occurs."

17 Q All right, let's take the death -- the death provi-
18 sion, of course, is obvious. How about the remarriage of wife?
19 Why did you condition the payment of this money upon the remarriage
20 of wife?

21 A Mrs. Carter was expected to remarry and we didn't
22 really know who she was going to marry -- I thought I did - I
23 wasn't sure -- didn't know what his income would be, what sort of
24 provisions there would be for the children, so the thought was
25 that these payments would cease on her remarriage and that we

1 would then look at the situation and determine how much money the
2 children needed. If her new husband was wealthy, then the payments
3 would be reduced. If not, I didn't see -- I can't conceive of
4 any circumstances under which they would be increased.
5 Q All right, that takes care of death and remarriage.
6 Now, the emancipation of the children called for the termination
7 of all these payments, did it not?
8 A Yes, sir.
9 Q All right, why?
10 A Because the payments are in reality simply child
11 support and nothing else and so, if all the children had been
12 emancipated the day after the agreement was signed, there would
13 have been no payments.
14 Q All right, sir, what further provisions are in that
15 paragraph (15) relating to support money?
16 A Paragraph (15) further provides that "all payments of
17 alimony shall cease if at any time any court decrees any increase
18 in payments for the support and maintenance of said children over
19 those provided herein."
20 Q Explain what that language means. What was the pur-
21 pose of your using it?
22 A It was my fear that Mrs. Carter might at some later
23 date attempt to use the fact that the support and maintenance of
24 children is always before the Court to obtain further funds from
25 me while attempting to hang on to what she already had, so to guard

against that, to make sure that no part of these payments could ever become payments to Mrs. Carter, it was provided that all payments of alimony would cease if she went back to court. Now, I don't know at this stage why it says "all payments of alimony" instead of "all payments in lieu of alimony," but, as I recall, after subsequent conferences -- after Mr. Michie returned and after I determined how much I would obtain from my grandmother's estate, we had subsequent conferences and I think then I attempted to draft the rest of the agreement after using language that Mr. Michie and I agreed to. I believe I then delivered a draft to Mr. Michie's office - an executed draft - which - because Mrs. Carter was calling day and night to get this agreement executed -- there was something in it that had to be changed, so the agreement was retyped at Mr. Michie's office and, because of Mrs. Carter's continuous phone calls, I went to Mr. Michie's office and waited while - I suppose it was Barbara Merriman - typed the agreement and, when it came out of her typewriter, I executed it on the spot without proofreading it and called Mrs. Carter and advised her that I had done so and she had Mrs. Merriman confirm it to her, so I think that probably in the drafting and redrafting of the agreement, we ended up with a reference to alimony in one spot and a reference to payments in lieu of alimony in the prior spot. Those two references apply to the same thing or were intended to.

Q Mr. Carter, there are no more conditions or provisions

1 in paragraph (15), are there?

2 A No.

3 Q All right. What is your income, Mr. Carter?

4 A During 1972, it --

5 Q That's all right, 1972 is fine. Go ahead.

6 A I had an income of $16,726.89 and that included non-

7 recurring capital gains of $4,141.49.

8 THE COURT: Wait just one second. I didn't -- the total

9 income was $16,---?

10 A 726.89, Your Honor.

11 THE COURT: And how much was the non-recurring capital

12 gains?

13 A $4,141.49.

14 Q Do you have any securities, Mr. Carter, that you can

15 sell in order to have capital gains in the future?

16 A I have some I hope I can sell. I have some capital

17 gains, I have some capital losses which I could realize if I sold

18 securities at the present time.

19 Q Is it not correct, sir, that stocks which you can

20 dispose of are very few in nature?--in number? What's the value

21 of stock that you can dispose of?

22 A Well, the -- I have -- I think it's $22,050 in market-

23 able securities now that are not either pledged at banks or in a

24 margin account.

25 Q All right, then you have marketable securities in

1 the approximate amount of $4000 or $5000 that are pledged, is that
2 correct?
3 A More than that, sir. In any event, may I return to
4 1972?
5 Q All right.
6 A In that year,my payments to Mrs. Carter and my pay-
7 ments of medical expenses for her and my payments of accounts in
8 her behalf amounted to $20,357.99, which was $3631.10 more than
9 my entire income.
10 Q Now, what's your income in 1973?--anticipated income
11 in 1973?
12 A I'd have to refer to a statement, Mr. Boyle. During
13 1973, I would anticipate having an income of approximately $6,123
14 from dividends, $6,162.00 from a trust, testamentary trust, approx-
15 imately $3200 from an apple orchard which my wife and I own and
16 I would anticipate at this point, in October of 1973, that I would
17 either have no income or a small loss from my office practice so
18 that I would anticipate a yearly total income for 1973 of $15,485
19 or $1290 a month.
20 Q Do you have photographs, Mr. Carter, of the house in
21 which Mrs. Carter is now living?
22 A Yes, I do.
23 Q Are these those photographs?
24 A Yes, they are.
25 Q Do you also, sir, have photographs of the house in

which you will be living within a few months?

A Yes, I do.

Q Where is this house located?

A It's on Israel Mountain, in the Ragged Mountains, about eight miles south of Charlottesville.

Q Who built this house, Mr. Carter?

A Well, I employed someone to put in the cinderblock foundation. My wife and I then did all of the construction to the roof and I've had a young man helping me since then. It became too heavy or too --

Q Of course, with the help of the young man, after all of the frame was done, have you done every bit of the work on this house yourself?

A Yes, I have. I'm still in the process -- with the exception of the septic tank, but I am doing the plumbing and wiring.

Q What's the cost of that house, Mr. Carter, for the work that you've done on it?

MR. LOWE: Your Honor, I don't know what the relevance of this is. I would object to it cluttering the record.

MR. BOYLE: The relevance is in showing at least in part the difference in standard of living between your client and mine.

MR. LOWE: I don't think that the --

THE COURT: Now, wait a minute. These pictures here are the --

1 MR. BOYLE: The house which Mrs. Carter was given by
2 Mr. Carter.
3 THE COURT: I see.
4 MR. BOYLE: These pictures are the ones that show the
5 house which Mr. Carter has built himself and in which he intends
6 to live.
7 MR. LOWE: Well, Your Honor, I don't think we can base
8 any -- even if it were relevant information -- what the cost is
9 in terms of cost to Mr. Carter is no valid basis of what the
10 house would be worth when it's finished in any event.
11 MR. BOYLE: We'll ask him that.
12 MR. LOWE: You know yourself that it may be worth much
13 more than the money he puts into it. I don't think it's relevant
14 in any event in this hearing.
15 THE COURT: Well, I --
16 MR. BOYLE: The first group -- there are five in the
17 first group, Your Honor, and as to the --
18 THE COURT: And four in the second. I think if you back
19 it up with some figures, I think it might -- those pictures might
20 have some relevance --
21 MR. BOYLE: Sir, I think we have figures concerning the
22 value of Mrs. Carter's house.
23 Q How much has the home that you have constructed cost
24 you to build, Mr. Carter?
25 MR. LOWE: I gather the Court's overruling my objection

for the moment at least?

THE COURT: Yes.

MR. LOWE: We would except to that, until the Court makes a final decision.

A Your Honor, at the present time the house is only partially completed and to date it has cost $10,896.00.

Q To put it in the condition in which one sees it in the photographs?

A Approximately.

MR. BOYLE: Those would be exhibits 6 through 10?

A Yes.

MR. BOYLE: 6 through 9, excuse me.

[9 color photographs, 3X3, having been marked by the reporter as Complainant's Exhibits 1 through 9; the first five representing photographs of Mrs. Carter's house and 6 through 9 representing photographs of house being built by Mr. Carter.]

Q How much more do you anticipate that you will have to put in that house to complete it?

A It was originally intended to cost about $14,000 and, because of the delays in the construction because I've had my children and because of an additional bath that I've added to it, it's expected to cost around $16,000.00.

Q Have you added this bath because your children have moved in with you?

A Yes, I have. Yes.

THE COURT: I don't know that the record has actually shown, but I assume it's true that the children are now living with you in the home out at Israel's Gap or Israel Mountain?

A We are now living in an apartment, Your Honor, because we couldn't move in the house with the kids in an uncompleted state.

THE COURT: Oh, I see.

Q (By Mr. Boyle) When do you expect that the house will be completed, Mr. Carter?

A It had better be completed by December 1st because we have no apartment after that date.

THE COURT: It is planned that the children and you will move out there around December the 1st?

A Yes, Your Honor.

MR. BOYLE: Witness with you, Mr. Lowe.

MR. LOWE: Well, Your Honor, I would move to strike that evidence. There is no basis of saying what the house is going to be worth. We don't know what the land is worth, we don't know what the house will be worth when it's finished as the result of the work that Mr. Carter has put into it. That's no basis for the Court to make any comparison and I think it's irrelevant in any event and I would ask the Court to review its holding and rule that it's irrelevant.

MR. BOYLE: Your Honor - if Your Honor please, the point

of this line of interrogation is to show the Court, since Mr. Lowe has undertaken to show the circumstances under which Mrs. Carter lives, I wish to show the circumstances under which Mr. Carter lives. Now, I realize that we are confined by the words in this agreement, so we are not here to determine what the need is and what ability to pay -- but Mr. Lowe has gone into the question of need, I presume, with the thought that he might encourage the Court to give a substantial portion of the $600 to Mrs. Carter as alimony. I would object to the Court's following that tact, but that seems to be hidden. Since the Court has undertaken to hear this testimony and with the by Mr. Lowe, I have submitted this information to the Court so that the Court might gain some understanding of circumstances under which Mr. Carter lives and what his real earnings are.

MR. LOWE: Well, Your Honor, the point I'm making is I can buy -- if I'm an artist, I can buy $3.00 worth of paint and $1.00 worth of canvas and paint a masterpiece that may bring $20,000 in value. Now, we have $16,000 worth of expenses of some sort other than Mr. Carter's own labor in this thing, but we don't know what the house is going to be worth, whether it's going to be $85,000 or $25,000 when it's done. It appears to be a very nice looking house and may be worth much more. We don't know what the value of the land is that he owns there.

MR. BOYLE: If Your Honor please, that's why we supplied the Court with the photographs. The Court can draw its own

1 conclusion. It's a barn type structure with a plywood exterior.
2 I don't think that anyone in the world would pay $85,000 for it.
3 I don't think anyone in the world would pay much more than what
4 was put into it except the increase that would be added to it by
5 Mr. Carter's own labor.

6 MR. LOWE: Your Honor, I was looking at a log cabin up
7 in Greene County the other week that was for sale for $52,000.
8 It only has about ten acres with it.

9 THE COURT: Well, just to stop you gentlemen -- you all
10 apparently would go on for some time, but I really don't see how
11 I can get much deeper into this thing. There's no thing about
12 the cost and --

13 MR. BOYLE: But I'm leading to something, Your Honor,
14 that was brought up --

15 MR. LOWE: That's right. I --

16 MR. BOYLE: And we'll soon get there if Mr. Lowe will
17 stop objecting.

18 MR. LOWE: Well, I thought you said that you were through
19 with your witness, Mr. Boyle. That's why I objected.

20 MR. BOYLE: Well, I was going to wait until you finished,
21 Mr. Lowe, but since you addressed the point, I'll take him now.

22 Q Mr. Carter, at the last hearing, did the Judge indi-
23 cate that he would be interested to know whether or not you would
24 relinquish the restriction that you have on the house on Williams-
25 burg Road which is contained in the agreement?

A I so understood the Court.

Q All right. Have we discussed that since the last hearing?

A Yes, we have.

Q And have you concluded that, under the circumstances, you would be willing to relinquish the restrictions that you have on that house on Williamsburg Road?

A Yes. The only intent of the provision restricting the sale or encumbrance was to insure that the children have a home and they're with me and I can assure that myself. I think it was stipulated by Mrs. Carter's counsel that she would probably never be able to recover custody because of her condition, so I anticipate the children will remain with me and therefore I have no reason to require that Mrs. Carter retain the home which she no longer needs, so therefore I am willing to relinquish it from the conditions in that agreement.

THE COURT: Of course, I take it if you release that restriction, from what you said, the furniture -- you would anticipate that the furniture there would not remain in the home if it was sold or anything of that sort?

A Well, I would hope that -- Mr. Boyle and I did not discuss this, but I would hope that Mrs. Carter's condition would permit the children to visit with her. Obviously, she's going to be living somewhere. I'm certainly not making any demand for the return at this time of any of the furniture and I would like to

1 see her have as nice a place for them to visit as circumstances
2 would permit and so therefore I would anticipate that she would
3 retain the furniture under the agreement and the provisions
4 thereof regardless of the present circumstances.
5 MR. BOYLE: Now, witness with you, Mr. Lowe.
6 MR. LOWE: Now, Your Honor, I have to repeat my -- well,
7 let me ask Mr. Carter a question or two and it may clarify things.
8
9 CROSS EXAMINATION
10 By Mr. Lowe:
11 Q Do I understand - you said you'd be willing to -- do
12 I understand that right now, here in open court you are relinquish-
13 ing this sale condition on the house?
14 A Yes.
15 Q All right. The figure of $10,896 was given by you
16 with relation to this house. How much land do you own associated
17 with the house - contiguous to the house?
18 A My wife and I together own this property, Mr. Lowe,
19 as tenants by the entirety. According to the deed, it contains
20 113 acres.
21 Q Did you own this prior to your marriage to your pre-
22 sent wife, did she own it or have you acquired it since your
23 marriage?
24 A We acquired it after marriage in April of this year.
25 Q And what was the purchase price of the land? In

1 other words, what's the land worth?

2 A The purchase price on the land was $42,000. It was

3 subject to a First Deed of Trust of $16,500, the Seller took back

4 a Second Deed of Trust of $11,000 and the real estate agent

5 accepted a note for $4200 as his commission. The Second Deed of

6 Trust and the note are payable -- the note is payable in five

7 years, the Second Deed of Trust is payable $2000 a year.

8 Q So you paid about $10,300 down on this land? That's

9 about what your equity value is based on the purchase price?

10 A That's correct.

11 Q Now, you have had no appraisal made of the house you

12 are building by an appraiser or anyone who is professionally qual-

13 ified to say what the house -- even if they could say what the

14 house will be worth when it's finished, have you?

15 A No, Mr. Lowe, I've been too busy putting it up. It's

16 a little early yet to have anybody look at it.

17 MR. LOWE: Well, Your Honor, my objection to the ad-

18 missibility of this is simply that there is no basis of comparison

19 to the present house because we don't know what the house will be

20 worth. As I say, he may put $16,000 worth of materials into it

21 and it may be worth $85,000 when he gets done or $26,000, the site

22 that it's located on, the land, the proximity to roads, to water

23 and all these factors come in and I don't see how we can make any

24 rational connection to value at this point. I think it would be

25 immaterial and irrelevant.

THE COURT: I must say that it's difficult for me to tie this in. On the other hand, in view of her answer on a statement that Mr. Carter has made, I think that I'm going to let it in to - you might say for a better understanding of what he's done. At least, we know the value of -- or we have testimony as to the value of the other property that he has now in open court yielded to Mrs. Carter and I certainly don't see any harm at least in this evidence. I'm a little at a loss to know just what the relevance of it is, but I certainly don't see any harm --

MR. BOYLE: We're seeking sympathy, Your Honor --

THE COURT: And I think that, in view of all the circumstances, I'm going to let it in.

MR. LOWE: All right. Am I correct in assuming that these Deeds of Trust you mentioned are the only encumbrances -- that these other expenses - the $10,896 has been paid and is not a note or something, in addition to the ones you mentioned?

A I think the $10,896 also includes bills that I have received to date but have not yet paid all of them.

Q Substantially most of the money has been paid, is that -- with the exception of some bills that have just come in or are there large bills outstanding yet?

A I would anticipate that there's probably -- I probably have $2000 in bills.

Q Now, you started to say, and Mr. Boyle interrupted you - I don't think you had a chance to finish as to how much

1 stock is pledged or securities of any kind or bonds.

2 A I testified that it's $2,250 in marketable securities

3 that I have that are not pledged, and I have $53,172 in pledged

4 securities or securities in the margin account.

5 Q $53,172.00?

6 A That's correct.

7 Q $53,172.00 I think you were saying - that you have

8 this pledged or in a marginal account - margin account for your

9 broker. How much of that represents equity value that you have,

10 either in the amount you've paid to the broker or the amount above

11 what is pledged that it actually secures, if you know?

12 A I would have to do some calculations, Mr. Lowe. I

13 can tell you this. I have notes at the Monticello National Bank

14 in the amount of $14,145.00, I think. I have notes at the Citizens

15 Bank in the amount of $13,700.00 and there is stock securing --

16 partially securing those loans. This changes from day to day.

17 They've been partially secured for a long time. My present esti-

18 mate of the indebtedness against the margin account is $2251.00

19 so that my equity would be the difference between those figures.

20 Q So it looks to me as though the figures you've re-

21 cited, there was $30,096 in encumbrances against $53,172.00, so

22 you've got about $23,000 in equity roughly. Is that a ballpark

23 figure?

24 A I would think that's correct, roughly.

25 Q And, in fact, if you made appropriate arrangements

1 with the bank and advised them you were going to sell securities
2 and gave them a first payment on the notes against the securities,
3 there's no reason why you wouldn't be able to sell these securi-
4 ties if you wanted to, is there? I mean I'm not questioning your
5 business judgment, but if you had to sell them, you'd be in a
6 position you could?
7 A Well, I've testified that the notes at the banks are
8 only partially secured.
9 Q Right.
10 A And I would think the banks would object to my with-
11 drawal of any of their collateral --
12 Q But, I mean if you gave them security for the payment
13 of those notes out of the proceeds, they certainly would allow
14 you to do it because if you've got $27,000 and you want to sell
15 $53,000.00 worth of stock and did it in such a way that they
16 would get their $27,000 first, they certainly would not object
17 to it, would they?
18 A No, if I were able to do that. I'm not commercially
19 insolvent at the moment and I suppose that they wouldn't object.
20 Q Now, just to clarify, the $20,357.99 that you said
21 you spent last year on Frances, a substantial portion of that was
22 for the medical expenses you were obligated to make under the
23 support agreement, isn't that true?
24 A Well, specifically, -- I think that requires some
25 interpretation, Mr. Lowe. I was not obligated to commit her to

1 Arlington House or to commit her at all and I was taking the posi-
2 tion that I was not obligated to pick up those payments. Now, if
3 during 1972, if she had a mental illness and incurred expenses,
4 I was obligated to pay them. Most of that $9,612.98 was for
5 mental illness. A very small percentage was for anything else.
6 Q Okay. Now, you are an attorney and you have been
7 since 1963. I presume that you have done at least some work in
8 the area of domestic relations and divorce and child custody and
9 support and that type of thing, that you're familiar with the
10 laws in Virginia and the cases. Is that a fair statement?
11 A I try to do as little work in that area as possible.
12 Q But at the time that you were formulating, negoti-
13 ating this agreement, you at least had had some contact with it
14 and knew the general outlines of the law and definitions and
15 things of that nature, I believe. You were representing yourself,
16 I believe, in negotiating the agreement, were you not?
17 A I was attempting to represent myself and I didn't
18 generally know --
19 Q You knew that child support does not cut off auto-
20 matically upon remarriage of a wife unless there is some specific
21 provision in that agreement that it does so, don't you?
22 A That's correct.
23 Q And you also know that child support is taxable to
24 the husband and not to the wife?
25 A That's correct.

1 Q And you also know that alimony cuts off or do you
2 know that alimony cuts off upon wife's death or remarriage?
3 A I know that and I know that payments in lieu of
4 alimony do not necessarily do so.
5 Q So that you do know the difference between alimony
6 and payment in lieu of alimony as courts have ruled in Virginia,
7 don't you?--that, while they're both for support of the wife, one
8 is in the control of a court and cuts off automatically and the
9 other is a contractual obligation which does not and is not under
10 the control of the court, isn't that true?
11 A I don't know that I'd agree with all of that. My
12 impression may be erroneous.
13 Q You understand that alimony --
14 A I think that tells part of the story.
15 Q All right, you understand that alimony is support
16 for the wife which is court ordered and that support in lieu of
17 alimony in an agreement can be support which is agreed upon that
18 is for the wife, isn't that true?
19 A True, if adopted by the court.
20 Q Well, even if it isn't adopted by the court, if it's
21 a contractual obligation, it --
22 A Cannot be varied by statute.
23 Q Right. All right, so that in paragraph (15) where
24 it says, "As payment in lieu of alimony and as further support
25 and maintenance of the children," the plain language there

1 indicates that the sums set forth in paragraph (15) are to include
2 both support for wife - that is the portion which says "payment
3 in lieu of alimony" - and also the portion for payment of support
4 and maintenance of the children. That's what the plain language
5 there would indicate, wouldn't it?
6 A Not necessarily, because my impression is that pay-
7 ments in lieu of alimony could have been to a third or fourth
8 party, someone not involved at all. It could have involved the
9 payment of an obligation. I think that a wife in Virginia can
10 accept increased child support as a payment in lieu of alimony.
11 I think that I could have agreed to have paid $100 to the Red
12 Cross and Frances could have accepted it in lieu of alimony.
13 Q Is it your statement now that your intention at the
14 time you executed this agreement and ever since then was that
15 paragraph (15) did not contain one penny of alimony or support
16 for Frances Carter?
17 A That's correct, but I have to say, Mr. Lowe, as I've
18 testified to previously -- I've testified how we arrived at that
19 figure.
20 Q I understand. I understand that, but your interpre-
21 tation is in legal contemplation right now that provision does
22 not provide one penny of alimony or support for Frances Carter?
23 A It was not intended to and I don't think it does.
24 Q And, in fact, since this agreement was entered into,
25 you have filed tax returns based on the fact that this provision

1 was a mixture of alimony or support for the wife on the one hand
2 and support for the children on the other, have you not?
3 A That's correct.
4 Q Now, you mentioned a figure of $9,909.18 total ex-
5 penses, and I gather that was for the household of Frances Carter
6 and the three children during a period of time or perhaps also
7 including yourself during a period of time and that you anticipated
8 that that same amount of money would be necessary to maintain the
9 same standard of living following your split-up, is that your --
10 the sum and substance of your testimony on how you used that
11 figure?
12 A That's correct.
13 Q And I understand that you contemplated at one point
14 deducting one-quarter of that as an allocation of the support for
15 Frances Carter as distinguished from support for the three child-
16 ren because you did not feel that you wanted to pay any alimony,
17 but then you subsequently decided to put it back in because it
18 would lower the overall support for the family unit, is that also
19 correct?
20 A The problem, Mr. Lowe, was how to achieve this tax
21 treatment of these payments without providing any alimony to Mrs.
22 Carter.
23 Q Right, but as far as figuring out the amount of money,
24 regardless of how you later decided to designate it, in figuring
25 out the total amount, you decided to put that one-quarter back in

1 or not to take it out because you realized that that would cut
2 down the support for all four of the people in that household to
3 three-quarters of the amount, isn't that true?
4 A I thought that, if I in fact reduced it, that Mrs.
5 Carter would probably misappropriate what belonged to the child-
6 ren, as she's attempting to do in this court action, and, in order
7 to preclude that result, I did not do it.
8 Q Well, you knew that, for example, in making the house
9 payment, that there's no way to split up the house payment into
10 three-quarters for the children and one-quarter for Mrs. Carter,
11 didn't you?
12 A Well, it goes a little bit farther than that, too.
13 There's no way for the three children to properly or psychologic-
14 ally, soundly have steak for dinner while their mother does not.
15 Q Right, so that you knew when you figured up this
16 figure that that money would be being spent on the three children
17 and on Frances Carter as a family unit, regardless of how you
18 designated it, didn't you?--whatever the amount of money was you
19 gave.
20 A I assumed that it would be. That was not --
21 Q Is there any question in your mind that, of this money
22 that you've been paying, part of it has been used for the support
23 of Frances Carter since this agreement was executed? In fact,
24 now, de facto, that part of that money was supporting Frances
25 Carter by paying for her portion of the house payment, her portion

1 of the food bills, her portion of the electricity and everything
2 else?
3 A No, there's no doubt in my mind of that, or that she
4 has used it for her own purposes to the detriment of my children
5 and I've investigated bringing an action to seek an accounting.
6 If determined, I don't believe it can be done. Do you want me
7 to amplify that?
8 Q No, I venture Mr. Boyle may. Let me get back. You
9 indicated that one of the reasons that you didn't want any alimony
10 or you don't think there was any alimony intended was because
11 Mrs. Carter intended to remarry very shortly, if I understood
12 your testimony, but isn't it true that there was a specific pro-
13 vision in paragraph (15)to cover that possibility that this would
14 completely discontinue upon the remarriage of wife?
15 A There is a provision saying it would discontinue
16 upon remarriage, that's quite correct, and I've testified as to
17 the reasons why that was provided.
18 Q Well, it wouldn't have been necessary to provide no
19 alimony and for it to be terminated upon remarriage of wife if it
20 applied to the payment in lieu of alimony, would it? Either one
21 or the other would have been sufficient.
22 A I'm sorry. Would you repeat that?
23 MR. BOYLE: Were they all in that conditions that you
24 recited, Mr. Lowe?
25 MR. LOWE: Well, I think -- if there was no alimony in

1 there, there would be no need to have a payment in lieu of alimony
2 terminate upon remarriage of wife because in fact there would not
3 have been any, would there?
4 A You are correct in fact there would not have been
5 any, but because of the language that we were compelled by neces-
6 sity to use, if we used to create the tax treatment that we wanted
7 to create, we had to use it -- we had to use the expression "alimony
8 and,therefore, even though alimony automatically terminates on
9 the remarriage, it had to be provided in there that the payment
10 in lieu of alimony ceased. My impression is that payment in lieu
11 of alimony would continue after remarriage.
12 Q All right, now, at one point in your testimony you
13 said that the second unnumbered paragraph in the numbered para-
14 graph (15) which begins, "All payments shall cease," and so forth,
15 you said, if I have it correct here, that you didn't know why it
16 says, "All payment of alimony" instead of "all payments in lieu
17 of alimony." Do you believe that that paragraph, in order to
18 effect your intent at the time you executed this agreement, should
19 read, "All payments in lieu of alimony shall cease if at any time
20 the court decrees" and so forth? I wasn't quite sure what you
21 were saying.
22 A I'm not sure, Mr. Lowe, at this stage whether the
23 payment - the provision - payment in lieu of alimony should have
24 been as payment of alimony, in which case the second provision
25 should have read, as it does read, or whether they both should

have read, "as payments in lieu of alimony." What I am absolutely sure of is that there was no alimony intended, that other than the house, there was no alimony asked and there was no bargain for it and the tax treatment is the only reason why these words were put in there.

Q Well, the thing I don't understand about your interpretation of that second portion of paragraph (15) is this. It states that "all payments of alimony shall cease if at any time any court decrees an increase in the payments for the support and maintenance of the children", but it doesn't say, as I think will be consistent with your position, that all payments of alimony and child support shall cease if at any time any court decrees an increase in payments for the support and maintenance. How can you terminate the payments of alimony without terminating the payments of child support under your interpretation of this agreement? How could the court break it down under your interpretation? Could you explain that to the Court?

A The fear was that Mrs. Carter would by high living run out of money and attempt not only to keep the payments provided for in the first paragraph -- the first part of paragraph (15) -- but seek to get increased child support and maintenance which is, of course, always before the court. There was a further-- I recognized the hazard of putting into the agreement any reference to alimony when there was in fact none and it was -- what we attempted to do was to put in there every possible condition that

could arise so that there was no possibility of any true alimony arising in the future and the one thing that we did not anticipate that Mrs. Carter correctly testified to was that we did not ever anticipate either her insanity or that I would have custody of the children.

Q All right, let me give you -- perhaps the best way to ask this question is this. Go back just prior to the time when the child custody changed. Let's assume that we're back when Mrs. Carter still had the children in her custody and suppose she came to this court and asked for an increase in child support, says, "I just can't make it." Under the provisions of this paragraph, at that moment, I presume by your understanding of the paragraph, all payments of alimony would cease because she had gone to the court and asked for an increase. Is that your interpretation?

A That's right. Then the court would be, as it's always free to do, go back and raise or lower, whichever the case may -- well, the Court could neither raise nor lower the payments for the children. If it raised them thereafter, while the children would get what the Court ordered, then Mrs. Carter wouldn't get a cent of this, too.

Q All right, let's go back to, say January 10, 1973, just to pick a date, when you were under an obligation to pay $600 a month and the children were with Mrs. Carter. Now, if, on January 10th Mrs. Carter had come into court and asked for an

1 increase of support for the children which would have put that
2 paragraph into operation, how much of the $600 would have termi-
3 nated under the provisions of that second part of the paragraph
4 in your --
5 A All of it.
6 Q So that all of it was alimony then?
7 A No.
8 Q Well, isn't that what the plain language says and
9 isn't that what you just finished saying, that the alimony would
10 terminate?
11 A If -- well, of course, if she did that, all the
12 child support would terminate, too.
13 Q That's not what the paragraph says and that's what
14 I've been asking you.
15 A The child support would terminate upon the Court's
16 decree decreeing other child support.
17 Q It doesn't say that, though, does it? It doesn't
18 say all alimony and child support shall cease. It says, "all
19 alimony."
20 A There's no way that I know to provide by contract
21 that child support is going to cease.
22 Q Well, that's what I'm asking you. How much of the
23 $600 would terminate? How much of the $600 was alimony? Or how
24 would you propose to have the Court determine how much it was?
25 A The Court can't determine how much of it was alimony

1 because none of it was alimony and there's no -- as far as I can
2 tell -- I recognize, Mr. Lowe, in all candor, only one argument
3 that there's any alimony in this agreement. I don't know whether
4 I'm testifying or whether I'm arguing against counsel. In the
5 text, "Divorce and Alimony in Virginia and West Virginia," which was
6 used in the drafting of this provision, it says, "In Virginia the
7 Court can modify the child support provisions of a separation
8 agreement. Therefore, it is arguable that by dealing in child
9 support and support for the wife, there is no contract. However,
10 the Virginia court might well regard a provision such as that in
11 the Lester case as sufficiently identifying the amount for child
12 support for the purpose of holding the contract as support for
13 wife." Now, the Lester case provided -- it's a United States
14 Supreme Court case -- provided for combined payments, but it con-
15 tained a provision in the post-nuptial agreement that as each
16 child became of age, a certain portion of the payments would cease
17 and what this text is saying is that a Virginia court might well
18 regard - and I think it's a good thing - might well regard that
19 those portions which cease when children become of age are child
20 support. If the Court does that in this agreement, and I surely
21 hope it does, since all of the payments cease when the children
22 have become of age and would have ceased if they had been emanci-
23 pated the day after the agreement, it is quite clear, exactly
24 what we intended, that there was no alimony. The text, "Divorce
25 and Alimony in Virginia and West Virginia" is not binding on any

1 court, of course, and so in recognition of that possibility that
2 some court might hold that the original contract as to alimony or
3 attempt to do anything else, the idea was by this second part of
4 paragraph (15) that, if Mrs. Carter went back to court on child
5 support, the court would do whatever it deemed proper as to child
6 support, but if that-- whatever came out of the court as a result
7 of her actions amounted to more than $600, she got no part of it.
8 It was all clearly child support.
9 Q All right, Mr. Boyle in his opening statement said
10 that there was nothing to show that Mrs. Carter was entitled to
11 a specific amount, but in fact isn't the sum and substance of
12 your testimony that the reason there were no amounts mentioned
13 was that that would defeat the whole tax purpose of having mixed
14 child support and alimony? Isn't that a fact?
15 A That's correct.
16 Q And isn't in fact your testimony that your understand-
17 ing and belief and intent was that the apportionment of the $600
18 during 1973 would be zero for support for Mrs. Carter and $600
19 support for the children?
20 A Would you repeat that, please?
21 Q Isn't your interpretation and your recollection of
22 what your intent was when you signed this agreement and ever since
23 then that the $600 per month which it called for after January 1,
24 1973 was apportioned $600 for the children and zero for Frances
25 Carter?

A That's correct, if I understand your statement correctly. The additional -- I mention one argument about alimony being in this agreement. The first year it was provided that there would be payments of $900 and that, of course, was because Mrs. Carter would not be working. She needed those additional funds. I think you could properly concede that the $300 additional paid the first year was Mrs. Carter's.

Q But you say that that was not your intent, isn't that correct? Are you now testifying that your intent was that part of these payments would be alimony?

A That was not my intent.

Q Your intent was that it was all child support from the beginning, wasn't it?

A That's correct.

Q Now, you --

THE COURT: Wait a minute now. You're confusing the Court. That $900 -- part of that would be for the benefit of Mrs. Carter, wouldn't it?

A Yes, Your Honor, it's true.

Q (By Mr. Lowe) Well, now, how can you sit there and say that part of the $900 was for her benefit, but not part of the $600? Aren't you now trying to make up your own figures as you go along? If you're going to take that, haven't you testified under oath several times that the entire amount since the beginning of the contract was all child support?

1 A It was all intended to be, yes, sir.

2 Q Every penny of it? You said in the beginning that

3 not one penny was supposed to be support for Frances Carter,

4 didn't you?

5 A What I said, Mr. Lowe, and what I will stand on is

6 that I didn't intend to pay any alimony, I didn't contemplate

7 paying any alimony, I didn't agree to pay any alimony and I would

8 have litigated and still been litigating if possible if indeed

9 demand on me for alimony had been made.

10 Q And, in fact, not one penny of this provision of

11 paragraph (15) was alimony from the beginning, was it?

12 A Not intended to be.

13 Q All right. You acknowledge that a part of any of

14 the provisions of that, whether $300, $900 or $600 - part of it

15 would benefit Frances Carter, but that would be incidental. That

16 would not be your intent that that be alimony or support for her?

17 A I do acknowledge that and you've stated correct--

18 the situation correctly.

19 Q Now, you've dealt with some tax law in your practice,

20 haven't you? Haven't you done some tax law and dealt with the

21 Internal Revenue Service?

22 A I very seldom deal with the Internal Revenue Service,

23 but --

24 Q You've dealt with tax law?

25 A Yes, I have.

1 Q Do you think for a minute that if you ask an opinion
2 of the Internal Revenue Service, that if I take child support, no
3 alimony, just child support, and I call it something else, but I
4 tell you that it's child support that I can claim as a deduction,
5 do you think for a minute that the Internal Revenue Service would
6 allow you to just change the label and change the tax treatment?
7 A Well, that's exactly what happened in the Lester case
8 and a --
9 Q But that involved some alimony, didn't it, and some
10 child support?
11 A But the whole thing was treated just as we have
12 treated it --
13 Q Well, I'm giving you a hypothetical question now. If
14 you just took pure child support and said to the Internal Revenue
15 Service --"I've got pure child support." Let's suppose you don't
16 have a wife. Let's suppose the children are living with somebody
17 else and you say this is pure child support, but I'm going to call
18 it support for my family or support in lieu of child support or
19 something else, do you think there's any chance that the Internal
20 Revenue Service would say that you can change the tax treatment
21 of that money by changing the label on it?
22 A I think you have to do more than that.
23 Q Okay.
24 A I think you have to make it -- let me put it this
25 way -- I don't think the Internal Revenue Service could successfully

1 attack this agreement, the tax treatment that resulted as a result
2 of this agreement.
3 Q You don't think that if you sat down with the Inter-
4 nal Revenue Service and said, "From the inception, it was my in-
5 tention that zero of this be for support for my wife or alimony
6 or alimony in lieu of support - zero. Every penny of it was
7 child support, but I decided that by calling it mixed alimony
8 and child support I would get a tax deduction." Do you honestly
9 think that they would allow that as a tax deduction?
10 MR. BOYLE: I object, Your Honor.
11 MR. LOWE: Well, I think it goes to his state of mind.
12 I think it's completely relevant.
13 MR. BOYLE: Well, I'm not objecting to the question,
14 just the use of the term "honestly." He's under oath and --
15 MR. LOWE: All right, I -- well, I - it's redundancy.
16 I'll say do you really believe that they would give you a tax
17 deduction for that if you told them all that?
18 A Well, Mr. Lowe, I will have to answer the question
19 this way. I think on the face of this agreement the Internal
20 Revenue Service would conclude without any questions that these
21 payments were taxable to wife and deductible to husband. In the
22 event they went further than that and challenged that -- this is
23 rank speculation and I'm just guessing, but I could surely foresee
24 that the Internal Revenue Service would have an extremely difficult
25 time with the Tax Court or the District Court either making any

1 allocation here between alimony and child support. I don't think
2 they could do it.
3 Q All right, now, my question to you was -- maybe --
4 I'm not sure if you're answering my question or not, but my ques-
5 tion was if you sat down and told them that zero of this at any
6 time was alimony, in lieu of alimony or support for my wife;
7 every penny of it was intended and has been child support, do you
8 think then that they would allow you a tax deduction?
9 A I can't imagine sitting down and telling the Internal
10 Revenue Service that, but -- I think the circumstances would just
11 be morbid.
12 Q Do you have the question in mind, though?--I mean
13 that I'm asking you? Can you answer it?
14 THE COURT: Gentlemen, I think we might as well adjourn
15 for lunch.
16 MR. LOWE: Well, can't he answer this question, Judge,
17 before we leave?
18 THE COURT: I just don't see how this business about
19 the Internal Revenue is going to --
20 MR. LOWE: Well, Your Honor, I'll tell you exactly why;
21 because we're talking about a question of equitable estoppel here
22 and I think Mr. Carter's answer bears strongly on this and I
23 would ask the Court's indulgence for another moment or two and
24 let him answer it. I think that this is an important question
25 for our case.

1 MR. BOYLE: Well, the question here is not what the
2 Tax Court would do.
3 MR. LOWE: The question is what was in Mr. Carter's
4 mind and I think it's the issue of equitable estoppel; particularly
5 if this case goes on appeal, this is a crucial question. I think -
6 and I could speculate what his answer would be. I think he would
7 like not to have to answer the question, but I'd ask that he be
8 allowed to answer the question.
9 THE COURT: What is the question?
10 MR. LOWE: The question is if he told the Internal
11 Revenue Service that not one penny of this was ever intended or
12 ever was alimony, payment in lieu of alimony or support for his
13 wife, but that every penny of it always has been and was intended
14 to be child support, whether he really believes that they would
15 grant him - allow him a tax deduction.
16 MR. BOYLE: Well, that's not a proper question because
17 one of their alternatives was for payment in lieu of alimony.
18 He's not taken the position that it was not payment in lieu of
19 alimony, so the question just doesn't apply.
20 MR. LOWE: Let me just word the semantical issue. If
21 you told them that every -- not one penny of it was alimony or
22 support of any kind for your wife, but that every penny of it
23 always has been and was intended to be child support, do you be-
24 lieve that they will allow you a tax deduction if they knew that?
25 A As a practical matter, Mr. Lowe, I think what the

1 Internal Revenue agent might do is to see which way it would
2 result in the most tax collected and that would probably be the
3 position they'd take. I would repeat that I don't see how Inter-
4 nal Revenue could successfully attack this provision.
5 Q But that's not in answer to my question, Mr. Carter.
6 Do you think that they would allow you a deduction in that situa-
7 tion?
8 A I'm saying I don't know, Mr. Lowe. It's a short
9 answer. I don't know. I'm saying that I don't think they could
10 by court action compel any tax result other than that intended.
11 On the question of equitable estoppel, --
12 Q Well, I - I'm not asking you any questions. If Mr.
13 Boyle wants to ask you some questions, that's fine, but --
14 THE COURT: I think we might as well adjourn for lunch.
15 MR. LOWE: All right, sir.
16 THE COURT: Suppose we come back at two o'clock.
17 [At this point court adjourned for lunch at 12:55 P.M.
18 and resumed at 2:00 P.M. The proceedings continued
19 as follows:]
20 [Mr. Carter continues on cross-examination by Mr. Lowe:]
21 Q In your income, Mr. Carter, you indicate for 1973
22 that you anticipate no income as a result of your office practice.
23 Is that on the basis of ten months so far that you think for the
24 entire twelve month year you'll have a loss or you'll have no
25 income at all?

A That's correct, sir. The reason for that, Mr. Lowe, -- do you want it?

Q Yes.

A Is because of several reasons. In November of 1971, I reduced the clients that I accepted because I was very heavily involved in some negotiations and potential litigation in West Virginia. That has continued unabated until the present time. Also, in the summer of '72, as you well know, I moved back in the house when Frances was hospitalized and took care of the children from August until November, virtually without help except occasionally from friends and I found it simply impossible to practice. That had the effect of work not coming in, so there was no backlog at that time. Referring to this year, I took off in July for the same reason and also to complete work on the house. The effect of that is, I think, as of the moment - I'm showing an income of about $400 from practice to date.

Q Are you back at work now where you're pretty much in practice and generating clients and so forth again now?

A No, not yet because I've been involved with this litigation, I'm still taking care of my kids. I have to take them to school in the morning and pick them up in the afternoon, which is something I left out. After Frances was released from the hospital last November, from then until the end of June it was I who picked up the kids at school, Elizabeth, and that involves taking off from the office at about three-thirty in the afternoon.

1 Q Now, do I understand that the only stocks or securi-
2 ties you have are the ones you have mentioned already, about
3 $56,000 worth total, is that correct?
4 A No, sir, that's not correct.
5 Q What other securities or capital assets do you have?
6 A In addition to those marketable securities which I
7 labeled as such, I have twenty-five shares of stock in a corpora-
8 tion which I manage and it's not -- it's valued at $1,000 a share,
9 $25,000.00.
10 Q What corporation is that?
11 A Lawson Heirs, Incorporated. It is an incorporated
12 estate is how it came into being.
13 Q So -- and is it your best estimate at this time that
14 those shares are worth $25,000?
15 A I don't know how you determine the value of shares
16 of stock in a corporation which are not traded, not sold. That
17 valuation has been challenged by Internal Revenue and accepted
18 and has been used by either four or five estates, of which at
19 least three -- no, of which -- it's been used by five estates, of
20 which four are still in the process of being settled.
21 Q All right, but in any event, is there income from
22 this? Is this part of the income you mentioned above in dividend
23 income?
24 A Yes, sir, very high -- it's $5000 of that $6000
25 specifically. It's from dividends from Lawson Heirs, Incorporated.

Q All right, and that comes from those twenty-five shares?

A Yes, sir.

Q $5000 in dividends. That's this past year?

A That's correct.

Q Are there any other securities or capital assets which you own other than the things you've mentioned so far?

A No, sir, I don't think so. I did not - and I wish to be perfectly candid, Mr. Lowe - I did not put in that statement, which I'm not sure -- has that been introduced today?

MR. BOYLE: No.

A I own some life insurance policies, but they all have my loans against them and my impression is that the loans have eliminated any cash surrender value.

Q Okay. How about estates? Do you have any estates of which you are beneficiary that are being settled at this time and will be or either are providing you income at this time or which will provide you with any substantial assets in the next year or so?

A No, sir, and I would think there is no potential of that in the future. Now, let me clarify that. There is one estate which is being settled, by which I inherited thirteen shares of stock in Lawson Heirs which is included in that $25,000 and upon which I made a deposit toward the taxes which would be assessed against it, but I get nothing else from it.

1 Q You have no other income and no other substantial
2 assets other than those you have already mentioned today?
3 A That's correct.
4 MR. LOWE: I have one question for the Court at this
5 point. I'm not sure how far the Court wants to go into the issue
6 of living expenses and that type of thing for Mr. Carter that we
7 have provided for Mrs. Carter or whether the Court would reserve
8 that for later exorcision if it becomes necessary.
9 MR. BOYLE: We have an outline, Your Honor, which we
10 would propose to admit and I wanted to talk to them to interrogate
11 Mr. Carter about it. Mr. Lowe asked me a few moments ago if we
12 would not allow Mr. Carter to stand aside for Mr. Michie because
13 he has an appointment. I would ask that Mr. Lowe finish his
14 direct and then I'll have my cross so that you can bring on Mr.
15 Michie if you want to.
16 MR. LOWE: All right, let me just check here and I
17 think I've finished now, but I want to be sure I've got everything.
18 THE COURT: I think that ought to come in along with
19 what Mrs. Carter's expenses were.
20 MR. LOWE: Yes, that's why -- but if Mr. Boyle has it
21 nice and orderly, I'll let him bring that in.
22 Q (By Mr. Lowe) Let me ask you this, Mr. Carter.
23 During the past year when you - or the last two years, let's say --
24 in addition to your income which you have specified, have you
25 received any substantial gifts from members of your family or

estates or anything which helped you?

A During the past two years?

Q Yes. Gifts as opposed to income, in other words.

A No, sir.

THE COURT: Why don't we go ahead and let Mr. Michie testify and you can come back and ask him some more questions.

MR. LOWE: That's all I have in any event for Mr. Carter right now.

THE COURT: If you'll stand aside, Mr. Carter, so Mr. Michie -- [Mr. Carter stood aside.]

MR. LOWE: I'll call Mr. Michie as our witness, Your Honor.

MR. MICHIE: Your Honor, if I might have one minute with Mr. Lowe. I'd like to point something out to him.

THE COURT: All right, sir.

MR. LOWE: Mr. Michie wants to clarify an attorney-client privilege question with Mrs. Carter. I think it'll -- she's in this room and we'll be right back.

THE COURT: All right.

THOMAS J. MICHIE, JR., called as a witness by the Complainant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Lowe:

Q Please state your name and your occupation and what

your relationship is or was to Frances Carter.

A I'm Thomas J. Michie, Jr., I'm an attorney and I represented Frances Carter in working out a separation agreement and obtaining a divorce from Edwin R. Carter.

MR. LOWE: May we stipulate that this is Respondent's Exhibit #2 that Mr. Michie is referring to as the separation agreement?

MR. BOYLE: Certainly.

Q All right. In the negotiation of that agreement, I think the simplest thing would be to ask you to first of all state whether paragraph (15) of that agreement in your understanding contemplated at least some support for the wife in addition to child support or whether it was all child support or whether it was all support for wife and then if you would outline what information you can give the Court to support your understanding of the intent of that paragraph.

A Well, it is my recollection from reviewing the file and thinking about this matter that that paragraph provides what I would call mixed alimony and child support. For tax reasons for Mr. Carter's benefit, it was all to be treated and is so treated in the separation agreement as alimony. Therefore, in my own mind I made no distinction as to how much I considered to be alimony because it was all going to be taxable to the wife and basically what she was interested in would be the total dollars that she would have after taxes. Now, if I may review my

file and put things into the record, I think it will establish how I arrived at my recollection. This matter, like so many domestic difficulties, extended over a number of months and there were a number of conferences and I would hate to say that my notes are very complete because they're not. The first note relevant to this question that I have is that I have a separation agreement consisting of fourteen paragraphs that had a date that was left blank but the month was February, 1971. This is a rough draft of an agreement that was prepared by Mr. Carter himself and there are fourteen paragraphs which are fairly standard and then there's a fifteenth paragraph which is not typewritten, but just the beginning of it in Mr. Carter's handwriting. It says, "As additional support and maintenance of said children, husband agrees" and that's all there is to it. It is my distinct recollection from talking to Mr. Carter when he brought this agreement to me - he said, "We'll have to work out support"and he may have said "for the children." He may have made it pretty clear that he was just talking about the children, but he said, "I have a lot of bills and I have this estate that I'm going to receive a share of, but I don't know how much it's going to be and I'm just not in a position to say what I can do for the children at this time." Now, I reviewed that agreement and then I added a pencil mark of my own on paragraph (16), which I just put down the word "alimony" which indicated my feeling that I was looking for alimony as well as child support, whether Mr. Carter was willing

to give it or not. Now, then I have a covering letter addressed to Frances Carter dated February 17, 1971 and I have -- let me say for the record that I've just conferred with my client, Frances Carter, in the presence of her attorney, John Lowe, and in the presence of her mother and she has agreed to waive all attorney-client privilege. This letter says as follows:

> Dear Frances:
>
> I enclose a copy of the draft of the separation agreement. I've made some notations and some question marks. In general, it looks quite standard and well prepared. Of course, you will see that it does not cover the real problems of amount of alimony and child support to be paid.
>
> With kindest regards, I am,
>
> Sincerely yours.

Now, the next note that I have in my file relative to this matter has a heading on it that says, "Conference N. Carter," meaning Nick Carter, "August 13, 1971" and there are some notes at the top about his probable inheritance of $72,000.00 and the yield on it and something about Lawson Heirs Co. stock. Then I have a line drawn across the middle of the page and I don't know what that means. I don't know whether that's a continuation of the same conference with Mr. Carter or not, but the notes that are below that line say, "Call all alimony. Pay for necessities and tax on alimony. She pays mortgage, he deeds the house to her, he will pay college tuition, he will pay medicals, has no health insurance." Now, my reconstruction of the meaning of those notes

1 is that either in conference with Mr. Carter or presumably shortly
2 thereafter I would guess that I was agreeing with Mr. Carter that
3 we were deciding on some basic things, but I hate to say for sure
4 that I was agreeing with Mr. Carter because the notes don't have
5 at the head of them, "Conference Mr. Carter," but I would guess
6 that, since they're on the same piece of paper, that it was all
7 the same conference and maybe I drew the line through the middle
8 because the top part was facts and the bottom part were decisions,
9 but this is not necessarily so. But my reconstruction of it
10 would be that we were deciding to call everything alimony for tax
11 reasons and that his idea was that he would pay for necessities
12 and he would pay that additional tax that Frances would have to
13 pay by virtue of the fact that these payments were all being
14 called alimony, that she would own the house and pay the mortgage
15 on it. In addition to his in effect paying for necessities, he
16 would pay the college tuition and medicals. Now, what I think --
17 Q Let me stop you there for a moment and clarify one
18 thing, Mr. Michie. When you say necessities --
19 A That's what I was coming to. I was coming back to
20 that. I think that when I wrote down there that he would pay for
21 necessities, the idea was that he was going to pay for Frances's
22 necessities because obviously he's obligated to pay for the
23 children's necessities, that he was willing to help her out, but
24 he expected her to get a job and this is my recollection of the
25 situation, that, first of all, he recognized that for a number of

1 months she needed to go to school to get, I think an M.A. or
2 something in Guidance and so he was willing to pay more during
3 that period of time. Thereafter, he was just willing to pay for
4 her necessities; that he didn't think he should have to give her
5 as much alimony as you might otherwise expect in a situation where
6 a couple have been married for a good number of years and had
7 children; that he'd expect her to get out and work. That's what
8 I draw from these notes. Now, coming back to the final agreement
9 itself, and I regret that I have no other copies of drafts that
10 may have gone in between -- there must have been other copies,
11 but I don't have them -- I think the fact that the agreement it-
12 self says that "all payments of alimony shall cease" --
13 MR. BOYLE: May it please the Court, I notice that the
14 tenor of Mr. Michie's testimony is that he is reading notes of
15 his in the agreement and attempting to draw conclusions presently
16 of what these were to be. Now, I think he can testify as to what
17 he remembers having been said or agreed to at the time of the
18 preparation of and the execution of this agreement, but cannot
19 come in and interpret today what the agreement means or what his
20 notes mean. Now, if this -- he's -- I notice - I put something
21 down here and he said, "The conclusion I draw from these notes" --
22 Now, I don't think Mr. Michie can possibly testify here and now the con-
23 clusion that he draws now from these notes. If he knows that
24 that was the conclusion he drew then, then he can testify to it,
25 but not what he thinks now, nor his views on the agreement now.

1 THE COURT: I'm inclined to agree that if all he has
2 are some notes there and he doesn't remember what took place or
3 what his thoughts were at that time, that he can't now sit down
4 and speculate as to what he possibly was thinking, so I think
5 if you will just try to show what your notes show and then you can
6 testify as to what you remember, but don't -- I'll sustain the
7 objection.
8 A Yeah, I'll -- you'll have to stop -- well, let's see,
9 now, going to the agreement itself, do you want me to try to re-
10 construct about the notes?
11 Q Well, let me ask you a couple of questions to go on
12 here. One of the provisions in paragraph (15) is that support
13 would terminate upon the emancipation of the youngest of the
14 children and one of the questions that has been raised is why
15 would that be true of alimony? Was there a reason? Was this an
16 arbitrary compromise or was this some logic to it or what can you
17 say about the reason why it would all terminate upon the emanci-
18 pation of the children?
19 A My recollection is that this was a compromise; that,
20 first of all, as I say, Mr. Carter was unwilling to pay what some
21 people would regard as a full measure of alimony, that he was
22 only willing to pay for Frances's necessities and, second, that
23 either this would stop when the youngest child reached majority.
24 Q Would it be fair to say that she was supposed to be
25 on her feet by that time and on her own?

1 A That's right. That's my recollection of conversa-
2 tions with Mr. Carter, that he had a very strong feeling that he
3 was not going to be obligated to Frances for the rest of his life.
4 Q Mr. Michie, let me ask you,at that time did you
5 do much practice of tax law as well as other aspects of law?
6 Were you familiar with the tax ramifications of provisions of
7 agreements and so forth?
8 A Yes, certainly, as --
9 Q I guess you're aware that child support is taxable
10 to the husband and alimony taxable to the wife and, as I think
11 you've already mentioned, that mixed alimony and child support
12 could be taxed entirely to the wife, is that true?
13 A I wouldn't say that child support is taxable to the
14 husband--
15 Q Well, not deductible.
16 A -- or phrase it that way.
17 Q It's not deductible. Is there any way that you
18 understand the law to operate as it is written in paragraph (15)
19 if there was absolutely not one penny of alimony or support for
20 Frances Carter in there, could it possibly have resulted in a tax
21 deductible mixed alimony and child support if there was absolutely
22 no support for the wife mixed in?
23 A Well, if you call it all alimony, yeah. You're ask-
24 ing me for an opinion of law now.
25 Q What I'm getting at is this. If, in fact, it was

1 all child support --

2 A Yeah, now, you can call it alimony. The only condi-
3 tion is that it last either for ten years or that it terminate
4 on an uncertain condition and if you have in there, just like
5 you have here,"upon her remarriage"- you know - just so you call
6 it alimony, you can take the deduction - as long as you satisfy
7 those rules.

8 Q Now, at the time this agreement was being put to-
9 gether, and the intent of the parties as you understood it and
10 were communicating with Mr. Carter,was the intent that none of
11 that money be alimony or did you understand that at least a por-
12 tion of it, regardless of what amount was allocated, a portion of
13 it was supposed to be support for Frances Carter?

14 A Well, that's my recollection, that a portion of it
15 is what I would consider true alimony. As I said at the begin-
16 ning of my testimony, I have no notes to indicate what portion
17 would be considered true alimony and I never bothered to worry
18 about it because the compromise was that it was all going to stop
19 when the youngest child reached majority and none of it was going
20 to stop when an older child reached majority, so it was really
21 irrelevant at that point to figure out what portion would really
22 be considered alimony.

23 Q All right. There was never any contemplation of a
24 situation in which the children would not yet have been emanci-
25 pated but would no longer be in the custody of Frances Carter when

1 this was drawn, is that true?

2 A No, that's true, but we did say that if - you know -

3 there's one child -- she was going to get the full amount whether

4 there was one, two or three children, so obviously I suppose you

5 could argue that if two out of three children were living with Mr.

6 Carter, she would still get the full amount.

7 Q Well, it was just silent as to what would happen if--

8 A It was silent in that regard. What we were thinking

9 about there was that as the first and second child became emanci-

10 pated, she would still get the full amount because you'd still

11 have the home expenses and just in general things don't decrease

12 as a child is emancipated necessarily.

13 MR. LOWE: I think that's all the questions I have.

14 Mr. Boyle may have some questions for you.

15

16 CROSS EXAMINATION

17 By Mr. Boyle:

18 Q Mr. Michie, do you recall Mr. Carter's ever telling

19 you that under no circumstances would he pay alimony to Frances?

20 A That's mighty strong language, Mr. Boyle. I hate to --

21 you know - say yes or no, but as I said earlier, I knew he didn't

22 want to pay alimony. Whether he used language that strong or not,

23 I don't know.

24 Q But, of course, we've made no attempt to repeat what

25 he may have said to you verbatim, but do you recall his taking a

1 firm position with respect to paying alimony, that position being
2 that he did not feel that he should have to pay alimony?
3 A Yeah, yeah, he took that position.
4 Q All right, now, I think you indicated that your
5 recollection plus some thinking about it and also from looking at
6 your notes indicates that he had agreed to increase his support,
7 a support figure that apparently you had been discussing with
8 him, in order that Frances could pay the taxes; in view of the
9 fact that the word "alimony" was going to be used, then she would
10 have to pay the taxes. And also the word "necessities" was in
11 there without further delineation. I think you'll also recall,
12 sir, that for a specified period of time Mr. Carter would pay
13 $900 and then it would reduce to $600?
14 A I'm sorry, I didn't hear you then.
15 Q In paragraph (15) you'll recall that it was agreed
16 that for a particular period of time Mr. Carter would pay her
17 $900 a month?
18 A Oh, yeah, right.
19 Q And then it became reduced to $600 a month?
20 A Right.
21 Q Can you recall, Mr. Michie, whether or not the $300
22 per month concession for a limited period of time was, in fact,
23 Mr. Carter's willingness to pay for these necessities while Mrs.
24 Carter was in school?
25 A That's a good question. I would - you know - hate to

1 say that that wasn't the idea. About all I can say is that, if
2 it was the idea, I should have made that in my notes that he
3 would pay the necessities for eight months or whatever it is,
4 where my notes just say that he will pay for necessities.
5 Q Well, I do understand you, do I not, sir, to say that
6 the reason the word "alimony" was used in that paragraph and the
7 reason it was called alimony was solely for tax purposes?
8 A Well, the reason it was all put into one paragraph.
9 As we all know, often we draw a separation agreement that has one
10 paragraph on support and one on alimony, but when you're dealing
11 with two parties, one of whom has significant income and the
12 other has very little, it makes more sense to call it all alimony.
13 Q All right, now, did you say, sir, that it was in Mr.
14 Carter's hand - where paragraph (15) was to come but had not been
15 typed on your draft, was it in Mr. Carter's hand, "as additional
16 support and maintenance of said children?"
17 A Right.
18 Q Now, there was no mention of wife or support for
19 wife in his handwriting, is that correct?
20 A That's right.
21 Q And it was in your handwriting that the word was
22 thereafter written in that blank space "alimony," is that right?
23 A That's right.
24 Q Mr. Michie, is it correct, sir, that throughout these
25 negotiations it was made clear to you by Mr. Carter that he did

not want this divorce?

A That's correct. He very much wanted to continue the marriage.

Q Is it also correct, sir, that Mrs. Carter was very impatient about getting both the divorce and the execution of this agreement?

A I'm sure she expressed impatience at times, but - you know - as a matter of fact, this thing did stretch out over nine months or so because - you know - one thing, Mr. Carter didn't know about inheritance and so forth. Yeah, I can certainly agree that at times she was impatient to get it done, yes. I can certainly agree that at times she was very impatient.

Q Has Mrs. Carter agreed just prior to your testifying, sir, that you were permitted to testify concerning all communications between the two of you?

A That's not up to me. Well, she --

Q Well, has she agreed -- has she waived attorney-client privilege?

A Yeah, she's waived.

Q Was Mrs. Carter in fact --

MR. LOWE: Excuse me -- as to the negotiation of this agreement.

MR. MICHIE: Huh?

MR. LOWE: As to the negotiations surrounding this agreement.

1 MR. MICHIE: Well, with him. He's asking if she'd
2 waived the privilege of my - of what I'd said to Frances.
3 MR. LOWE: Right. With relation to the agreement I
4 think you're speaking of, aren't you?
5 A Well, I --
6 MR. LOWE: I mean I don't know what other matters Mr.
7 Michie may have had.
8 MR. BOYLE: Well, I want to go a bit farther than that.
9 Perhaps you can ask --
10 THE COURT: Well, why don't you phrase your question
11 and then we'll --
12 MR. LOWE: Phrase your question and maybe we can --
13 Q Is it a fact, Mr. Michie, that Mrs. Carter during
14 the process of these negotiations was contemplating remarriage?
15 A You want me to say what she's told me?
16 Q Yes.
17 A Well, I don't know that she - you know - I didn't
18 think about that in talking to her about waiving of privilege,
19 so I guess I've got to find out about that.
20 THE COURT: Well, if you feel that you can't answer
21 that question because of privilege, maybe you could consult with
22 her again.
23 MR. LOWE: What -- perhaps then you -- I'm not sure
24 what -- it seems to me that Mr.Carter has already given testimony.
25 It's uncontradicted at this point that she was anticipating getting

1 remarried. I'd rather -- frankly, she's --

2 MR. BOYLE: If you'll permit that to stand, it's all

3 right with me. It won't continue any further.

4 MR. LOWE: Well, I don't anticipate calling Mrs. Carter

5 to deny that she said these things. For a number of reasons I'm

6 not going to call her to contradict it.

7 THE COURT: All right.

8 MR. MICHIE: That she was planning to remarry?

9 MR. LOWE: No, I just don't want to take issue on it.

10 MR. BOYLE: I have no further questions of Mr. Michie.

11 THE COURT: Have you any more questions, Mr. Lowe?

12

13 REDIRECT EXAMINATION

14 By Mr. Lowe:

15 Q The only thing -- you stated that Mr. Carter at least

16 at one point stated in words to the effect that he did not want

17 to pay any alimony. Is it your understanding that that was not

18 the final position taken by the execution of this agreement or

19 that he did believe that the agreement meant no alimony?

20 A I really would rather not testify as to what he be-

21 lieved at the moment the agreement was signed.

22 Q Well, let me ask you this.

23 A I just would hate to put words into his mouth, you

24 know, and say -- I just think it's too hard to recall --

25 Q Based on your conversations with Mrs. Carter, was it

1 your understanding and as far as you can tell from what your com-
2 munications were with her, was it her understanding that this did
3 provide some support for her when it was executed?
4 A Well, you know, as I say, that's my recollection,
5 that part of it was alimony, but - you know - as I say, you look
6 at the whole dollars and cents if that's the way things are going
7 and you really don't think much about --
8 MR. LOWE: Okay, that's all I have.
9 THE COURT: Let me ask you this, Mr. Michie. In para-
10 graph (15), the first two references of the first paragraph there
11 are to payments in lieu of alimony and the second paragraph --
12 it's an unnumbered paragraph in paragraph (15), says "all payments
13 of alimony" rather than "in lieu of alimony." The draftsman just --
14 didn't intend any particular significance by changing the language,
15 did he?
16 A All right, I don't think there's any significance
17 other than carelessness on the part of the draftsman.
18 THE COURT: What was the -- the statement in the first
19 paragraph of paragraph (15) says, "payments to continue until the
20 death or remarriage of wife." Did that represent a compromise
21 you might say?
22 A Yes, Your Honor. To me -- to me, that --
23 THE COURT: Then all of that -- that whole sentence is
24 a compromise?
25 A Right. Right, I meant to explain that again, that I

1 thought about that sentence very carefully because it is worded
2 in the alternative, either the children growing up or the death
3 or remarriage, whichever first occurs, and you have to have - you
4 know - an indefinite event in order for it to be alimony and I
5 remember thinking about that sentence very carefully to make sure
6 that Frances was protected because I, on thinking about it, I
7 realized that if she did remarry, then it's true that the payments
8 would all stop, but since the children would be below the age of
9 majority, he would have a statutory duty to support them and, if
10 the parties could not arrive at a fair sum, she would always have
11 a right to go to court and, since the other alternatives when all
12 the children became of age, that was,in my recollection, the deal
13 that that's when the alimony would stop,so that she was protected
14 at either event occurring first.
15 THE COURT: All payments would stop?
16 A All payments would stop.
17 THE COURT: On majority.
18 MR. LOWE: One last question. At the time of the exe-
19 cution of this agreement and in the intent and in the discussions
20 you had, was age 21 or age 18 contemplated when you made that --
21 that was signed?
22 A I guess the Legislature in its wisdom had not changed
23 it to eighteen. That was '72.
24 Q Was it the understanding of the parties at that time
25 that majority meant age 21?

A Yeah, I guess that was the contemplation of the parties. These kind of things where lawyers write things and then decide what the parties were contemplating when they signed them --

THE COURT: I don't think the effective -- the change from 21 to 18 became effective until '72, did it?

A That's my recollection.

MR. BOYLE: That deals with emancipation, starting to emancipate. Now that they're - you know - when they're eighteen they're emancipated.

THE COURT: Any further questions of Mr. Michie?

MR. BOYLE: I have one question.

RECROSS EXAMINATION

By Mr. Boyle:

Q Is it not correct, sir, that one of the reasons that the cutting off of all of this support if Mrs. Carter remarries is the uncertain event which must be tied with such a paragraph in order to make it taxable to Mrs. Carter?

A Well, you have to have some uncertain event. You could have just her death without the remarriage, but either one would qualify for tax purposes.

MR. BOYLE: I have no further questions.

THE COURT: All right, if there's no objection, then Mr. Michie is excused. Thank you very much.

[The witness was excused.]

[Mr. Carter resumed the stand on Redirect Examination by Mr. Boyle:]

Q Comments have been made concerning your monthly expenses in earlier testimony. In answer along this line, have you prepared a statement of your monthly expenses?

A Yes, sir, I have.

Q All right, have I not supplied Mr. Lowe and the Court with copies of that statement?

A Yes, sir, you have.

THE COURT: Let's see, what exhibit will this be?

MR. BOYLE: This would be 10, I believe.

[Statement of monthly expenses of Mr. Carter received in evidence and marked as Complainant's Exhibit #10.]

MR. BOYLE: Your Honor, I can review this with him. It speaks for itself. Mr. Lowe can examine him on it. I think possibly that would be the briefest way to handle it.

THE COURT: I don't see any reason for him going over the whole thing unless-if Mr. Lowe can cross-examine him as to what he wants to ask him about.

Q Yes, sir. Mr. Carter, are you aware of any assets which your wife has?--or your former wife, excuse me - Mrs. Carter.

A Yes, in addition to the real estate at 1900 Greenbrier Drive and her 1968 Ford Country Squire Station Wagon, she has a considerable amount of jewelry, most of which I gave her, including

among her jewels an emerald and diamond ring and an emerald bracelet which she inherited under certain conditions under my mother's Will. These rings were appraised two or three years ago at $5300 and my guess would be they are worth --

MR. LOWE: Objection to any guess, Your Honor.

THE COURT: Don't use that word "guess."

A I'm always suspicious of experts, Your Honor.

Q And now that you've released any control over the house which this agreement exercised over Mrs. Carter, she now has that as free and clear, does she not?

A She does, and then she has a considerable amount of silver that was among the furniture and personal property which I conveyed to her outright and there are some valuable articles. She has, I would think, a substantial possibility of inheritance as an only child.

Q She is an only child?

A Yes, she is.

Q Do you have any conception of the approximate fair market value of her estate at the present time, the assets which you've just described?--the house, the jewelry, the furniture, the car.

MR. LOWE: I would object to the relevance, Your Honor, although I --

THE COURT: I think he's testified to the individual items.

MR. BOYLE: I think he's put no value on the furniture, Your Honor. I think he has put a value on the house to which it could be calculable and one on the -- a portion of the jewelry, although not all of the jewelry, and none on the car and none on the furniture, if I'm not mistaken.

THE COURT: I don't know what all their questioning about his financial worth was --

MR. BOYLE: It wasn't my intention to get into it, Your Honor, but Mr. Lowe brought it in and I thought since the Court was apparently --

THE COURT: Since they got the other in, I told him -- but I don't think he's able to add much to what he's already said.

Q Can you give an estimate of the value of the furniture? I take it you --

A I would estimate her total assets, as I know them, are worth $65,000.00.

Q Now, Mr. Carter, Mr. Lowe raised I think an important point and it's one that Mr. Michie touched on and that is that if you did not in fact contemplate paying Mrs. Carter any alimony -- and you've explained to the Court why that word was used -- why then was the money which you were to pay $900, thereafter to be reduced to $600? You didn't have to pay this. You didn't have to do this. Why did you do it?

A In comparison to the marriage prior to this time in the late summer and early fall of '71 when this provision of the

1 agreement was being negotiated, things were relatively agreeable
2 between Mrs. Carter and me. We communicated many times, sometimes
3 several times a day, and she steadfastly refused to consider any
4 reconciliation, but we would discuss the kids and we would dis-
5 cuss problems and we would discuss this agreement. She was still
6 in school, we talked about that, we talked about the job that she
7 was planning to get, and the extra $300 was simply to get her
8 through until -- not only through school, but it was my thought
9 that she would probably go to work the following September - that's
10 what was then anticipated - and, of course, the $900 payments
11 would continue until the end of December of that year and it was
12 my thought that she could probably use that money to get herself --
13 to help get herself another car, but it was just -- I loved her
14 and I wanted to help her and, in addition to what was called for
15 in the agreement, I paid her tuition, paid her special coaching
16 classes and paid a considerable number of other things.
17 Q What other things? In the agreement,you allowed her
18 a credit of $200 a month for a limited period of time on the
19 charges on your account, didn't you?
20 A Well, in addition, during that period of time she
21 was supposed to limit her charges on my credit to $200 a month.
22 She actually -- in cash to her and in charges on my account, she
23 actually spent $2116.83, but of that $2116.83, $482.24 were items
24 that I just gave her. The $1634.59, the balance, was what she
25 charged supposedly under the agreement, but actually a breach of

it and I didn't discover it until after the year ended when the bills started coming in. That represents a $934.59 excess over what she was authorized to spend.

Q Over the $200 a month?

A Yes.

Q And you did go on and pay this yourself, did you not?

A Yes, sir, I had to. They were on my accounts and, if I did not, my credit would suffer by it. Incidentally, it did suffer, anyway. She charged some --

MR. LOWE: Your Honor, I - you know - I don't know what relevance all this is. I know you've allowed a lot of it in with broad latitude. I'd just like to note my continuing objection to the relevance of it. I don't see how it relates.

THE COURT: Well, now, what does this relate to?

MR. BOYLE: I don't think how his credit suffered does relate, Your Honor.

THE COURT: All right.

Q Mr. Carter, let me go on to one other area. Mr. Lowe in his opening statement indicated that you have not paid the $600 per month since the children were in your care. You have indicated to me that you have paid some months since the children were in your care. Do you have a record of the monies which you have paid either to Mrs. Carter or for Mrs. Carter that were bills of hers during that period of time when you feel that you were not obligated, but went on and did it anyway?

A At Mrs. Carter's written request and authorization, I acted as her attorney-in-fact in arranging for her telephone service to be reestablished. It had been disconnected for non-payment and I paid that. That was $49.02, as I recall, and I paid her maid for two weeks. Until outside parties moved into the house, I gave Mrs. Carter -- let's see, I -- well, after Mr. Lowe called you and advised that Mrs. Carter was ill again, I gave her an extra hundred dollars. I gave her an additional hundred dollars after that and I paid her an additional $60.00. I think those amounts were the last two. The $160 represented eight days in which she had the children, four week-ends, after she got out of Davis Ward and before she went into Arlington House.

Q Is it correct then that what you did when the children visited her but were in your custody was pro-rate the $600 over a month's period --

A Yes, sir.

Q -- and paid her on a daily basis for the days during which she kept these children?

A Yes, sir.

Q I think it worked out to something like $20.00 a day?

A That was consistent with my understanding of the agreement between us.

Q And, in addition, you paid $125 pendente lite here approximately two weeks ago, is that correct?

1 A That's correct.

2 Q What is the total of these monies that you've there-

3 fore paid since you've had the children?

4 A Approximately $358.00. I may have neglected some

5 payments, though.

6 Q Well, yes, I think you testified that you paid $100

7 on one occasion, $100 on another occasion, $60 on another occasion,

8 $125 on another occasion, you paid Forty-Nine something for the

9 phone bill and for the maid two weeks.

10 A Well, I think your question was what did I pay during

11 the time that I had the children and the first $100 was after Mr.

12 Lowe advised you that Mrs. Carter was ill and that I should take

13 steps to protect my children.

14 Q Well, I'm sorry. I didn't mean to phrase my question

15 following --

16 A It was.

17 Q Deducting from the $600 per month that you would

18 ordinarily have had to pay,had Mrs. Carter had the children, the

19 monies which you have not paid,but taking a credit for those

20 monies which you've just described, how much money would you have

21 paid Mrs. Carter at the rate of $600 per month?

22 A I'm sorry, Mr. Boyle, you've lost me.

23 Q All right, you were obligated when she had custody

24 to pay $600 a month?

25 A That's correct.

Q Somewhere along the line you stopped that. When did you stop that?

A Well, I had paid her for the month of July and she was committed on July 26th, I believe.

Q All right, so you did not pay for August?

A That's correct.

Q You did not pay for September?

A That's true.

Q And you did not pay for October?

A That's correct.

Q All right, now, that's $1800. Now, please add up the monies which you were not obligated to pay, such as the maid for two weeks, the telephone, the $385 that you've testified that you gave to her, and subtract that from $1800 and tell us what the answer is.

A $1442.00.

Q All right.

MR. LOWE: How much was the maid for two weeks? I didn't hear you mention that.

A $13.00 a week, sir. I must correct myself --

THE COURT: Wait a second. $1440 is what you haven't paid out of the $1800, is that correct?

A That's correct, and I have made a mistake. I --

THE COURT: But from $300 -- well, wait a minute. We had that $358 before. Is that correct?

MR. BOYLE: We had $360 plus $49.00 and something, so that takes us up to $409.00 and something, plus the maid. $435, approximately $435 from $1800, about $1365.00.

MR. CARTER: I have to correct myself as to one payment to the maid. One payment to the maid was made while Mrs. Carter was spending the week at Boar's Head Inn when she had left my children there by themselves and she did that on a -- she left the house on a Monday morning and didn't return until the following Friday without telling anybody where she was going and the maid was supposed to be paid on that Thursday. It's in addition to supplying -- I also supplied money that I cannot recall the amount of for food during that period to my children.

Q Was that in July, Mr. Carter?

A That was in -- immediately prior to her commitment.

Q So that would have been in July?

A Yes. I think I probably supplied something like $50.00 for food.

THE COURT: Well, I'm unclear as to what's paid.

MR. LOWE: They're talking - as I understand it - afterwards. After the children were taken, there was two $100 payments, a $60 payment, $26.00, $49.02 and the $125 which he paid as a result of our conference here and I think maybe you slipped a decimal point or $100 here. I got $1340.

MR. BOYLE: Yeah, I did, too, but I think what he's saying now, if I'm not mistaken, is that - I had phrased these

1 questions regarding what he should have paid beginning August 1
2 and what he did in effect was to pay the maid $26.00 - two 13's -
3 during July, right before she went to the hospital, paid $50.00 and
4 MR. LOWE: All right, in other words, that's -- well,
5 $1340 is basically the same figure you came out with?
6 MR. BOYLE: Yes.
7 MR. CARTER: I may have paid some other bills, too, Mr.
8 Boyle. I can't recall at the moment.
9 MR. BOYLE: Right.
10 MR. LOWE: Do you mean you are through, Mr. Boyle?
11 I didn't understand you.
12 MR. BOYLE: No, I was agreeing with what Mr. Carter
13 said, although I do think I am through.
14 MR. LOWE: Oh, I'm sorry. I thought you were still
15 trying to decide whether you were through or not. I was waiting
16 for you.
17
18 RECROSS EXAMINATION
19 By Mr. Lowe:
20 Q Some questions that have been raised - I didn't
21 understand about the $72,000 inheritance. Is that included in
22 all these figures or is that something else you're talking about?
23 A No, sir, that's included.
24 Q Oh, okay. Now, as I understand it, there was a total
25 income of $6,123 for dividends, of which $5000 came from the Lawson

Heirs shares. Do I understand that so far this year you have only received $1123.00 total return on $53,000 or roughly $55,000 worth of other stocks and securities?

A Oh, very generous of you, Mr. Lowe. All those securities -- well, the overwhelmingly major part of them are in the margin account and that represents the net dividends from the margin account, the net of the interest charged on the account and which, as you probably know, currently runs something like eleven and a half percent.

Q Okay. So, on your interest payments up here, banks and other interest -- I presume -- is that interest on your loans and other things? You've paid $185 a month, which is about $2200 a year interest, and I gather those are your two notes at Monticello National and Citizens and also -- well, there would be a net out of the interest you paid on your margin account and the dividends received, which nets to $1100+. Is that a correct analysis of those?

A Well, the $185 figure does not include interest on the margin account. That's just the interest on notes.

Q Right, these are the notes because the interest nets out with the dividends at $1100?

A That's correct.

Q Now, is this - payments on the First Deed of Trust and everything - that includes your present home you're building, is that -- that's what that encompasses, isn't it?

1 A Yes, sir. The Deed of Trust was on the property
2 when we bought it, so we assumed --
3 Q You say your estimated food and debts for your
4 entire -- is it a family of five now or four? I don't know
5 whether Edwin is living with you or not.
6 A Four and a half. Sometimes he is and sometimes he
7 isn't.
8 Q And automobile expenses - is that exclusively for
9 you or is that for your whole family?
10 A Seeing Mrs. Carter's estimate of her expenses, I
11 think that's probably grossly conservative. They were intended
12 to cover not only my wife and me, but also my daughter, Finley,
13 and,when he recovers his driver's license, my son.
14 Q Okay. How about the tuition and educational expenses?
15 Is that for one of the children or --
16 A They are for Elizabeth and Finley. Edwin is not now
17 in school. He's investigating going back to school.
18 Q Okay.
19 THE COURT: I don't get this. Is the tuition and
20 educational expenses - is that for tuition at a private --
21 MR. LOWE: At Belfield or something?
22 A Elizabeth goes to Belfield and Finley goes to St.
23 Anne's.
24 Q Now, how about -- obviously some of these expenses
25 relate to your whole family. Do I understand that your present

1 wife does work and provide some income to the family?

2 A Yes, she's employed part-time by my suite-mate,

3 Lewis Martin.

4 Q And how much income does she contribute to the

5 family, to these expenses each month?

6 A I believe about $220, Mr. Lowe.

7 Q That's a net figure?

8 A Yes.

9 Q Per month. Now, you've got debt service here

10 eighty -- well, almost Nine Thousand -- Nine Thousand and some

11 odd dollars. It's quite true, isn't it, that you could sell

12 some of these stocks that you own on margin -- or holding in a

13 margin account and liquidate all of your outstanding debt service

14 obligations, isn't that true?--and still have some left over -

15 a considerable amount left over.

16 A I don't know whether I could liquidate them all or

17 not, Mr. Lowe. I somewhat doubt that I could.

18 Q $27,800 of notes; $4200 note to your realtor - that's

19 about $32,000 total and the Second Deed of Trust of $11,000 --

20 that would make it $43,000 total, so just those -- I'm not talk-

21 about the First Deed of Trust on your property --

22 A About $3000 to Lawson Heirs.

23 Q Pardon?

24 A Plus $3000 to Lawson Heirs.

25 Q I don't think you mentioned that.

A Well, I am indebted to the corporation in the amount of $3000 and payable on demand.

Q All right, that would make a $46,000 indebtedness, so if you had $53,000 worth of stock, you could liquidate and eliminate all of those things and come out and still have about $8000 or $9000 left, isn't that true?

A If that's what it adds up to, sir. I've not checked your arithmetic.

Q Well, I'm only -- I'm not saying you necessarily have to do that, but I'm trying to balance out some of these against the assets that you have.

THE COURT: There might be some Sellers --

MR. BOYLE: Might be some capital gains in there somewhere.

MR. LOWE: Might be.

Q You said that Frances Carter had $65,000 in total estimated assets. You're not talking about unencumbered, are you?

A I would have to stand corrected. I would have to net the mortgage off of that and I --

Q Is that about $20,000 equity in the house, would you say? $26,000 loan, $46,000 by your figures?--something on the order of $20,000?

A I would say she has $40,000 to $45,000 assets now.

Q And that includes the $53,000 worth of emeralds which you believe have appreciated somewhat and --

MR. BOYLE: $5300.00.

MR. CARTER: $5300.00.

Q $5300.00 - I'm sorry, I meant to say $5300.00, not $53,000.00. And the silver and furniture. Was there anything else other than those items - the house, the car, the silver, the furniture and the emeralds?

A There were other items of jewelry. I think probably there's some unencumbered antique china and glassware and I'm just estimating on the basis of experience at auctions what those things might bring.

Q Now, I'm still not clear. You have $233 a month at your office, $128 miscellaneous office expenses; you've got somewhere in the vicinity of apparently $400 in office expenses. Do I understand that you do or do not anticipate getting back into the full time practice of law in the next month or so?

A I surely hope to. I think that would depend more on your client than anything else.

MR. LOWE: I think that's all the questions I have, Your Honor.

REDIRECT EXAMINATION

By Mr. Boyle:

Q Mr. Carter, it is a fact, is it not, that if you were to liquidate all of your securities, marketable securities, you would pay a capital gains tax and absorb the costs of settlement?

1 A I would certainly pay that on some of them. I don't
2 know whether it would be a net taxable in that or not.
3 Q In regard to the Lawson Heirs stock, is it not
4 correct that you -- a significant portion of your income is gen-
5 erated by serving as attorney for that corporation?
6 A Yes, sir.
7 Q And if you sold that stock, you'd no longer be
8 attorney for that corporation?
9 A I would have extreme difficulty with the position if
10 I sold the stock, that's true.
11 Q By virtue of your being a substantial stockholder
12 and an attorney, that you are the attorney for the corporation,
13 isn't that correct?
14 A That's correct.
15 Q How much of your income is generated by the fact
16 that you hold those shares both in returns of dividends and pay-
17 ments as attorney?
18 MR. LOWE: I think he said $5000 from the dividends. I
19 don't think he stated what the attorney's portion --
20 A I would say I probably receive something like $8000
21 a year from Lawson Heirs.
22 Q $5000 of which is dividends?
23 A Is dividends, yes.
24 Q $3000 of which is compensation for your service as
25 the company attorney?

MR. BOYLE: All right, I have no further questions, Your Honor.

THE COURT: Any more questions, Mr. Lowe?

MR. LOWE: No, sir.

THE COURT: This utility is estimated at $60.00 a month. What does that include, heat?

A Yes, sir, heat, telephone, electricity. Those are just estimates, Your Honor. I have not lately had any experience with as large a family as I now have.

THE COURT: All right, thank you. You may stand aside.

MR. BOYLE: We have no further witnesses, Your Honor.

THE COURT: Have you anyone else, Mr. Lowe?

MR. LOWE: I have no further witnesses, Your Honor.

THE COURT: All right, do you want to take a few minutes before you argue?

[At this point there was a brief recess, after which argument was presented by counsel for the parties. The Court then ruled as follows:]

THE COURT: All right, gentlemen. This agreement, I repeat, is ambiguous. I think it's very difficult to construe paragraphs (15) and (16). I think probably in an effort to work out a compromise and get the maximum benefit from the tax standpoint, they've distorted the real meaning of the thing, but I think that it's clear that, whether you call it alimony or in lieu of alimony, this obviously calls for support of the children.

1 There isn't any question about that and I'm going to have to rule
2 that it calls for some alimony on the part of Mrs. Carter. Now,
3 I think it's very clear from Mr. Carter's testimony and Mr. Michie's
4 testimony that Mr. Carter didn't want to pay any alimony and
5 didn't think he had any obligation to pay alimony, but I think
6 that it's clear to me from Mr. Michie's testimony that a compromise
7 was reached under which first, this payment for one year, during the
8 year of 1972, pay to wife the sum of $900. Well, now, clearly
9 that was for the benefit of the wife, call it what you want, be-
10 cause there's no showing here whatsoever that the children were
11 going to cost that much more for the year 1972 and then I think
12 thereafter, according to Mr. Michie's testimony, some part of it
13 was alimony, but for reasons best known to them - perhaps because
14 everybody was satisfied with it - they did not spell out what
15 percentage of it was, but I think that you'd have to -- I'd have
16 to take the position that some part of it was alimony, but also
17 obviously some part of it is for child support and down there at
18 the bottom of paragraph (15) it provides, "Should either party
19 hereto desire to change the agreement in respect to child custody
20 or support and maintenance of said children, the party desiring
21 such change shall first make an honest and sincere effort to negot-
22 iate with the other with respect thereto as a condition precedent
23 to apply to the court for such change." But, assuming that were
24 done, the agreement contemplates that an adjustment on the part of
25 support could be had. Of course, you also have to read that in

1 connection with the second paragraph of paragraph (15) where all
2 payments of alimony will cease if at any time any court decrees
3 any increase in the payments for the support and maintenace of said
4 children otherwise provided herein.
5 But, I think that obviously a major portion of this it
6 seems to me was for the children, but I think Mr. Carter has ex-
7 plained the tie-in throughout this entire agreement with the
8 maintenance or the house intact, the furniture and the cost of
9 maintaining it and, of course, as Mr. Carter testified, at one
10 point that he had thoughts that really he ought to reduce the
11 $600 by a fourth because of the fact that he wasn't paying her
12 any alimony and that she would benefit from it, but he decided
13 not to do it because of the fact that he said he couldn't have
14 his children eat steak while his wife ate hot dogs, or words to
15 that effect -- or his ex-wife.
16 Now, the choice the Court has here is to work within
17 the framework of this agreement and really, I don't know that
18 anybody is really seriously wanting me to overthrow the agreement.
19 It seems to me I've either got to try to work within the frame-
20 work of the agreement or I've got to declare the agreement null
21 and void and just start from scratch on a consideration of what
22 alimony, if any, should be paid by Mr. Carter to Mrs. Carter, but
23 I -- they have carried out all the provisions of this agreement,
24 the house has been deeded under the terms of the agreement to Mrs.
25 Carter and now that Mr. Carter has in open court agreed to change

1 the provision about the sale of it, it might well be argued that
2 if she couldn't sell it and had to maintain it, that there would be
3 some reason for him to continue paying the $600, but that has
4 now been changed by his agreement in open court to permit her to
5 sell it. That being true, it just won't do. It just won't be
6 equity to require him to support these children and pay her $600
7 a month. It is financially -- on the showing here today, his
8 finances won't permit it. Now, it's clear to me that, while in
9 par -- the section -- no, it's the last part of the first para-
10 graph of (15), as one child reaches a majority - becomes self-
11 supporting it's taken to mean - nothing is reduced. Still and
12 all, while the agreement does not expressly cover this point, when
13 all three of the children are taken over by Mr. Carter, it seems
14 to me that obviously a material reduction has got to be made and
15 I know of no other way to do it than by taking three-fourths of
16 the $600 for the support of the children since - and I'm reminded
17 by Mr. Michie's testimony of the necessities - and the way I
18 would construe that would be the maintenance of the house and for
19 the necessities. While the grown person might well under unwritten
20 law require more for their necessities, I would construe it to
21 mean that each one of them would have an equal part in the $600
22 and three of them are removed. I would award her $150, and, of
23 course, she is gone out of the house and that's the best I can do.
24 MR. LOWE: Your Honor, excuse me, but one fact that I
25 think -- I don't know that it got into evidence, but I believe we

can stipulate that Edwin is over age 18. He's no longer a child support obligation for Mr. or Mrs. Carter. I think that, under your theory, the least would be one-third at this point.

MR. BOYLE: But he was at the time of the agreement.

MR. LOWE: But he was in the agreement.

THE COURT: Now, you can argue -- you could argue, of course, that said payments continue until the death or remarriage of wife or the emancipation by attainment of majority or otherwise of all of said children. As far as -- but you could argue perhaps as far as Mrs. Carter is concerned, since the support has been taken over by Mr. Carter, that for all practical purposes that amounts to an emancipation, but I think that the fairest thing that can be done and equitably can be done - and as I say, I have to operate within that agreement because of the fact that they have gone too far along to repudiate the agreement and take a fresh start - is to allow her - and to require the payment of $1500 which would be effective from the date that he took over the children.

MR. BOYLE: Now, you said $1500, Your Honor.

THE COURT: I mean $150.00.

MR. BOYLE: Well, actually, Your Honor, taking into account his credits, would we be entitled to take them into account for payments that he's made since he took over the children? I think there were $360 -- let's see, $260 plus $125 - $385.

THE COURT: It actually comes out to $462. I'm inclined

to think that she ought to have that other $125 as -- I really intended that that was to be $250 payment. She ought to have that $125 and then starting from now on, it should be $150 a month.

MR. BOYLE: So, it starts $150 now and at the rate of $150 for August, September and October, it would be $450, and are we entitled to the two $100 payments and the $60 payment?

THE COURT: I'm going to adjust that by requiring an additional payment of $125 required by my last order which has never been typed up and the rest of it would cancel out.

MR. LOWE: Yes, sir, it has been typed up and tendered to Mr. Boyle last week.

THE COURT: It hasn't been signed then. So, he would pay $125 --

MR. BOYLE: $125.

THE COURT: Plus $150 a month from now on until -- now, on the majority as I construe it, regardless of what the people intend as majority when they draw up an agreement, when the Legislature in their wisdom changed majority from 21 to 18, I think that's binding on everybody, regardless of what they thought majority was or was going to be.

MR. BOYLE: But since his emancipation, even if it's not what they thought majority was going to be.

THE COURT: So when the youngest one reaches 18, under my theory of the case, that would wipe out the obligation.

VIRGINIA

IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

EDWIN R. CARTER, III,

Complainant

v.

FRANCES M. CARTER,

Respondent

ORDER

CHANCERY No. 1913

This day came the Respondent, with her retained counsel, John C. Lowe, and also came the Complainant, with his counsel, and also came the Guardian ad litem for Frances M. Carter, John C. Lowe, and upon the Motions and Pleadings filed, the testimony heard ore tenus, and the representations of counsel, the court doth find that the parties have agreed that it is in the best interests of the children of the parties and the parties themselves not to modify the presently existing order of this court with respect to custody, to leave the custody of the children in the custody of Edwin R. Carter, III, until the further order of this court, the court specifically reciting that it made no determination on the merits of the issue of custody, and that this order is made without prejudice to the rights of either party; for the reasons stated into the record in open court on the trial of this controversy the court finds that the parties originally

intended one fourth of the support called for in paragraph 15 of their separation agreement dated September 14, 1971, to be alimony which would survive the change of custody of the children from the Respondent to the Complainant, and to terminate when the youngest surviving child of the parties attains age 18.

WHEREFORE, it is ADJUDGED, ORDERED and DECREED, that the children of the parties remain in the custody of Edwin R. Carter, III, the Complainant, until the further order of this court, that Edwin R. Carter, III, shall pay to Frances M. Carter, the sum of $150.00 per month alimony beginning immediately, and shall within 90 days, pay to John C. Lowe $450.00 for attorneys' fees, and guardian ad litem fee, and this matter is ordered continued on the docket.

ENTER: S/ GEORGE M. COLES

DATE: Dec. 26, 1973

I ask for this:

Robert P. Boyle, p.q.
Boyle and Wood
420 Park Street
Charlottesville, Virginia

Seen and objected to:

John C. Lowe

John C. Lowe, p.d.
Lowe and Gordon
1111 West Main Street
Charlottesville, Virginia 22903

Seen and objected to:

John C. Lowe

John C. Lowe
Guardian ad litem for Frances M. Carter
1111 West Main Street
Charlottesville, Virginia 22903

A COPY TESTE:

CARL E. HENDRICK, CLERK

Judith Ann Durham DEP. CLERK

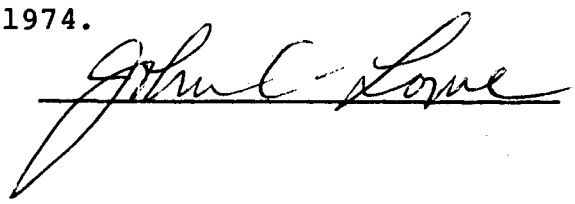
ASSIGNMENTS OF ERROR - FILED JANUARY 25, 1974

1. The Court erred in ruling that the Respondent was not entitled to the full $600 support provided in the support agreement entered into between the parties.

2. The Court erred in ruling that Edwin R. Carter by his actions had not opened up the question of alimony for further determination by the Court in accordance with principles of law and equity.

3. The Court erred in ruling that Edwin R. Carter, was not estopped by his actions and statements from denying that Frances Carter was entitled to full benefits called for in the separation agreement of the parties.

4. The Court erred in ruling that Frances Carter was not entitled to a determination of support for herself under the terms of the agreement based on the needs and resources of the parties.

CERTIFICATE

I hereby certify that I have fully complied with Rule 5:35 of this Court on July 15, 1974.