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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 74-0382

KAREN B. WHITE,
Appellant,

v.

BENTON M. WHITE,
Appellee.

JOINT APPENDIX

Harry Pincus, Jr.
Doumar, Pincus, Knight & Harlan
1350 Virginia National Bank Building
Norfolk, Virginia 23510
Counsel for Appellant

Frederick H. Creekmore
Creekmore & Rinehart
392 Battlefield Boulevard, South
Chesapeake, Virginia 23320
Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

KAREN B. WHITE :

Complainant :

VS. : IN CHANCERY NO. 14047

BENTON. M. WHITE :
2001 Chesapeake Avenue
Chesapeake, Virginia 23324

Defendant :

BILL OF COMPLAINT

TO THE HONORABLE JUDGES
OF THE AFORESAID COURT:

Your complainant respectfully represents as follows:

1. That the complainant and the defendant, husband and wife, were married in the City of Elizabeth City, North Carolina, on the 18th day of March, 1966, and that both parties are over the age of 21 years.

2. That the complainant and the defendant, on the date this suit was instituted, were domiciled in and were then and had been actual bona fide residents of the State of Virginia for at least one year next preceding the commencement of this suit.

3. That there was one child born of this marriage, namely Benton M. White, Jr., age three and one-half years.

4. That the complainant and the defendant last cohabited at 948 Poplar Avenue, Chesapeake, Virginia.

5. That the defendant is not a member of the Armed Forces of the United States of America.

6. That on various and sundry occasions, Benton White has assaulted, beaten, cursed, threatened, abused, harrassed and humiliated his wife, Karen White, to the extent that she has been in fear of him and in fear of her child's safety. Further he has attempted suicide and has on occasion taken the child from her to further cause her mental anguish and fear. On a recent date, he took the child after filing a warrant against his wife to cause her to be arrested. All of the aforesaid man's behavior (except for the recent arrest) has caused her such fear and mental anguish as to compel her to leave the home where the parties last cohabited on January 6, 1972, taking the child with her.

7. That the parties have lived separate and apart since that said date.

8. That this behavior on the part of the husband is tantamount to constructive desertion.

WHEREFORE, the complainant seeks a divorce a mensa et thoro to be merged into a final decree of divorce at the proper time. She seeks the custody of her child as well as such alimony as she herself may need as well as support for the child and such other matters as the nature of her case may require.

KAREN B. WHITE

By H. Pincus Jr.
Of counsel

HARRY PINCUS, JR.
DOUMAR, PINCUS, KNIGHT & HARLAN
1350 Virginia National Bank Building
Norfolk, Virginia 23510

Filed in the Clerk's Office the 11th day of July, 1972

Writ Tax $ 5.—
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Teste:
CHARLES B. CROSS JR., Clerk
L. M. Hart D.C.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

KAREN B. WHITE,	:	
Complainant,	:	IN CHANCERY NO. 14047
vs.	:	
BENTON M. WHITE,	:	ANSWER AND CROSS-BILL
Defendant.	:	

A N S W E R

NOW COMES your defendant, BENTON M. WHITE, and for his answer to the complainant's bill, respectfully represents unto the court the following, to-wit:

1. That the allegations contained in Paragraphs 1, 2, 3, 4, and 5 are admitted.

2. That the allegations contained in Paragraphs 6, 7, 8 and all other allegations contained therein are denied.

WHEREFORE, your defendant prays that the complainant's bill be dismissed and that he be allowed to recover his reasonable costs therein expended.

BENTON M. WHITE

By _____
Of Counsel

CROSS - BILL

As and for his cross bill, the defendant, BENTON M. WHITE, respectfully submits unto the court the following:

1. That the allegations in the complainant's bill which were admitted are incorporated and marde a part of this cross bill

2. That on or about January 15, 1972 complainant did desert and abandon defendant without reason or cause on the part of the defendant, which said desertion and abandonment has remained uninterrupted to date.

WHEREFORE, yowr defendant prays for a divorce a mensa et thoro to be later merged into a divorce a vinculo matrimonii; that the absolute care and custody of the infant child born of this marriage shall be awarded to the defendant and that he shall have such other and further relief in the premises as the nature of his case may require and as to equity may seem meet.

And he will ever pray.

BENTON M. WHITE

By _____
Of Counsel

I hereby certify that a true and exact copy of the foregoing Answer and Cross-Bill was this 1st day of August, 1972, mailed to Harry Pincus, Jr., 1350 Virginia National Bank Building, Norfolk, Virginia 23510, counsel for complainant.

Frederick H. Creekmore, p.d.
Creekmore & Rinehart
Drawer F
Chesapeake, Virginia 23320

_____
Frederick H. Creekmore

Filed 8/1/72

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

KAREN B. WHITE	:	
Complainant	:	
VS	:	IN CHANCERY NO. 14047
BENTON M. WHITE	:	
Defendant	:	

ANSWER TO CROSS BILL

Now comes the complainant and for answer to the cross bill filed against her, the complainant respectfully represents unto the court as follows:

1. That the allegations of the first paragraph of the cross bill relate to the complainant's original bill of complaint and therefore require no answer.

2. That the allegations set forth in paragraph (2) of the cross bill are explicitly denied.

WHEREFORE and now having answered the cross bill, the complainant prays that the cross bill be dismissed and that the complainant be granted the relief requested in the original bill of complaint and such other relief as the nature of her case may require.

KAREN B. WHITE

BY Harry Pincus
Of Counsel

I hereby certify that a true and exact copy of the foregoing answer to cross bill was the 4th day of August, 1972 mailed to Frederick H. Creekmore, counsel of record for the defendant, c/o Creekmore & Reinhart, Drawer F, Chesapeake, Virginia, 23320.

Harry Pincus

Harry Pincus, Jr.

DOUMAR, PINCUS, KNIGHT & HARLAN
1350 Virginia National Bank Building
Norfolk, Virginia

Filed 8/4/72

1 Q All right.

2 Following this incident where she was injured,

3 did you then attempt suicide?

4 A I --

5 Q Yes or no?

6 A When I lost my wife and baby, yeah; I tried it.

7 Q What did you take to attempt suicide?

8 A Poison.

9 Kill 'Em.

10 Q And following that did your wife and you later

11 come to live at her mother's home?

12 A Yes, sir.

13 Q Let me go back to the event of May 24th, 1970

14 and ask you this question: As a result of the fight between

15 you and your wife, did your wife take out a warrant in the

16 City of Chesapeake?

17 A Three years ago; yes, sir.

18 Q And were you convicted under that warrant?

19 A I didn't contest it.

20 No, sir.

21 Q My question was: Were you convicted?

22 A Yes, sir.

23 Q All right.

24 Did you in August of 1970 move back to

25 948 Poplar Avenue in the City of Chesapeake, into a

1 Q Did you --

2 A I said, "Well, not really."

3 That was just trying to get her to come and

4 be with me. It wasn't --

5 Q Did you ask her to come to Georgia?

6 A Yes, sir.

7 Q Did you threaten her -- that if she didn't

8 come you would remain there and she would never see the child

9 again?

10 A No, sir.

11 Q You deny that?

12 A Yes, sir; I sure do.

13 Q All right.

14 You came back up to Virginia shortly there-

15 after, did you not?

16 A Within 48 hours; yes, sir.

17 Q All right.

18 And following your return to Virginia you

19 entered the hospital on the ninth floor of the Psychiatric

20 Ward, didn't you?

21 A Yes, sir; I sure did.

22 Q How long were in the Psychiatric Ward of the

23 Norfolk General Hospital from January '71?

24 A I don't know. Possibly four weeks; five weeks.

25 Q Somewhere between four and six weeks, wasn't

1 it?

2 A Yes, sir.

3 Can I finish -- tell the reason why I was in

4 there; what Dr. Scott -- what Dr. Scott said?

5 Q You can't tell what Dr. Scott said.

6 A Marital problems was the only thing was

7 involved.

8 Q I see.

9 A Marital problems.

10 Q I see.

11 A I went in there to prove there weren't nothing

12 wrong.

13 THE COMMISSIONER: Off the record.

14 (Off the record.)

15 MR. CREEKMORE: Your Honor, I would

16 just like to renew my objection as to all

17 of this testimony and let it be a continuing

18 objection.

19 THE COMMISSIONER: Okay.

20 Off the record.

21 (Off the record.)

22 THE COMMISSIONER: Okay. Go ahead.

23 MR. PINCUS: All right.

24 By Mr. Pincus:

25 Q After you came out of the hospital, there was

***

1 THE COMMISSIONER: Wait.

2 THE WITNESS: -- repaired a car;

3 stuff like that; kept costs off of her.

4 THE COMMISSIONER: Well, look, don't --

5 Just for the child.

6 You have answered, I think, --

7 MR. PINCUS: Yes, sir.

8 THE COMMISSIONER: -- adequately.

9 MR. PINCUS: All right.

10 By Mr. Pincus:

11 Q And during that period of time she supported

12 the child, didn't she?

13 A He was living with her.

14 Q All right.

15 Now, how much do you earn per week?

16 A I clear about a hundred and twenty dollars a

17 week.

18 Q All right.

19 A A hundred and nineteen.

20 Q All right.

21 A Something like that.

22 Q And is there anything taken out of your salary

23 before you get your hundred and nineteen?

24 A Yes, sir.

25 Q What is taken out?

1 A. Community Fund.
2 Q. And what else?
3 A. Insurance on Karen and Ben and myself.
4 Q. All right, sir.
5 Are you working at the present time?
6 A. Yes, sir.
7 Q. All right.
8 So, your earnings would approximate -- take
9 home -- over $480 a month?
10 Wouldn't that be true?
11 A. (No response.)
12 Q. I'm multiplying 119 by four, and it would be
13 approximately -- a little over -- $480 a month; isn't that
14 true?
15 A. Yes, sir; something like that.
16 Q. Are there any other persons responsible to
17 you?
18 I mean for whom you are responsible other
19 than your son?
20 A. You mean who I owe bills to?
21 Q. No; no; no. Who you are responsible for.
22 Do you have any other children --
23 A. No, sir.
24 Q. -- by a previous marriage --
25 A. No, sir.

***

1 Q All right.

2 Mrs. White, I ask your attention to the date

3 of May 24th, 1970 and I ask you: At that time and prior

4 thereto had you and your husband been having any marital

5 difficulties?

6 A Yes, sir.

7 Q What happened on the 24th of May 1970 --

8 A Well, Mac --

9 Q -- and what time in the day was it?

10 A It was early in the morning, and Mac had

11 gotten up late for work, and he was dressed, and I was

12 fixing his lunch, for him to go to work, and he came into

13 the kitchen and started asking me -- telling me he didn't

14 want to go to work and he wanted to stay home and he wanted

15 me to go back to bed with him, and I told him that he was

16 already dressed and why didn't he just go ahead to work, and

17 he got mad and started --

18 We started in an argument, and I wound up in

19 the middle of the living room floor.

20 Q Now, how did you wind up in the middle of the

21 living room floor?

22 What did he do or what did he say?

23 A He knocked me down, and --

24 Q I beg your pardon.

25 A He knocked me down on the living room rug,

1 and I started struggling to get away from him when he fell
2 on top of me, and I was trying to get away from him, and
3 finally -- when he found out that I wasn't going to submit
4 to him, he finally left.
5 Q Would you describe the injuries, if any, that
6 you received?
7 A I wound up with bruises on my arms and my
8 hips and both my legs, and rug burns on my back, too.
9 Q Did you go to the doctor?
10 A I went to Dr. Meyers as a result of that.
11 Q Was he drunk or sober at that time?
12 A He was sober.
13 Q Did you take any warrant out as a result of
14 this --
15 A Yes.
16 Q -- action on his part?
17 A Yes; I did.
18 Q What did you do?
19 A Well, after he left to go to work, I got up
20 and went and got Ben a bag packed and I went to my mother's,
21 and from there I called a lawyer, Mr. Davis, --
22 Q All right.
23 A -- and I went and talked to him, and then he
24 walked with me over to the Justice of the Peace, and I took
25 out a warrant for the assault.

1 Q All right.
2 Was the matter heard?
3 A Yes; it was.
4 Q And what was the result of the hearing?
5 A He was convicted of assault.
6 Q All right.
7 Following this, did you remain at that --
8 No. Take that question back.
9 Following this incident, where did you go?
10 A I went to my mother's that morning after he
11 left.
12 Q All right.
13 And did you subsequently learn from Ben what
14 he did?
15 A Well, he came to the house that night, to my
16 mother's, and tried to get me to call him, and --
17 MR. CREEKMORE: Your Honor --
18 You're saying "Ben". That's the child.
19 THE WITNESS: Mac.
20 MR. CREEKMORE: I object if you are
21 going to testify --
22 THE COMMISSIONER: That's Mac.
23 MR. PINCUS: That's right.
24 THE COMMISSIONER: Supposed to be Mac.
25 THE WITNESS: He --

1 MR. PINCUS: I object.

2 I mean I apologize.

3 THE COMMISSIONER: Okay.

4 I was --

5 MR. PINCUS: I had carefully tried to

6 set up a distinction, and I violated my own

7 effort.

8 MR. CREEKMORE: Sorry.

9 By Mr. Pincus:

10 Q Tell me what Mac did.

11 A Well, he came to the house that night after

12 he got back from work, came to my mother's, and tried to get

13 me to go home, and I told him, "No," I wasn't going home,

14 and, so, the next morning I went and moved some of the

15 furniture and moved our clothes, and then that night, when

16 he came home and found out that things were gone, he came

17 back to my mother's again, and, so, when he went home that

18 night he -- he took rat poison, because I wouldn't go back.

19 Q Did you subsequently learn that he had taken

20 rat poison from Mac, himself?

21 A No.

22 My mother went over to the house, because when

23 she called there was --

24 He told her he had taken something. So, she

25 went over there and took him to the hospital.

***

1 Q What else did he do or say with regard to
2 your relationship with him?
3 A Well, he would threaten me that if I didn't
4 sleep with him I'd be sorry, that he would take --
5 He made --
6 He said I may wake up one day and he'd be
7 gone with Ben.
8 Q During the cross-examination of Mac by me I
9 made reference to a ladder after you moved in August of 1970.
10 Would you tell us of that incident?
11 A Well, that morning I had gotten up to go to
12 work, and he told me that he wasn't going to work that day,
13 and he said he wanted me to leave Ben there with him, and I
14 was afraid to leave Ben alone with him because I didn't know
15 what he would do.
16 Q Did you --
17 A So --
18 Q Did you feed your husband?
19 A Yes.
20 Q All right.
21 Go ahead.
22 A So, I stayed home that day, and he went out-
23 side. I thought he was doing some work out in the yard or
24 the utility room, and he was gone for awhile. So, I went to
25 look and see where he was, and when I opened the door from

1 the kitchen to the utility room he was sitting on a ladder
2 with a belt around his neck, and it was attached to a hook
3 in the top of the ceiling.
4 Q What did he do when he saw you?
5 A Well, I said, "What do you think you're doing?"
6 And he said, "Oh, nothing," and he unhooked
7 it and he got down.
8 Q All right.
9 During this same period I requested information
10 of your husband had he ever tried to drug you.
11 A Yes; he did.
12 Q Will you tell us the circumstances?
13 A I had worked late that night at the hospital,
14 and when I came home I wanted to relax a few minutes before
15 I went to bed. So, I told him I wasn't going straight to
16 bed. So, I sat down, and I was reading a magazine, and I
17 had a drink sitting on the table beside me, and he came and
18 was standing next to me, leaning against the wall, and trying
19 to tell me, you know, convince me, to go to bed, and I told
20 him I didn't want to right yet; I needed time to wind down
21 from work until late that night. So, I went to take a drink
22 from the glass, and when I turned the glass up there was
23 about a half an inch of white powder in the bottom of my
24 glass.
25 Q Did you speak to him about this?

1 A. Yes. I asked him what he had put in my drink.
2 Q. What did he say at first?
3 A. He said, "Nothing."
4 He told me it was nothing, but I knew the
5 drink didn't look -- it wasn't supposed to look like that.
6 Q. Did you continue to ask him about it?
7 A. Yes, and he finally --
8 Q. Did he make any statement later?
9 A. He finally told me he was just trying -- he
10 wasn't trying to hurt me, that he wanted me to get sleepy
11 and go to bed.
12 THE COMMISSIONER: Off the record.
13 (Off the record.)
14 By Mr. Pincus:
15 Q. We talked about May the 24th, 1970 as the time
16 when -- after this fight you left him and went to your
17 mother's, and we talked about August of 1970 when you left
18 your mother's with him and went to 948 Poplar Avenue.
19 A. Yes.
20 Q. Now, did this incident with the ladder take
21 place while you all were living in Poplar Avenue?
22 A. Yes; it did.
23 Q. After August of '70?
24 A. After August of '70.
25 Q. Did this incident about the drug in the drink --

***

glass.

Q Well, what is the composition of Nytol? What does it do?

A It's for sleeping.

Q Oh, I see.

A You can get it at drugstores.

THE COMMISSIONER: Off the record.

(Off the record.)

By Mr. Pincus:

Q During the period of August of '70 through December of 1971 did your husband ever curse you or at you?

A Yes.

He would get mad at me because I didn't want to sleep with him.

Q What would he say or what words would he use? You can either state them or spell them.

A Well, he told me, since I didn't want to sleep with him, that I must be sleeping with somebody else, and he would call me --

He would call me names like whore or --

He told me I was a bitch and that I must be sleeping with somebody.

Q Did this language take place in the presence of any other person?

A Sometimes Ben would be in there -- in the room

1 So, later on that afternoon my mother called
2 and she said, "Let Ben come over here and Mac can come and
3 visit him here."
4 So, she came and picked him up at Ward's
5 Corner. She didn't want to come to the house because she
6 said he might follow --
7 MR. CREEKMORE: Objection.
8 MR. PINCUS: You can't say what she
9 said.
10 THE WITNESS: All right.
11 She came and picked him up at Ward's
12 Corner and took him to see Mac.
13 By Mr. Pincus:
14 Q Then what happened?
15 A Well, during the night Mac left her home with
16 Ben and went to Georgia.
17 Q Did your mother know he had taken Ben?
18 A Not until --
19 MR. CREEKMORE: I object, because he
20 would have to tell her.
21 MR. PINCUS: Well, --
22 MR. CREEKMORE: It would be hearsay.
23 MR. PINCUS: -- it could be that Mac
24 told her.
25 MR. CREEKMORE: Well --

1 MR. PINCUS: He's already testified,
2 incidentally, that he --
3 THE COMMISSIONER: What was her answer
4 to that?
5 I mean: What was your question?
6 By Mr. Pincus:
7 Q Did your mother know that he had taken the
8 child?
9 A Not until she woke up the next morning.
10 Q All right.
11 MR. CREEKMORE: Note my objection.
12 THE COMMISSIONER: I think it's
13 objectionable.
14 MR. PINCUS: All right. I'll withdraw
15 the question.
16 THE WITNESS: Okay.
17 By Mr. Pincus:
18 Q Did he tell you he had taken the child?
19 A No.
20 I found out from my mother when she came the
21 next morning to tell me.
22 Q All right.
23 You say you found out from your mother?
24 A From my mother.
25 Q All right.

1 How did you feel about it?
2 A. Well, when --
3 THE COMMISSIONER: I --
4 MR. PINCUS: Okay.
5 THE COMMISSIONER: I'm sorry.
6 MR. CREEKMORE: I'll say that.
7 MR. PINCUS: I realize it's an improper
8 question.
9 THE COMMISSIONER: Okay.
10 MR. PINCUS: I'll withdraw the question.
11 THE COMMISSIONER: You know, I forget
12 I'm an attorney.
13 I'm sorry.
14 MR. PINCUS: I'm sorry.
15 I withdraw the question.
16 THE WITNESS: Okay.
17 By Mr. Pincus:
18 Q. When you learned that Mac had taken the child,
19 did you know where Mac was?
20 A. No.
21 Q. How long after you learned that the child
22 had been taken did he contact you?
23 A. He called Sunday night --
24 Q. All right.
25 A. -- from Atlanta.

1 Q All right.
2 And what, if anything, did he say to you?
3 A He told me that he wanted me to take a plane
4 and go down there where he was, if I wanted to see Ben again.
5 Q All right.
6 Did you contact the police?
7 A Yes; I did.
8 Q When did Ben come back?
9 When did Mac come back?
10 A He came back early Monday morning.
11 Q Did you file a custody request with the police?
12 A On Sunday I did.
13 Q And when did Ben come back?
14 I'm sorry.
15 A He came back on Monday morning.
16 Q All right.
17 Where did he go when he came back?
18 A To my mother's.
19 Q And following his return to Norfolk what did
20 he do?
21 A Well, he later that week signed himself into
22 the Psychiatric Ward at Norfolk General.
23 Q All right.
24 Do you know who treated him?
25 A Dr. Scott.

***

1 A. I went home to the apartment at 948 Poplar.
2 Q. All right.
3 And then what did Ben do?
4 I mean: What did Mac do following that
5 hearing?
6 A. When I came home from work one day, he had
7 moved all his stuff back in.
8 Q. Had you invited him to do this?
9 A. No.
10 Q. Did you ask him to leave?
11 A. Yes; I did.
12 Q. What did he do?
13 A. He said, "No."
14 Q. All right.
15 At that time were you all going to a therapist?
16 A. Yes.
17 Q. All right.
18 A. Mrs. Tiedemann.
19 Q. How long did they keep Ben?
20 A. For almost --
21 About six weeks to two months.
22 Q. Did they return Ben to you?
23 A. Yes; they did.
24 Q. And your husband?
25 A. (The witness nodded affirmatively.)

1 Q Was this around --

2 A In June.

3 Q June?

4 A (The witness nodded affirmatively.)

5 Q Of what year? 'Seventy-one?

6 A 'Seventy-one.

7 Q All right.

8 Now, at that point the three of you were now

9 living in --

10 A Poplar Avenue.

11 Q -- 948 Poplar Avenue?

12 A Yes, sir.

13 Q All right.

14 Did things change?

15 A No. Things never changed.

16 Q What was his attitude toward you or what

17 expressions did he use?

18 A He'd still argue with me about sleeping with

19 him, and he would get mad and threaten me, but he would --

20 He would never hit me, but he would argue with

21 me and yell at me, and sometimes Ben would, you know, come

22 in and tell -- hear Mac yelling, and he would tell him if he

23 touched his mommy he would kill him.

24 Q And did he curse you?

25 A Yes.

1 Q Did you sleep during this period?

2 A I had very much difficulty trying to sleep,

3 because I'd wake up some nights and he would be creeping up

4 at the foot of the bed.

5 Q I beg your pardon.

6 A I'd be asleep some nights, and I would wake

7 up and he would be creeping up at the foot of the bed and

8 would have me by the arm, trying to hold me down.

9 THE COMMISSIONER: Let me --

10 Off the record.

11 (Off the record.)

12 By Mr. Pincus:

13 Q During this period, after he moved into 948

14 Poplar Avenue, did he ever make accusations of you?

15 A Yes.

16 He kept accusing me of other men.

17 Q What, if any, violence did he show or indicate

18 to you?

19 A Sometimes he would get mad and he would throw

20 the footstool across the room or knock a chair over or some-

21 thing.

22 Q Was he going to the psychiatrist at this time?

23 A He refused to go back to the therapist. He

24 said it was getting too expensive --

25 Q All right.

1 A -- and it wasn't doing any good.
2 THE COMMISSIONER: Off the record
3 again.
4 (Off the record.)
5 THE COMMISSIONER: All right. Go
6 ahead.
7 By Mr. Pincus:
8 Q Did you remain at the house until January 5,
9 1971?
10 A 'Seventy-two.
11 Q I beg your pardon.
12 'Seventy-two.
13 A 'Seventy-two; yes.
14 Q All right.
15 Can you tell me what happened on the night of
16 January 5, 1972?
17 A We had another argument about me sleeping
18 with him, and he told me that night that when he got back
19 from work the next day either I slept with him or I'd never
20 see Ben again because he'd be gone.
21 Q Did you fear him?
22 A Yes; I did.
23 Q What did you do the following day?
24 A I packed our bags and we left.
25 Q All right.

1 A. I knew I had to be gone before he got home
2 from work.
3 Q. And who did you leave with?
4 A. With Ben.
5 Q. Where did you go?
6 A. I rented a motel room at Virginia Beach.
7 I knew if I went to my mother's he would be
8 there. So, I went where nobody would know where we were.
9 Q. Did you attempt to notify him or your mother
10 that you were safe?
11 A. My mother knew.
12 Q. She knew --
13 A. Yes; she knew.
14 Q. -- where you were?
15 A. Yes.
16 Q. Now, how long were you at the motel?
17 A. For a week.
18 Q. And then where did you go?
19 A. I went back to my mother's.
20 Q. All right.
21 And did you contact Ben or did you contact
22 Mac?
23 A. I called Mac the day after I left and told
24 him not to look for me, --
25 Q. Oh, you did tell him --

1 A -- that I wasn't at any of the families, that
2 he wouldn't find me there, and that I just wasn't coming
3 back.
4 Q I see.
5 When you went to your mother's, did you
6 contact him?
7 A I talked to him several times during that
8 week, --
9 Q I see.
10 A -- like I would call on the phone and Ben
11 would talk to me.
12 Q When you went to the motel, where did Mac go?
13 A To my mother's.
14 Q Did he --
15 A Just like always.
16 Q Did he stay there?
17 A Yes.
18 Q After you went to your mother's, what
19 arrangement, if any, did you make with Mac?
20 A He told me that if I would come back to my
21 mother's where Ben would be nearby for him to see that he
22 would go home.
23 Q Did you agree to that?
24 A Yes.
25 Q In staying with your mother did Little Ben

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1 What happened at the end of these three days?
2 A. We had talked continuously the three days,
3 and we agreed that we would try to settle it peaceably, and
4 he told me that he would take me back to my mother's, --
5 Q. And, so, --
6 A. -- and Ben.
7 Q. -- finally he did that?
8 A. Yes; he did.
9 Q. All right.
10 A. He took me to my mother's.
11 Q. And where did you go from your mother's?
12 A. My car was at my mother's, and I drove Ben
13 and myself back to our apartment.
14 Q. All right.
15 Now, on June the 25th, 1972 would you tell
16 the Court what happened at that time?
17 A. Mac wanted to see Ben that day, and he asked
18 me could he see him. So, I --
19 I agreed, and I drove to Mac's mother's house
20 and picked him up and took Mac back to my mother's so he
21 could spend the day with Ben.
22 Q. All right.
23 Did you spend the night there?
24 A. I spent the night at my own apartment.
25 Q. All right.

1 What happened that night?

2 A. Well, that afternoon he left. He walked out

3 of the back yard with Ben.

4 Q. Who is "he"?

5 A. Mac walked out of the back yard with Ben.

6 Q. And did you know --

7 A. No.

8 Q. -- that he was doing this?

9 A. I didn't know that he was gone.

10 Q. And what did he do with the child?

11 A. They were gone. I didn't know where they

12 went.

13 Q. Well, when did you first learn that the child

14 had been taken again?

15 A. Well, I had arranged with my mother for me to

16 pick Ben up on Sunday morning; that he was going to spend

17 the Saturday night with her. So, when I called Sunday

18 morning to see if Ben had his -- you know, to get his things

19 ready, that I was on my way to pick him up, Daddy told me

20 that Mac had left with him again.

21 Q. Were you afraid?

22 A. Yes. Very.

23 Q. How long did he remain gone?

24 A. He called --

25 He called me that afternoon.

1 Q And what did he say?

2 A He told me to bring Ben's clothes over there

3 to his apartment.

4 Q Did you ask him to return the child to you?

5 A He refused when I asked him to bring Ben

6 back.

7 Q So, what did you do?

8 A Well, I --

9 I talked to my mother, and she agreed. She

10 said that Ben did need clothes.

11 Q You can't say --

12 A Okay.

13 Q -- what your mother said, --

14 A Okay.

15 Q -- but, as a result of your conversation, did

16 you --

17 A I packed --

18 Q Were you able to get him to bring the child

19 back to you?

20 A No. Not then; no.

21 Q All right.

22 And what did he demand of you?

23 A He told me to bring Ben's clothes over there, --

24 Q All right.

25 A -- that he wasn't going to bring him home.

1 Q All right.

2 And did you do that?

3 A. I agreed.

4 Q All right.

5 A. I knew that would be the only way I could see

6 Ben.

7 Q All right.

8 Did you meet him?

9 A. When I got to the apartment, there was nobody

10 there. So, I waited in the driveway.

11 Q And what happened?

12 A. About --

13 It was about 15 or 20 minutes later Mac drove

14 up in the driveway.

15 Q This was on June the 25th?

16 A. Yes.

17 Q All right.

18 What happened at that time?

19 Was he with anybody?

20 A. He was alone.

21 Ben wasn't with him.

22 Q All right.

23 What did he say?

24 A. He told me that he had come to talk to me

25 first and that he would go get Ben later.

1 Q All right.

2 Did he leave you?

3 A Yes.

4 Q All right.

5 A He left to go get Ben.

6 Q And did he come back?

7 A He came back.

8 Q All right.

9 When he came back, did you see the car?

10 A Yes.

11 Q Who was --

12 A I was in the driveway.

13 Q Who could you see in the car?

14 A Just Mac.

15 Q All right.

16 What happened?

17 A Well, I walked over to the car, and I asked

18 him where was Ben, and he said that --

19 He started telling me about he had heard me

20 on the phone and that he didn't think I was going to behave

21 myself, and he had told me that would be the only way I could

22 see Ben. So, finally, I told him that I had to see Ben, and

23 he says: "Okay, Ben. You can get up now."

24 Q And what happened?

25 A So, Ben crawled out of the back of the car.

1 Q And what did you do --

2 A Well, he --

3 Q -- or what did Ben do?

4 A Ben crawled into the front seat, into Mac's

5 lap, through the -- at the window, and I said, "Well, can I

6 hold him?"

7 He said, "Just for a minute," and Ben reached

8 up and I grabbed Ben and I started running to get away from

9 him.

10 Q And how far did you get?

11 A I was down to the end of the driveway when he

12 caught up with me.

13 Q Did he have a --

14 You heard in his cross-examination that he had

15 some sort of sling or some sort of a cast.

16 A He had a cast on his arm.

17 Q And what was that?

18 Was it a soft or a hard cast?

19 A It was a hard cast.

20 Q Well, what did he do while you were running

21 away?

22 A I was running away from him, with Ben in front

23 of me, and he came up behind me and put the arm with the

24 cast around my neck, and subsequently I wound up on the

25 pavement, and he was trying to pull Ben away from me.

1 Q What happened to your clothes?
2 A The whole --
3 The zipper was ripped all the way out of the
4 front of my suit, all the way down, and my underclothes were
5 torn, and they were hanging at the top.
6 Q Were these plainly visible --
7 A Yes.
8 Q -- to your husband?
9 A (The witness nodded affirmatively.)
10 Q And then was there any noise?
11 A I started screaming for someone to please help
12 me.
13 Q Well, did anybody appear?
14 A The neighbors.
15 I saw the neighbors come out on the porch --
16 Q All right.
17 A -- his neighbors -- Mac's neighbors.
18 Q Then what did he do?
19 A Well, he grabbed me, and he was still trying
20 to pull Ben, and he had ahold of Ben with the cast around my
21 neck, and he took us into the house.
22 Q Were you afraid?
23 A Yes.
24 MR. CREEKMORE: I object --
25 THE WITNESS: I kept screaming.

1 MR. CREEKMORE: -- to the leading,
2 your Honor.
3 MR. PINCUS: I don't think that's
4 leading.
5 MR. CREEKMORE: I think "Were you
6 afraid?" is --
7 MR. PINCUS: Well, how can I ask --
8 MR. CREEKMORE: -- a question asking
9 for --
10 MR. PINCUS: -- did she have fear or
11 something of that nature?
12 THE COMMISSIONER: That's right close
13 to it, if it's not leading.
14 MR. PINCUS: Well, I would submit,
15 your Honor --
16 I'll try not to ask that.
17 By Mr. Pincus:
18 Q What did he do --
19 A Well, he --
20 Q -- after this, after he --
21 A Well, when he got us into the house, he
22 shoved me across the room, and he was trying to lock the
23 door, and he says: "We've got to get out of here. The
24 police --
25 "The neighbors are going to call the police."

1 So, he took us out the back, around the house,
2 out the back door, --
3 Q Did you --
4 A -- around the house, and --
5 Q Did you voluntarily leave?
6 A No. I didn't want to go.
7 Q All right.
8 A I wanted to go home. I wanted to get away
9 from him.
10 Q Did you offer to get in the car voluntarily?
11 A No.
12 He opened his door, the driver's side door,
13 and I still had Ben, and he shoved me in, and I fell across
14 the console and got into the other seat.
15 Q And then what did he do?
16 A He took off flying.
17 We went --
18 We drove all night long.
19 Q Approximately what time was this that he
20 grabbed you when you were running with the child?
21 A It was about 8 o'clock; seven thirty,
22 8 o'clock at night.
23 Q And how long did he drive?
24 A We drove until about --
25 Well, we drove all night.

1 He didn't take us back until four in the
2 morning.
3 Q Did you make any request of him while you
4 were in the car?
5 A I kept telling him to please take us home,
6 and he refused.
7 Q What speed did he use?
8 A Well, when we left the apartment, he was
9 going very fast, and --
10 Q Where did he go?
11 A We drove all through Newport News and back
12 roads in Suffolk, and he stopped three times -- two times --
13 and made phone calls, and he told me -- he got back in the
14 car and he said that he had found out that the neighbors --
15 that someone had called the police and that he knew they were
16 looking for him and he knew the best thing to do would be to
17 take us home.
18 Q Where did he take you?
19 A To my mother's.
20 He wouldn't take me to my apartment.
21 Q And what day would this now be?
22 A It was 4 a.m. on Monday morning when we got
23 back.
24 Q Was that the following day, the 26th of June?
25 A Yes.

1 Q When you got there, had anybody been there?
2 A I believe the police had been there.
3 Q Who was with you when you returned to your
4 mother's?
5 A Mac and his brother, Trim, and Ben and myself.
6 Q How did the brother get into the car?
7 A Well, he didn't have a driver's license with
8 him.
9 Q Who didn't have a driver's license?
10 A Mac didn't have a driver's license, because
11 the police had taken it from the wreck.
12 Q All right.
13 A So, he --
14 Q Was he driving at any time?
15 A Well, he drove us away from the apartment and
16 all through Newport News.
17 Q When did he pick up his brother?
18 A On the way back to my mother's house.
19 He said he was afraid to drive through town
20 with no license in case they did stop him.
21 Q How long had he been driving that night
22 without a license before he picked up his brother?
23 A Well, the wreck was on the 13th of June, and
24 he didn't have his license with him. He said the police who
25 were at the scene took -- you know, had his license.

1 Q From the 13th of June he had no license?
2 A No.
3 He thought the police had it.
4 Q All right.
5 What happened when he and his brother and you
6 and the child went to your mother's house?
7 What transpired there?
8 A Well, he refused to take me home.
9 I wanted to go home, and --
10 Q Did you ask him to take you home?
11 A Yes; I asked him to take me to my apartment,
12 and he said, "No." He said he would take me to my mother's,
13 and, so, we went into my mother's, and I asked her did she
14 have some pins so I could pin, you know, the front of my suit,
15 because it was just ripped, -- it was torn completely open --
16 Q All right.
17 A -- and she said that the police had been
18 there, and she said --
19 Q Wait a minute.
20 Did she say these things in front of Mac?
21 A Mac and his brother were there.
22 Q All right.
23 How did you --
24 What happened when he refused to take you
25 home?

1 A I said, "Will somebody" --

2 I looked at my mother. I said, "Will somebody

3 please take me home?"

4 I said, "I want to go home," and nobody would

5 take me home. So, I got my bag and I started walking.

6 Q Who did you go with?

7 A Ben.

8 Just me and Ben.

9 Q The baby?

10 A Yes.

11 Q And how far was it?

12 A Four blocks.

13 Q Well, let me ask you this: What happened

14 after that, after you left for home with your child?

15 A I started walking home, and then I was about

16 two blocks away from the house and Mac and his brother drove

17 up behind me, and he told me to get in the car, that it was

18 no time of the morning for me to be walking down the street

19 with my clothes like that.

20 Q I see.

21 Did you do anything legally as a result of

22 this action?

23 A Yes; I did.

24 Q What did you do?

25 A I swore out a warrant.

***

1 Is that true?

2 A. No; it isn't.

3 Mac never changed a diaper until Ben was

4 almost eight months old.

5 When I left the first time and went back, --

6 Q. All right.

7 A. -- that's when he started changing diapers

8 once in awhile.

9 Q. All right.

10 When you left in January the 6th, 1972, has

11 that separation been continuous --

12 A. Yes; it has.

13 Q. -- and uninterrupted since that time?

14 A. Continuous.

15 Q. Did you do anything that would have provoked

16 the treatment that your husband gave you?

17 A. No.

18 Q. Since January the 6th, 1972, what support,

19 financial support, has your husband given toward the baby?

20 A. The first week --

21 Q. From January 6th, 1972 to the date of the

22 temporary hearing.

23 A. The first week I was at my mother's he gave

24 me $15, --

25 Q. And then following that --

1 A. -- and I was paying my mother $20 a week, and
2 that didn't cover the expenses for anything other than
3 sleeping there. So, I had to go back to work to take care of
4 me and Ben because he didn't pay anything else.
5 Q. You've heard your husband state that he made
6 four payments between January the 6th, 1972 and the time when
7 we had the first temporary custody hearing.
8 Is that true or is it not true?
9 A. No; it isn't.
10 I had to go back to work the 7th of February
11 to support myself and my son.
12 Q. All right.
13 How come your mother charged you $20 a week?
14 A. Well, that was what she considered was what we --
15 they needed to compensate for what we used.
16 Q. I see.
17 At the present time, under this temporary
18 court order, your husband has the child during the week and
19 you have the child on the weekends?
20 A. Yes, sir.
21 Q. Now, when does your husband bring the child to
22 you?
23 A. Seven o'clock on Friday afternoons.
24 Q. All right.
25 A. Friday evenings.

***

1 Q Was this during the period from January the
2 6th, 1972 until the temporary court?
3 A Yes.
4 Q Was this during the period when you were
5 supporting the child?
6 A Yes.
7 Q Is there any possibility of reconciliation?
8 A No, sir.
9 Q Has there been any reconciliation --
10 A No, sir.
11 Q -- since you all left?
12 A (The witness shook her head negatively.)
13 MR. PINCUS: I have showed this,
14 Mr. Commissioner, to Mr. Creekmore.
15 By Mr. Pincus:
16 Q I ask you, Mrs. White: Is this a list of the
17 expenses for your child -- monthly expenses?
18 A For Ben. For Ben only.
19 Q And what do they total?
20 A A hundred and fifty-five dollars.
21 THE COMMISSIONER: How about making
22 a copy of those? and I'll put it as an
23 exhibit for you.
24 MR. PINCUS: Yes, sir.
25 MR. CREEKMORE: Is that per month?

1 A Yes, sir.

2 Q Mrs. White, I would ask you, will you tell the
3 Commissioner the reason that you had for denying to your
4 husband sexual intercourse?

5 A Well, it began when I was three months pregnant
6 with Ben, and I was at work, and I began to hemorrhage, and I
7 worked at the hospital, and I went down to the emergency room,
8 and the doctor examined me. And they called Mack from work,
9 and he came over there, and the doctor had examined me and
10 talked to us both, and he said that for the next, you know,
11 few weeks or so until I could go back to my family doctor,
12 that I should take it easy, and we should have no sexual
13 relations until I found out what the bleeding was caused by.
14 I could be on the verge of losing the baby. And then that
15 very, you know, the same time, Mack began to try to hold me down
16 and force me to have relations with him. I was afraid I would
17 lose the baby.

18 Q When you say, "at the same time," what do you
19 mean, in terms of time?

20 A Well, that same day, the same week.

21 Q Had he talked to the doctor about your condition?

22 A Yes, sir. The doctor talked about it and told
23 me that I had to be careful until they found out what the
24 bleeding was.

25 Q Did Mr. White know of your condition?

1 A Yes, he did. But he did -- he still tried to
2 force himself on me, knowing that I might lose the baby. And
3 it just -- I was just so afraid that I would. And when he
4 kept trying to make me do it, it just made me begin to resent
5 him for it, because I felt like he didn't care about me or the
6 baby.
7 Q I believe you have already testified that you
8 left him on an occasion -- this was prior to the last separation --
9 and when you left -- can you tell us approximately what date
10 it was that you first left Mack?
11 A The first time I left was May 24, 1970, I
12 think it was.
13 Q And where did you go to live?
14 A I went to my mother's house.
15 Q I feel that we have covered a good deal of this
16 in the other testimony, so I won't go into that, but I would
17 like you to state, did you subsequently go back to live with
18 your husband in August of that year, 1970?
19 A Yes, I did.
20 Q And what was the understanding between you and
21 your husband that prompted you to go back to him?
22 A Well, he told me that, you know, if Ben and I
23 would just go back and live with him that he would continue
24 with the therapist and we would try to work it out, and he
25 told me he would make no demands on me sexually until I was

1 ready, and things were straightened out.

2 Q Did he keep his promise?

3 A No, he didn't.

4 Q What did he do that reflected that he broke

5 his promise?

6 A Well, some nights I would wake up and he would

7 be on top of me trying to force me again. And he knew how I

8 felt about it.

9 Q Were you wearing your night clothes?

10 A Yes, sir, I was.

11 Q What would happen to them?

12 A A lot of times my gowns were torn, and I was

13 trying to get away from him.

14 Q As a result of this, did you separate a second

15 time from Mr. White?

16 A Yes, sir, I did.

17 Q Can you tell me approximately what date that was?

18 A It was in January of 1971.

19 Q Where did you go to live?

20 A I went to live in Wards Corner with a friend

21 of my mother's. My mother arranged for me to go stay with her.

22 Q I see. And approximately how long were you

23 separated from Mr. White during the period following January,

24 1971?

25 A I stayed with Maureen just a week or so, and

1 then I went back to my mother's.

2 Q I see. And then did you subsequently come

3 back with Mr. White to live?

4 A Yes. He promised me again that he would try

5 to work it out, and maybe we could straighten things out and

6 be a family again.

7 Q What happened after you returned to live with

8 your husband?

9 A Well, conditions never changed. He still

10 tried to force himself on me, even though we had made the

11 agreement that he wouldn't try to force me until I was ready.

12 And he would get mad and yell at me and call me names.

13 Sometimes he would get mad and throw the footstools and things

14 around the house, and it just got unbearable again.

15 Q I believe you stated in your allegations that

16 you left finally on January 6, 1972. Would you state to the

17 Court what happened on the night of January 5, 1972, and what

18 had happened up till January 6, 1972?

19 A Up until that time he still tried to force

20 himself on me. He accused me of people at work, and he called

21 me names, and he would argue and fuss with me, and finally

22 on the night of January 5 he gave me an ultimatum. He told me

23 that I would either sleep with him the next night, or he would

24 take Ben and I would never see Ben again.

25 Q What did you do? Did this cause you fear?

1 A Yes. It got to the point I was afraid to go
2 to sleep at night.
3 Q What did you do on January 6?
4 A I took Ben, and I left that morning after he
5 left for work.
6 Q Has your separation from Mr. White been
7 continuous and uninterrupted since that time?
8 A Yes, sir.
9 Q And at that time did you take the child?
10 A Yes, sir.
11 Q How long did the child remain with you from
12 January 6?
13 A Until July 7, 1972.
14 Q And then, I believe that you have testified as
15 to other matters that took place, at which time Mr. White got
16 control of the child; did you not?
17 A Yes.
18 Q That is in the previous record?
19 A Yes, sir.
20 Q So I won't go into that. Can you tell me what
21 has been the temporary situation with regard to the custody
22 of the child?
23 A Well, since July Ben has been at Mack's house
24 during the week, and he comes home on weekends.
25 Q Can you state when the child comes to your house

1 on weekends, what time, what date?

2 A He comes home on Friday nights, 7 o'clock.

3 Q I see.

4 A And he stays until Sunday night, until seven.

5 Q How does he get there?

6 A His daddy brings him.

7 Q And when the child comes, will you describe

8 what happens? How does the child arrive, and that sort of

9 thing?

10 A Well, I always know Ben is coming because I

11 hear him running up the steps, and he will come and bang on the

12 door, so I let him in, and he will say, "I beat Daddy to the

13 door again, Mamma," and he comes ahead of Mack and hugs me, and

14 starts talking to me, what he has done during the week and

15 things.

16 Q I see. And what do you do with him on Friday

17 nights?

18 A Well, usually after seven, you know, after his

19 daddy leaves I give him his bath and put his pajamas on, and

20 sit and read to him, or play games, or talk or read books, or

21 something.

22 Q Is there anyone else who is living at the home

23 with you?

24 A Carol Sawyer is living with me now.

25 Q I see. And what happens on Saturday morning?

1 A Well, Saturday mornings we get up, and after
2 breakfast I dress Ben, and we just sit around and play around
3 the house, or something, and we will go shopping. Usually
4 about every Saturday we go to my grandmother's and visit her,
5 and my little cousin lives with her, and Ben likes to go play
6 with him, so we go visit her every Saturday.
7 Q What is the situation on Saturday night? What
8 do you do then?
9 A We go to the grocery store, or we go out to
10 the shopping center and walk around and look at toys, and things,
11 and we go home after supper, and he gets his bath, and I put
12 his pajamas on. We either watch TV or, you know, read books,
13 or something.
14 Q Are you with him -- how much of this weekend
15 are you with him?
16 A The whole weekend.
17 Q And then what happens on Sunday morning?
18 A Well, Sunday mornings we get up after breakfast
19 and he is dressed, and sometimes we go to the laundromat, and
20 he likes to help me fold the clothes when they are dry. He
21 thinks he is good at it.
22 Q And Sunday afternoon, would you describe what
23 goes on?
24 A Well, during the summer we go to the park, or
25 go riding, and sometimes we go to a movie or something.

1 Q Then what about Sunday night?

2 A Well --

3 Q What takes place on Sunday night?

4 A Usually about six I tell Ben it is time to take

5 his bath and get dressed, that his daddy is coming to get him.

6 And a lot of times he will tell me he is not ready yet, and

7 he doesn't want to take his bath. He wants to do something else.

8 Q Does Mr. White come to pick him up on Sunday

9 night?

10 A He comes 7 o'clock on Sunday.

11 Q And what is the reaction -- I mean, what is the

12 reaction of the child on Sunday night when Mr. White comes to

13 pick him up?

14 A Well, usually he just doesn't want to go. He

15 will tell me he is not ready to go yet, or he wants to stay

16 and play longer. Mack tells him it is time to go, and Mack

17 tells him, "come on. Let's go. We will go to a movie, or

18 go to this, or we are going to go see somebody." He usually

19 has to talk to him a few minutes to get him to go.

20 Q Does the boy wish to go?

21 A No, sir. He will tell me, you know, when I

22 tell him it is time for Daddy, he will say he doesn't want to

23 go yet.

24 Q Does Mr. White ever pick him up bodily?

25 A Yes, he has.

1 Q What does the boy do?

2 A He will cry sometimes when Mack will pick him
3 up and take him out, or Mack will either tell him there is
4 somewhere they have got to go, or he has bought him a puppy
5 and he has to go home and see his new puppy, or something.

6 Q Does Mr. White ever discuss with you, or ask
7 you to try to get the boy to go?

8 A Yes. He will tell me, he will say, "why are
9 you just sitting there. Why don't you say something."

10 Q What do you respond to Mr. White?

11 A I tell Mack I can't tell Ben, or talk him into
12 going, or tell him that I want him to go, because I don't.

13 Q How old is this boy?

14 A Ben is four years old.

15 Q When was he four?

16 A November 8, this year -- last year.

17 Q November 8 of last year?

18 A '72.

19 Q Did you have occasion on his last birthday
20 party to see little Ben?

21 A Yes. Mack told me if I wanted to see Ben I
22 would have to come to his house after Mack's football game
23 that night, so I went out to the football field where Mack
24 was, to see how long they would be, because I guess it was
25 about quarter to eight then.

1 Q Did you see little Ben?

2 A When I got there Ben was standing behind the

3 fence, and he was crying.

4 Q Why was he crying?

5 A He was sick. He had a fever, and he was cold.

6 Q Where was his father?

7 A His father was out on the football field with

8 the boys, with his team.

9 Q Did his father know where little Ben was?

10 A He knew he was behind the fence, I suppose.

11 Q What was wrong with the boy? What was wrong

12 with little Ben?

13 A He had been -- Mack told me he had been up

14 with him for the last two days and nights because Ben was sick,

15 and he had taken him to the doctor, and the doctor told him

16 that he had impetigo.

17 Q What is impetigo?

18 A It is a skin disease where there are sores that

19 break out on the skin, and they are runny and crusty.

20 Q And what causes impetigo, if you know?

21 MR. CREEKMORE: I object to that. I think it

22 would have to be hearsay. She is not medically trained

23 and she can't say.

24 MR. PINCUS: I don't know that it is anything

25 but a general disease.

1 COMMISSIONER FOREHAND: If it is a general
2 thing, unless you go into some medical explanation --
3 if you know generally, it is all right. If it takes
4 some medical opinion, then it is not admissible.
5
6 BY MR. PINCUS:
7 Q Do you know generally what causes it, without
8 any medical, technical knowledge?
9 A Well, I looked it up in the medical dictionary
10 at work, and it can be caused by a small scrape in the skin
11 that is not properly cleaned, that can get infected, and the
12 germs spread through the body and cause these sores.
13 Q Did you later on go to the home of Mr. White
14 with the child?
15 A Yes. After the game was over I went with Ben
16 to his daddy's house for his birthday.
17 Q How did the child react at his own birthday
18 party? Was he happy?
19 A He was so sick, and he had sores in his mouth
20 and on his tongue too, and he couldn't even eat his birthday
21 cake.
22 Q At the football game, was the child dressed
23 properly?
24 A When I got there --
25 MR. CREEKMORE: I object to the leading.

1 COMMISSIONER FOREHAND: Sustained.

2 MR. PINCUS: All right.

3 BY MR. PINCUS:

4 Q I would ask you this: how was the child

5 dressed, and what was his -- how did you find him?

6 A When I got there he was standing behind the

7 fence, and he was crying, and I walked up to him, and he saw

8 me coming, and he came running and I picked him up, and I could

9 feel his skin was real hot, and he had on a jacket with a hood

10 on it, and he told me, "Mommy, I am so cold." So I put my

11 coat around him and sat down in the bleachers with him, and

12 he went to sleep. I was there about twenty minutes, and Mack

13 looked around to see where he was, and he saw me sitting there

14 with Ben.

15 Q Mrs. White, are you asking the Court for

16 custody of the child?

17 A Yes, I am.

18 Q And prior to the time when Mr. White got

19 custody of him, would you tell me who took care of Ben, little

20 Ben?

21 A I took care of little Ben by myself. I fed

22 him. I clothed him. I had a place for him to stay, and I

23 took care of him alone.

24 Q From the time that you and your husband

25 separated, which was on January 6, 1972, who supported the child?

1 A I did. Mack told me he couldn't afford to
2 pay me anything for Ben's support.
3 Q Are you employed?
4 A Yes, sir, I am.
5 Q And where are you employed?
6 A Norfolk General Hospital, in the business office.
7 Q Are you seeking any alimony?
8 A No, sir.
9 Q Are you seeking support for little Ben?
10 A Just for Ben.
11 Q I show you what purports to be a list of the
12 cost of living expenses for Ben, and I ask you have you
13 prepared these at my direction?
14 A Yes, sir.
15 MR. PINCUS: Mr. Commissioner, may I submit
16 this as a plaintiff's exhibit? Let me give you the
17 original, if I may, sir.
18 COMMISSIONER FOREHAND: What was our last
19 exhibit? We have had several exhibits.
20 MR. PINCUS: I suggest we call it Plaintiff's
21 Exhibit 1 on the hearing of January 12.
22 COMMISSIONER FOREHAND: I will put it that way.
23 MR. CREEKMORE: Or maybe 1(a), or something
24 like that.
25 COMMISSIONER FOREHAND: Plaintiff's Exhibit 1,

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1 A Well, the last I know is a year ago, and he
2 was clearing about $148 a week, I think, the best I can remember.
3 Q Does he have any other persons that are
4 dependent upon him for support, except the child?
5 A No, sir.
6 Q And where does your husband live, if you know?
7 A 948 Popular Avenue, Chesapeake.
8 Q And what is your address?
9 A 1401 Chesapeake Avenue, Apartment 3, Chesapeake.
10 COMMISSIONER FOREHAND: Off the record.
11 (Off-the-record discussion.)
12 BY MR. PINCUS:
13 Q I think I have one other question, and that
14 is when was the last day that you had the custody of little
15 Ben?
16 A July 7, 1972.
17 Q And is it my understanding that your husband,
18 Mr. White, got custody by bringing a warrant for which you
19 were arrested?
20 A Yes, sir, he did.
21 Q Was this warrant later heard and dismissed?
22 A Yes, sir, it was.
23 Q And then is it my understanding that he took
24 the child on the evening of the date that you were arrested?
25 A Yes, sir. When the police came they told me

1 that Ben's father was outside and that he wanted Ben, and
2 that either I could go get Ben or that the policeman would go
3 wake him up and take him to Mack.
4 Q I see. And where was this warrant heard, in
5 what court?
6 A It was in the Norfolk court.
7 Q And what was the disposition of it?
8 A It was dismissed after Mack and his detective
9 testified.
10 Q Is there any possibility of reconciliation
11 between yourself and Mr. White?
12 A No, sir.
13 Q Do you know of anything that you have done that
14 justified Mr. White's treatment of you?
15 A No, sir.
16 Q Has the separation between you and Mr. White
17 been continuous and uninterrupted since January 6, 1972?
18 A Yes, sir, that is true.
19 Q Has more than a year passed since that
20 separation?
21 A Yes, it has. It was a year last Saturday.
22 Q Are you seeking custody of the child?
23 A Yes.
24 Q If you were granted custody of the child,
25 would you be willing to allow Mr. White to visit the child?

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1 COMMISSIONER FOREHAND: Yes, she certainly may.
2 (Witness excused)
3
4 CAROLYN M. SAWYER, called as a witness by and
5 on behalf of the Complainant, having been duly sworn, testified
6 before the Commissioner as follows:
7
8 DIRECT EXAMINATION
9 BY MR. PINCUS:
10 Q Would you state your name, please?
11 A Carolyn M. Sawyer.
12 Q Where do you live, Mrs. Sawyer?
13 A 1401 Chesapeake Avenue.
14 Q In what city?
15 A Chesapeake.
16 Q With whom do you live?
17 A Karen White.
18 Q Where do you work?
19 A Norfolk General Hospital.
20 Q With whom do you work?
21 A Karen White.
22 Q When did you come to live with Karen?
23 A Around November 17, 1972.
24 Q Are you aware that Mr. White brings the child
25 on the weekends --

1 MR. CREEKMORE: I object to the leading question.
2 COMMISSIONER FOREHAND: I think you can ask
3 that. Go ahead.
4 BY MR. PINCUS:
5 Q Are you aware that on Friday evenings Mr. White
6 brings the child over to Mrs. White's for the weekend?
7 A Yes, sir, I am.
8 Q How are you aware of that?
9 A I live with Karen, so I know when he brings him
10 and he leaves, picks him up.
11 Q About what time does he bring her on Friday
12 night -- I beg your pardon. What time does he bring little Ben?
13 A About 7 o'clock Friday nights.
14 Q And on what time does he come to pick the child
15 up?
16 A About 7 o'clock Sunday night.
17 Q Would you describe, from your observation,
18 what happens when little Ben comes in on Friday night?
19 A Well, usually around 7 o'clock we can be like
20 sitting there in the living room, and will hear him running
21 down the street from the front of the house, and up the stairs,
22 and he runs in, and he embraces his mother and kisses her and
23 hugs her.
24 Q Can you describe his behavior and his attitude
25 on coming to live with his mother over the weekend?

1 A He seems very excited, and he really enjoys
2 being with her.
3 Q Will you describe what takes place on Friday
4 night, from the time he comes there until the time he goes to
5 bed?
6 A Well, we usually play -- Carol usually plays
7 games with him and takes out his toys and things like that, and
8 plays with him in the middle of the floor, or they will watch
9 television, and she will fix him something to eat, and she
10 will bathe him and dress him and put him to bed.
11 Q Now, are you there on Saturday morning?
12 A Yes, sir.
13 Q Can you describe what happens, what the family
14 environment for little Ben is on Saturday morning?
15 A He gets up and he wants his mamma to fix him
16 breakfast. He wants Karen to do everything for him.
17 Q Have you ever attempted to fix his breakfast?
18 A Yes. He says he wants his mamma to do it.
19 Q Have you ever attempted to put clothes off or
20 on him?
21 A I have, and he said, "I want Mamma to do it."
22 Q After breakfast, what happens?
23 A Well, he will, like we are doing the dishes or
24 something, he will take out his toys and we will go in and she
25 will sit on the floor with him and play with his toys with him,

1 and maybe watch a few cartoons with him, the ones that he
2 enjoys watching.
3 Q What, if you know, what do they talk about?
4 A Oh, all kinds of things. He likes football --
5 he loves football and motorcycles. And like we can be riding
6 down the street, and he will see a motorcycle, and he will
7 say, "Mamma, did you see that motorcycle," and things of that
8 sort.
9 Q Can you describe what happens on Saturday night,
10 assuming that you are there?
11 A Well, when I am there, which is most of the
12 time, we will fix dinner for him, and he will eat, and he will
13 talk. He loves to play games. All these games, he will get
14 all his Christmas toys from Christmas and he will play with them.
15 Q Was his attitude obvious to you, or, I
16 mean, observable to you while he is at his mother's during the
17 weekends?
18 A He is very happy.
19 Q What happens on Sunday morning, or Sunday noon --
20 start with Sunday morning?
21 A Well, usually after breakfast, we usually --
22 well, he loves to play with his toys. We usually play a game
23 with him, or something, and we take him to the laundromat. He
24 enjoys going to the laundromat. He likes to help Karen do the
25 laundry, and he runs around the laundromat being real happy and

1 all that.

2 Q Are you there on Sunday evening when Mr. White

3 comes for him?

4 A Most of the time, yes.

5 Q Would you describe what he says in Mr. White's

6 presence, when Mr. White comes to take him from Mrs. White's

7 home?

8 A Well, when his father comes in, you know, he

9 talks to Ben and, you know, Ben talks back, and they all talk

10 back and forth, and Mack will ask him, "Ben, are you ready to

11 go home." And Ben will say, "no." And so he will say, "not

12 right now, Daddy," and he will talk a little while and he will

13 ask him again, "Ben, are you ready to go home." Ben will say,

14 "no, not yet, Daddy."

15 Q What, if anything, does Mr. White do to get him

16 to go?

17 A Well, like right around Christmas time, he told

18 him that they had to go so they could go pick out the Christmas

19 tree, and then the week after that they told him that they had

20 to hurry, you know, that he had to get home so that he --

21 Q When you say "they told."

22 A Mack told him that they had to go, you know, and

23 get the -- well, first they had to go get the Christmas tree,

24 and get the tree all up, and then the next week he was going to

25 take him to a movie. And then I think the next week he said

1 they would have to take down the Christmas tree. And then I
2 think the next Sunday night he said he was going to take him
3 to a movie.
4 Q Does little Ben want to leave Mrs. White's home
5 to go with his father?
6 A Not all the time, no.
7 Q Have you ever seen Mr. White physically pick
8 up the child?
9 MR. CREEKMORE: Your Honor, I object to that.
10 It is a leading question.
11 COMMISSIONER FOREHAND: I sustain the objection.
12 MR. PINCUS: Let me rephrase the question.
13 BY MR. PINCUS:
14 Q Have you observed any other behavior of the
15 child when Mr. White attempts to remove him from the house?
16 A Well, one time he picked him up and he told
17 him, you know, they were going to leave, and Ben got real upset
18 and started crying. He didn't want to go.
19 Q In Mr. White's presence, how does he refer --
20 how does little Ben refer to his home?
21 A Well, he refers to Mack's as his daddy's
22 house, and he refers to Karen's as his home.
23 Q Have you observed the nature of the care and
24 treatment that Mrs. White affords to the child while he is at
25 her house?

1 A Yes, sir.

2 Q Would you describe that treatment, please, and

3 the care?

4 A Well, she sees that he is clean, that he has

5 a clean place to sleep, that the house is nice, that he has

6 clean clothes to wear, that he is fed properly, that he gets

7 the proper amount of rest, and things of this sort, and enjoys

8 many things that he likes to do and that they do together.

9 Q How would you describe her feelings, or care for

10 the child?

11 A She takes care of him very good. She loves him,

12 and she takes a lot of interest in things that she does for him.

13 MR. PINCUS: Answer the questions of

14 Mr. Creekmore, please.

15

16 CROSS-EXAMINATION

17 BY MR. CREEKMORE:

18 Q You say that you are Miss, or Mrs.?

19 A Mrs.

20 Q Are you separated from your husband?

21 A Yes, sir.

22 Q Have you ever babysat for Ben?

23 A Well, no, not really. She went Christmas

24 shopping one night to pick up a few things right before

25 Christmas, and she was gone about an hour or so, and he, of

***

1
2 CROSS-EXAMINATION

3 BY MR. PINCUS:

4 Q Mrs. Brimer, you wouldn't have noticed any
5 mistreatment to the child when he was with his mother either;
6 would you?

7 A As far as mistreatment, no, sir.

8 Q And would you have noticed any -- was he
9 properly clothed when he was living with both of them?

10 A Yes, sir.

11 Q And the same is true when he was living with
12 Mrs. White?

13 A Yes.

14 Q Do you have any children who come from either
15 broken homes or homes where the parents have presently
16 separated?

17 A Not at the present moment, no, sir. I have had.

18 Q You have had?

19 A Yes.

20 Q Isn't it a fact when the parents do separate,
21 of course, the child is instinctively aware of this?

22 A Oh, a child definitely knows there is something
23 wrong.

24 Q And wouldn't you state, as I think you did
25 earlier, that when the parents broke up little Ben was confused;

1 wasn't he?

2 A Yes, sir.

3 Q And it was really the basis, his confusion was

4 based on the fact that his parents broke up and separated;

5 wasn't it?

6 A Yes.

7 MR. PINCUS: I have no further questions.

8 COMMISSIONER FOREHAND: Thank you, Mrs. Brimer.

9 (Witness excused)

10

11 LYNN R. BARNES, called as a witness by and on

12 behalf of the Defendant, having been duly sworn, testified

13 before the Commissioner as follows:

14

15 DIRECT EXAMINATION

16 BY MR. CREEKMORE:

17 Q You are Lynn Barnes; is that correct?

18 A Yes, sir.

19 Q How old are you, ma'am?

20 A Seventeen.

21 Q And I believe you are the sister of Karen White,

22 Karen Barnes White; is that right?

23 A Yes, sir.

24 Q I ask you whether or not you have had an

25 opportunity to observe your brother-in-law, Mack White, and

***

1 time ago.

2 Q When was that?

3 A I don't know right offhand.

4 Q Well --

5 A They came off and on for about a year.

6 Q You seem to recall, you know, with reasonable --

7 COMMISSIONER FOREHAND: Let's not comment.

8 Ask her the question. If she doesn't remember, she

9 doesn't remember.

10 MR. PINCUS: I think she remembers.

11 A (Continuing) They came off and on for about

12 a year and a half.

13 BY MR. PINCUS:

14 Q Do you remember seeing your sister living at

15 the home of your mother?

16 A Yes.

17 Q And would it have been in 1972?

18 A Yes, sir.

19 Q Did you see your sister take care of the little

20 baby?

21 A Yes, she stayed there.

22 Q I said, did you see her take care of the child?

23 A What do you mean by, "take care."

24 Q I mean, dress him?

25 A Yes.

1 Q Feed him?
2 A Yes.
3 Q Clothe him?
4 A Yes, also other people did it too.
5 Q My question is simply --
6 A Yes, sir.
7 Q Do you have any reasons to -- you appear to
8 have some bias against your sister in this case?
9 A No, I don't.
10 Q Is there none?
11 A I am just looking out for Ben.
12 Q I see. Has anybody talked to you about your
13 testimony in this case?
14 A No. I am seventeen years old and old enough
15 to make up my own mind.
16 Q My question wasn't that you make up your mind.
17 Has anybody talked to you about testifying in this case?
18 A No, sir.
19 Q Has your mother talked to you?
20 A No.
21 Q Doesn't your mother seem to run the family?
22 MR. CREEKMORE: I object to that.
23 THE WITNESS: No, not necessarily.
24 COMMISSIONER FOREHAND: I think that is an
25 improper question.

***

1 Q Did your wife ask you not to talk to your
2 daughter?
3 A No, sir.
4 Q When she was in your home in January, 1972,
5 did you see her take care of Ben?
6 A Yes.
7 Q Did she take care of him well?
8 A Yes, sir. Yes, sir.
9 Q Did you see her feed the child?
10 A Yes, she helped cook, yes, sir.
11 Q And did you see her bathe the child?
12 A Yes, sir.
13 Q Did you see her dress the child?
14 A Yes, sir.
15 Q Wouldn't you say that she was as good a mother
16 to the child as she could be?
17 A Well, when she was around me, yes, sir.
18 Q Now, do you know that she breast-fed the child?
19 A Well, I would say about the first month or two,
20 yes, sir.
21 Q You know that; don't you, sir?
22 A Yes, I know she started off.
23 Q Most people, women, don't breast-feed children;
24 do they?
25 MR. CREEKMORE: I object. How does he know?

1 MR. PINCUS: I withdraw the question. I
2 realize that is not within his knowledge.
3 BY MR. PINCUS:
4 Q You know Karen breast-fed the child; don't you?
5 A She started out -- how long, I couldn't tell you.
6 Q Now, have you seen the child run to Karen when
7 he wanted something; didn't you?
8 A Yes, sir.
9 Q You helped Karen move; didn't you?
10 A Yes, sir, twice.
11 Q And you have been over to her home often until
12 this summer; haven't you?
13 A What do you mean, the last place she moved? I
14 have been there twice.
15 Q When you say to her house, you said you helped
16 her move?
17 A Yes, sir.
18 Q And you used to visit her before this summer;
19 didn't you?
20 A Yes, sir.
21 Q And then you stopped visiting her; didn't you?
22 A Well, this is about the last --
23 Q My question is, yes or no?
24 A Yes, sir.
25 Q Did anyone ask you to stop visiting her?

***

1 MR. CREEKMORE: I object, Your Honor.
2 I think that is a conclusion.
3 THE COMMISSIONER: Sustained. That is a
4 conclusion that she would make and I sustain that.
5 MR. PINCUS: Well, Your Honor, I think it
6 would be important to know certainly the facts
7 then, perhaps not the conclusions, but the facts.
8 THE COMMISSIONER: No. You can ask her
9 what she does and ask him on examination what he
10 does, but I don't think -- see, that is a conclusion.
11 MR. PINCUS: Right. I understand. I will
12 withdraw the question.
13
14 BY MR. PINCUS:
15 Q Mrs. White, what do you do for the child
16 that Mr. White doesn't do for the child?
17 MR. CREEKMORE: If she knows --
18 MR. PINCUS: Yes, if you know.
19 MR. CREEKMORE: -- what he does.
20 THE WITNESS: Well, Ben is only four years
21 old and at his age there are things that a mother
22 can do for a child that a father can't. He is
23 young and he is still quite little. He needs the
24 softness and companionship of a mother and
25 understanding that maybe a father doesn't understand

1 how to give a son, because he is so young. I think
2 the father would try to make a little boy more of a
3 man than he should be at four years old. He still
4 needs to be a child. He needs to be understood as
5 a child. I think a mother does that better than a
6 father ever could.
7
8 BY MR. PINCUS:
9 Q All right. Now, it's a fact that you work
10 and Mr. White works and the child, I believe, goes to the
11 nursery during the day.
12 A Yes, he does.
13 Q What does the child do in the nursery during
14 the day?
15 A Well, he plays and is with other children.
16 He spends his day playing. I feel that with so many other
17 children in the nursery he has to share the attention
18 of a woman, the lady that takes care of him. When he gets
19 home he needs the attention and care of one woman and that
20 should be me, because we sit down and we can talk about
21 things that maybe Mrs. Brimer doesn't have time to talk
22 to him about. We can talk about things that are important
23 to him.
24 Q What does Mr. White talk to him about?
25 MR. CREEKMORE: I object, Your Honor.

1 BY MR. PINCUS:

2 Q Mrs. White, when the child comes to you
3 for the two days, under the temporary order, that you
4 have him what do you discuss with him?

5 A We talk about different things, things
6 he likes to do, things we can share together. He asks
7 me about why his father and I don't live together. I
8 just explain to him that just because daddy and I don't
9 live together any more doesn't mean that we both don't
10 love him. I try to make Ben -- stress to him that daddy
11 loves him as well as mamma.

12 Q When Mr. White and you were living together,
13 when you all were living together before you separated,
14 what type of conversations, or what type of play did you
15 observe and actually hear Mr. White give to the child?

16 MR. CREEKMORE: If Your Honor please,
17 I would object to that, because it's been over
18 a year since they lived together and I think it
19 would be immaterial what happens at that time.

20 THE COMMISSIONER: Give me your reason
21 why you think it's material.

22 MR. PINCUS: Your Honor, the testimony
23 that has been brought into the case by both
24 Mr. Creekmore and myself have gone back well
25 over a year and we are dealing with the most

1 BY MR. PINCUS:

2 Q What would be, Mrs. White, your temperament
3 and your attitude to the child as he lives with you? In
4 other words, what is your nature towards the child as
5 he lives with you?

6 A Well, when Ben gets upset or upset about
7 something we sit down and we talk about it. If he cries
8 then I am there to listen to him for him to tell me what
9 is wrong. I want him to be able to come to me when he wants
10 to talk about things.

11 Q Do you let him cry?

12 A I think it's good for a child to cry. That
13 is a way a child can let go of their feelings and explain
14 to you how they feel.

15 Q When you were living with Mr. White and
16 the child would cry what would Mr. White say to the child
17 about crying?

18 A Well, a father doesn't want a child to be
19 a baby or a sissy. He wouldn't want him to cry -- play
20 with this, or come do this to keep him from crying. But
21 a child needs to let go of his emotions. It doesn't help
22 to hold things inside.

23 Q You mentioned earlier that you have told
24 the child that his father loves him. Has this been told
25 to the child when Mr. White is away from the child?

1 A Oh, yes. We talk about his daddy, about
2 how much his daddy loves him too.
3 Q What would be the nature of the influence
4 on the child when you were away and either your family
5 or Mr. White was with the child?
6 A Well, sometimes when we talk about his
7 daddy and I will tell Ben that daddy loves him too, then
8 he'll say -- he will tell me --
9 MR. CREEKMORE: I object to anything that
10 was said.
11 THE COMMISSIONER: Sustained.
12
13 BY MR. PINCUS:
14 Q You can't say anything that little Ben --
15 would Mack tell the child that you loved him?
16 MR. CREEKMORE: Your Honor, that is
17 certainly a leading question and I would
18 object to that.
19 THE COMMISSIONER: I sustain that
20 objection. It's certainly improper.
21
22 BY MR. PINCUS:
23 Q What would be the influence -- what would
24 the Barnes family tell the child from your knowledge
25 about you?

1 differences.

2 MR. PINCUS: Well, then I think if they

3 are so widely known as to be given judicial

4 sanction there could be no other reason for

5 objecting to their entry.

6 THE COMMISSIONER: She isn't an expert.

7 MR. PINCUS: This isn't an expert opinion.

8 THE COMMISSIONER: Go see Judge Bray

9 if you want to put it in the record, because I

10 am not going to let you put it in there.

11 MR. PINCUS: All right. Please note my

12 objection.

13

14 BY MR. PINCUS:

15 Q Now, I would wind up by asking you

16 questions dealing with statements that were made by

17 witnesses on behalf of Mr. White in the testimony of

18 Detective Mosely.

19 Do you recall when he testified?

20 A Yes, sir.

21 Q Do you recall that he testified that when

22 he came into premises where you were staying that you had

23 on "a long robe with nothing on underneath"? Do you

24 remember him making that statement?

25 A I remember.

1 Q Is it true?
2 A No, sir, it isn't.
3 Q Would you describe what you had on.
4 A I had on a long peasant dress.
5 Q Is this worn outside the house as well
6 as inside?
7 A Yes, it is. Yes.
8 Q Did you have underclothes on under?
9 A Yes, sir.
10 MR. CREEKMORE: I object to the leading.
11 THE COMMISSIONER: Sustained.
12 MR. PINCUS: I withdraw the question.
13
14 BY MR. PINCUS:
15 Q What did you have on underneath?
16 A I had on underclothes.
17 Q Next, do you recall when Lynn Barnes
18 testified?
19 A Yes, sir.
20 Q Do you recall my asking her about the
21 football game and that she said that the child was crying,
22 but that the child was not sick or cold? Do you recall
23 that testimony?
24 A I remember.
25 Q Is that testimony true?

1 A No, it isn't.

2 Q What is true about that situation?

3 A Ben was very sick. Mack had taken him to

4 the doctor that week and had been out of work with him,

5 because he was so sick. When I got there Ben was crying.

6 When he saw me coming he came up to me and he said, "Mommy --

7 MR. CREEKMORE: I object to what he

8 said.

9 THE COMMISSIONER: Sustained.

10

11 BY MR. PINCUS:

12 Q Was it in Mack's presence?

13 A No, Mack was out.

14 Q Then you can't say what he said. You can

15 state what he looked like.

16 A He was running a fever and he was trembling

17 he was so cold. So I picked him up and went to the

18 bleachers with him and wrapped him up in my coat and he

19 fell asleep.

20 Q All right. Next I ask you to recall, if

21 you will, my examination of Mrs. Barnes at which time I

22 asked her did she see any bruises on you. She said, "I

23 didn't see bruises." Now, was that statement true?

24 A No, it wasn't.

25 Q What are the facts about that?

REDIRECT EXAMINATION

BY MR. PINCUS:

Q He asked you isn't it true that Mack took care of little Ben's physical needs and you said maybe physical. Would you explain what you mean when you say maybe physical needs.

A Well, I believe he takes good care physically of Ben, but I don't think he meets the mental needs that Ben has. I think Mack tries to be a big pal to him and play and not try to understand him as a little boy and that is something a mother does. It is not -- I don't expect a man to understand things like that.

Q What other needs does Ben have, besides the physical needs?

A He needs to be understood when he is hurt, or sick. He needs a mother to listen to him and to be there. He doesn't need a big pal to play with all the time.

MR. PINCUS: That's all I have, sir.

MR. CREEKMORE: I would like to call Mr. White.

THE COMMISSIONER: Okay.

(Whereupon, the witness was excused.)

***

1 reasons.

2 THE COMMISSIONER: All right. Go ahead.

3 MR. PINCUS: The question what do you

4 feel you can do for Ben, what you think you can

5 do for Ben, and what can you do for Ben are all

6 the same question just with a little different

7 words. It calls for an opinion on his part and

8 it's objectionable. There's no reason why the

9 Court should allow --

10 THE COMMISSIONER: What do you do for Ben

11 then I will --

12 MR. CREEKMORE: I will ask it that way if

13 that would satisfy Mr. Pincus.

14 THE COMMISSIONER: He can answer that.

15 THE WITNESS: I get up in the morning,

16 I dress Ben, I go in there and I cook his breakfast,

17 comb his hair, and we go to the nursery in the

18 morning. We get there about a quarter after seven

19 and we leave about five minutes to seven. Then

20 I go to work and I -- then I get off at four and

21 I come back by Mrs. Brimer's. I pick Ben up

22 about fifteen minutes after four. We go home

23 and he goes out in the backyard and plays with

24 his puppy and the rabbit and his swing set and

25 stuff like that. I go inside and I take a quick

1 shower and start cooking supper, while he is
2 playing with the kids in the neighborhood in
3 the backyard.
4 He comes in when it gets dusk and he
5 goes in and washes up and we sit down and eat
6 supper. Then he gets up and goes in and watches
7 TV while I clear the table, wash the dishes and
8 put the food away. Then he will go outside and
9 he will get his puppy's bowl and bring it inside
10 and put the scraps and dog food in it. He goes
11 back outside and feeds the puppy. The puppy comes
12 in and he and the puppy plays in the house for a
13 while and then the puppy goes back outside.
14 Ben gets ready to take his bath. I am
15 running the water. Then he will get back and
16 lie on the couch and watch TV for a while and
17 then we'll go to bed.
18
19 BY MR. CREEKMORE:
20 Q All right. Do you know how many children
21 are in Mrs. Brimer's nursery?
22 A No, sir. I know it's quite a few, not
23 too many.
24 Q Now, do you have anybody else living with
25 you and Ben? **

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

KAREN B. WHITE,)

Complainant)

vs.) IN CHANCERY NO. 14047

BENTON M. WHITE,)

Defendant)

REPORT OF VERNON T. FOREHAND
COMMISSIONER IN CHANCERY

TO: THE HONORABLE JUDGE OF SAID COURT:

The undersigned Commissioner in Chancery, to whom the above styled cause was referred by Decree of Reference entered herein on August 15, 1972, pursuant to Notices, did on the 21st and 29th days of September, 1972 and on January 12, 1973, February 16, 1973 and April 19, 1973, proceed to take the testimony and to make the inquiries ordered by the Decree.

Your Commissioner attaches hereto the depositions taken at said hearing, together with the exhibits filed in evidence.

All witnesses who testified at said hearings did personally appear before your Commissioner at the time they testified. At said hearings, Mr. Harry Pincus, Jr., appeared as counsel for the Complainant, and Mr. Frederick H. Creekmore, appeared as counsel for the Defendant.

Your Commissioner respectfully reports to the Court as follows:

1. WHETHER OR NOT THE PARTIES ARE PROPERLY BEFORE THE COURT:

All necessary parties are properly before the Court.

2. JURISDICTION AND VENUE:

On the date this suit was instituted, the Complainant and the Defendant were domiciled in and were then and had been actual bona fide residents of the State of Virginia, for more than one year continuously next preceding the commencement of this suit. (Depositions dated September 21, 1972, T 6 Lines 6-9) (Depositions dated April 19, 1973, T 4 Lines 2-9)

The parties to this suit last cohabited as man and wife in the City of Chesapeake, Virginia. (Depositions dated September 21, 1972, T 8 Lines 3-15) (Depositions dated April 19, 1973, T 5 Lines 6-10)

The Court has jurisdiction to hear and determine this cause.

3. THE RACE OF THE PARTIES:

Both the Complainant and Defendant are members of the Caucasian Race.

4. WHETHER OR NOT LEGAL GROUNDS FOR A DIVORCE EXIST:

The parties to this suit were married in Elizabeth City, North Carolina on March 18, 1966.

The Complainant alleged in her Bill of Complaint that the Defendant assaulted, cursed, threatened, abused, harrassed and humiliated her to the extent that she was in fear of him and in fear of her child's safety. She further alleged that because of the Defendant's conduct she left him on January 5, 1972.

WHAT ACTS OF CRUELTY DOES THE COMPLAINANT IN HER DEPOSITIONS STATE AND ARE SUFFICIENTLY CORROBORATED TO JUSTIFY HER LEAVING ON JANUARY 5, 1972?

DEPOSITIONS DATED SEPTEMBER 21, 1972

Complainant testified that on May 24, 1970, the Defendant remained home from work and attempted to force her to have sex with him. She refused and an argument ensued which resulted in his throwing her on the floor causing bruises to her arms, hips, legs and rug burns on her back. (T 149 Lines 10 - 25; T 150 Lines 1-8)

DEPOSITIONS DATED SEPTEMBER 29, 1972

Dr. John Myers said he saw the Complainant in May, 1970. The Complainant told Dr. Myers that her husband beat her. Finding by Dr. Myers bruises on her thighs, buttocks, left shoulder, left wrist and left forearm. Dr. Myers prescribed no specific treatment. (T 7 Lines 15-24)

DEPOSITIONS DATED SEPTEMBER 21, 1972

Defendant testified that on May 24, 1970, he and his wife had an argument over sex; that he attempted to force himself on his wife and she was bruised in the attempt. His wife left him taking his son with her and he attempted suicide by taking poison. (T 8 Lines 4-25; T 9 Lines 2-7, Lines 15-17; T 10 Lines 2-8)

The undisputed evidence is that the Complainant went to her mother's home to live after the incident of May 24, 1970, and remained at her mother's home until August, 1970. At this time, the Defendant was in the hospital. Complainant's mother (Mrs. Barnes) invited the Defendant to live in her home after being released from the hospital. (T 153 Lines 10-15; T 153 Lines 21-25; T 154 Lines 1-5)

The Complainant and Defendant, with their son, renewed their marriage in August, 1970, moving to an apartment on Poplar Avenue in the City of Chesapeake. The Complainant stated the condition for her returning was that the Defendant would not pressure her about sex. (T 155 Lines 9-22)

Complainant testified that after moving in August, 1970, she was afraid Defendant was going to hang himself. (T 157 Lines 22-25; T 158 Lines 1-7)

Defendant testified that he had lived for three years without sex and concerning the alleged hanging incident, he denied it. (T 11 Lines 6-25; T 12 Lines 1-5) There was no corroborating testimony concerning the alleged hanging.

DEPOSITIONS DATED JANUARY 12, 1973

Complainant testified that when she was three months pregnant with Ben, she began to hemorrhage, so she consulted a doctor who advised her that she should have no sexual relations until she found out about the bleeding. (T 3 Lines 2-7)

On cross-examination the Complainant stated the last time she had sexual relations with her husband was May, 1970. (T 22 Lines 23-25)

Complainant was asked if there was anything physically wrong with her to prevent relations with her husband. Her answer was no, I left my husband because I could not live with him. I was afraid to live with him. (T 23 Lines 24-25; T 24 Lines 1-2)

Mrs. Audrey H. DuPree testified for the Complainant that during January and April, 1972, the Defendant would call the Complainant at work and his calls would upset her. (T 62 Lines 12-16; T 63 Lines 10-12)

NOTE: These calls were made after January 5, 1972 when Complainant left the Defendant. There is no corroboration of cruelty by this witness. Carolyn M. Sawyer furnished no corroborating testimony to establish cruelty on the part of the Defendant. (T 65)

Robert L. Mosely, Jennette Detective Agency, testified he saw the Complainant on June 30, 1972, when she was living on Peachtree Street, Norfolk, Virginia, get on a motorcycle with a Mr. Plum. They had not returned at midnight. (T 86 Lines 15-20; T 87 Lines 19-24) There were other nights when Complainant was seen with Mr. Plum.

On cross-examination Lynn R. Barnes, sister of the Complainant, testified that she had observed the Complainant go off on a motorcycle with a man and not return home until 3:00 o'clock. (T 129 Lines 19-22)

In the opinion of your Commissioner, the depositions do not sustain the allegations made by the Complainant in her Bill of Complaint. Several acts of cruelty were alleged by the Complainant. However, the most significant charge which was made happened on May 24, 1970, when an argument arose over sexual relations and the Defendant tried to force himself on the Complainant causing bruises to her person, which bruises were corroborated by Dr. Myers. The Complainant left the Defendant and subsequently returned to live with him and remained with him until she finally left on January 5, 1972.

The Complainant gave as her reason for leaving on January 5, 1972, an argument with the Defendant about sex. She stating that the Defendant told her if when he returned from work the next day she did not sleep with him, she would not see Ben, her son, again. (Depositions dated September 21, 1972, T 174 Lines 15-20) There was no corroborating testimony on the Complainant's behalf confirming her testimony as to her reason for leaving on January 5, 1972. The Defendant stated that the Complainant asked for the station wagon, which he agreed for her to use. He asked her if she would try harder to make the marriage work and she answered, "yes". When he returned home from work on January 5, 1972, the Complainant had gone, taking his son with her. (Depositions dated September 21, 1972, T 108 Lines 21-25; T 109 Lines 1-2)

It is the opinion of your Commissioner that after the resumption of marriage by the parties subsequent to the incident of May 24, 1970, the Complainant condoned any mistreatment which she stated occurred on that date as a result of her refusing her husband, the Defendant, sexual relations.

See Williams v. Williams, 188 Va 543. "Conflicting testimony, when resolved in favor of the Complainant, might be said to have established her right to maintain her action if there were no evidence of condonation of Defendant's transgression."

This applied to the subject case. The actual resumption and continuation of marital relations refuted the Complainant's claim of cruelty and fear and was such proof of forgiveness of Defendant's previous conduct as to render her deliberate departure on January 5, 1972, unjustified. That, along with her persistant refusal to return, constituted desertion on her part and entitles him to an absolute divorce.

See Toler v. Toler, 168 Va 302; 191 SE 638.

While the Defendant may not have been justified in forcing sex on her and causing the bruises about her person, yet his forbearance was put to a severe test. Under the facts his conduct gave the Complainant no reasonable ground to believe that her husband would do her serious bodily harm if she continued to live with him as his wife.

Your Commissioner is of the opinion that the physical abuse alleged by the wife was not out of proportion to the provocation exerted by the wife by refusing him sex.

There were other acts which the Complainant attempted to show as an accumulation of cruelty on the part of the Defendant - when the Defendant drove up in his car with his son Ben, and the Complainant asked to hold Ben, and she grabbed the child and started running with the Defendant after her. During the chase and struggle for the child, the Complainant claims she wound up on the pavement. (Depositions dated September 21, 1972, T 189 Lines 4-25)

This accumulation of incidents claimed as acts of cruelty by the Complainant do not meet the standard which furnishes the Complainant a legal right to desert her husband. Many of these incidents were provoked by the Complainant of which she is equally guilty.

See Stolfe v. Stolfe, 203 Va 696. "One spouse is not justified in leaving the other unless the conduct of the other is sufficient to

establish the foundation of a judicial proceeding for divorce."

See Montgomery v. Montgomery, 183 Va 96; 31 SE 2d 289 quoting from Butler v. Butler, 145 Va 85, 88; 138 SE 756. "The law does not permit Courts to sever marriage bonds and to break up households merely because husband and wife, through unruly tempers, lack of patience and uncongenial natures, live unhappily together. It requires them to submit to the ordinary consequences of human infirmities and unwise selections, and the misconduct which will form a good ground for legal separation must be very serious and such as amounts to extreme cruelty, entirely subversive of the family relations, rendering the association intolerable."

A fair reading of the evidence leads your Commissioner to the conclusion that the attitude, approach and conduct of the Defendant did in fact contribute in some measure to the marital difficulties these parties experienced. However, the Complainant was not justified in deserting him on January 5, 1972.

IT IS THE CONCLUSION OF YOUR COMMISSIONER THAT A DIVORCE BE GRANTED FROM THE BOND OF MATRIMONY TO THE DEFENDANT, BENTON M. WHITE, ON THE GROUNDS OF DESERTION BY HIS WIFE, KAREN B. WHITE, ON JANUARY 5, 1972.

5. OTHER MATTERS PROPERLY RAISED BY THE PLEADINGS:

There was one child born of the marriage, to-wit: Benton M. White, Jr., age 4 years. Temporary custody was granted the Defendant, Benton M. White, with visitation rights reserved to the Complainant from 7:00 p.m. on Friday to 7:00 p.m. on Sunday, by order of the Circuit Court entered on July 20, 1972. Rb

Your Commissioner respectfully reports that most of the testimony at the five separate hearings was an attempt to show that one or the other parent was a proper or unfit person to have custody of the said infant child, Benton M. White, Jr.

Your Commissioner requested that the Social Service Bureau send a representative to each of the hearings and to have made an independent investigation to determine which house and parent was best equipped to care for the needs of the said infant.

At each hearing a representative was present. However, before the conclusion of all of the testimony, two of the case workers assigned left the service and the final report was prepared by Mr. Larry Rumsey, who read the reports of the previous assigned workers, read all the testimony and made an independent investigation before making his recommendation.

Your Commissioner observed each witness who testified and noted that each of the parents loved their infant son. Your Commissioner was impressed with the fact that Mrs. Frances W. Brimer, who operated a nursery school where Benton M. White, Jr. remained while his parents worked, testified that while the infant was living with his mother he was nervous and confused, but when he lived with his father he seemed happy. (Depositions dated January 12, 1973, T 110 Lines 12-25; T 111 Lines 1-13) Your Commissioner was impressed with the fact that Lynn R. Barnes, James F. Barnes and Ruth R. Barnes, sister, father and mother of the Complainant testified in behalf of the Defendant instead of the Complainant, that the Defendant was a good father to the infant.

Your Commissioner feels the custody of an infant child is an important decision which should not be taken lightly, and after reading the recommendation of the Social Worker assigned to the case, it is the conclusion of your Commissioner that the conclusion reached by him is the same conclusion as that of your Commissioner, based on your Commissioner's observation of the witnesses as they testified, their sincerity, their interest in the results, and above all, the best interest of Benton M. White, Jr.

Your Commissioner reports and recommends as follows:

A. That custody of the infant child born of this marriage, Benton M. White, Jr. shall remain with the Defendant, Benton M. White, with reasonable rights of visitation by the Complainant.

B. That the Defendant is not a member of the Armed Forces of the United States of America.

C. That both the Complainant and the Defendant are over the age of twenty-one (21) years, now eighteen (18) years.

Respectfully submitted this 22nd day of August, 1973.

Vernon T. Forehand
Commissioner in Chancery

Fee for this report to Vernon T. Forehand, Commissioner in Chancery, to be paid by the counsel for the Defendant $500.00

Your Commissioner hereby certifies that pursuant to Section 8-256 of the Code of Virginia, 1950, as amended, he did on the 22nd day of August, 1973, notify Harry Pincus, Jr., Esquire, attorney for the Complainant, Virginia National Bank Building, Norfolk, Virginia 23510, and Frederick H. Creekmore, Esquire, attorney for the Defendant, Chesapeake Professional Building, Chesapeake, Virginia, by mailing to them a copy of the foregoing Report filed on the 22nd day of August, 1973, in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia.

VIRGINIA:
In the Clerk's Office, Circuit ~~Corporation~~ Court of Chesapeake
Received and filed this the 22
day of Aug, 1973
Teste: JULIAN R. RAPER, Clerk
By Marion Pipe
Deputy Clerk

Vernon T. Forehand
Commissioner in Chancery

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHESAPEAKE

KAREN B. WHITE	:	
Complainant	:	
vs.	:	IN CHANCERY NO. 14047
BENTON M. WHITE	:	
Defendant	:	

EXCEPTIONS TO THE REPORT OF THE COMMISSIONER IN CHANCERY

Now comes the complainant, by counsel, and files exceptions to the Report of the Commissioner in Chancery to whom this cause was referred by Decree of Reference entered on August 15, 1972, and which report bears date on August 22, 1973, the exceptions as follows:

1. In his report, the Commissioner restated the complainant's allegations and in so doing the Commissioner erroneously omitted significant allegations, to-wit:

a. That the defendant had beaten the complainant.

b. That the defendant had attempted suicide and had on occasion taken the child from the complainant, causing her mental anguish and fear.

2. That the Commissioner erred in failing to note or to consider several clear and distinct acts and statements of cruelty by the defendant toward the complainant, which failures and omissions played a large part in the Commissioner's recommendations on the major issues of divorce and custody.

3. Specifically, but not by way of limitation, the Commissioner erred in failing to properly note or to properly consider:

a. The defendant's false accusations of infidelity.

b. The defendant's constant harrassment of the complainant.

c. The defendant's attempts to drug the complainant.

d. The defendant's threats and actual carrying out of threats to take the baby from the mother's care and control.

e. The defendant's attempt to force himself sexually upon the complainant wife despite the doctor's advice to the contrary.

4. The Commissioner erred in suggesting that each act of cruelty by the defendant required corroboration.

5. The Commissioner erred in his opinion that ". . . after the resumption of marriage by the parties subsequent to the incident of May 24, 1970, the Complainant condoned any mistreatment which she stated occurred on that date of a result of her refusing her husband, the Defendant, sexual relations."

6. The Commissioner erred in concluding that the actual resumption of and continuation of marital relations refuted the complainant's claim of cruelty and fear.

7. The Commissioner erred in concluding that the actual resumption and continuation of marital relations was proof of forgiveness of the defendant's previous conduct.

8. The Commissioner erred in concluding that the complainant's departure on January 5, 1972, (or on January 6, 1972, as complainant alleges) was unjustified.

9. The Commissioner erred in concluding that complainant's acts along with her refusal to return to the defendant constituted desertion.

10. The Commissioner erred in concluding that the defendant's conduct gave the complainant no reasonable ground to believe he would do her serious bodily harm if she continued to live with him.

11. If the Commissioner meant (in the middle of page 5) that in his opinion the physical abuse "alleged" by the wife was not out of proportion to the provocation exerted by the wife by refusing him (the husband) sex, then the Commissioner erred in his opinion.

12. If the Commissioner meant (in the same opinion) that the physical abuse "proved" by the wife's testimony was not out of proportion, etc., etc., then the Commissioner still erred in his opinion.

13. The Commissioner erred in that he fails to consider the incident (recited in depositions dated September 12, 1972, T. 189, lines 4-25) as a violent attack by the husband and as a clear act of cruelty by him.

14. Whether the Commissioner intended (in the next to the last paragraph on page 5) to use the word "claimed" or "proved", the Commissioner erred in concluding that the acts of cruelty do not justify the complainant leaving her husband. The complainant respectfully contends that the said acts of cruelty do justify her leaving him.

15. Counsel does not understand the Commissioner's statement (in the next to the last paragraph on page 5): "Many of these incidents were provoked by the complainant of which she is equally guilty."

16. Commissioner erred in concluding that the complainant was guilty of provoking the defendant into his acts or statements of cruelty.

17. Commissioner erred in concluding that the complainant was not justified in leaving the defendant on January 5, 1972 or on January 6, 1972.

18. Commissioner erred in concluding that a divorce be granted to the defendant on the grounds of desertion by the complainant.

19. Commissioner erred in the manner in which he delegated authority to the various case workers involved or assigned in this matter on the question of custody of the child.

20. Commissioner erred in the manner in which he himself decided the question of the custody of the child.

21. Commissioner erred in his recommendation that the child, Benton M. White, Jr., be granted to the custody of his father.

22. Commissioner erred in failing to recommend that the divorce be granted the complainant on the grounds of cruelty.

23. Commissioner erred in failing to recommend that the mother of the child be granted the custody of the said child with appropriate child support.

24. Commissioner erred in failing to recommend attorneys fees for counsel for the complainant wife.

WHEREFORE, and now having set forth the exceptions as above stated, the complainant respectfully prays that the Court will fully read and review all the testimony taken in this cause; that the Court will question and will allow counsel to question the reports of the various caseworkers, and that the Court will amend and/or overrule the Commissioner's Report and find for the complainant on the question of divorce pursuant to the allegations of the bill of complaint and the proof in support thereof and on the question of the custody of the child pursuant to the prayer of the bill and the proof in support thereof.

DOUMAR, PINCUS, KNIGHT & HARLAN
1350 Va. National Bank Bldg.
Norfolk, Virginia 23510

KAREN B. WHITE

By Henry Pincus Jr.
Of Counsel

I certify that a true copy of the foregoing pleading was mailed to Frederick H. Creekmore, counsel for the defendant, at Chesapeake Professional Building, Chesapeake, Virginia, this 29 day of August, 1973.

Henry Pincus Jr.

1-30-73
B.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

KAREN B. WHITE	:	
Complainant	:	
vs.	:	IN CHANCERY NO. 14047
BENTON M. WHITE	:	
Defendant	:	

FINAL DECREE

This cause came on this day to be heard upon the complainant's bill, upon the Answer and Cross-Bill of the defendant, upon the Report of Vernon T. Forehand, Commissioner in Chancery, filed on August 20, 1973, the exceptions to said report filed by the complainant, which were argued by counsel. Said exceptions to the Commissioner's Report are hereby overruled and said case having otherwise regularly matured, was argued by counsel.

It appearing unto the Court from the testimony herein and independently of the admissions of either party in the pleadings or otherwise, that the parties to this cause are members of the caucasian race, over the age of twenty-one years; that neither the complainant nor the defendant is on active duty in the military service of the United States; that the complainant and defendant were married in Elizabeth City, North Carolina, on March 18, 1966; that there was one child born of this marriage, namely, Benton M. White, Jr., age 4; that complainant and defendant are actual bona fide residents of and have been domiciled in the State of Virginia for more that one year next preceding the commencement of this suit and were so domiciled at its institution; that the parties hereto last resided together in the City of Chesapeake, Virginia, on or about January 5, 1972, at which time complainant deserted the defendant without any reason or cause on the part of the defendant, which said desertion has remained interrupted to date, that the parties have not reconciled, nor is reconciliation possible.

IN CONSIDERATION WHEREOF, it is hereby ADJUDGED, ORDERED and DECREED that the defendant, Benton M. White, be and hereby is, divorced A VINCULO MATRIMONII from the complainant, Karen B. White, on the grounds of desertion.

It is further ADJUDGED, ORDERED and DECREED that the defendant be awarded custody of the infant child born of this marriage, with the following visitation rights reserved unto the complainant:

a. Every other weekend, starting at 6:00 P.M. Friday night January 11, 1974 and ending at 6:00 P.M. Sunday night, the complainant to pick up and deliver the said child at the home of the defendant.

b. During the summer time, for a Two week ~~the~~ period of the complainant's vacation. The complainant will notify the defendant two weeks prior to the time the complainant is to receive the child. The complainant to deliver and pick up the child at the commencement and termination of the visits.

c. The parties shall alternate the Christmas visits as follows: On even numbered years, the complainant shall have the child visit with her from 10:00 A.M. December 21 through 3:00 P.M. December 25, and on odd numbered years, the complainant shall have the child visit her from 3:00 P.M. December 25 through 6:00 P.M. January 1.

The complainant is to pick up and deliver the child at the commencement and termination of the Christmas visits with her.

It is further ADJUDGED, ORDERED and DECREED that the defendant shall pay to Doumar, Pincus, Knight & Harlan, attorneys for the complainant, the sum of $550.00 on account of attorney fees and $50.00 on account of court costs.

And this cause is hereby retained on the docket.

ENTER this 15 day of February, 1974.

Judge

I ASK FOR THIS:

Frederick H. Creekmore, p.d.

SEEN AND OBJECTED TO:

Harry Pincus, Jr., p.q.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

KAREN B. WHITE	:	
Complainant	:	
vs.	:	IN CHANCERY NO. 14047
BENTON M. WHITE	:	
Defendant	:	

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

The complainant, Karen B. White, by counsel, hereby gives notice, pursuant to the Rules of the Supreme Court of Virginia, of her appeal from a Final Decree entered in the above styled case on February 15, 1974, in which the Court granted a final decree of divorce to the defendant husband on the grounds of desertion, and the Court awarded custody of an infant child to the defendant father.

The following errors are assigned:

1. That the Court erred in denying to the complainant wife a Final Decree of Divorce on evidence sufficient to prove cruelty, and in granting to the defendant husband a divorce on evidence insufficient to prove desertion.

2. That the Court erred in denying custody of the said infant child to the mother together with commensurate child support.

Pursuant to Rules 5:6 and 5:9 of the Rules of the Supreme Court of Virginia, counsel for Karen B. White states that the transcript of the case has been filed in the Office of the Clerk together with the Report of the Commissioner in Chancery

Respectfully submitted,

KAREN B. WHITE

By Harry Pincus Jr.
Of Counsel

HARRY PINCUS, JR.
DOUMAR, PINCUS, KNIGHT & HARLAN
1350 Virginia National Bank Building
Norfolk, Virginia 23510

I certify that a true copy of the foregoing Notice of Appeal & Assignments of Error and Statement as required by Rules 5:6 and 5:9 of the Rules of the Supreme Court of Virginia was mailed to Frederick H. Creekmore, counsel for Benton M. White, at 392 Battlefield Blvd S, Drawer F, Chesapeake, Virginia, 23320, on this the 21st day of February, 1974.

Harry Pincus Jr.
Counsel for Karen B. White

Filed in the clerk's office
the 22 day of February, 1974
TESTE: CHA[illegible] JR., CLERK
By Diane Eckleberry D. C.