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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

740618

NORMA FAYE JONES EATON

V.

PETER THOMAS EATON, SR.

APPENDIX

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

PETER THOMAS EATON, SR., Plaintiff,

v.

NORMA FAYE JONES EATON, Defendant.

STATEMENT OF FACTS

On August 17, 1973, the Plaintiff filed a Petition in which he alleged that he was under an Order to pay support and maintenance for his child in the amount of $125.00 per month. First notice for a hearing was set on September 28, 1973, continued at request of attorney for Defendant to October 5, 1973 because of conflict. Continued from October 5, 1973 to November 1, 1973, at request of attorney for Plaintiff because of hearing in Supreme Court of Virginia and continued by Court from November 1, 1973 to November 28, 1973. He alleged that his son was eighteen (18) years of age and emancipated and requested to be relieved of future payments of support due to this fact. A hearing was conducted on November 28, 1973 at which time both parties and their attorneys were present. It was stipulated by the parties that Peter Thomas Eaton, Jr., was a student at Virginia Commonwealth University and reached his 18th birthday on September 18, 1973. The Plaintiff moved

the Court to be relieved of support for his son in the amount of $125.00 per month on the ground that his son had obtained the age of 18 years and was no longer a minor. He based his request on the Statutory change made by the Legislature in 1972 which said that a child reached majority at age 18. It was further stipulated that the parties had entered into a separation agreement dated April 19, 1971 in which the Plaintiff agreed to continue to make support payments until Peter Thomas Eaton, Jr., reached the age of twenty-one (21), years on certain conditions. In the bed and board decree entered May 13, 1971, the Court Ordered that a copy of the written agreement dated April 19, 1971 be filed with the papers previously filed in the divorce decree.

The issue that was argued by counsel was whether or not the support should be terminated because Peter Thomas Eaton, Jr. had attained the age of 18 years. Counsel were allowed an opportunity to file letter memorandums in support of their positions. Defendant's attorney filed letter memorandum dated December 7, 1973. Plaintiff's attorney filed reply letter memorandum dated December 19, 1973. Court gave letter opinion on February 19, 1974. On March 5, 1974, an Order was entered in the Circuit Court of the County of Hanover which stated: "It appearing that Peter Thomas Eaton, Jr., the child of the parties is now eighteen years

of age, it is ORDERED that any Orders entered in this cause directing the Plaintiff to pay for the support of his son, after he reached eighteen years of age, be, and they are, vacated, and the Plaintiff is relieved of the requirement to pay support. The Defendant duly objects to this action."

Edward P. Simpkins, Jr., Judge
May 10, 1974

THIS AGREEMENT, executed in triplicate, this 19th day of April, 1971, by and between PETER T. EATON, SR., party of the first part, hereinafter referred to as "Husband", and NORMA FAYE EATON, party of the second part, hereinafter referred to as "Wife".

****

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That for and in consideration of the premises and in consideration of the mutual covenants, releases and agreements hereinafter set forth, and in consideration of the sum of Five Dollars ($5.00) cash in hand paid to each of the parties hereto by the other, receipt of which is hereby acknowledged by the respective parties before signing, acknowledgement and delivery of this Agreement one to the other, the said parties do hereby covenant and agree as follows:

1. The husband agrees to pay the wife a sum of Three Hundred Dollars ($300.00) per month, for the support and maintenance of their infant son, Peter Thomas Eaton, Jr., on the following terms and conditions:

(a) As long as the wife lives at and maintains a home at 5707 Oak Street, Mechanicsville, Virginia and Peter Thomas Eaton, Jr. resides at such address with her.

(b) Such payments of Three Hundred Dollars ($300.00) per month are to continue to be paid until Peter Thomas Eaton, Jr. reaches the age of twenty-one years, provided he lives at such residence and she maintains such residence as a proper home for their son.

(c) Should Peter Thomas Eaton, Jr. move from 5707 Oak Street; or should he marry or become self supporting, then the Three Hundred Dollars ($300.00) per month payments shall cease entirely; while the infant son is attending college and during the months that he is absent from 5707 Oak Street, Mechanicsville, Virginia, at college, then such payments shall be reduced to Two Hundred ($200.00) Dollars per month.

(d) Should the wife remarry the payments of Three Hundred Dollars ($300.00) per month for support and maintenance of their infant son, Peter Thomas Eaton, Jr. shall be reduced to Two Hundred Dollars ($200.00) per month if Peter Thomas Eaton, Jr. continues to live with wife, however, should he discontinue living with wife then the husband shall be relieved of paying support and such payments to wife shall cease.

(e) Should wife remarry she unequivocally covenants to vacate the premises at 5707 Oak Street, Mechanicsville, Virginia and further covenants that husband will be under no duty to support their infant son and she will assume the duty of support should she refuse or fail to vacate the premises at 5707 Oak Street, Mechanicsville, Virginia.

When Peter Thomas Eaton, Jr. reaches the age of twenty-one (21) years, payments by husband to wife, for his support shall cease regardless of wife's circumstances.

2. The husband is given the permission of coming onto the property at 5707 Oak Street, Mechanicsville, Virginia at times which are reasonable and agreeable to the wife.

3. The husband agrees that the wife shall have exclusive possession of the furniture and fixtures that are now located in their residence at 5707 Oak Street, except for a few items that husband shall remove; that in the event either party hereto should remarry, or when their son reaches the age of twenty-one, the personal property shall be appraised and either party may buy the other party's interest in the furniture except for one bedroom suit, which will be the property of the son, Peter Thomas Eaton, Jr.

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

PETER THOMAS EATON, SR., Plaintiff,

v.

NORMA FAYE JONES EATON, Defendant.

BED AND BOARD
DECREE

****

And it appearing that the parties have entered into a written agreement dated April 19, 1971, it is ORDERED that a copy thereof be filed with the papers in this cause.

ENTER: Edward P. Simpkins, Jr., Judge
May 13, 1971

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

PETER THOMAS EATON, SR., Plaintiff,

v.

NORMA FAYE JONES EATON, Defendant.

FINAL DECREE

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It is ordered that the Plaintiff pay to the Defendant the sum of $200.00 each month for the care, support and maintenance of his minor son, payable on, or before the fifth (5th) day of each month.

ENTER: Edward P. Simpkins, Jr., Judge
March 31, 1972

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

PETER THOMAS EATON, SR., Plaintiff,

v.

NORMA FAYE JONES EATON, Defendant.

O R D E R

This cause came on the 14th day of November, 1972, the parties appearing in person and by counsel, to be heard on the Plaintiff's petition to reinstate the cause on the docket, for injunction, reduction in support, visitation rights and was argued by counsel.

Accordingly, it is ORDERED that this cause be and it is reinstated on the docket.

Upon further consideration whereof, it is ADJUDGED, ORDERED AND DECREED that effective for the month of December 1972, the Plaintiff pay to the Defendant the sum of $125.00 each and every month for the support and maintenance of the minor child. Such sum is to be paid on or before the 21st day of each and every month until the further order of this Court.

ENTER: Edward P. Simpkins, Jr., Judge
November 20, 1972

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

PETER THOMAS EATON, SR., Plaintiff,

v.

NORMA FAYE JONES EATON, Defendant.

N O T I C E

TO: NORMA WILLS
Formerly
Norma Eaton
6410 Cold Harbor Road
Mechanicsville, Virginia

TAKE NOTICE that on the 28th day of September, 1973, at 9:15 a.m., I shall appear before the Honorable Judge of the Circuit Court of Hanover, at Hanover Courthouse, Virginia, and move the Court to enter an Order relieving me of future payments of support for my child who is now emancipated.

PETER THOMAS EATON, SR.

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

PETER THOMAS EATON, SR., Plaintiff,

v.

NORMA FAYE JONES EATON, Defendant.

P E T I T I O N

TO THE HONORABLE JUDGE OF SAID COURT:

Your petitioner, Peter Thomas Eaton, Sr., respectfully represents unto the Court as follows:

1. That he is presently under an Order of this Court to pay the sum of $125.00 per month for the support and maintenance of his son, Peter Thomas Eaton, Jr.

2. That your petitioner respectfully request the Court to relieve him of future payments of support due to the fact that his son is now 18 years of age and emancipated.

WHEREFORE, he moves the Court to enter an Order relieving him of support of his son after the September payment has been made and to grant him whatever relief that may be necessary in this cause.

PETER THOMAS EATON, SR.

****

George F. Tidey, Esq.
7th & Main Streets
Richmond, Virginia 23219

Ivy P. Blue, Jr., Esq.
Hanover, Va. 23069

RE: Eaton v. Eaton

Gentlemen:

I have considered the request of Petitioner, Peter Thomas Eaton, Sr. to release him of further payments of support of Peter Thomas Eaton, Jr. on the ground that he is now over 18 years of age. I received your letters and have examined the statute. Under the Juvenile and Domestic Relations law dealing with support of children, among other things, Section 16.1-141 "Definitions" we find the following: "(3) "Child", "juvenile" or "minor" means a person less that eighteen years of age;" and "(5) "Adult" means a person eighteen years of age or older;".

The divorce section dealing with support of children in Section 20-103 dealing with temporary orders speaks of "minor children". Section 20-107 in speaking of support after a final divorce speaks of "minor children".

Section 1-13.42 provides as follows: "Age of Majority -(a) Unless a different meaning appears from the context: (1) The words "infant", "Child," "Minor," "juvenile" or any combination thereof shall be construed to mean a person under eighteen years of age. (2) When used to mean or include disability because of age, the term "person under disability" shall be construed to mean or include a person under eighteen years of age. (3) The word "adult" shall be construed to mean a person eighteen years of age or over. (4) The word "infancy" shall be construed to mean the state of being under eighteen years of age. (b) For the purposes of all laws of the Commonwealth including common law, case law and statutory law, unless an exception is specifically provided in this Code, a person shall be an adult, shall be of full age and shall reach the age of majority when he becomes eighteen years of age."

Under the circumstances it is the Court's belief that an Order of the Court should be entered stopping the payments being made by Mr. Eaton.

The Court desires to point out, however, that in making the above decision it has not taken into consideration in any way the contract filed in the papers in which Mr. Eaton promised to pay $300.00 per month for the support of Peter Thomas Eaton, Jr. on certain conditions. These conditions apparently comtemplated that the payments would be made until he reached 21 years of age if certain other conditions were met. This contract was not approved or confirmed by the Court but merely filed with the papers. In the Bed and Board Decree there was no order for support and the final decree provided for support of $200.00 per month which was later reduced to $125.00. This opinion of the Court has no bearing whatsoever on any action which might be brought by any party under the contract.

Mr. Blue will please present the proper decree which has been endorsed by Mr. Tidey.

Very truly yours,

Edward P. Simpkins, Jr.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

PETER THOMAS EATON, SR., Plaintiff,

v.

NORMA FAYE JONES EATON, Defendant.

O R D E R

This cause came on to be heard on November 28, 1973, the parties appearing in person and by counsel, upon the petition of the plaintiff for relief from further support payments of the child of the parties, and was argued by counsel.

Upon Consideration Whereof, it appearing that Peter Thomas Eaton, Jr., the child of the parties, is now eighteen (18) years of age, it is Ordered that any Orders entered in this cause directing the Plaintiff to pay for the support of his son after he reached eighteen years of age be, and they are, vacated, and the plaintiff is relieved of the requirement to pay support. The defendant duly objects to this action.

Nothing further remaining to be done herein, it is Ordered that this cause be stricken from the docket and placed among the ended causes.

ENTER: Edward P. Simpkins, Jr.,
Judge
March 5, 1974

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

PETER THOMAS EATON, SR., Plaintiff,

v.

NORMA FAYE JONES EATON, Defendant.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

The Defendant, Norma Faye Jones Eaton, gives Notice of Appeal from the judgment of the Court entered herein on March 5, 1974, and assigns the following errors as required by Rules of Court 5:6:

1. The Court erred in ruling that any Orders entered in this cause directing the Plaintiff to pay for the support of their son be vacated, thus relieving the Plaintiff of his duty to pay for the support of his son.

2. The Court erred in Ordering the Plaintiff be relieved of his requirement to pay support after the Plaintiff's son reached the age of eighteen (18) years, said Order, in effect, being retroactive from March 5, 1974 to September 18, 1973.

3. The Court erred in entering its Order of March 5, 1974 vacating the Plaintiff's obligation to pay support for his infant son as said ruling was contrary to the law and the evidence.

NORMA FAYE JONES EATON