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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 760881

IN THE MATTER OF THE CHANGES OF NAME OF LARRY ANDERSON FLOWERS, JR. TO LARRY ANDERSON CAIN AND OF CHRISTOPHER ALLAN FLOWERS TO CHRISTOPHER ALLAN CAIN

LARRY ANDERSON FLOWERS
v. Appellant

JOYCE R. CAIN
Appellee

APPENDIX

E. EUGENE GUNTER
Attorney at Law
The Kent Building
16 South Kent Street
Winchester, Virginia 22601

Counsel for Appellant

FRED R. SURFACE & ASSOC. INC., HERITAGE BUILDING, RICHMOND, VA. (804) 643-7789

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PETITION

Your Petitioner, Joyce R. Cain, respectfully represents that she is a resident of the City of Winchester, Virginia, that she is the mother and legal custodian of Larry Anderson Flowers, Jr., born March 15, 1968 in Washington, D.C., and of Christopher Allan Flowers, born July 13, 1969 in Winchester, Virginia, both of whom are presently residents of the City of Winchester, Virginia; that her maiden name was Joyce Ann Rippeon and that the name of said children's natural father is Larry Anderson Flowers; that your Petitioner and Larry Anderson Flowers were divorced in 1971 and that your Petitioner has since married Thomas Franklin Cain; that the aforesaid parties are shortly moving to a new community and in order to avoid confusion, to permit registration in school under the names by which they wish to be known and to prevent embarassment on the part of said children among their playmates and friends, Petitioner desires to change their names to, respectively, Larry Anderson Cain and Christopher Allan Cain, and to this end hereby makes application therefor in accordance with the statute in such cases made and provided, to-wit: §8-577.1 of the Code of Virginia (as amended).

Joyce R. Cain

Joyce R. Cain

James L. Berry
Berry and Owen
108 North Braddock Street
P. O. Box 267
Winchester, Virginia 22601

Counsel for Petitioner

I, Thomas Franklin Cain, join in the foregoing Petition and consent and agree to the changes of name therein requested.

Thomas Franklin Cain
Thomas Franklin Cain

ORDER

This day came Joyce R. Cain and by leave of Court filed her Petition setting forth that she is a resident of the City of Winchester, Virginia, that she is the natural mother and custodian of Larry Anderson Flowers, Jr., born March 15, 1968 in Washington, D.C., and of Christopher Allan Flowers, born July 13, 1969 in Winchester, Virginia, both of whom are presently residents of the City of Winchester, Virginia, that said children's natural father is Larry Anderson Flowers, that her maiden name was Joyce Ann Rippeon and that she desires to change said children's names to Larry Anderson Cain and Christopher Allan Cain, respectively.

And the Court having considered said Petition, and being of the opinion that the application made therein should be granted, proceeding under the statute in such cases made and provided, to-wit: §8-577.1 of the Code of Virginia (as amended), doth hereby ADJUDGE, ORDER and DECREE that the name of Larry Anderson Flowers, Jr. be, and it hereby is, henceforth changed to Larry Anderson Cain, and that the name of Christopher Allan Flowers be, and it hereby is, henceforth changed to Christopher Allan Cain.

The Clerk of this Court is directed to enter a copy of this order upon the current Deed Book, indexed in both the old and new names and to transmit certified copies hereof to the

State Registrar of Vital Statistics and to the District of Columbia Department of Public Health, Vital Statistics Section.

ENTER this 6th day of February, 1976:

Judge

I ask for this:

D E C R E E

Upon a consideration of the Motion of Larry Anderson Flowers, his Affidavit filed herein, and a brief hearing of the evidence of Larry Anderson Flowers *ore tenus*, it is hereby ADJUDGED, ORDERED and DECREED that the Order of this Court herein on February 6, 1976, be, and it hereby is, vacated and this cause is set for a further hearing *ore tenus* on March 9, 1976, at 9:30 A.m., or as soon thereafter as the matter may be heard.

ENTERED this 27th day of February, 1976.

s/ Duncan C. Gibb
Judge

SEEN AND ~~EXCEPTED~~ Objected TO:

s/ James L. Berry
James L. Berry, Counsel for Joyce R. Cain

SEEN:

s/ E. Eugene Gunter
E. Eugene Gunter, Counsel for Larry Anderson Flowers

A Copy Teste: Michael M. Foreman

Michael M. Foreman, Clerk
Winchester Circuit Court

MOTION

Comes now Larry Anderson Flowers, natural father of Larry Anderson Flowers, Jr., and Christopher Allan Flowers as designated in the caption of this suit, by counsel, and moves this Honorable Court to vacate the Order entered herein on February 6, 1976, or in the alternative, to vacate the said Order and set ahhearing in reference to the matter or matters at issue herein in consideration of the interests of the said Larry Anderson Flowers.

LARRY ANDERSON FLOWERS

BY: E. Eugene Gunter
Counsel

E. EUGENE GUNTER
Attorney at Law
The Kent Building
16 South Kent Street
Winchester, Virginia 22601
Counsel for Larry Anderson Flowers

CERTIFICATE OF DELIVERY

I hereby certify that an exact copy of the foregoing Motion was hand delivered to James L. Berry, Esquire, 103 North Braddock Street, P. O. Box 267, Winchester, Virginia 22601, Counsel for Petitioner, on this 27th day of February, 1976.

E. Eugene Gunter
E. Eugene Gunter

A F F I D A VII T

STATE OF VIRGINIA

COUNTY OF FREDERICK, to-wit:

Comes now the Affiant, Larry Anderson Flowers, and, after having been duly sworn, does aver and testify as follows:

1. He is the natural father of Larry Anderson Flowers, Jr., and Christopher Allan Flowers.

2. He is providing good and adequate support for the aforesaid two (2) children.

3. He exercises his visitation rights with the aforesaid two (2) children.

4. Thomas Franklin Cain is not related to the aforesaid children unless one considers that a stepfather is related to a stepchild.

5. All of the averments of the Petition filed by Joyce R. Cain are not true.

6. The changes of name of the two children would serve to embarrass the said children among their playmates and friends and it would be an extreme matter of embarrassment to Larry Anderson Flowers.

7. Larry Anderson Flowers does not believe that the two children wish to have their last names changed from Flowers to Cain.

8. There have been no adoption or similar proceedings instituted in reference to the said two children.

9. Larry Anderson Flowers has done nothing to justify having the names of his children changed from his last name to the last name of their stepfather.

10. Larry Anderson Flowers believes that this change of name proceeding was instituted as a cruel and vindictive act towards him by his ex-wife, the Petitioner, and that the names of his children are being used as a weapon in this design of cruelty and vindictiveness if this Court does grant such a name change.

11. Larry Anderson Flowers received no service of process or legal notice in reference to this cause and he only learned about it unofficially a few days ago.

Larry A. Flowers
Larry Anderson Flowers

Subscribed and sworn to before me in my State and County aforesaid on this 27th day of February, 1976.

Phyllis D. White
Notary Public

My Commission Expires: Jan. 29, 1979.

E. EUGENE GUNTER
Attorney at Law
The Kent Building
16 South Kent Street
Winchester, Virginia 22601
Counsel for Larry Anderson Flowers

CERTIFICATE OF DELIVERY

I hereby certify that an exact copy of the foregoing Affidavit was hand delivered to James L. Berry, Esquire, 103 North Braddock Street, P. O. Box 267, Winchester, Virginia 22601, Counsel for Petitioner, on this 27th day of February, 1976.

ORIGINAL SIGNED BY
E. EUGENE GUNTER

E. Eugene Gunter

ORDER

On the 9th day of March, 1976, came the Petitioners herein, and their counsel, and came Larry Anderson Flowers, and his counsel, to be heard upon the Petition and other papers filed herein, upon the evidence taken ore tenus, and the matter was argued by counsel.

Upon consideration whereof, and it being the opinion of the Court from the evidence that the Petition was filed for no illegal or fraudulent purpose, that the granting of said Petition will have no disruptive effect on the family relationship and that the granting of said Petition is in the best interests of said infant children, it is

ADJUDGED and ORDERED that the previous Order of this Court entered herein on February 6, 1976 and which was vacated by Order entered herein on February 27, 1976, be, and it hereby is reaffirmed and reinstated in full force and effect nunc pro tunc.

Whereupon, counsel for Larry Anderson Flowers moved the Court to suspend the effect of this Order pending application to the Virginia Supreme Court, which motion is denied.

ENTER this 9 day of March, 1976:

Signed: Duncan C. Gibb
Judge

SEEN:

s/ James L. Berry, p.q.
Seen and objected to:
s/ E. Eugene Gunter

A Copy, Teste:-

Jeanette A. Rhodes, Clerk
Dep.

NOTICE OF APPEAL

TO: Michael M. Foreman, Clerk
Circuit Court for the City of Winchester
Rouss City Hall
Winchester, Virginia 22601

Comes now Larry Anderson Flowers, by counsel, and hereby notes his appeal from that Order of the Circuit Court for the City of Winchester, Virginia, as entered on the 9th day of March, 1976. In that Order the Court did reaffirm and reinstate in full force and effect nunc pro tunc its previous Order entered by the Court on February 6, 1976, and which was vacated by Order entered by the Court on February 27, 1976. In that Order entered by the Court on March 9, 1976, the Court did also deny the Motion of counsel for Larry Andesson Flowers which would suspend the effect of that Order pending application for appeal to the Virginia Supreme Court.

A transcript of the testimony and other incidents of the case is to be hereafter filed with the Court.

ASSIGNMENT OF ERROR

The Trial Court erred in granting the Petition filed by Joyce R. Cain, the natural mother of the hereinafter-named children, seeking to change the names of Larry Anderson Flowers, Jr. and Christopher Allan Flowers when the natural father of the said children, Larry Anderson Flowers, did not join in the said Petition and where he objected to the changes of names and stated various valid objections to the said changes of names.

LARRY ANDERSON FLOWERS
ORIGINAL SIGNED BY
BY: E. EUGENE GUNTER
Counsel

E. EUGENE GUNTER, ESQUIRE
The Kent Building
16 South Kent Street
Winchester, Virginia 22601
Counsel for Larry Anderson Flowers

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal and Assignment of Error was mailed, postage prepaid, or delivered, to the office of James L. Berry, Esquire, BERRY AND OWEN, 103 North Braddock Street, P. O. Box 267, Winchester, Virginia 22601, Counsel for Petitioner, on this 8th day of April, 1976.

ORIGINAL SIGNED BY
E. EUGENE GUNTER

E. Eugene Gunter

G/jrs
8/76
3-D

NOTICE OF IDENTITY AND DELIVERY OF TRANSCRIPT

TO: Michael M. Foreman, Clerk
Circuit Court for the City of Winchester
Rouss City Hall
Winchester, Virginia 22601

Comes now Larry Anderson Flowers, by Counsel, pursuant to Rule 5:9 (b) of the Rules of the Supreme Court of Virginia, as now in force, and recites that the transcript of the testimony given in the above-captioned cause as prepared by Ms. Dolores S. Smith, Court Reporter, and accompanying this Notice of Identity and Delivery of Transcript, has been filed on this the 6th day of May, 1976, in the Office of the Clerk of the Circuit Court of the City of Winchester, Virginia.

LARRY ANDERSON FLOWERS

BY: ORIGINAL SIGNED BY STEPHEN J. KUSHNER
E. EUGENE GUNTER
Counsel

E. EUGENE GUNTER, ESQUIRE
The Kent Building
16 South Kent Street
Winchester, Virginia 22601
Counsel for Larry Anderson Flowers

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of this Notice of Identity and Delivery of Transcript was on this 6th day of May, 1976, mailed to James L. Berry, Esquire, Counsel for the Petitioner, BERRY AND OWENS, P. O. Box 267, 103 North Braddock Street, Winchester, Virginia 22601.

ORIGINAL SIGNED BY STEPHEN J. KUSHNER
E. EUGENE GUNTER
E. Eugene Gunter

1 MR. GUNTER: Your Honor, the object of this cause is
2 that a petition was filed by Mr. Berry, and also it is signed by
3 Joyce R. Cain with her personal signature and then his thereafter.
4 Thomas Franklin Cain, I believe her present husband, is also
5 joined in the petition at the end thereof. And it was an ex
6 parte proceeding brought under Section 8-577.1 of the Code of
7 Virginia. No notice was given to the natural father. It concerned
8 the change of the name of the children of Joyce R. Cain, whose
9 former name before her marriage was Joyce R. Flowers. These
10 children were the children of Joyce R. Cain, her present name,
11 and Larry Anderson Flowers, my client. Now, he received no notice
12 of this, and we learned about the change of name proceeding quite
13 by chance, and then we appared in Court, Your Honor. I think it
14 was the twenty-first day after the Court had entered a decree.
15 The Court, on motion with an affidavit setting forth the summary
16 facts and reasons why Mr. Flowers felt that he was a very interested
17 and material party and also why he thought the change of name
18 should not be granted, did vacate the previous order and did set
19 the matter down for hearing today. Now, it is with that, Your
20 Honor, that the Court -- My research on the matter would indicate
21 that the petitioner would need to go forward with the evidence on
22 the matter, and Mr. Berry --
23 JUDGE: All right. Let's hear from Mr. Berry.
24 MR. BERRY: I will be glad to go ahead with the
25 evidence, Your Honor.

1 JUDGE: All right, sir.

2

3 THE WITNESS, JOYCE R. CAIN, BEING FIRST DULY SWORN,
4 DID DEPOSE AND SAY AS FOLLOWS:

5 EXAMINATION BY MR. BERRY:

6 Q. You are Joyce R. Cain, the petitioner in this
7 matter, are you not?

8 A. Yes, I am.

9 Q. Where do you live, Mrs. Cain?

10 A. 1966 Mayflower Drive, Woodbridge, Virginia.

11 Q. And you are the mother of the two children
12 involved in this matter?

13 A. Yes, sir.

14 Q. And Mr. Larry Anderson Flowers is the father of
15 these children?

16 A. Yes.

17 Q. And you and he were divorced in this Court on
18 April 30, 1971?

19 A. Yes, sir.

20 Q. And in that decree did you receive custody of
21 these children?

22 A. Yes.

23 Q. And have you had custody ever since that date?

24 A. Yes.

25 Q. And have you since remarried?

1 A. Yes, I have.
2 Q. What is your present husband's name?
3 A. Thomas Franklin Cain.
4 Q. Is that the gentleman sitting next to you there?
5 A. Yes, it is.
6 Q. And when did you remarry?
7 A. December 24, 1975.
8 Q. And thereafter you undertook to petition this
9 Court for the change of name of your children, did you not?
10 A. Yes.
11 Q. And for what purpose did you seek to bring that
12 result about?
13 A. Well, we were moving to a new community.
14 Q. Where?
15 A. From Winchester to Woodbridge, and the children
16 would be growing up in that area and going to a new school. The
17 children had thought that since we were married that their
18 name was automatically Cain. They started using Cain at school
19 here and weren't able to because, you know, it would cause
20 problems at school -- when they first went back to school after
21 Christmas. And I thought with going to a new area and being down
22 there that the children should be able to grow up having the same
23 name as mine and Tom's -- not having to explain to their playmates
24 and friends or other people at school why their names were Flowers
25 and mine and daddy's was Cain.

1 Q. Have you filed this petition seeking a name change
2 for any illegal or fraudulent purpose?
3 A. No. Just for the children's sake.
4 Q. Does Mr. Flowers provide support for the children?
5 A. Yes, he does.
6 Q. In what amounts?
7 A. $21.00 a week per child.
8 Q. He has made affidavit to the fact that he
9 exercises his visitation rights with the aforesaid two children.
10 Would you tell the Court please what visitation he has exercised
11 in the last couple of years?
12 A. Last year Larry visited the children -- actually
13 coming to the home -- taking the children -- twice. Once in the
14 summer. I don't know whether it was June or July. He took them
15 for a couple of hours one day. And then he had them at Christmas
16 this year.
17 Q. On what other occasions would he see them?
18 A. He never calls, and he never comes to visit the
19 children. The only other time that he does see the children is if
20 I happened to go to the Grand Union which is only a block from
21 where I lived. It was within walking distance. I used to go
22 to that grocery store. If I had the children with me, he would
23 see them down there.
24 Q. Is that where he is employed?
25 A. Yes, sir.

Q. Has he asked for the children and not been given visitation?

A. A long time ago, when we were first separated, there were problems. Four years or so ago there was a lot of hostility between us at that time which I guess is only normal when people are separated and divorced, but I would say in the past three or four years there has been no problem. Whenever he wanted the children, all he would have had to do was to notify me. That's the only thing. There's no problem with Larry seeing the children if he wants to.

Q. Do you recall what visitation he exercised the year before last?

A. The year before last he saw Christopher in July on Chris's birthday, and then he had them again at Christmas. Because I remember what he got Chris for his birthday. But he didn't take them at Christmas time to visit. He just came to the apartment to visit the children there. He didn't take them.

Q. Have you any purpose in seeking the granting of this petition to embarrass or punish Larry Anderson Flowers?

A. No, I don't feel that way. I was thinking of the children. I wasn't thinking of embarrassing him or doing something to cause hurt or shame or something to him. I was thinking what was best for the children.

Q. Have the children indicated to you in any manner what their wishes are?

A. Yes, they have. Like I said, when we were first married, they thought that their last name was Cain. Chrisy, the littlest one -- he went back to school after Christmas, and he came home with Chris Cain on his papers. And I said, "You know you can't do that." And he said, "The lady at school says I can write Chris Cain if you come to school and sign the papers so I can do it." And that was when we thought of changing their names. I realized that it meant something even to the littlest one. Because they think so much of Tom, and he has been around the children since they were two or three. He has always been there, and they kind of look towards Tom as a father substitute.

MR. BERRY: Your witness.

CROSS-EXAMINATION BY MR. GUNTER:

Q. Mrs. Cain, now, in addition to the $42.00 a week that Mr. Flowers pays to you for the support of the children, he also provides complete medical coverage for -- through his premiums and his employer's contributions, and so forth -- in other words, you have a card that he gives you that the children can get all medical treatment -- dental and everything for. Is that correct?

A. No, that is not so. They don't get complete medical treatment. The only thing that I get with that card is if the children are sick and they need a prescription, they can get their medicine for 50 cents. I can take them to the dentist. They do get their dental checkup, and they get their eyes checked

1 free of charge, but -- Now, he has hospitalization on them. If
2 they were to go to the hospital, that would be taken care of;
3 but doctor visits and that sort of thing are not taken care of
4 under the plan.
5 Q. All right. So, in essence, through your response
6 to the question then, he provides coverage that takes care of
7 glasses, teeth, prescriptions, hospitalization -- everything, in
8 other words, except regular office doctor visits. Is that right?
9 A. Yes.
10 Q. Now, Mrs. Cain, isn't it also true that since
11 your divorce that Mr. Cain has both provided savings accounts --
12 that Mr. Flowers has provided contributions or deposits to savings
13 accounts for the children and has purchased bonds for them?
14 A. About three years ago -- let's see. It was '72.
15 No, it was the Christmas of '71. Larry opened a savings account
16 for the children, and he put $50.00 in their savings account, and
17 he gave them both a $25.00 savings bond. And that was all that was
18 in that up until we got ready to move a month or so ago, and I
19 went to Larry and asked him because I had savings accounts for the
20 children, too; and they were both in the same bank. And I wanted
21 to take their bonds and their savings accounts and put it all into
22 one account so that when we moved it could all just be transferred
23 without any inconvenience or hassle over it, and he agreed to that.
24 He signed the bonds, and he signed their savings accounts, and let
25 me do that. But he doesn't give them money in a savings account

1 on a regular basis or savings bonds. That money is the same as
2 it has been except for the interest drawn on it since 1971.
3 Q. But, Mrs. Cain, besides the savings account that
4 you are talking about that you or the mother maintains for the
5 children, Mr. Flowers, in fact, had a separate savings account
6 for the children that admittedly he didn't contribute to every
7 week, but he contributed to when he had some money?
8 A. No, the only time that he ever put money in that
9 was when it was first opened. They have the books at the bank.
10 They kept all the old books. There is one deposit when he opened
11 the account, and that was it. Then the interest drawn on it.
12 Q. All right. Now, and this is the savings account
13 that you asked him to sign over to you so that you could put it
14 all into one savings account for the children?
15 A. Right.
16 Q. And he did that, didn't he?
17 A. Yeah.
18 Q. Now, Mrs. Cain, you mentioned birthdays and
19 Christmas and so forth. Did Mr. Flowers give the children presents
20 on those occasions?
21 A. Mr. Flowers -- he doesn't see -- Well, he saw
22 Chris the year before last on his birthday.
23 Q. I'm asking you does he give them --
24 A. Well, he doesn't -- well, he does. He's always
25 busy working and that sort of thing. When I go to pick up my check,

1 from him every week, if I remind him that the children have a
2 birthday, he'll say,if I give you some extra money this week, will
3 you pick up something for them and tell them it's from me. And
4 that's the way it has been, Larry; and you know that.
5 Q. Mrs. Cain, is it not true that on several
6 occasions that the children have actually come down to the Grand
7 Union to their father to talk to him and to pick up the check?
8 A. Twice I sent Chris. My apartment is right in
9 back of Grand Union. There's a little path that goes right down
10 to the store, and twice I called to see if Larry was working.
11 Twice I sent Tag-- he's the oldest one -- down to the store,
12 knowing that Larry was working because I called to check to see
13 if I could get my check. Because when I wasn't working, I was
14 very dependent on the child support that I got from him; and the
15 only way that I could get my check was to go get it. He even told
16 me once. He even told me once -- he said,"Do you know how much
17 that would cost me in stamps each week if I had to mail it for a
18 whole year?" So the only way I would get my support check was to
19 go get it or send Tag after it.
20 Q. All right. Mrs. Cain, is your support current
21 now?
22 A. No, it is not. I didn't get a check last week.
23 Q. You are due a check right now?
24 A. From last week. Yes, I am.
25 Q. And has your support been kept current -- how long

have you all been separated?

A. Larry and I divorced in 1971.

Q. All right. And your support of $42.00 a week, plus also alimony when you were first separated, has all been paid, has it not?

A. Yes, it has been.

Q. And, of course, you have moved recently as indicated?

A. Yes, sir, I have.

Q. And this money is paid directly by Mr. Flowers to you rather than through the Court?

A. Yes, it is.

Q. Mr. Flowers has a check for you today, but he doesn't have your address.

MR. FLOWERS: You gave it to me, and I lost it.

Q. Now, you are aware of the fact also that Mr. Flowers has life insurance policies upon which the two children are beneficiaries, aren't you?

A. No, I wasn't. I knew he had them on there, but his mother and father were to get the money to be used for the children. It was my understanding -- the way his insurance worked.

Q. Then you haven't seen the policy or the beneficiary part?

A. No, I haven't. Not on Larry's policy.

Q. But you did understand that it was made out to be

1 used for the benefit of the children?

2 A. Through his mother and father. They haven't

3 seen the children for five years either.

4 Q. Did -- and with the medical insurance coverage

5 and matters of that kind, all of that is also paid to date current,

6 is it not?

7 A. I don't know for sure. I knew that there were

8 some outstanding bills that Larry was responsible for, and I don't

9 know whether he has taken care of them yet or not.

10 Q. You haven't had any complaints about the creditors,

11 have you?

12 A. I haven't no, but I understand he has. He has

13 told me he has.

14 Q. Now, Mrs. Cain, did you give Mr. Flowers any

15 notice of this proceeding?

16 MR. BERRY: The record shows that there was no notice.

17 JUDGE: She had nothing to do with that anyway. That

18 has to do with her attorney.

19 Q. All right, sir. The record I think shows that.

20 Mrs. Flowers, the two children are both boys I believe, aren't

21 they?

22 A. Yes, they are.

23 Q. And their ages are what?

24 A. Six and seven.

25 Q. All right. And they know their father and who he

is, do they not?

A. Tag was old enough when we separated to kind of know Larry, but it wasn't until a couple of years ago -- Now, Chrisy -- he was just a baby when Larry and I separated, and not being around Chris very much -- Chris knows now that he is their natural father. Both of them understand that, but they don't call him daddy. They call him Larry. They don't see him, you know. To Chrisy for a long time he was the man at the grocery store that give him a penny for the bubble gum machine. And that really hurt for a long time. It really did.

Q. Hurt who? The children or you?

A. Me because he would never see the children.

Q. All right. So they both know who Larry is and that Larry is their father?

A. Yes, they do. Yes, they do.

Q. That is all I have of this witness.

JUDGE: All right.

RE-DIRECT BY MR. BERRY:

Q. Mrs. Cain, has Larry ever mentioned to you having the children adopted?

A. Well, when he found out about the name change, he called me one evening; and he said, "Joyce, did you know the children's last names changed?" And I said, "Yes, I did." He said, "Well, you just go ahead and have them adopted. Why don't

1 you have them adopted?" And I couldn't believe this because I
2 didn't think that Larry would ever want to do something like that
3 because knowing Larry, you know -- I just didn't think he would
4 go along with ever having the children adopted. And I said, "What
5 do you mean?" And he said, "I just want you to go ahead. Get the
6 papers drawn up. Talk to your lawyer, but don't have your lawyer
7 here in town do it. Have it done by a lawyer out of town." He
8 said, "Just go ahead and start adoption procedures. I'll sign the
9 papers." I said, "If you want to allow Tom to adopt the children"
10 -- I said, "Go about it your way." I said, "Right now we are
11 moving." You know -- And I said that I have no intention of going
12 into Court right now for adoption procedures for the children
13 because there is so much going on right now. You Know -- just
14 getting married and moving and going to a new area and getting
15 settled -- we just moved last week. But he did. When he first
16 found out -- that's what he told me. He said, "Go ahead and have
17 adoption proceedings drawn up for the children." He said, "I can't
18 afford to support two children that I don't see." That's what he
19 told me on the phone.
20 Q. Had he ever mentioned it at any other time before?
21 A. At income tax time. We had a hassle over income
22 tax records who was going to claim the children and that he couldn't
23 afford to support them every week and not be able to claim them.
24 MR. BERRY: That's our case, Your Honor.
25 JUDGE: All right, sir. Mr. Gunter.

1 MR. GUNTER: Yes, sir. If Your Honor please, I would
2 move to strike the petitioner's evidence on this matter; and in
3 relation thereto I do have some case law. I have referred the
4 Court in the very short preliminary hearing that we had a week or
5 two ago to the recent Virginia case which did not touch upon the
6 factual situation that we have here. It dealt with a married
7 woman wanting to resume her maiden name and the husband joining
8 in that petition, and there also being an agreement that any
9 children born of the marriage would carry the father's surname;
10 and the Court making a finding that this would not be disruptive
11 in any respect to the husband and the wife who were the only
12 parties involved. Now, if Your Honor please, this is the only
13 Virginia case that I can find that has ever been decided under
14 this statute. I think the language is distinguishing as far as
15 this case is concerned. Now, in examining the case law, however,
16 throughout the other jurisdictions, Your Honor, I would refer the
17 Court to a case from New York. It's the Application of Shipley.
18 It's 205 New York Supp. 2d 581, 26 Misc. 2d 204. In that case
19 the Court held, and this is a direct quotation from the case --
20 "Possible adverse effect on relationship between a father and his
21 children is a valid ground of objection to changing the surname
22 of the children where father has evidenced sustained interest in
23 children by continuing support payments and visitation, and he
24 does not unreasonably delay in objecting to the change." Now, in
25 another New York case, which is entitled Application of Ebenstein,

which is 85 New York Supp. 2d 261, that Court said, "divorced husband was held entitled to an order directing his divorced wife to desist from imposing on their children under the age of sixteen years any name other than his name." The last case, Your Honor, and this used to be in the Southeastern Reporter system; and therefore I was able to make a photocopy of this upon the rather short period of time that we had in between. It's the case of Tolbert v. Tolbert, and that's a Georgia case. The citation on that is 131 Georgia Appeals 388, and it's reported in 206 S. E. 2d 63. In that case the Georgia Court declined to allow the children's names to be changed to the name of a stepfather in a situation where there was a divorce and the mother was granted custody. And the matters that the Court pointed to, Your Honor, was that consideration should certainly be given to the well-being of the children, such as identity problems and things of that sort. It says that the petitioner must show the well-being of the child and possibly by expert testimony. Consideration should be given to the interest of the parent -- and in parenthesis, father -- that he has in continuing the parental surname. It pointed out again, as the children are the father's dependents in connection with family income tax returns, complications would be involved when he showed his children with a name different than his on his income tax returns. Also pointed out in this particular case, Your Honor, but I was not going to hand you that case -- I would like to point out an analogous thing in

this case, is the fact that this man carries life insurance and medical insurance on these children and the problems -- whether they be inconveniences or possibly even a refusal to pay on the part of his insurance company when his policy covers his children and he makes claim for individuals whose names are not the same as his. Now, also, if Your Honor please, if I -- I would submit that analogous to the same would be possible confusion with the clauses of a will or even with the intestate descent, but those are just thoughts in reference thereto. Now, the evidence has shown here that the husband does, rather diligently, pay $42.00 per week for the support -- and simple mathematics will show how much he has paid over a period of five years for the children -- that he does pay or arrange to have paid all medical bills -- that he sees that the children have presents at Christmas and birthdays -- and at this point I think, Your Honor, we have to take the evidence as it is. There is an admission of visitation, but a claim that it is not a sufficient -- it is not a regular visit. Now, Your Honor, added to that, the Georgia case mentions, and it is the same in Virginia; and I feel that this is really one of the most intelligent reasons of all of why the evidence should be stricken when there is such an interest shown as has already been shown in this case by the evidence before the Court and where there is disruption of the family and where there are these complications and inconveniences and matters involved. The point I am getting to, Your Honor, is -- suppose something should happen

1 to Mrs. Cain as the situation now is. Under the laws made and
2 provided in Virginia, there would be no question in the world
3 about the fact that Mr. Flowers, as the natural parent of the
4 child -- custody would revert to him just as a matter of right
5 as the blood surviving parent of the child. This man would have
6 his two children with Mrs. Cain's present husband's name and
7 what would he do then? It would create just almost absurd cir-
8 cumstances, and it would probably put him in the position of --
9 if this were granted, in order to rectify the situation to come
10 in to get another change of name proceeding in order to get his
11 children's names back to his own name that it was when they were
12 born. I make this motion, Your Honor, based on the evidence that
13 has been offered herein.
14 JUDGE: All right. Mr. Berry?
15 MR. BERRY: I will try to be brief, Judge. I think it
16 is very difficult to try to apply a case from another juris-
17 diction, particularly where we have no idea what the statute
18 from those jurisdictions is and particularly where we don't have
19 the case. As Your Honor knows, footnotes and headnotes are very
20 often not exactly a statement of what the case holds. In the
21 United States there are various change of name statutes, and some
22 of them require that the application be made by both parents,
23 Some of them require a notice to the parent who is not making
24 an application, and some, like Virginia, don't require any notice
25 at all. Just an application by one of the parents. I think that

1 the holdings generally are that where -- of course, where the
2 application has to be made by both, then the objections of the
3 one are considered more than they are in the states where the
4 application can be made by one with notice to the other. In
5 those states then the objections of the non-applying parent are
6 considered, but the general rule seems to be, as it is in
7 Virginia, I would suggest to the Court, that the best interests
8 of the children are still the paramount and deciding factor in the
9 case of changes of name as they are in custody and adoption and
10 those sort of proceedings. In Virginia we have a statute that
11 doesn't require any notice, and this case recently decided in re
12 Strikwerda v. Antell says, as the statute does, that the matter
13 is one within the discretion of the Court; and the Court, after
14 hearing the evidence, has to decide whether it is in the best
15 interest of the children and whether the petition ought to be
16 granted. I would like to point out to the Court that the only
17 Virginia authority on the case, while bound to be different to
18 some extent, says in so many words that the statutes suggests that
19 in the absence of an illegal purpose a change of name petition
20 should be granted. And I think we are in a position now and we
21 will be at the conclusion of all the evidence that there's no
22 illegal purpose in this change of name -- in that petition. I
23 will only mention briefly because Mr. Gunter mentioned it -- it
24 is my recollection that on tax returns you only put in the first
25 names of children anyhow and both of those things would be pre-

conditioned on qualifying to take them as deductions, I would suggest to the Court, and that's the requirement of in excess of 50 per cent support. I don't know whether this would make it or not. It seems to me that it is not such an open and shut case as Mr. Gunter would suggest that Mr. Flowers would get the custody of these children if something would happen to Mrs. Cain; and, even if it did happen, it is not such a difficult task to change the name of any one. Because it is not all that difficult to change it back if that event were to occur, I think we have amply sustained the burden necessary certainly to survive a motion to strike, and I think you will so rule.

JUDGE: I'll deny your motion, Mr. Gunter.

THE WITNESS, LARRY ANDERSON FLOWERS, BEING FIRST DULY SWORN, DID DEPOSE AND SAY AS FOLLOWS:

EXAMINATION BY MR. GUNTER:

Q. You are Larry Anderson Flowers?

A. Yes, sir.

Q. And you are the father of Christopher Allen Flowers and Larry Anderson Flowers, Jr.?

A. Yes, sir.

Q. And those children were born in wedlock when you were married to Joyce Rippeon Flowers, is that correct?

A. Yes, sir.

Q. Now, Mr. Flowers, I believe in the year 1971

1 a divorce was granted between you and Mrs. Flowers?
2 A. Yes, sir.
3 Q. In that divorce decree custody was granted to
4 Mrs. Flowers and you were ordered to pay support, is that correct?
5 A. And alimony.
6 Q. All right. And have you done that since that
7 time, Mr. Flowers?
8 A. Yes, sir.
9 Q. All right. And would you tell the Court what
10 you paid in amounts from the date of the separation on to the
11 present time and are continuing to pay?
12 A. It started out at $62.00. That went on for
13 about two years. She said she couldn't work, and it wasn't but
14 like six months after we were divorced she was working. Up
15 until I took her back into Court to get the alimony dropped she
16 had worked all along; and, when we went to Court, the Judge
17 granted that I wouldn't have to pay any more alimony. And I
18 offered to pay her medical bills, eyeglasses and stuff like that
19 which she held me to. He said he never heard tell of such a
20 thing -- which, when she needed eyeglasses, she went and got them.
21 I reckon she used the medical rights. I don't know. I never
22 asked her. And there has been different times that she has called
23 me for something for the kids. She was short on money, and she
24 got it. The check didn't have to be paid until Sunday; and, if
25 she wanted it like on a Monday or Tuesday, she would call and ask

me if I had the money -- if she could get it early. I don't remember but one time that I didn't have it right then. But anytime she wanted it early or anything she was always able to get it.. Like I say, right after we were married there was hostility there. We had to go to Court for things that she -- part of my clothes and all that I never did get. Just you know -- I haven't done a thing wrong, and I can't see any need of even changing the boys' names. That's the reason I am here right now. I did call her when I first heard about changing the name, and I was mad. I made the statement "Why don't you go ahead and adopt the kids? You have done everything else." And I won't deny that part, but at the time I found out I was very, very mad and upset about it.

Q. All right. Were those -- Was that comment then made in anger before --

MR. BERRY: I object to his leading him, Judge.

JUDGE: Yes. Don't lead him too much.

A. Well, I said at first that I was angry when I called them.

Q. All right. Now, Mr. Flowers, in addition to the support paid, will you tell the Court what kind of a relationship that you have had with your two sons and what, if anything, else, you have provided them during -- well, since the separation?

A. Well, it's like Christmas time, birthdays, and everything like that. One time on Chris's birthday he wanted

something for his birthday, and she had to order it out of the catalog. I said, "Well, I'll just add the money to the check; and you take care of it for me." And she said, "Okay." All the other times at Christmas time or their birthdays I will either ask them or ask her what they need, and they have always got it. There has never been a question about it. I know it was more than two times. I mean I can't remember -- how can I say how many times I have seen the kids, but she comes right up with two times. As I say, it's like every other day I see them at the store and talk to them, and she said he would pay for bubble gum. Anything they wanted in the store, if they wanted candy, or anything they wanted, I would buy for them. What else am I supposed to do?

Q. All right. Mr. Flowers, on the occasions when you attempted to exercise visitation privileges, have there been problems?

A. Yes, sir. We had to go back to Court. For my grandparents' 50th anniversary I was supposed to get the kids with a week's notice. Our understanding was that I called her the day before or give her notice I could get the kids anytime I wanted. I called her the week before and the day before I was supposed to pick them up -- No, I couldn't get them. She couldn't even find them, and she knew the day before. And if I have to look in the dresser right now -- all the family's pictures are there -- all but my two kids.

1 Q. All right. Now then, Mr. Flowers, as far as
2 the two children are concerned then do you still have love and
3 devotion to those two children?
4 A. Sure.
5 Q. All right, sir. Mr. Flowers, does this petition
6 or change of name constitute an embarrassment to you,,it being a
7 request to the Court to change your children's names to their
8 stepfather's name?
9 A. Yes. Like last Friday I had to take off to
10 come down here because it's the last day, and I have to tell them
11 at the store why I am taking off. Sure it's embarrassing. It's
12 very uncomfortable. If I had done something wrong, I could see
13 it; but I haven't done a thing wrong. I have paid everything.
14 Q. All right. Now, is it your expectation that
15 you will continue to support these children, and I understand your
16 wife is moving down into the Washington area, but also to visit
17 them whenever you can?
18 A. Yes, sir.
19 Q. And is it also your expectation to continue medical
20 coverage, insurance coverage, life insurance, and all the things
21 that have been mentioned?
22 A. Yes, sir.
23 Q. Mr. Flowers, do you talk to the children on
24 these occasions when you see them that you have described?
25 A. Yes, sir.

1 Q. Have they ever expressed any desire to you or
2 have they ever asked you any questions about it or has it ever
3 been mentioned anything about their names?
4 A. No, sir. Never. And on occasion Chrisy would
5 call me "Larry", and at the same time he would catch himself and
6 call me "Daddy". He was the youngest.
7 Q. All right. What does the oldest boy call you?
8 A. He has always called me"Daddy." He never called
9 me "Larry". One time -- the only time I remember him calling me
10 that was one time -- that was because little Chrisy said "Larry"
11 and he went right back to "Daddy" too; and it's always "Daddy".
12 Q. All right. Now, I believe Mrs. Cain indicated
13 that she was married on this past Christmas Eve -- in other words,
14 on December 24, 1975.
15 A. Yes, sir.
16 Q. Have you remarried?
17 A. No, sir.
18 Q. All right. Mr. Flowers, if anything happened
19 to your exwife, Joyce Cain, would you want to resume custody of
20 the children yourself?
21 A. Yes, sir.
22 Q. Mr. Flowers, have you been contacted by the
23 school or by anyone else or do you have any knowledge of any
24 difficulty at all that the children have experienced as a result
25 of their name being Anderson rather than Cain?

A. No.

Q. And the children were in local school up until about what -- a few weeks ago?

A. They moved last weekend. I don't know when she registered them in school. When I called and asked her to -- She registered them way before this 21 days was up because, when I called her, she had already registered the kids in school; and they were already registered under Cain's name. In fact, when she got the money -- for me to sign the account -- the savings account and bonds over to her, she had already changed the names to Cain then. That is how I found out about it.

Q. Mr. Flowers, did you maintain any kind of savings account or bonds for the children?

A. Yes, sir. Like I say, I hadn't put anything in for the last year. The interest and all was there. I had bonds and stuff like that for them. I never -- I wasn't a rich man. I paid her so much a week and pay for myself and for Christmas and everything and buy stuff too.

Q. What is your education, Mr. Flowers?

A. I went to the sixth grade.

Q. And you work at Grand Union at a chain grocery store, is that right?

A. Yes, sir.

Q. And I think obviously you -- that's why we are here -- you object to the change of this name.

A. Yes, sir.

Q. All right, sir. Would you answer Mr. Berry's questions?

CROSS-EXAMINATION BY MR. BERRY:

Q. Mr. Flowers, was it your grandparents fiftieth anniversary?

A. Yes, sir.

Q. When was that?

A. It has been two years ago. Two or three years ago. The date I don't exactly remember. That's when we had to go back to Court. The Court wasn't until after that.

Q. Three years ago, was it?

A. I would say something like that.

Q. Well, I mean was it almost exactly three years ago?

A. I have a terrible membry for dates. Two and a half to three years ago.

Q. Mr. Flowers, now tell me about the savings accounts and bonds. When you opened them was that around 1971? Around the time of divorce?

A. No, sir, it was later than that.

Q. When would it have been?

A. That would have been about two or three years ago.

Q. That you opened a savings account for each child?

A. Yes, sir, a separate one.

Q. How much did you put in each account?

A. It was more than -- it was a couple hundred dollars or more in the account and the bonds and everything.

Q. I will ask you about the bonds in a minute. How much in the savings account -- each one?

A. Both of them together I guess about $160.00.

Q. I want one.

A. One had eighty some and the other had eighty some plus a couple bonds.

Q. This is what you opened them with -- $80.00 each?

A. No. I think I opened one one time -- I think I opened one with 25 and a couple of times added 25 in there. I really don't remember. It's -- I had a little savings account there, but I don't remember every time I put something in it. I really don't remember. I can't even tell you what I have in my own. I know it's not much.

Q. And there wasn't much in these accounts, was there?

A. No. She is getting everything -- the kids are getting everything they need now. How much more do we give them?

Q. I have heard you say that twice now. What

sort of car do you drive, Mr. Flowers?

A. I just bought a new car.

Q. What was it?

A. I just bought a new Mercury.

Q. What kind of Mercury did you buy?

MR. GUNTER: If Your Honor please, I don't -- I think the means of his providing support for these children is important in this proceeding, but I do not believe that it is pertinent as to what kind of a car the man happens to be driving at this time.

MR. BERRY: The Court please, he's made affidavit to the fact that he provided good and adequate support, he's made reference twice to not being a millionaire in his testimony, and I suggest that I ought to be able to explore those and one of the items in that regard would be what sort of a car he has purchased.

JUDGE: I will permit you to pursue it as I think it will clarify the extent of support and the effort that is being made.

Q. I just want to know the make and the model.

A. Well, it's a Mercury Marquis, and the bank's -- I owe everything to the bank. You can check the bank if you want to know what that is.

Q. A 1975?

A. Yes, sir.

1 Q. What are you monthly payments on it?
2 A. Approximately about a hundred and fifty.
3 Q. A hundred and fifty a month?
4 A. Yes, sir, and that's all I own. She -- I drive
5 what I want to drive.
6 Q. The bonds that you took out for the kids --
7 you took out one for each of them?
8 A. Yes, sir. They were $25.00 bonds.
9 Q. They cost you $18.75 a piece?
10 A. I don't know what I paid for them. That has
11 been a couple of years ago.
12 Q. Mr. Flowers, are you testifying under oath
13 that you opened a savings account for each of these children
14 and that one or more times after that you made additions to that
15 savings account?
16 A. To my recollection, yes, sir. I mean I can't
17 swear to it, but to my knowledge, yes sir.
18 Q. Well, now you're under oath. You're having
19 to swear to it, Mr. Flowers.
20 A. Well, I can't swear to it because I really
21 don't know. She handed me the books. I didn't look -- I remember
22 the amount in the books roughly because I was mad when she
23 wanted to change it. I just looked at the books and signed them
24 all and said, "Here you might as well take everything else."
25 And she comes down to the store while I am working again and

wants me to do that which I never hesitated. I went ahead and signed it.

Q. Mr. Flowers, in 1971 who got the divorce in this case?

MR. GUNTER: If the Court please, I object to that -- that is just --

JUDGE: A matter of record.

MR. BERRY: Yes, sir. All right. You made affidavit, Mr. Flowers, that all the averments of the petition filed by Joyce R. Cain are not true. What averments in there are not true?

MR. GUNTER: Your Honor, I think we will have to look at it.

Q. Well, maybe it will just simplify it if I ask him..

JUDGE: Yes, please.

Q. She is the mother and legal custodian of the two children, is she not?

A. Yes, sir.

Q. And their birth dates and birth places are correct?

A. Yes, sir.

Q. And they both at the time of filing this were residents of the City of Winchester, were they not?

A. Yes, sir.

Q. And her maiden name was Joyce Ann Rippeon?

A. Yes, sir.

Q. And your name is Larry Anderson Flowers?

A. Yes, sir.

Q. And that you all were divorced in 1971?

A. Yes, sir.

Q. And that she has now married Thomas Franklin Cain?

A. Right.

Q. And that they're shortly -- at that time were shortly moving to a new community?

A. Right.

Q. And that the change of the children's name would avoid confusion and permit their registration in school by the names that they wish to be known and to prevent embarrassment on the part of said children among their playmates.

A. I disagree with that right there. I mean it's -- they went to school here. I mean whether they move or not they are my kids and I have paid for them. I have never been late. I have never done a thing wrong. I mean -- I think this is all wrong for changing the names. They are my kids. I mean -- and the way this thing was handled. In my opinion, the way this thing was handled I thought -- You can ask Mr. Gunter here how hot I was about it. He said, "I never heard tell of such a thing." Before I called her, you brought the petition down to the store; and I said, "Give me a copy of it." She wouldn't

give me a copy. So finally I went over and I said, "I need a copy because he went to Court to try to find it and could not find it." And she read it to him, and I said,-- well, a couple of words there -- you might as well lock me up because you are not going to get by with this. I was hostile then. Well, not really hostile, but I was upset about it when I heard it. Well, I was embarrassed when I was told about it -- very embarrassed. Don't you think I didn't get on the phone and call right then. I didn't ask her how she changed the bank accounts. I asked her how she registered the boys in school, and she said under Cain. And I said, "You are not going to do that." And I called back to Mr. Gunter -- I said, "This just wasn't right."

Q. I have no further questions.

RE-DIRECT BY MR. GUNTER:

Q. Mr. Flowers, proceeding just one step further than Mr. Berry's question, when you did see a copy of this petition at my office after we were able to locate it. Did you feel that the children wished to be known by the name of Cain and that to prevent embarrassment on the part of these children among their playmates and friends that their names ought to be changed to Cain?

MR. BERRY: I am going to object to the question, Judge, I don't think there is any way he could have known under the evidence as it stands. He hasn't seen the children since

1 Christmas.

2 JUDGE: He answered the question any way. The fact
3 that he was embarrassed.

4 MR. BERRY: He testified earlier that she had never
5 said anything to him about having the name changed.

6 A. May I say something to that point? Let's back
7 up here about a year, and she said that he has been with the kids
8 for three years or something like that. One day I was sitting
9 in the Back Room, and Tom had come in. And he said, "Do you
10 know that Joyce has somebody else moving in with her?" Now,
11 this was when he lived with her before; and he has come to my
12 shoulders to cry at the Back Room to me.

13 MR. BERRY: Judge, I don't see --

14 A. That's what the change part is about the boys'
15 names.

16 MR. BERRY: What the relevancy of this is.

17 JUDGE: Yeah, I don't see much --

18 A. Well, he asked the question about Cain -- that
19 the boys wanted to change their names to Cain. Well, I'm leading
20 up to -- he hasn't been there for three years. I mean he wasn't
21 there -- he has only been back a couple of months, and they
22 just got married. How can the boys want their names changed?

23 JUDGE: You don't know that. Have you talked to
24 them and asked them?

25 A. I know. I have been over to their house.

JUDGE: Have you asked them whether or not --

A. Do you mean have I asked them do you want your names changed to Cain? No, sir, I did not.

Q. Mr. Flowers, in reference to the question about Mr. Cain, do you know of your own knowledge from visitations whether or not Mr. Cain has been around the children continuously prior to the marriage on Christmas Eve?

A. Yes, sir, I knew that. The fact that -- a couple of times I was over to see the kids and this was just before Christmas before Tommy come back. She was very upset because this guy she was living with knew him and Tommy had come back. It hasn't been that long that they would say anything. They knew Tommy before, but there had been like a six-month or better than a year that Cain wasn't even around. Now, within a couple of months, the boys want to change their names; and she wants to change their names. She got married. All within a couple of months, and I'm their father for seven years. I mean do you want to take a couple of months for seven years?

MR. BERRY: Judge, I am not really sure how appropriate it is, but, if I might in rebuttal, I just wanted to ask Mrs. Cain a couple of questions.

JUDGE: Yes.

MR. BERRY: I'm really not even sure it's rebuttal. I hope I don't overstep; and Mrs. Gunter, I am sure, won't let me.

REBUTTAL EXAMINATION BY MR. BERRY:

Q. Mrs. Cain, do you recall when you got the attested copy of this order that I sent you that the Judge had entered --

A. The 13th of February or the 12th of February. It was that weekend.

Q. What steps did you take after receiving that copy with regard to changing the children's records?

A. I went ahead because I was waiting to get them -- I had to register them in the new school, and I was waiting for that to come through so I could register them under their new name down there. And I went ahead and changed their records at Virginia Avenue School here.

MR. GUNTER: Judge, I do object. I don't think that's responsive.

JUDGE: All right, sir. Well, I think we could because he made the statement that she had already pre-registered them.

MR. BERRY: Do you know when you changed what? Can you just sort of give it to us --

A. I changed the records at Virginia Avenue School on the 13th of February. I went down to the Rockbridge Elementary School on the 17th and registered them in the new school down there on the 17th of February.

Q. Is that in Woodbridge?

A. That is in Woodbridge. Yes, sir.

Q. And I also had to change their savings accounts -- their names -- their social security cards on the 13th. I changed their birth certificates. I filed their birth certificates. I have gotten Larry's back with his new name change on it. I haven't gotten Chris's from Richmond yet. I changed their Sunday School attendance records. I changed their names with Dr. Jones, Dr. White and Dr. Cain, and their names have also been changed in their grandfather's will.

MR. BERRY: Your witness

MR. GUNTER: I don't believe I have any questions.

MR. BERRY: That's our case, Your Honor.

JUDGE: All right. Do you wish to argue?

MR. BERRY: Oh, yes, I forgot who was first. I really haven't anything material -- Well, I don't have much more to say, Judge. Mr. Gunter mentioned in his argument before about the disruption of the family and disruption of the family is mentioned in the only Virginia case on this; and I would suggest to the Court that that is not a consideration in this case -- that if there was any disruption of the family it came about in 1971 when Mrs. Flowers was divorced from Mr. Flowers on the grounds of adultery. I think that the --

MR. GUNTER: I object to that, Your Honor. That hasn't been the subject of any evidence at this hearing and has no bearing upon the matters either.

1 JUDGE: It's a matter of record.

2 MR. BERRY: Yes, sir, it's a matter of record.

3 MR. GUNTER: Yes, sir, but it hasn't been shown
4 here, and I don't believe it has any relevancy to this proceeding.
5 It doesn't make him any the less their father.

6 JUDGE: No. I'll sustain the objection.

7 MR. BERRY: Well, if the Court please, I think it
8 does go to the matter of disruption of the family which Mr.
9 Gunter argued before and maybe not a lot but it has some bearing
10 on it.

11 JUDGE: I think that the divorce was granted to
12 her and she received alimony so it was obvious that the party at
13 fault was the husband.

14 MR. BERRY: All right, sir. So we are talking
15 basically under the Virginia cases -- or the Virginia case --
16 the cases in other jurisdictions -- we are talking about what's
17 in the best interests of the children, and I think the evidence
18 before this Court is that this is the desire of the children.
19 There is no evidence contrary. The only other evidence is that
20 Mr. Flowers has never talked to the children about it. The
21 evidence is, as far as convenience, it is certainly going to be
22 more inconvenient to go through and change everything back at
23 this point than it is to continue with the change of name as
24 indicated. And Mrs. Flowers went ahead on a proper and entered
25 order of this Court given her some week after it was entered

1 by this Court -- an attested copy thereof -- and proceeded to
2 do what she thought was right, and what I think she did have a
3 right to do. This is, as Your Honor will recognize, a somewhat
4 unusual procedure because there isn't any provision in the
5 statute for notice to Mr. Flowers nor really any provision for
6 him to be heard in the case. I think Your Honor's granted him
7 that hearing just as an accommodation more than as a requirement
8 of the statute. I think the whole determination here is within
9 the sound discretion of the Court, and I think that the sound
10 exercise of that discretion will dictate to the Court that these
11 children's names be the same as their mother's and father's and
12 that their records and that their name by which they are known
13 by their playmates and friends be the same as their parents.
14 Your Honor, I just want to add that there is positive evidence
15 before the Court that this was not done for any fraudulent or
16 illegal purpose which seems to be at least the victim in the
17 in re Strikwerda case, and I would suggest to the Court that
18 the fact that this might be an embarrassment to Mr. Flowers is
19 not a proper consideration for this Court in determining this
20 issue.
21 JUDGE: All right. Mr. Gunter.
22 MR. GUNTER: Judge, I think Mr. Berry probably made
23 a statement through error in his closing argument that indicates
24 exactly why we are here. He said that these children's names
25 ought to be the same as their father and their mother; and, of

1 course, he meant to say stepfather and mother; and that's what
2 we are here about. The proof of the thing, Your Honor, is in
3 the pudding. In other words, looking true -- what is normal and
4 what is abnormal, what is usual and what is unusual, is always
5 subject to who's determining what is reasonable and usual and
6 so forth. But, if Your Honor please, I would submit to the Court
7 that there is 99 point some per cent of the children of divorced
8 parents whose names are still and will always be the name of
9 the father, and less than one per cent whose names have been
10 changed through some manner or reason to the name of the stepfather.
11 In the absence of something like an adoption. Naturally, if
12 there's an adoption there would be a change in name, and so we
13 want to be sure. Well, the Court is well aware that is not what
14 we are dealing with here. We are dealing with relief here without
15 any penalty for it, Your Honor. The penalty is to Mr. Flowers,
16 and I think it is obvious from Mr. Flowers testimony that he is
17 a concerned father about this and that he does not feel that it
18 is in the best interest of the children and that he has good
19 reason to raise complaint concerning the same. And I submit to
20 Your Honor that there hasn't been any showing here that the
21 welfare of these children cries out for their name to be changed
22 from Flowers to Cain. This is just a preference of Mrs. Cain
23 apparently. Now, Your Honor please, I am not going back at all
24 except to mention that the cases that we have relied upon in this
25 case on our motion to strike, but the case, I guess it is

1 Strikwerda and Antell from Virginia, has the victim concerning
2 the disruptive effect on the family and the fact that any
3 children -- there weren't any children in that case -- would bear
4 the surname of the father and that all interested parties joined
5 in and consented in that case. I think that in a back-door sort
6 of way, Your Honor, that that case is really favorable to Mr.
7 Flowers' position. Now, the other cases that have been relied
8 upon have been cited by both the state reporter and the regional
9 reporter in my motion to strike -- the New York cases and the
10 Georgia case. Now, therefore, Your Honor, in concluding, I would
11 like to give the Court the benefit of what admittedly is secondary
12 authority, but nevertheless I believe it to be one of the best
13 sources of secondary authority that can be presented. Referring
14 the Court to Volume 65 of Corpus Juris Secundum, Your Honor,
15 Section 11, under the title of "Names 11, Subsection 2, Change
16 of Name of Infant." Now, first of all, I would like to point out
17 to the Court that the text deals with the change of the name of
18 an infant in a different subsection than it does a change of
19 name of say a woman or even a man or whoever. And it begins,
20 generally -- and this is quoted, Your Honor -- "Generally the
21 grant or denial of an application to change the name of an infant
22 is within the discretion of the Court." We certainly don't argue
23 that. What we are doing -- we are trying to persuade the Court
24 in the exercise of its discretion what is the right discretion to
25 use. All right. "The application should be granted only where

1 to do so is clearly in the best interest of the child, and there
2 is no reasonable objection to the proposed change." And we
3 submit there, Your Honor, that there is a reasonable objection
4 here to the proposed change. Now, Your Honor, rather than going
5 through this section, I would like to quote and I don't want to
6 give the Court the idea that I am quoting every word in here,
7 so I am telling you now that I don't believe I have taken it out
8 of context, but that I'm quoting at random through this section.
9 "The father cannot be arbitrarily deprived of his right to have
10 his child use his name unless it is in the interest of the child
11 that such change be made. Ordinarily a change of the name of a
12 minor child of divorced parents should not be granted where it
13 might contribute to the estrangement of the child from its
14 father who has shown a desire to preserve a parental relationship
15 but such an application has been granted where the father is
16 shown to have been indifferent to the son's material welfare over
17 a period of years, and he is in reality a stranger and an
18 unknown to him." Now, Your Honor, I think that amply resolves
19 this matter here; and I feel that clearly Mr. Flowers wouldn't
20 be here today if he was a stranger to his child and if he wasn't
21 concerned about the material welfare of these children, and his
22 record shows that so far as material welfare is concerned and
23 so forth that there has always been that care there -- that
24 love. And you can tell from his testimony today. Although he's
25 a young man, and he works hard for a living; and he only has a

1 sixth grade education and so forth, yet he -- in his testimony
2 he was at one point very near a brink of tears concerning this
3 matter he is so concerned about it. I submit to Your Honor that
4 this change of name proceeding in Virginia was never meant to be
5 exercised in a plenary manner in the instance of where it would
6 be disruptive to a father-son relationship and where it would be
7 a subject of embarrassment.
8 JUDGE: Mr. Berry.
9 MR. BERRY: The Court please, I think Mr. Flowers
10 is trying to cast himself in the role of concerned father, and his
11 desire to preserve the parental relationship is amply answered
12 by the evidence which is -- visitation has been testified to, and
13 it hasn't been denied by him. And I would suggest to the Court
14 that no one would consider seeing these children twice a year
15 and chance visits -- or chance meetings at the grocery store --
16 as any kind of a visitation schedule or a desire to maintain
17 a father-son relationship with these children who obviously need
18 some sort of guidance from their father. I think that the
19 disruptive effect in this case, Judge, on the family would be
20 for these children to have a different name from Mr. and Mrs.
21 Cain. I think that's the primary consideration of this Court
22 in this case.
23 JUDGE: All right. Of course, we have nothing
24 to guide us on this in Virginia. The statute is silent and does
25 not provide, as we have said, for the other parent to even be

1 notified of -- It is only by chance that this matter came on
2 within 21 days so that it could be reviewed. I don't know how
3 it could have been reviewed if it had been a week later. But I
4 still think that the primary concern of the Court is for the
5 welfare of the children. There is no allegation that this is
6 done for an illegal purpose, and I am mindful of the fact that a
7 father has a sense of pride in having his name carried on.
8 However, in this case the custody in the divorce proceeding was
9 granted to the mother. Although the father is providing financial
10 support, he has not shown a desire to create a real lasting
11 and parental relationship by visiting regularly with the children.
12 There has been very sporadic visitation. Certainly now that the
13 mother and the children have been moving to a new community and
14 establishing a new life it appears that those visitation privileges
15 will be more difficult. Nor do I see the embarrassment that the
16 father alleges. Had the stepfather and the mother remained in
17 the present community where Mr. Flowers is living, there would
18 have been more opportunity for embarrassment than there will be
19 in this case where there has been a change in their residence.
20 I don't see that this will disrupt in any way the relationship
21 between the father and the child. I think that it is interesting
22 that the children have indicated a desire that their names be
23 changed by an indication to the mother that they assumed that
24 it would automatically be changed. And I think all in all when
25 you weigh all the equities of the matter that here this is a new

1 family going into a new area. The children would be benefited by
2 a change of name and so I will grant the petition and reaffirm
3 the previous order of the Court changing their names. I don't
4 consider that there was a sufficient reason proven by the father
5 that the names should not be changed, so I will deny your motion.
6 MR. GUNTER: Judge, since this does appear to be a
7 case of first imprint as far as I can determine in Virginia, and
8 since we have obviously employed a court reporter for that
9 purpose and, as indicated, my client is very concerned about it,
10 would the Court consider suspending the effect of this order
11 pending appeal -- an application for a writ of error to the
12 Supreme Court?
13 JUDGE: I think we have -- Would you like to
14 comment on it.
15 MR. BERRY: Only to say, Judge, that just about
16 everything that would ordinarily flow from the change of name
17 has been done, and it seems to me a futile thing to suspend
18 the order and have everything undone pending the application
19 for a writ of error. I think things should be left at the
20 status quo.
21 JUDGE: That's the difficulty here. Everything
22 would have to undone that has been done, and then if there should
23 not be an appeal, then you would have to go through it all again.
24 I think it would be -- Since we are in the posture that we are
25

1 that it would be better not to suspend the execution of --
2 but certainly I think that Mrs. Cain would -- She probably would
3 have no reason to make any further changes on the records; but,
4 if she did, I would think that possibly she would not unless it
5 was absolutely necessary -- that unless it was absolutely necessary
6 she would consider not making any changes until this matter has
7 been resolved, but from what I can see practically everything
8 that would effect the children at this time has been done.
9 MR. GUNTER: I assume, Your Honor, the nature of
10 the case being such as it is that this Court would not require
11 any bond or anything other than what the rules of the Supreme
12 Court would require.
13 JUDGE: No, I don't think so.
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STATE OF VIRGINIA-AT-LARGE, To-wit:

I, Dolores S. Smith, a Notary Public in and for the State of Virginia-at-Large, do hereby certify that the foregoing testimony was duly taken by me at the time and place aforesaid; that I thereafter reduced the same to writing; and that I am not related to any of the parties to this suit nor otherwise interested in the outcome thereof.

Given under my hand this 4th day of May, 1976.

My commission expires March 6, 1978.

Dolores S. Smith
Notary Public