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IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

CLERK
SUPREME COURT OF VIRGINIA
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AUG 22 1980
RICHMOND, VIRGINIA

3

RECORD NO. 800344

GILBERT FRANCIS ROBERTS, SR.

. . . . .Appellant

v.

ROBERTA L. ROBERTS

. . . . .Appellee

JOINT APPENDIX

Burke F. McCahill
~~313 North Washington Street~~
~~Alexandria, Virginia 22314~~
P.O. Box 679
Leesburg, Va

Counsel for Appellant

Ilona E. Freedman
532 North Washington Street
Alexandria, Virginia 22314

Counsel for Appellee

TABLE OF CONTENTS

		DATE FILED	APPENDIX PAGES
1.	BILL OF COMPLAINT	07/25/75	1 - 3
2.	ANSWER AND CROSS-BILL OF COMPLAINT	08/12/75	4 - 5
3.	COMMISSIONER'S REPORT	05/04/78	6 -10
4.	EXCEPTIONS TO COMMISSIONER'S REPORT	05/12/78	11
5.	NOTICE FOR LEAVE TO FILE AMENDED CROSS-BILL OF COMPLAINT	11/02/78	12
6.	MOTION FOR LEAVE TO FILE AMENDED CROSS-BILL OF COMPLAINT	11/02/78	13
7.	MEMORANDUM OPINION OF JUDGE WILLIAM G. PLUMMER	10/22/79	14-17
8.	LETTER OPINION OF JUDGE WILLIAM G. PLUMMER	11/09/79	18-19
9.	FINAL DECREE OF DIVORCE	11/30/79	20-25
10.	ASSIGNMENTS OF ERROR	. . . . .	26

ROBERTA L. ROBERTS,

Complainant

vs

GILBERT FRANCIS ROBERTS, SR.
4000 Laurel Road
Alexandria (Fairfax County),
Virginia, 22309

Defendant

Filed 07/25/75

IN CHANCERY NO. _____

FILED
IN CIRCUIT COURT
CLERK'S OFFICE
JUL 25 1975
W. FRANKLIN GOODING
CLERK, FAIRFAX COUNTY, VA.
WRIT TAX PAID. $ 25.00
DEPOSIT. . . .

BILL OF COMPLAINT FOR DIVORCE

COMES NOW the complainant, Roberta L. Roberts, by counsel, and for her bill of complaint for divorce in the above styled cause respectfully states as follows:

1. That your complainant is and has been an actual bona fide resident and domiciliary of the Commonwealth of Virginia, County of Fairfax, for more than six months next preceding the institution of this suit; that the defendant, Gilbert Francis Roberts, Sr., is also an actual bona fide resident and domiciliary of the Commonwealth of Virginia, County of Fairfax, and has been such for more than six months next preceding the institution of this suit and presently resides at the address in the caption above.

2. That the parties hereto were lawfully married on the 31st day of December, 1968, in Fairfax County, Virginia, and there was one child born of this marriage, to-wit: Gilbert Roberts, Jr., born June 11, 1969, who is in the care, custody and control of your complainant, Roberta L. Roberts.

3. That your complainant, Roberta L. Roberts, is a fit and proper person to have both temporary and permanent custody of the minor child of the parties hereto, to-wit, Gilbert Roberts, Jr.

4. That the last place of cohabitation between the parties hereto as husband and wife was at 4000 Laurel Road,

Alexandria (Fairfax County), Virginia, 22309.

5. That the parties hereto are over the age of 18 years members of the Caucasian race, and neither is a member of the Armed Forces of the United States of America on active duty.

6. That the defendant during the course of this marriage has been cruel and abusive and threatening to your complainant, both verbally and physically, and has in recent months prior to the filing of this bill of complaint, shoved and pushed your complainant around without regard to her safety, threatened to quit his job and leave the complainant and their minor son without funds, has told her in front of witnesses to get out of the jointly owned home of the parties, that he didn't love her and didn't want to live with her any longer, has taken the only car of the parties away from your complainant so that she is unable to perform the normal duties of a wife and mother; further, that the parties hereto are sharing separate bedrooms because of the cruel and abusive conduct of the defendant towards the complainant, and the defendant has, in addition to the aforesaid, refused to give the wife enough money to support herself and the minor child, all of which acts and conduct on the part of the defendant are tantamount to desertion (constructive) from the 1st day of June, 1975, up to the present time, and there is no hope or possibility of a reconciliation.

WHEREFORE, upon the premises considered, your complainant prays as follows:

FIRST: That the said Gilbert Francis Roberts, Sr., be made a party defendant to this Bill of Complaint for divorce and be required to answer the allegations of said complaint, but not under oath, answer under oath being hereby expressly waived.

SECOND: That all proper processes may issue, inquiries be directed, and depositions of witnesses be taken.

THIRD: That your complainant be awarded both temporary and permanent custody and control of the minor child of the partie hereto, to-wit, Gilbert Roberts, Jr., born June 11, 1969.

FOURTH: That your complainant be awarded a decree of divorce, a mensa et thoro, from the defendant, Gilbert Francis Roberts, Sr., on the grounds of wilful desertion and abandonment (constructive) from the 1st day of June, 1975 up to the present time, with leave to merge the same into a final decree of divorce, a vinculo matrimonii, at the end of the statutory period of time.

FIFTH: That your complainant be awarded both temporary and permanent alimony and support for herself, court costs and counsel fees, and such other and further relief as to this court may seem meet and just.

ROBERTA L. ROBERTS, Complainant

By MARTIN A. GANNON
Counsel

MARTIN A. GANNON

MARTIN A. GANNON
Counsel for Complainant
801 N. Fairfax St., Suite 207
P.O. Box 1286
Alexandria, Virginia 22313

Filed 08/12/75

ROBERTA L. ROBERTS Complainant vs. GILBERT FRANCIS ROBERTS, SR. Defendant	In Chancery No. 46877 ANSWER AND CROSS-BILL

COMES NOW the defendant, Gilbert Francis Roberts, Sr., and for answer to the bill of complaint heretofore filed against him answers and states as follows:

1. That he admits the allegations contained in Paragraphs 1, 2, 4 and 5 of said bill;

2. That he denies the allegations contained in Paragraphs 3 and 6 of said bill and calls for strict proof of each and every allegation contained therein.

AND, having fully answered said bill of complaint, this respondent prays that the same may be hence dismissed.

AND NOW, by way of cross-bill of complaint against the complainant herein, your defendant and cross-complainant respectfully represents unto the Court as follows:

1. That both parties hereto are actual and bona fide residents and domiciliaries of the State of Virginia, County of Fairfax, and have been such for more than six months immediately preceding the institution of this suit.

2. That the parties last lived and cohabited together as husband and wife in Fairfax County, Virginia, at 4000 Laurel Road.

3. That the parties hereto were married on the 31st day of December, 1948, in Fairfax County, Virginia.

4. That there was one child born of the marriage, namely: Gilbert Francis Roberts, Jr., born June 11, 1969.

5. That on the 1st day of June, 1975, the complainant and cross-defendant, Roberta L. Roberts, voluntarily and willfully

did desert and abandon the defendant and cross-complainant, without just cause or excuse; that there has been no resumption of marital cohabitation between the parties since the date of separation, and there is no hope nor probability of a reconciliation between them.

6. That both parties hereto are over the age of 18 years, members of the Caucasian race, and neither party is a member of the armed forces of the United States.

IN TENDER CONSIDERATION WHEREOF, and forasmuch as your cross-complainant is remediless in the premises, except by the aid of a Court of Equity, where matters of this kind are alone properly cognizable, your cross-complainant prays as follows:

a. That he may be awarded a limited decree of divorce (a mensa et thoro) from the cross-defendant on the ground of desertion existing from the 1st day of June, 1975, and continuing to the present time, with leave to merge the same into a final decree of divorce (a vinculo matrimonii) upon expiration of the statutory period;

b. That the cross-complainant be awarded such further and general relief as the nature of this cause may require and the Court deems just.

GILBERT FRANCIS ROBERTS, SR.
Defendant and Cross-Complainant

QUINLAN H. HANCOCK, p.d.
421 King Street, Suite 209
Alexandria, Virginia 22314

By: _____
Counsel

THIS IS TO CERTIFY that a true copy of the foregoing answer and cross-bill was mailed, postage prepaid, this 7th day of August, 1975, to Martin A. Gannon, Esquire, Post Office Box 1286, Alexandria Virginia 22313, counsel for complainant and cross-defendant.

_____
Quinlan H. Hancock

ROBERTA L. ROBERTS, Complainant/ Cross-Defendant, v. GILBERT FRANCIS ROBERTS, SR., Defendant/ Cross-Complainant.	)))))))))))	Filed 05/04/78 IN CHANCERY NO. 46877 COMMISSIONER'S REPORT

The undersigned Commissioner in Chancery to whom the above-mentioned suit was referred by a Decree entered on the 29th day of August, 1976, executed the provisions of said Decree by receiving evidence at a hearing which was held at 10:00 A.M., July 25, 1977, in the office of your Commissioner, 4084 University Drive, Fairfax, Virginia.

In consideration of the evidence, together with the proceedings in this cause, the undersigned respectfully reports his findings as follows:

1. Notice. Due and timely notice of the hearing was given the Defendant/Cross-Complainant.

2. Domicile, Residence and Venue. The statutory domicile, residence and venue requirements have been properly alleged and proven. The evidence submitted at the aforesaid hearing proved with sufficient corroboration through the testimony of the Complainant/Cross-Defendant, Roberta L. Roberts, and her witness, Paula Landis Givens, that the Complainant/Cross-Defendant is a resident of Fairfax County, Virginia, and has continuously resided in and been a domiciliary of the Commonwealth of Virginia for more than six months next preceding the institution of this suit.

The Subpoena in Chancery with Bill of Complaint attached was served upon the Defendant/Cross-Complainant by posting a true copy of same on the front door of his usual place of abode.

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& HANES
at Law
x 547
nia 22030

The parties last cohabited together as husband and wife in Fairfax County, Virginia.

3. When and Where Parties Were Married, Age and Race. The parties were lawfully married on the 31st day of December, 1968, in Fairfax County, Virginia.

The Complainant/Cross-Defendant and Defendant/Cross-Complainant are both over the age of eighteen years.

Both Parties are members of the Caucasian race.

4. Whether or Not Grounds for Divorce Have Been Proved. The evidence submitted at the aforesaid hearing proved with sufficient corroboration through the testimony of the Complainant/Cross-Defendant, Roberta L. Roberts, and her witness, Paula Landis Givens, that the parties voluntarily separated from each other on the 5th day of July, 1976; that the parties have since lived separate and apart and that the separation has been continuous and without interruption. Other grounds for divorce were alleged in Complainant/Cross-Defendant's Amended and Supplemental Bill of Complaint for Divorce and Defendant/Cross-Complainant's Amended Cross-Bill of Complaint. The allegations as to these additional grounds for divorce were not determinative for the following reasons:

(a) The evidence submitted at the aforesaid hearing failed to prove with sufficient corroboration that Defendant/Cross-Complainant pursued a course of cruel and abusive conduct toward the Complainant/Cross-Defendant, which rendered further cohabitation a danger to the Complainant/Cross-Defendant's well-being; or that said conduct constituted a constructive desertion. The evidence proved with sufficient corroboration that the Defendant/Cross-Complainant did curse and insult the Complainant/

Cross-Defendant on several occasions during the period June 1 through July 25, 1975. However, the allegations regarding non-support and physical abuse were not corroborated and were in fact denied by Defendant/Cross-Complainant. The evidence clearly established that Defendant/Cross-Complainant ordered Complainant/Cross-Defendant to leave the marital home in June of 1975, but the Complainant/Cross-Defendant did not leave. In fact, Complainant/Cross-Defendant's own evidence established that she continued to sleep with Defendant/Cross-Complainant during the period June 1 through July 25, 1975. Further, she continued to have sexual relations with the Defendant/Cross-Complainant until she filed her Bill of Complaint on July 25, 1975. Thereafter, Complainant/Cross-Defendant continued to reside with Defendant/Cross-Complainant until his departure for an overseas assignment approximately one year later on July 5, 1976.

A divorce cannot be granted merely because the husband and wife are unable to live together in peace and harmony. The cruelty that authorizes divorce is anything that tends to bodily harm and thus renders cohabitation unsafe or expressed otherwise anything that involves danger of life, limb or health. 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. Upchurch v. Upchurch, 76 S.E.2d, 170, 194 Va. 990.

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Considering the evidence of alleged mistreatment prior to July 25, 1975, the date of the filing of the original Bill of Complaint herein, Complainant has failed to prove with sufficient corroboration that she was entitled to a divorce based on cruelty or constructive desertion as of June of 1975.

(b) The evidence submitted at the aforesaid hearing failed to prove with sufficient corroboration that the Complainant/Cross-Defendant did on the first day of June 1975 without just cause or provocation, willfully desert and abandon the Defendant/Cross-Complainant. The evidence proved with sufficient corroboratio that the wife did not leave the marital residence on June 1st of 1975. On the contrary, the evidence established that the wife continued to perform all of her wifely duties until the filing of the Bill of Complaint on July 25, 1975. Therefore, there was no desertion by the wife as of the first day of June of 1975.

(c) Defendant/Cross-Complainant is precluded as a matter of law from alleging and proving that the Complainant/Cross-Defendant deserted him on December 6, 1976, since said desertion would have taken place during the pendency of a divorce proceeding. Alls v. Alls, 216 Va. 13, 213 S.E.2d 16 (1975). See also Painter v. Painter, 215 Va. 418, 211 S.E.2d 37 (1975).

5. Whether or Not There Are Property Rights To Be Settled. The parties have property rights to be determined by this Court.

6. Recommendation. Your Commissioner recommends that the Complainant/Cross-Defendant be granted a divorce A VINCULO MATRIMONII on the grounds of separation without cohabitation and without interruption for more than the statutory period of one year.

7. Other Pertinent Matters. Neither party is a member of the Armed Forces of the United States.

One child was born of this marriage, namely Gilbert Roberts, Jr., born June 11, 1969.

8. Certificate of Service and Independent Investigation. Your Commissioner hereby certifies an independent investigation has been accomplished by contacting Mrs. Bonelle Riddich, who corroborated the statements of the Complainant and her witness in regard to the Complainant's domicile and residence as given in the deposition.

Your Commissioner further certifies that Notice of the filing of this Report has been served upon Ilona Ely Freedman, Counsel for Complainant/Cross-Defendant, 532 North Washington Street, Alexandria, Virginia 22314, and to Quinlan H. Hancock, counsel for Defendant/Cross-Complainant, 313 North Washington Street, Alexandria, Virginia 22314.

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Law
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Robert A. Lawrence

Robert A. Lawrence
Commissioner in Chancery

Filed 05/12/78

ROBERTA L. ROBERTS
Complainant and
Cross-Defendant

vs.

GILBERT FRANCIS ROBERTS, SR.
Defendant and
Cross-Complainant

In Chancery No. 46877

EXCEPTIONS TO REPORT OF THE COMMISSIONER IN CHANCERY

COMES NOW the defendant and cross-complainant, Gilbert Francis Roberts, Sr., and excepts to the report of the Commissioner In Chancery filed herein, and in support thereof states as follows:

1. The defendant and cross-complainant excepts to Paragraph 4 of the Commissioner's report which states that the evidence submitted proved with sufficient corroboration that the parties voluntarily separated from each other on the 5th day of July, 1976.

2. The defendant and cross-complainant excepts to Paragraph 4(b) of the Commissioner's report wherein the Commissioner states that there was no desertion by the wife as of the 1st day of June, of 1975.

3. The defendant and cross-complainant excepts to Paragraph 4(c) of the Commissioner's report wherein the Commissioner states that the defendant and cross-complainant is precluded as a matter of law from alleging the proving that the complainant and cross-defendant deserted him on December 6, 1976.

4. Your defendant and cross-complainant excepts to the Commissioner's recommendation that the complainant and cross-defendant be granted a divorce on the grounds of a one year separation.

GILBERT FRANCIS ROBERTS, SR.
Defendant and Cross-Complainant

By: _____
Counsel

QUINLAN H. HANCOCK, p.d.
313 North Washington Street
Alexandria, Virginia 22314

Filed 11/02/78

ROBERTA L. ROBERTS Complainant	]	In Chancery No. 47877
vs.	]	NOTICE
GILBERT FRANCIS ROBERTS, SR. Defendant	]	

To: ROBERTA L. ROBERTS, Complainant
c/o Ilona E. Freedman
532 North Washington Street
Alexandria, Virginia 22314

TAKE NOTICE that on Friday, the 17th day of November, 1978, at ten o'clock a.m., or as soon thereafter as counsel may be heard, I shall appear before the Circuit Court of the County of Fairfax, Virginia, at the courthouse thereof, and ask the Court for leave to file an amended cross-bill of complaint alleging that the complainant, Roberta L. Roberts, has committed adultery since the hearing before the Commissioner In Chancery in this cause, in accordance with the motion attached hereto and made a part of this notice.

GILBERT FRANCIS ROBERTS, SR., Defendant

By: _____
Counsel

QUINLAN H. HANCOCK, p.d.
313 North Washington Street
Alexandria, Virginia 22314

THIS IS TO CERTIFY that a true copy of the foregoing notice was mailed, postage prepaid, this 2nd day of November, 1978, to Ilona E. Freedman, 532 North Washington Street, Alexandria, Virginia 22314, counsel for the complainant.

_____
Quinlan H. Hancock

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX
Filed 11/02/78

ROBERTA L. ROBERTS Complainant	]	
	]	In Chancery No. 47877
vs.	]	MOTION
GILBERT FRANCIS ROBERTS, SR. Defendant	]	

COMES NOW the defendant, Gilbert Francis Roberts, Sr., and moves this Honorable Court for leave to file an amended cross-bill of complaint in this cause, and in support thereof states as follows:

1. That since the hearing before the Commissioner In Chancery in this cause, and even since argument on the exceptions to the Commissioner's report, the defendant has learned that the complainant, Roberta L. Roberts, has been engaging in acts of sexual intercourse with an unidentified male; and

2. That to grant the complainant a divorce without fault would be in violation of the laws of the Commonwealth of Virginia.

WHEREFORE, your defendant prays for leave to file an amended cross-bill of complaint in this cause.

GILBERT FRANCIS ROBERTS, SR., Defendant

By: _____
Counsel

QUINLAN H. HANCOCK, p.d.
313 North Washington Street
Alexandria, Virginia 22314

THIS IS TO CERTIFY that a true copy of the foregoing motion was mailed, postage prepaid, this 2nd day of November, 1978, to Ilona E. Freedman, 532 North Washington Street, Alexandria, Virginia 22314, counsel for complainant.

_____
Quinlan H. Hancock

Filed 10/22/79

ROBERTA L. ROBERTS, *

Complainant *

vs. * CHANCERY 46877

GILBERT FRANCIS ROBERTS, SR., *

Defendant *

*

MEMORANDUM OPINION

On May 4, 1978, the Commissioner in Chancery recommended that the wife be granted a divorce based on the grounds of the parties living separate and apart for more than one year. The husband took exceptions to the recommendation and on August 31, 1978, the Court overruled the exceptions, granted the wife a divorce together with spousal and child support.

From the latter date to January 4, 1979, counsel disputed the wording of proposed decrees and had conflicting court calendars resulting in the final decree not being entered.

During that same period the husband apparently had the wife under surveillance. He then filed a separate divorce case alleging adultery and moved for consolidation with the present case or in the alternative allowing an amended or supplemental bill to be filed.

There is similarity in this case and Rosenberg v. Rosenberg, 210 Va. 44 (1969). The issue at hand is whether Rosenberg is controlling.

In Rosenberg the husband sought amendment while exceptions to the commissioner's report was being argued. In the present case, the motion was made more than four months after the Court had overruled the husband's exceptions and orally granted the wife

a divorce. The motion was based on alleged acts of adultery occurring in November and December, 1978 (two and three months after the divorce decision).

The wife claims the court's decision was final relying in part on Rollins v. Bazille, 205 Va. 613 (1964) and Haskins v. Haskin 185 Va. 1001 (1947).

Va. Rule 1:1 provides that all "final judgments, orders, or decrees" irrespective of terms of court shall be subject to modification, vacation, or suspension for only 21 days after the "date of entry".

The rule as to the date of finality of judgment is different for criminal and civil cases. In criminal cases, the date of pronouncement of sentence is the date of finality. In civil cases, the judge's oral decision is only notice to counsel so that they may prepare a proper order making the decision effective. Spicer v. Spicer, 192 Va. 105 (1951). The date of finality is when a written order is signed by the judge.

Rollins, supra, involved a sentence to jail for civil contempt Hoskins, supra, concerned the failure of the chancellor to sign the order book even though he had previously signed the divorce decree. Neither case is controlling here.

The Court rules that its oral pronouncement of August 31, 1978, was not a final decree.

Va. Rule 1:8 provides: ". . .Leave to amend shall be liberally granted in furtherance of the ends of justice.

In Griffin v. Rainer, 212 Va. 627 (1972), the Supreme Court held that there was no abuse of discretion by the trial judge who denied a motion to amend which was offered after each side had rested in a jury trial. Granting the motion would have

necessitated either a new trial or the taking of evidence on issues previously raised.

Rosenberg, supra, held that it was an abuse of discretion for the chancellor to deny an amendment or supplement under somewhat similar circumstances. Rosenberg also appears to be an exception to a line of Virginia cases which hold that the act relied on for divorce must be alleged and proved to have occurred prior to the bringing of suit, and not based upon some act of misconduct during the pendency. Johnson v. Johnson, 213 Va. 204, 210 (1972) (act of physical cruelty); Beckner v. Beckner, 204 Va. 580, 583 (1963) (act of physical cruelty); Smith v. Smith, 202 Va. 104, 109 (desertion); Plattner v. Plattner, 202 Va. 263 (1960) (desertio Alls v. Alls, 216 Va. 13 (1975) (desertion).

The last three cases cited are based on the proposition that one spouse leaving the other is not desertion in law if it occurs after a divorce suit is filed.

In Beckner, the acts of cruelty occurred after suit was brought and were not alleged in the bill of complaint. Apparently, the same situation existed in Johnson. Whether supplemental bills of complaint would have been allowed if timely requested is not known. It is assumed that the duty to refrain from physical cruelty to one's spouse would continue.

In Rosenberg, the Supreme Court found that the motion was timely (six days after the alleged adultery). It ruled that the filing of the supplemental bill of complaint should have been granted because ". . .adultery is highly relevant to the issues of alimony, support and custody. . . ." (210 Va. at 47) and "The filing of a bill of complaint itself does not terminate the marital relationship nor the rights and duties which are a part

thereof. . . ." (210 Va. at 48).

In the present case the alleged acts of adultery began November 5, 1978. The bill alleging adultery was filed January 3, 1979, and argued January 12, 1979.

The Court finds that the motion to file a supplemental bill of complaint was not timely, being filed some two months subsequent to the alleged event.

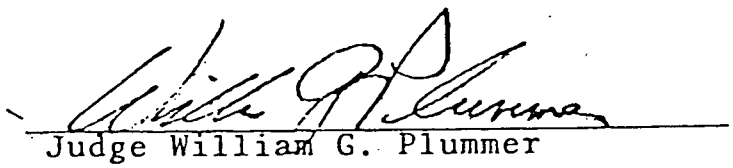
The effect of this ruling is that the husband is barred from using the alleged adultery as a grounds for divorce or a bar to the wife's right to alimony previously adjudicated. However, it does not bar him from seeking a change of child custody and including such evidence in support of his motion.

While the filing of the bill of complaint does not terminate the marital relationship or the parties' respective duties of fidelity to each other, the parties' hearing in open court an oral prouncement by the chancellor that they are divorced might lead laymen to believe that the duty of fidelity no longer existed.

The Court in no way condones illicit sexual intercourse whether it be titled "adultery" or "fornication". However, in drawing a line on the extension of the Rosenberg rule and with the object of bringing litigation to an end, the Court further finds that the time of pronouncement of the court's decision is the logical point at which to cut off supplemental allegation of new grounds in a divorce case.

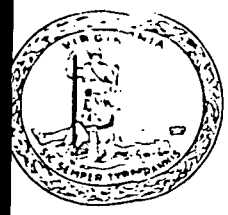
Counsel should prepare a draft of decree incorporating these rulings and submit it to the court at a mutually convenient time.

Date: October 22, 1979.



Judge William G. Plummer

Filed 11/09/79



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

COUNTY OF FAIRFAX CITY OF FAIRFAX

CITY OF FALLS CHURCH

NARD F. JEENNINGS
LIAM G. PELUMMER
EWIS D. MOORRIS
URCH MILLLSAP
MES C. CACCHERIS
MAS J. MIDDLETON
ARD J. JAMMBORSKY
VIS HALL GGRIFFITH
F. BRUCE EBACH
JUDGESS

JAMES KEITH
RETIRED JUDGE

November 9, 1979

FAIRFAX COUNTY COURTHOUSE
4000 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

Mrs. Ilona E. Freedman
Attorney at Law
532 North Washington Street
Alexandria, Virginia 22314

Mr. Quinlan H. Hancock
Attorney at Law
313 North Washington Street
Alexandria, Virginia 22314

Re: Roberts vs. Roberts - Chancery No. 46877

Dear Counsel:

The court erred in stating that the motion to file a supplemental bill of complaint was not timely. It was filed November 2, 1978, alleging acts of sexual intercourse with an unidentified male (with no dates mentioned). There is no evidence in the file as to whether the motion was made on November 17, 1978, and I have no independent recollection of same.

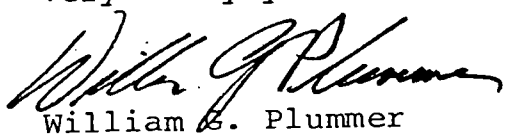
The case was scheduled by complainant's counsel for hearing on December 15, 1978, and again on December 22, 1978. Apparently counsel agreed to continue the matter on each occasion.

Defendant's counsel filed a new suit alleging adultery and a motion to consolidate in early January, 1979. It alleged the first act of adultery to be November 5, 1978 (three days after the filing of November 2, 1978, motion to file a supplemental bill of complaint in this case).

It would appear the filing of the motion was timely and perhaps even anticipatory of obtaining evidence to support the motion.

Timeliness was one of the two basic reasons for the court's decision. The court remains of the opinion that alleged acts of adultery occurring some nine weeks after the court's oral decision of divorce and alimony for the wife should not be grounds to reopen the case for the taking of further evidence. The primary reason for this decision is to bring litigation to an end.

Very truly yours,



William G. Plummer

WGP:jah

Filed 11/30/79

Roberta L. Roberts

Complainant

v.

CHANCERY # 46877

Gilbert Francis Roberts, Sr.

Defendant

FINAL DECREE OF DIVORCE

THIS CAUSE came on to be heard the 31st day of August, 1978, upon the papers formerly read and the proceedings had herein; upon testimony of the parties and their witnesses, heard before a Commissioner in Chancery of this Court, reduced to writing and filed herein; upon the report of the Commissioner in Chancery filed herein; upon defendant's exceptions and memorandum filed to the Commissioner's report, which were overruled; upon motion of the Complainant for the entry of a final decree of divorce and for an award of custody of the minor child of the parties, child and spousal support, court costs and counsel fees, and upon the taking of evidence on that date with regard to the financial situation of the parties, and after argument on the exceptions, it

APPEARING to the Court, independently of the admissions of either party hereto, in the pleadings or otherwise, that both parties are actual and bona fide residents and domiciliarie of the State of Virginia, having been such for more than six months immediately preceding the institution of this suit; that they both reside, and last lived together and cohabited as husband and wife, in the County of Fairfax, Virginia; that both parties are over the age of 18 years, and neither is a member of the Armed Forces of the United States; that the partie

were married on the 31st day of December, 1968, in Fairfax, Virginia; that there was one child born of the marriage, namely, Gilbert Francis Roberts, Jr. (born 11 June 1969); that the parties have been separated from each other since on or before the 5th of July, 1976; that the parties have lived separate and apart and that the separation has been continuous and without interruption; that there has been no resumption of marital cohabitation between the parties since the date of separation, and that there is no hope or probability of a reconciliation between them; that this Court has jurisdiction to hear and determine the cause; A FINAL DECISION OF DIVORCE WAS ORALLY RENDERED on AUGUST 31, 1979 by this Court, ordering as follows:

1. That the defendant's exceptions to the report of the Commissioner in Chancery be and hereby are overruled, and it is the finding of this Court that the Complainant is without fault for the breakup of the marriage; to which action the defendant, by counsel, excepted.

2. That the Complainant, Roberta L. Roberts, be and she hereby is awarded a final decree of divorce from the defendant, Gilbert Francis Roberts, Sr., on the ground that the parties have lived apart from each other for a period in excess of one year, without interruption and without cohabitation, and that the bonds of matrimony heretofore existing between the parties are forever dissolved, to which action of the Court the Defendant excepted.

3. The Complainant is hereby awarded custody of the minor child with the right of the Defendant to see said child at reasonable times and places, including alternate weekends

and a month in the summer, Xmas vacation to be split and Xmas Day to be alternated, with the defendant to have said child on Xmas Day 1978; and other visitation as agreed between the parties.

4. The Defendant is ordered to pay to the Complainant the sum of $300.00 per month, on the first day of each month, for the support and maintenance of the minor child, and further to pay to the Complainant the sum of $200.00 per month, on the first day of each month, as and for her spousal support until further order of the Court, to which action the Defendant excepted, and

5. The Defendant is ordered to pay to the Complainant the lump sum spousal support of $10,000.00 (Ten thousand dollars); to which action the Defendant excepts,

6. The Defendant shall pay to the Complainant the sum of $2000.00 (Two thousand dollars) as and for counsel fees for the Complainant, and to pay the sum of $382.83 representing the balance due the Commissioner in Chancery, directly to the Commissioner, to which action the Defendant excepts.

Counsel could not agree on the form of the decree to be submitted for entry, and after some notice and continuances counsel for the Complainant again requested written entry of the orally stated final decree on 15 December, 1979, and the Defendant moved on that date, asking the Court to re-open the suit and to file an amended cross-bill of Complaint, alleging that the Complainant had committed adultery since the hearing on August 31, 1978, and that motion was argued by counsel, and Defendant's counsel filed a new suit, # 60499, and a motion to consolidate in early

January, 1979, and the Court took the matter under advisement, and it appearing to the Court, that the allegation of adultery occurring some nine weeks after the Court's oral rendition of the decision of divorce and support should NOT be grounds to re-open the case for the taking of further evidence, it is hereby,

ADJUDGED, ORDERED AND DECREED as follows:

1. The Defendant's exceptions to the Commissioner's report be and hereby are overruled, and it is the finding of the Court that the Defendant failed to prove that the Complainant was without fault in the breakup of the marriage; to which action the Defendant, by Counsel, excepts, and

2. The Complainant, Roberta L. Roberts, be and she hereby is awarded a final decree of divorce from the Defendant, Gilbert Francis Roberts, Sr., on the ground that the parties have voluntarily lived apart from each other, separated, for a period in excess of one year, without interruption and without cohabitation, and the bonds of matrimony heretofore existing between the parties are forever dissolved, to which action of the Court the Defendant excepts, and

3. The Complainant is hereby awarded custody of the minor child with the right of the Defendant to see said child at reasonable times and places, including alternate weekends and a month in the summer, Xmas vacation to be split and Xmas Day to be alternated annually, with the Defendant to have the child on Xmas day 1980; and other visitation as agreed between the parties, and

4. The Defendant is hereby ordered to pay to the

Complainant the sum of $300.00 per month, on the first day of each and every month, for the support of the minor child, until further order of this Court, and he is further ordered to pay to the Complainant the sum of $200.00 per month, on the first day of each and every month, for her spousal support (alimony) until further order of this Court or until she shall remarry or either shall die, to which action on spousal support the Defendant excepts, and

5. The Defendant is hereby ordered to pay to the Complainant as and for lump sum spousal (alimony) support the sum of $10,000.00 (Ten Thousand Dollars) ; to which action of the Court the Defendant, by counsel, excepts, the payment of which is hereby suspended so long as the Defendant timely prosecutes his appeal and thereafter so long as the matter is under consideration by the Supreme Court of Virginia, and

6. That the Defendant shall pay to the Complainant the sum of $2000.00 as and for counsel fees for the Complainant through this date, to which action of the Court the Defendant, by counsel, duly escepts, and payment of said sum is hereby suspended so long as the Defendant timely prosecutes his appeal and thereafter so long as the matter is under consideration by the Supreme Court of Virginia, and

7. That the Defendant be and hereby is ordered and directed to pay to the Commissioner the remaining balance of $382.83 representing the monies still owed to said Commissioner; to which action of the Court the Defendant, by counsel, excepts and the payment of which is suspended so long as this matter is under consideration by the Supreme Court of Virginia, and

8. That the motion of the Defendant asking leave of Court to re-open and to amend his cross-bill of Complaint to allege adultery on the part of the Complainant be and hereby is denied, and

8. That the Defendant, Gilbert Francis Roberts, Sr., be and he hereby is ordered to post an appeal bond in the Clerk's office of the Circuit Court of Fairfax, Virginia within 30 days in the amount of $15,000.00, reciting the judgment of the Defendant's intention to appeal, which bond shall be conditioned to perform and satisfy the judgment in case such judgment or such part thereof shall be affirmed in whole or in part or the appeal not be timely prosecuted or the appeal be denied and which bond will also be conditioned to pay all damages, costs and fees which may be awarded against the Defendant in the Supreme Court and all actual damages incurred in consequence of the suspension.

AND THE CLERK OF THE COURT shall forthwith mail copies teste of this decree to counsel of record for the parties.

AND THIS DECREE IS FINAL

Entered this 30th day of November, 1979.

Judge William G. Plummer

Ilona E. Freedman, p.q.
532 N. Washington Street
Alexandria, Virginia 22314

Seen & Excepted to

Quinlan H. Hancock, p.d.
313 N. Washington Street, Alexandria, Va. 22314

A COPY TESTE:
JAMES E. HOOFNAGLE, CLERK

By: Deputy Clerk

ASSIGNMENT OF ERROR

1. The trial court erred in precluding the Husband from introducing any evidence of fault which occurred after the Wife filed her bill of complaint on July 25, 1975.

2. The trial court abused its discretion in denying the Husband's motion to file a supplemental bill of complaint, alleging adultery prior to the entry of the final decree.