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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 8162

ARTHUR WILLIAM WILKERSON,

APPELLANT

V.

ROSE MARIE WILKERSON,

APPELLEE

APPENDIX

WHITE, CABELL, PARIS & LOWENSTEIN
721 EAST MAIN STREET
RICHMOND, VIRGINIA 23219

CONRAD C. LEWANE
COUNSEL FOR APPELLANT

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday *the* 16th *day of* January, 1973.

Arthur William Wilkerson, Appellant,

against Record No. 8162

Rose Marie Wilkerson, Appellee.

From the Circuit Court of Henrico County

Upon the petition of Arthur William Wilkerson an appeal is awarded him from a decree entered by the Circuit Court of Henrico County on the 25th day of April, 1972, in a certain chancery cause then therein depending, wherein Rose Marie Wilkerson was plaintiff and the petitioner was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said court below in the penalty of $300, with condition as the law directs.

A Copy,

Teste:

Clerk

BILL OF COMPLAINT

The plaintiff, Rose Marie Wilkerson, respectfully shows unto the Court the following:

1. The plaintiff and the defendant, both of whom are of the Caucasian race, were lawfully married in the City of Richmond, Virginia, on November 4, 1963, a certified copy of which marriage certificate is attached hereto.

2. One child was born as a result of this marriage: namely, Beth Marie Wilkerson, now three years of age.

3. The plaintiff and the defendant are domiciled in and have been actual bona fide residents of the County of Henrico and the State of Virginia for more than one year next preceding the commencement of this suit.

4. Plaintiff and defendant last cohabited at their home located at 1720 Havenwood Drive, Henrico County, Virginia, on October 1, 1970.

5. That on or about the 1st day of October, 1970, the defendant struck the plaintiff about the face and body causing serious bodily injury; that the defendant on the same day wilfully and without any justification whatever did leave his home at 1720 Havenwood Drive, Henrico County, Virginia, and such desertion and abandonment has continued to date.

WHEREFORE, the plaintiff prays that she be awarded a divorce from bed and board from the defendant on the grounds of wilful desertion and abandonment; that the care and custody of Beth Marie Wilkerson,

infant child of the parties, may be awarded to your plaintiff; that the defendant be required to pay your plaintiff such suitable sums of money as shall be necessary and proper for the support and maintenance of said child and your plaintiff as the Court shall deem just; that the defendant be required to pay your plaintiff's court costs and counsel fees incident to the prosecution of this suit on her behalf; and that she may have all such other, further and general relief in the premises as the nature of her case may require or to equity shall seem meet.

Rose Marie Wilkerson

by E. K. Geisler, Jr., Counsel

* * * * * * *

ANSWER

As his Answer to the Bill of Complaint, the defendant, Arthur William Wilkerson, states as follows:

1. He admits the allegations contained in paragraphs 1, 2, 3 and 4 of the Bill of Complaint.

2. He denies the allegations contained in paragraph 5 of the Bill of Complaint and asserts that he did not leave the marital domicile on October 1, 1970, but it was the plaintiff who left the marital domicile on said date and that he was without fault in the separation and that the plaintiff left without justification or cause, thereby resulted in desertion of the defendant by the plaintiff.

3. That the defendant denies that the plaintiff is entitled

to a divorce from bed and board on the grounds of wilful desertion and abandonment, or on any grounds; denies that she should be awarded the custody of the infant child born of this marriage; denies that she is entitled to court costs or attorney's fees; and asks that the Bill of Complaint be dismissed and no divorce be awarded to the plaintiff.

WHEREFORE, he asks that the matter be dismissed with his costs.

Arthur William Wilkerson, Defendant

Conrad C. Lewane, Esquire
White, Cabell, Paris & Lowenstein
721 East Main Street
Richmond, Virginia 23219

* * * * * * *

April 26, 1972

Letter of Opinion

From: The Honorable John Wingo Knowles, Judge of the Circuit Court of the County of Henrico

Conrad C. Lewane, Esquire
721 East Main Street
Richmond, Virginia 23219

E. K. Geisler, Jr., Esquire
302 West Cary Street
Richmond, Virginia 23220

Re: Rose Marie Wilkerson v. Arthur William Wilkerson
Henrico Case No. K-465

Gentlemen:

The Court's minutes of evidence adduced on November 8, 1971 and April 24, 1972, have been examined, together with the depositions

taken on November 4, 1971, and filed with the papers. Very careful consideration has been given to the issues, with especial attention being paid to the question of custody of Beth Marie Wilkerson.

The Court has come to the conclusion that the preponderance of the evidence dictates that the best interests of the infant, Beth Marie Wilkerson, lie in her remaining in the custody of Mr. and Mrs. Malcolm Buchanan. Were it not for the natural mother's history of sporadic periods of disability, custody of this infant female would have been awarded to her. Since she is not at this time deemed capable of performing the necessary duties involved in the care and custody of a four-year-old, it appears that the next best solution is to permit Beth to remain with her great aunt and her husband and to continue in the environment to which she has grown accustomed.

The Court is not unmindful of the ties of blood and of the fact that the natural father's desires must be given great consideration. At the same time, the Court does not feel that introduction of a four-year-old female into a family situation where she would be rooming with a fourteen-year-old female, and a member of a family wherein, necessarily, there would be a difference of some eight or nine years between her and her next foster-sibling would be anywhere as near as beneficial as her present situation. Further, common sense dictates that regardless of the professed excellent attitude and intentions of the McCay family, consciousness of the makeshift aspects of the arrangement proposed by the defendant will always be present.

The Court has amended the second page of the proposed sketch for a final decree by inserting language which carries out the decision

reached here and awards custody to Malcolm and Ruby Buchanan, at the same time requiring the defendant to pay to them the amount of $20.00 each week for support of the infant. The objection of the defendant, by counsel, is noted in the body of the decree. Copies of the decree in final form are enclosed for each of your gentlemen.

Thank you for your cooperation throughout this case.

Very truly yours,

John Wingo Knowles,
Judge

* * * * * * *

FINAL DECREE

This cause, which has been regularly docketed, matured and set for hearing, came on this day to be heard upon the Bill of Complaint and exhibit filed herewith; upon proof of proper and legal service of process upon the defendant; upon the Answer and Cross-Bill of the defendant; upon the plaintiff's Answer to the Cross-Bill; upon the depositions of witnesses on behalf of the plaintiff and the defendant, regularly taken after proper and legal notice to the defendant and filed in accordance with law; upon evidence heard ore tenus on November 8, 1971, and April 24, 1972, and was argued by counsel.

Upon consideration whereof, the Court finds from the evidence, independently of the admission of the parties in the pleadings or otherwise, the following facts: that the parties are members of the white race and over the age of twenty-one; that they were lawfully

married in the City of Richmond, Virginia, on November 4, 1963; that there is one infant child born of this marriage, whose name is Beth Marie Wilkerson; that the plaintiff and the defendant are domiciled in and have been actual bona fide residents of the Commonwealth of Virginia for a period of more than one year immediately preceding the commencement of this suit; that the plaintiff and the defendant last cohabited as husband and wife in the County of Henrico, Virginia; that the charge of wilful desertion of the defendant by the plaintiff on September 29, 1970, as alleged in the Cross-Bill of the defendant, has been fully proven by the evidence, and that the defendant is entitled to the relief prayed for; the Court doth dismiss the Bill of Complaint of the plaintiff.

Accordingly, it is ADJUDGED, ORDERED and DECREED that the defendant, Arthur William Wilkerson, is now absolutely divorced from the plaintiff, Rose Marie Wilkerson, from the bond of matrimony on the ground of wilful desertion of the defendant by the plaintiff for a period of more than one year, and that the bond of matrimony created by the marriage between these parties on November 4, 1963, is dissolved.

It is further ORDERED that the defendant do pay to E. K. Geisler, Jr., counsel for the defendant, the sum of Four Hundred Fifty and no/100 ($450.00) Dollars as compensation for legal services and costs advanced on behalf of the plaintiff.

It is further ORDERED that custody of Beth Marie Wilkerson, infant daughter of the parties, pursuant to the request of the plaintiff, is awarded to Malcolm Buchanan and Ruby Buchanan, his wife, the great-aunt and great-uncle by marriage of the said infant, with reasonable

rights of visitation being reserved to the defendant, and that the defendant shall pay to the said Mr. and Mrs. Buchanan the sum of $20.00 each week for the support of the said infant. The defendant, by counsel, objects and excepts to these actions of the Court.

Nothing further remaining to be done in this cause, it is ORDERED that it shall be stricken from the docket and the papers filed among the ended causes.

Enter: 4/25/72

John Wingo Knowles
Judge

* * * * * * *

ASSIGNMENTS OF ERROR

Pursuant to the aforesaid rule, errors are assigned as follows:

1. The Court erred in awarding custody of the defendant's infant daughter, Beth Marie Wilkerson, to her paternal great-aunt and great-uncle, Malcolm Buchanan and Ruby Buchanan, on the grounds that it was contrary to the law and evidence and they were not properly before the jurisdiction of the Court.

2. The Court erred in awarding counsel fees to plaintiff's counsel, E. K. Geisler, Jr., in the amount of $450.00 on the grounds that it was contrary to the law and evidence.

Arthur William Wilkerson

by Conrad C. Lewane, Counsel

* * * * * * *

Complete narrative of testimony of hearing held April 24, 1972 in the Circuit Court of the County of Henrico, Virginia, before the Honorable John Wingo Knowles, Judge.

* * *

The hearing held on November 9, 1971, concerning the custody of Beth Marie Wilkerson and alimony for Rose Marie Wilkerson was continued until April 24, 1972, in order to give counsel and all parties concerned additional time to present additional evidence. At the commencement of the hearing, J. Grady Monday, attorney for Malcolm and Ruby Buchanan, made an oral motion to permit his clients to intervene in the suit which motion was denied. Mr. Monday was then associated as Co-Counsel for the plaintiff.

APPEARANCE FOR THE DEFENDANT, ARTHUR WILLIAM WILKERSON:

1. William Barry McCay, having first been duly sworn, testified that he was 37 years old, was employed at St. Mary's Hospital in Richmond, Virginia, as its business manager, has known both the plaintiff and the defendant for approximately 11 years, has known the infant daughter of the parties, Beth Marie Wilkerson, all of her life, and she had visited in his home on approximately four occasions, and that he is the father of three children, two boys and one girl. He further testified that he is renting a four-bedroom, airconditioned home with two baths, a living room, dining room, recreation room, kitchen, and utility room located in the Tuckahoe Village Section of Henrico County, Virginia, from the defendant, Arthur William Wilkerson, for the sum of $100.00 per month. Mr. McCay further testified that he was renting this home for $100.00 per month due to

the fact that he had an agreement with the defendant that the defendant and his infant daughter, Beth Marie Wilkerson, could reside with him. Mr. McCay also testified that both he and his wife drink socially and that on certain occasions while he is watching a football game he might have a beer or two. Mr. McCay further testified that he had no objection to the defendant and his daughter residing with him and his family.

2. Bette Jean McCay, having first been duly sworn, testified that she is the wife of William Barry McCay, is 35 years of age, has known both the plaintiff and the defendant for approximately 11 years, has been in the presence of the defendant's daughter, Beth Marie Wilkerson, on approximately five or six occasions, and was willing to have the defendant and his infant daughter reside with her and her family. She also testified that she has been employed by the defendant for approximately nine years, working for him one day a week which employment she would give up when the defendant and his infant daughter would move into their home. The sleeping arrangements were going to be that Mr. Wilkerson would have a bedroom of his own and his infant daughter would sleep with Mrs. McCay's 14-year-old daughter. Mrs. McCay stated that she and her husband drink socially. Mrs. McCay testified she would help take care of the defendant's daughter and had no objections to the sleeping arrangements. She also testified that she has been married 17-1/2 years.

3. Jaymie Kathleen McCay, having first been duly sworn, testified that she is 14 years of age and the daughter of William Barry McCay and Bette Jean McCay. She further testified that she is an

experienced babysitter and is willing to help care for the defendant's daughter, Beth Marie Wilkerson, and has no objections to sharing a bedroom with her.

4. The defendant, Arthur William Wilkerson, having first been duly sworn, testified that he and his daughter Beth planned to reside with Mr. and Mrs. William Barry McCay. He also testified that he was supporting his daughter since she has been residing with the Buchanans; that he loved his daughter very much and he was capable of raising and taking care of her; that he worked almost every day including Saturdays, but did not work on Sundays; that the McCays were fine people and their household was a fine house to raise his daughter in; and that he was just as capable of raising his daughter as the Buchanans and could offer a more stable emotional situation since he could offer a father's love. Mr. Wilkerson stated that the Buchanans treated Beth like they would have treated their own child and would be suitable to have custody of Beth if he could not have custody. However, he felt that he was much more capable of taking care of Beth because of the Buchanans' age, he was willing to make the necessary sacrifices, could provide suitable living accommodations, and most of all could give his daughter a natural father's love and consideration. Mr. Wilkerson also testified that if the Buchanans moved to Richmond all of them could live together in either an apartment or a home which he would furnish and thus both he and the Buchanans would have the benefit of enjoying the custody and love of Beth.

APPEARANCE FOR THE PLAINTIFF, ROSE MARIE WILKERSON:

1. Ruby Buchanan, having first been duly sworn, testified

that she and her husband loved the defendant's daughter; that she did not work and thus was more capable of taking care of Beth Marie Wilkerson; that when Beth became sick, it was she who took care of her and that she and her husband wanted custody of Beth because they both love her and were in a much better position to raise Beth. Mrs. Buchanan further testified that Mr. Wilkerson implied that if she fought him on the custody of Beth and lost, she would never see Beth again. In addition she testified that Beth called her Ruby, called her husband Malcolm, called Mable Richardson Grandma, called Rose Marie Wilkerson Mother, and called Arthur William Wilkerson Father.

2. Mabel Richardson, having first been duly sworn, testified that she felt that Ruby and Malcolm Buchanan were more capable of raising her granddaughter than the defendant. She also testified that her daughter was the plaintiff.

3. The plaintiff, Rose Marie Wilkerson, having first been duly sworn, testified that she felt that her aunt and uncle, Ruby and Malcolm Buchanan, were the proper persons to have custody of her infant daughter, Beth Marie Wilkerson; that the Buchanans could offer her daughter a stable home and love; that she did not feel her husband was capable of taking care of their daughter; and that she did not want her daughter residing with the McCays due to the fact that she has known the McCays for many years having socialized with them both in public and in the privacy of their homes and both of the McCays drink excessively and therefore it would not be a good environment in which her daughter should live.

* * *

Excerpts from testimony of Ruby Buchanan taken at depositions held on November 4, 1971.

* * *

(tr 12) ***

DIRECT EXAMINATION

BY MR. LEWANE:

Q. Do you know approximately when they separated?

A. When she went to Eastern State.

Q. When was that?

A. October 20, 1970.

Q. Do you know when they were married?

A. No. I am sorry. They have been married for about seven years.

Q. Do you know where they were married?

A. In Richmond.

Q. Where is Beth Marie Wilkerson now residing?

A. In my home, in Springfield, Virginia.

Q. How long has she been residing there with you?

A. Well, for a year, I have had her before then though.

Q. Does Mr. Wilkerson visit with his daughter?

A. Yes.

Q. How frequently does he come up?

A. I would say every other week, every third week.

Q. Does he ever come more than one time during the week?

A. Yes.

Q. Does he contribute towards the support of Beth?

A. Yes.

(tr 16) ***

Q. What would happen? Where would the male companion sleep?

A. Oh, they never spent the night there. They just came to visit.

Q. Do you know the name of this male companion?

A. Mike Walsh.

Q. How frequently would they visit? Was this when Rose Marie Wilkerson came to visit her daughter?

A. Yes.

Q. How many times would you say they visited together?

A. Every time they came up he brought her.

Q. Did he ever come into the house, this Mike Walsh?

A. Yes.

Q. Do you think Bill Wilkerson is a fit and proper father to raise Beth?

MR. NORTON: I object. Could you be more specific so she can give you specific examples of what you mean by "fit and proper". It is calling for a legal conclusion.

Q. Who do you think would be better able to raise Beth, Rose Marie Wilkerson or Arthur William Wilkerson?

A. I would like to continue looking after Beth myself?

Q. Yes, but of the two, between Rose Marie and Arthur William Wilkerson, who do you think would be the better?

A. Well, I think right now, I guess I would have to say Bill because Marie has been quite sick.

* * *

CROSS EXAMINATION

BY MR. GEISLER:

(tr 24) ***

Q. Do you think Mr. Wilkerson would be able to look after the child if he had custody at the present time?

A. Providing if he got someone to help him.

Q. Do you think if it were just the two of them he would be able to do it?

A. No.

Q. Why not?

MR. LEWANE: The reason is obvious. I will stipulate that he works. Someone has to be with a three and a half year old child.

Q. Would you say then that insofar as your observations of Mr. Wilkerson that he has characteristics that would make him a suitable person to have custody of the child? How does he behave around the child?

A. He is very good with Beth.

Q. Does he know how to take care of her?

A. He would try, not as well as a woman looking after her. I mean as to preparing food and preparing clothes, getting her ready for school. I recognize all these things. I am bringing these things out.

Q. Do you think either Mr. Wilkerson or Mrs. Wilkerson ought to have custody of Beth at the present time?

A. (Pause). I guess so.

Q. You think one of them ought to?

MR. NORTON: Answer the question honestly. He is calling for your feelings on the matter.

A. Ask the question again.

Q. Referring back to whether they ought to have custody at the present time -- Is that correct?

A. I would like to keep Beth.

MR. GEISLER: I have no further questions.

REDIRECT EXAMINATION

BY MR. LEWANE:

Q. Who pays for all the medical bills of Beth?

A. Mr. Wilkerson.

Q. Who pays for her clothing?

A. Her grandmother buys most of her clothing.

MR. LEWANE: I have no further questions.

* * *

Excerpts from testimony of Malcolm Buchanan taken at depositions held on November 4, 1971.

* * *

(tr 28) ***

DIRECT EXAMINATION

BY MR. LEWANE:

Q. Does Mr. Wilkerson visit Beth?

A. Quite often.

Q. When was the last time he was there?

A. This past Sunday.

Q. The time before that?

A. I believe the week before that, the Saturday before, I believe.

Q. As between Rose Marie Wilkerson and Arthur William Wilkerson who do you think would be a better person to have custody of Beth?

A. I have to give an answer --

Q. Yes, sir, if you can answer. If you feel you cannot it is all right. As between the two people, to take care of her, raise her -- Obviously Mr. Wilkerson cannot take care of the child since she is three and a half. He cannot do it by himself. Between those two people, presuming Mr. Wilkerson had someone competent to help him, who do you think is better fit to take care of the child?

A. I believe Mr. Wilkerson.

* * *

CROSS EXAMINATION

(tr 30) ***

BY MR. GEISLER:

Q. Do you know of any characteristics of Mr. Wilkerson that would make him particularly fitted to look after a child Beth's age?

A. He loves the child very much, and I am sure he would be a very good provider.

Q. Has he got any characteristics that would in your opinion make it not in the best interest of the child to have the child with him?

A. No, outside of the fact --

Q. -- That he is a man with a young child?

A. Yes.

* * *

Excerpts from testimony of Arthur William Wilkerson taken at depositions held on November 4, 1971.

* * *

(tr 40) ***

DIRECT EXAMINATION

BY MR. LEWANE:

Q. Did you ask your wife to refrain from her activities of going out with this fellow named Mike?

A. Yes. As a matter of fact I guess it all started -- He was, I thought, a mutual friend, and he used to come over the house in the evenings and we would get together and play cards or listen to music or something. Then finally when I realized that the situation was not exactly the most favorable I finally asked my wife not to call him, have him over at the house. Frankly for a while, maybe a few days, we even went along with this. Then the next thing I know he is calling her and coming by, and I asked her why, after I had requested this, why she continued to see him. She said that he would not let her alone. At the same time he said just the opposite, but anyway, so one thing lead to the other. I guess they started seeing each other at night.

* * *

(tr 60)

CROSS EXAMINATION

BY MR. GEISLER:

Q. Why did you allow Beth to go up and live with Mr. and Mrs. Buchanan after this happened?

A. Because I did not actually want her to, because I felt, and I still feel that Beth should be with one or the other of her natural parents, at least one or the other. However, when Mr. and Mrs. Buchanan and Mrs. Richardson, which is my wife's mother, came to Richmond, my child had a cold. She seemed to be so infuriated about it. They finally talked me into letting her go back with them to Springfield. I was so up tight about my wife being in the hospital, etc., that I said, well, at least I know she will be well taken care of.

Q. You do feel when she is with the Buchanans she is in good hands, well taken care of?

A. Absolutely, yes, sir.

Q. They love this child?

A. Absolutely, and she loves them, yes, sir.

Q. How does the child feel about Mrs. Wilkerson?

A. Well, I don't think I am really qualified to say.

Q. How about during the time of your marriage other than when she was ill?

A. She loved her mother very much.

Q. You don't know that love has stopped, do you?

A. Absolutely not. I would say that it has not stopped. I don't think it is something you turn on and off.

Q. Why didn't you take the child to the doctor?

A. Well, to begin with she had a cold and I had been trying to take care of her. I had a lady coming in during the day and even now I have to feel like it was pumped up a little bit. I don't think she

was -- She was playing every day. The lady came and brought children with her. She was playing every day. I just don't feel like she was sick -- I mean, she was not incapacitated. She had a cold which naturally should have been taken care of. It had just started a day or two -- It was all.

Q. You feel like Mrs. Buchanan and the foster grandmother were overly apprehensive about the child?

A. Well, that is kind of hard -- Probably so, to a degree, but still they knew she had a cold. Of course they love her, and you know, she is a child.

* * *

Excerpts from testimony of Ruby Buchanan taken at hearing held on November 9, 1971, in the Circuit Court of the County of Henrico, Virginia.

* * *

(tr 25) ***

DIRECT EXAMINATION

BY MR. GEISLER:

Q. Both Mr. and Mrs. Wilkerson came to visit the child while the child was with you?

A. Yes.

Q. Did they both come often?

A. As often as they could come, yes. They came up quite often then.

* * *

(tr 29) ***

DIRECT EXAMINATION

BY MR. GEISLER:

Q. Do you know of any particular reason why Mr. Wilkerson should not have custody of the child?

A. No. If he had someone to care for her, and I would hate to give her up, but if he had someone that could look after her --

* * *

(tr 32) ***

CROSS EXAMINATION

BY MR. LEWANE:

Q. Prior to that time, when was the last time he visited?

A. Maybe the week before. He comes quite often to see Beth.

Q. He pays for her kindergarten, I mean nursery school, and he contributes for her support, sends you money, pays doctors' bills, et cetera. Is that correct?

A. Yes.

Q. He buys the child some clothing. Is that correct?

A. Yes.

Q. In January, 1970, referring to the time when Mr. and Mrs. Wilkerson got Beth again, back in January, 1970, isn't it true besides having Mrs. Wilkerson having a full time maid there, with his wife's condition --

A. After two weeks they had a maid, yes.

Q. How does Beth feel about her father when you can observe her reactions when they are together?

A. Oh, she is fond of her father. She knows her parents.

Q. Does Mr. Wilkerson seem to be fond of his daughter when he goes up

to visit her?

A. Yes.

Q. Have you not discussed with Mr. Wilkerson the possibility of making some arrangements so you all could move together in the same home?

A. We have discussed it, yes.

Q. You and your husband do not have any children?

A. No.

Q. He is sixty-one years of age?

A. Right.

THE COURT: Is it mandatory that he retire at the Fairfax Country Club?

A. I think so.

Q. He would know?

A. Yes.

* * *

Excerpts from testimony of Malcolm Buchanan taken at hearing held on November 9, 1971, in the Circuit Court of the County of Henrico, Virginia.

* * *

(tr 38) ***

DIRECT EXAMINATION

BY MR. GEISLER:

Q. You do not have any other children?

A. I have a daughter from a former marriage who has her own home and two children.

Q. Do you feel it would be in the best interest of the child to remain in your custody at the present time?

A. Yes, I do.

Q. Why do you say this?

A. Because Ruby takes excellent care of her. We love her dearly.

Q. You feel that you are better able to take care of the child now and look after her than Mr. Wilkerson?

A. We believe this, yes.

MR. GEISLER: Judge, I have no further questions.

CROSS EXAMINATION

BY MR. LEWANE:

Q. The reason you believe you are better able to take care of Beth than Mr. Wilkerson, isn't it due to the fact Mr. Wilkerson works and your wife does not? Therefore, Beth will have someone to supervise her?

A. That is one of the reasons, yes.

Q. What is the other reason?

A. Well, I believe that a woman can take care of a child much better than a man in case of sickness, things like that, and proper care of feeding and clothing.

Q. How much does Mr. Wilkerson visit the child?

A. He visits quite frequently, when he can.

Q. What is the child's reaction when he visits?

A. She is very happy to see him.

Q. Have you discussed the possibility of living with Mr. Wilkerson?

A. We have discussed it, yes.

Q. What is your feeling on that?

A. If I have to, I will be glad to give up my home and my job to make

some type of arrangement, to make sure the child is taken care of.

Q. Mr. Wilkerson has offered to buy a home here for you or somewhere else to suit you and help you locate and get a job that you would not suffer economically.

A. He has offered, yes.

* * *

The entire testimony of Arthur William Wilkerson taken at hearing held on November 9, 1971, in the Circuit Court of the County of Henrico, Virginia.

* * *

(tr 42) ***

DIRECT EXAMINATION

BY MR. LEWANE:

Q. Would you state your name.

A. Arthur Wilkerson.

Q. How old are you?

A. Thirty-nine years of age.

Q. What do you do for a living?

A. I own Modern Coin, Incorporated, dealer in old coins.

Q. How long have you been in this business?

THE COURT: Modern Coin, Incorporated, dealing in old coins? Go ahead.

A. Eleven years in the business.

Q. You do not want Mike Walsh around your daughter. Is that correct?

A. Absolutely so, yes, sir.

Q. You feel he is the individual that broke up your marriage, one of

the reasons?

A. He is contributory to it, yes, sir.

Q. How frequently do you visit with your daughter?

A. I try to visit two to four times a month, as frequently as possible.

Q. What two alternative plans have you made for Beth?

A. Well, my second choice, I bought a home in Richmond, and I have a family who is living in this home already and as a second choice I would want to bring Beth to this home and I would move there with her with the family and their supervision, the mother would supervise. my first choice would be --

Q. Before you go into that, who is this particular family?

A. Mr. and Mrs. Barry McCay.

Q. That is the one your wife says drinks all the time, et cetera?

A. Yes, sir.

Q. Is that true?

A. I am not living with them now. I cannot verify how often or how much they drink. They do drink, as a lot of people do.

Q. How long have you known them?

A. I have known them ten or eleven years.

Q. You think they are suitable?

A. I think they are. They have three teenagers and all very healthy.

Q. Your first choice?

A. My first choice would be for Mr. and Mrs. Buchanan, myself and my daughter to live in the same home. We would all share the love of my child, and my child would have our love. Of course, it would have to be satisfactory to Mr. Buchanan, as far as his position is

concerned. I would buy the home, and I would set us up there and we could live as one family. I feel personally that a child should certainly have the love and attention and live with at least one natural parent if possible. I think a child deserves this.

Q. Very briefly, in your support statement, you show a net take home of $670.85 a month. Was this computed by taking your W2 Form, that you have filled out, and divided by twelve and got your net take home pay?

A. That is correct.

Q. Does not Modern Coin, Inc. owe you between $10,000.00 and $15,000.00?

A. It is a matter of record.

Q. That is how you supplement your income as such?

A. Yes, sir.

Q. You have given Mr. Geisler a copy of your Federal income tax return for 1970?

A. Yes, sir.

Q. Has it been audited?

A. I got a letter from the IRS saying everything was in order.

Q. Would I be correct your net worth is somewhere between $45,000.00 and $50,000.00?

A. In that neighborhood.

Q. You set up an insurance trust for your daughter, Beth?

A. Yes, sir.

Q. In fact, your insurance payments are $241.04 a month?

A. That is correct.

Q. Your position is that you feel you should not contribute anything to your wife's support due to the total circumstances involved? Is that correct?

A. That is correct.

Q. When at Eastern State were you not sending her $25.00 a week?

A. I would say most weeks I sent her something. It may have been averaging less than $25.00, but I sent her money every week. I sent her a little extra if she needed it and requested it.

Q. Medical bills during your marriage, it would at least be between $15,000.00 and $20,000.00?

A. At least that much, right.

Q. This is related to your wife's drinking problem? Is that correct?

A. Yes, sir.

MR. LEWANE: No further questions.

CROSS EXAMINATION

BY MR. GEISLER:

Q. Mr. Wilkerson, you have not yet worked out anything about living with Mr. and Mrs. Buchanan? You have not reached any agreement?

A. No. I would say within the last couple of days we discussed seeing a real estate man, though.

Q. But you have not reached any agreement?

A. We have not bought a house, no, sir.

Q. What about Mr. and Mrs. McCay?

A. There is nothing to work out there. They are ready to take Beth in any time that the Court decides I can have custody of her.

Q. Where are they today?

A. They are both at work, I assume.

Q. They are not here?

A. No.

Q. Mr. Wilkerson, do you own two homes?

A. Yes, sir.

Q. One home is owned jointly by you and Mrs. Wilkerson?

A. That is correct.

Q. Do you have any idea what sort of equity you have in that home?

A. I would estimate about $16,000.00 probably.

Q. How is the other home owned?

A. By myself.

Q. Where is the home that is jointly owned? What is the address?

A. 1720 Havenwood Drive, Henrico County, Tuckahoe Village.

Q. Is that where you live?

A. Yes, sir.

Q. Who lives with you?

A. I live alone.

Q. What is the other home?

A. The address? 1713 Lauderdale, in the same neighborhood, Tuckahoe Village.

Q. How much did you pay for that home?

MR. LEWANE: It is immaterial how much he paid for the other home.

THE COURT: The fair market value, et cetera. He is trying to question his net worth. Fair market value is more appropriate.

Q. Do you have any idea of the fair market value?

A. I can tell you what it was when I bought it. I don't know what it is

today. It was around $34,000.00 to $35,000.00.

Q. How long have you had it?

A. I bought it in August.

Q. How much do you owe on it?

A. I guess about $31,000, $30,000.00.

Q. You have your mortgage payments on those houses listed on your petition?

A. Yes, sir.

Q. Do you receive any income from the second house?

A. Yes, sir. I receive a hundred dollars a month.

Q. Does this cover your mortgage payment and expenses of the house?

A. No, sir, absolutely not.

THE COURT: It is $254.00, and you have it rented at $100.00?

A. Yes, sir, Barry McKay.

Q. Are both houses furnished?

A. Well, the house on Lauderdale is fully furnished, not with my furniture, with the McKay's furniture. The house on Lauderdale -- I mean, Havenwood was furnished but my wife came and took what she wanted of our furniture and so now it is semi-furnished, I guess you would call it.

Q. You agreed on the property she took?

A. Not to my knowledge. I don't know if it was an official agreement or not. I don't think so.

Q. You did talk with your wife about it?

A. No, sir. We discussed it but nothing was ever signed. I did not even know she was coming. I went in and it was gone.

Q. You own stock?

A. Yes, sir.

Q. Do you know what the total value of that stock is?

THE COURT: This week?

A. That is right. I don't know. I don't have those figures but I would not know. I would not be able to give you a figure.

Q. You must have some idea.

A. I can tell you what I have got. I have got three hundred some shares of Investment Corporation of America. We can get a paper and figure them out.

Q. If you can give us just rough values.

A. That goes at about $13.00 to $14.00 a share. It is three hundred twenty some shares of that, and I have got seven hundred shares of Penn Central Railroad. That sells around four and a half to five. I have got a few shares of Thalhimers stock. McCormick Tea Company. I have a little of that. I don't have all the figures.

Q. You cannot give us some idea?

A. Maybe $10,000.00 to $15,000.00. That is vague. That could be off. I don't think anything more than that.

Q. Is Modern Coin, Inc., that is a corporation, a Virginia corporation?

A. Yes, sir.

Q. Are you the sole stockholder?

A. Yes, sir.

Q. You are the President?

A. Yes, sir.

Q. You pay yourself a salary which is what you have listed here?

A. Yes, sir.

Q. Do you have any idea what that business is worth?

A. In the neighborhood of $30,000.00 probably.

Q. The money the business owes you, this is money you borrowed and the corporation --

A. No. This is for stock that I sold and put the money into the business.

Q. What other assets do you have other than real estate, personal property and the stock?

A. That is it.

Q. Do you have an automobile?

A. No, sir.

Q. You do not drive?

A. No, sir.

Q. Did you ever drive?

A. I have driven a few times, yes.

Q. How long has it been since you have driven an automobile?

A. Probably about two and a half years.

Q. Do you have a license?

A. No, sir.

Q. Why don't you drive?

A. Because I just don't feel that I am alert enough on the road to be a good driver. I am honest enough to admit it. A lot of people probably wish they had admitted it.

Q. Have you paid Mrs. Wilkerson anything recently?

A. The last time I paid her was, I sent her a check to Westbrook.

Then I heard that she was no longer there. I have not talked to her since then. I do not know where to send any money. I have not paid her anything since then, no.

Q. You knew who her attorney was?

A. Yes, sir.

Q. You have not sent any money in how long?

A. I think the last check I gave her was the second or third week of October. It would seem to me an attorney would get in touch with someone and say, your wife's money should go to this address now.

MR. GEISLER: If Your Honor please, for the record I have contacted his attorney concerning the money.

I have no further questions.

REDIRECT EXAMINATION

BY MR. LEWANE:

Q. Is it your feeling your wife should still be at Eastern State?

A. I am not a doctor, but unless a miracle occurred in the last few weeks I would say probably she should be.

Q. She just took a moving van when you were not there and moved everything out?

A. That is correct.

MR. LEWANE: No further questions.

MR. GEISLER: No questions.

BY THE COURT:

Q. Mr. Wilkerson, are you aware of how Mrs. Wilkerson was transferred from Eastern State to Westbrook?

A. No, sir. As a matter of fact, that is a question that has been in

my mind. I received a letter from Eastern State Hospital one day stating my wife had escaped and did I know her whereabouts.

Q. When was this?

A. I don't know the exact date. It was sometime I guess in October.

Q. What did you do?

A. I immediately called Eastern State, and they could not give me any information. As a matter of fact, I could not get in touch with her doctor.

Q. Did you know where she was?

A. No, sir.

Q. Did you tell them? How did you work that?

A. I could not get in touch with her doctor. I tried but I could not get in touch with the doctor at his home. I beg your pardon. That is correct. When I finally found where she was I called Westbrook and the people there told me Eastern State knew that she was there. That is what it was.

MR. GEISLER: I helped.

THE COURT: I cannot understand the mechanics of it. If she was in there on a voluntary admission and they decided she should stay I imagine they could transfer.

MR. GEISLER: Thomas Coates arranged for the transfer.

THE COURT: Was there a formal transfer?

MR. GEISLER: Yes, sir.

THE COURT: She was on an inpatient basis at Eastern State, right?

MR. GEISLER: Yes, sir. And on an inpatient basis at Westbrook.

THE COURT: Westbrook decided she should be an outpatient. As far as the formalities between the Commonwealth and Mrs. Wilkerson are concerned they have all been complied with?

MR. GEISLER: I don't know all the mechanics but Doctor Coates took care of it.

THE COURT: No escape warrant is outstanding?

MR. GEISLER: As a matter of fact, her belongings have been turned over to her by Eastern State. I have been in touch with them.

THE COURT: I could not understand.

MR. GEISLER: It has been taken care of.

THE COURT: During the period of time she was down at Eastern State were you required to pay anything for her support and maintenance?

A. No, sir. I went shortly after my wife was admitted there and she called me. The business office called me and asked would I come down to the hospital and discuss finances with them, which I did. I went into the finance office and discussed it with one of the gentlemen there. I showed him all my outstanding bills, how much I make, et cetera, down to the letter. He agreed at that time that there would be no charge made to me. He also stipulated probably within a couple months they would review the case and they would probably make a charge then, but I was never contacted.

THE COURT: They never got in touch with you again?

A. No, sir, not in reference to finances.

THE COURT: That is all I have.

REDIRECT EXAMINATION

BY MR. LEWANE:

Q. This $1,300.00 that you have owed to First & Merchants, that is due on about $4,000.00 for medical?

A. It was originally about $5,000.00.

Q. You have given your wife a car also?

A. Yes, sir.

Q. You have kept the insurance up on it for her?

A. Yes, sir, currently.

Q. And you have kept her life insurance policy for her also?

A. Yes, sir.

MR. LEWANE: No further questions.

RECROSS EXAMINATION

BY MR. GEISLER:

Q. Mr. Wilkerson, the car, was there a trade involved when you got this automobile?

A. Yes, sir.

Q. Was it Mrs. Wilkerson's automobile?

A. The one traded in? No, sir. I bought it.

Q. She did not contribute anything towards that automobile?

A. I bought that car from her mother and father.

MR. GEISLER: No further questions.