

212Va 623

Record No. 7642

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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RAYMOND E. WERNER

v.

COMMONWEALTH OF VIRGINIA  
AND ANNA LEE WERNER

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FROM THE CIRCUIT COURT OF HENRICO COUNTY

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RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk

IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND

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**Record No. 7642**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 19th day of January, 1971.

RAYMOND E. WERNER,

Appellant,

*against*

COMMONWEALTH OF VIRGINIA AND  
ANNA LEE WERNER,

Appellees.

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From the Circuit Court of Henrico County  
Edmund W. Hening, Jr., Judge

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Upon the petition of Raymond E. Werner an appeal is awarded him from a decree entered by the Circuit Court of Henrico County on the 6th day of July, 1970, in a certain chancery cause then therein depending, wherein Commonwealth of Virginia, at the relation of Anna Lee Werner, 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.

page 1 } Commonwealth of Virginia :

In the Juvenile and Domestic Relations Court of  
the County of Henrico

The Commonwealth of Virginia, at the rel. of Anna Lee  
Werner, 9708 Royerton Drive, Richmond, Virginia, Complain-  
ant, vs. Raymond E. Werner, 6811 Petersburg Turnpike, Rich-  
mond, Va., Defendant.

*To the Honorable Judges of the Juvenile and Domestic Rela-  
tions Court:*

Your petitioner, Michael Armstrong, respectfully repre-  
sents:

1. That on the 13th day of September, 1941, the said de-  
fendant, Raymond E. Werner, and Anna Lee Armstrong (Give  
Maiden Name) were lawfully married by Dr. George Earle  
Owen, in the City of Richmond, State of Virginia.

2. That on or about the 27th day of July, 1968, the said de-  
fendant did, without cause, desert or willfully neglect or re-  
fuse or fail to provide for the support and maintenance of his  
said wife, such wife, being then and there in destitute and ne-  
cessitous circumstances.

3. That Your Honor has jurisdiction in the premises, Sec.  
20-61, Va. Code 1950 as amended, by reason of the fact:

a. That at the time of desertion such wife was living in  
Henrico County.

c. That the defendant is now, and may be found, living in  
Chesterfield County.

4. That the facts and circumstances of the case are as  
follows:

That on July 27, 1968 after 27 years of marriage the de-  
fendant left his wife after admitting to her that he was hav-  
ing an affair with another woman. The first two months he  
paid her approximately \$650.00 per month, but since the first  
of October he has failed to adequately support her and has  
only given her \$21.00 for the month of December. Fore-  
closure on her house is eminent.

Wherefore, your petitioner prays that proper process may  
issue; that the Court may make all proper and necessary in-  
quiries into the matters herein set forth and enter such judg-  
ment or orders in the premises as to the Court may seem  
meet; and your petitioner will ever pray, etc.

Michael Armstrong

Petitioner sign here

Attorney for Complainant

Relation to Complainant or Defendant

Mays, Valentine, Davenport & Moore  
1200 Ross Building  
Richmond, Virginia 23219

December 13, 1968

Commonwealth of Virginia, to-wit:

City of Richmond

This day personally appeared before me, Michael Armstrong, a Notary Public, in and for the City and State aforesaid, the above-named petitioner who, upon being duly sworn makes oath that the facts stated in the foregoing petition are true to the best of his knowledge, information and belief.

Give under my hand, this 13th day of December, 1968.

My commission expires March 27, 1971.

Virginia H. Minor  
Notary Public

I have reviewed the above petition and direct the following:

1. Petition denied.
2. Investigation order returnable the      day of      , 19      .
3. That summons/warrant be issued and served on the defendant and the matter brought to trial on the 23rd day of December, 1968. Also all witnesses be summoned to appear on the date of trial.

Date      By order of      , Judge.

12-23-68  
J-9124 1/13/69  
M-232 6/1/70

Juvenile and Domestic Relations Court of the County of Henrico

COMMONWEALTH, at the rel of  
Anna Lee Werner, Complainant

vs.

Raymond E. Werner, Defendant

Address, 6811 Petersburg Turnpike (Chesterfield)  
Petition alleging desertion and non-support.

Executed on the within named

1/13/69

Evidence heard and guilty of non-support. The defendant is to pay to Mr. J. A. Hare, Chief Probation Officer the sum of \$50.00 per week for alimony commencing 2/7/69 and continuing until further order of Court. The defendant must also pay all debts except 1st and 2nd mortgage.

RMW

6/1/70

This Court feels it does not have jurisdiction now as a Bed and Board Decree and a Final Decree have been entered by Henrico County Court. Petition is dismissed.

RMW

Complainant, by counsel, noted an appeal.

RMW

6/1/70

Appealed

M. Armstrong, p.q.

Geo. Tidey, p.d.

Commonwealth of Virginia:

In the Juvenile and Domestic Relations Court of Henrico

The defendant, Raymond E. Werner, having been duly summoned and being present in Court on this date is found guilty of non-support and upon consideration of the circumstances of the case, imposition of sentence is suspended and the defendant is placed under support order.

(1) The defendant is hereby ordered and directed to pay to F. A. Hare, Chief Probation Officer, to be transmitted to Anna Lee Werner, toward the support and maintenance of his dependents as set forth in the petition, \$50.00 weekly, starting 2/7/69 until annulled or modified by the Court, and is further required to enter into a recognizance without surety in the sum of \$500.00 to faithfully comply with the support order and shall make his personal appearance in Court on the 12 day of January, 1970, or whenever in the meantime he may be ordered so to do by the Court.

Given under my hand this 13 day of January, 1969.

Defendant is to pay all bills shown on schedule of 1/13/69 except 1st and 2nd mortgage.

RMW

(2) The defendant having been duly summoned and being present in Court on this date, and, it appearing that the defendant has failed to comply with the support order entered the day of , 19 , he/she and hereby is required to enter into recognizance with surety in the sum of \$ to faithfully comply with the order heretofore entered on the day of , 19 , and to make his personal appearance in Court on the day of , 19 , or whenever in the meantime he may be ordered so to do by the Court.

Given under my hand this day of 19 .

Judge  
Assoc. Judge

(3) Upon consideration of the circumstances of the case, the support order entered the day of 19 , is hereby amended to \$ weekly/monthly, and he be and hereby it required to enter into bond of \$ with/without surety.

Given under my hand this day of 19 .

Judge  
Assoc. Judge

(4) Further, upon consideration of the circumstances of the case, and the defendant having failed to enter into recognizance with surety, the defendant be and hereby is sentenced to the State Convict Road Force for a period of months.

Given under my hand this day of 19 .

Judge  
Assoc. Judge

(5) Upon further consideration the execution of the sentence to the State Convict Road Force is hereby suspended and the defendant is placed on probation and under support order as set forth above. Failure to comply with the terms of probation and support order or any breach of the peace will cause revocation of the suspension or imposition/execution of sentence.

Given under my hand this day of 19 .

Judge  
Assoc. Judge

(6) The defendant having failed to comply with the terms of the order of 19 , the suspension of sentence contained therein is hereby revoked and the defendant is committed to the State Convict Road Force in accordance with the order of 19 .

7/20/70

The order of 1/13/69 has been affirmed by Henrico Circuit Court and remanded back to this Court. The order of 1/13/69 is affirmed and payments should continue as previously ordered. Defendant is to be given credit for

RMW

On motion of the defendant an appeal is granted to the term of the Court on this the day of 19 .

Judge—Assoc. Judge

\* \* \* \* \*

page 5 }

\* \* \* \* \*

In the Juvenile and Domestic Relations Court of the County of Henrico

Anna Lee Werner, Petitioner  
9708 Royerton Drive

vs.

Raymond E. Werner, Defendant  
6811 Petersburg Turnpike

On the 13 day of January, 1969, an order was entered against the defendant, Raymond E. Werner, directing him to pay to Francis A. Hare, Chief Probation Officer, the sum of \$50.00 weekly alimony, commencing 2-7-69 to be transmitted to Anna Lee Werner, petitioner, for the maintenance and support of his dependents named in the petition filed by the petitioner. (Defendant must pay all debts except 1st & 2nd mortgage.

Michael Armstrong,  
Atty. for Complainant  
1200 Ross Bldg; City  
23219

Robert M. Wallace, Assoc. Judge

Entered January 13, 1969

page 6 }

\* \* \* \* \*

In the County Court of Henrico County

\* \* \* \* \*

MOTION

TO:

Anna Lee Werner  
9708 Royerton Drive  
Richmond, Virginia

Take Notice that on May 11, 1970 at 11:00 A.M., I will appear before the Honorable Robert M. Wallace, Judge of the aforesaid Court, 22nd and Main Streets, Richmond, Virginia, and present the attached Petition and move the Court that the Order previously entered be terminated.

Raymond E. Werner

By George F. Tidey  
Of Counsel

George F. Tidey  
Somma, Tidey & McMurtrie  
Suite 314 American Building  
1001 East Main Street  
Richmond, Virginia 23219

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page 7 }

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IN THE COUNTY COURT OF HENRICO COUNTY

\* \* \* \* \*

PETITION

To The Honorable Robert M. Wallace, Judge of the Aforesaid Court:



Your petitioner, Raymond E. Werner, respectfully shows unto the Court the following:

1. That on January 13, 1969 an Order was entered in this Court directing your petitioner to pay to the plaintiff the sum of \$50.00 per week for alimony and support of the plaintiff until the further Order of the Court.

2. That at the time the Order was entered the plaintiff was not employed and was in need of support.

3. That is was your petitioner's understanding that the Order was temporary until the plaintiff could get established and find employment for herself.

4. That the plaintiff is now employed by Crawford Manufacturing Company on a regular basis.

Wherefore, your petitioner prays that the Order previously entered be terminated.

Raymond E. Werner

By George F. Tidey  
Of Counsel

George F. Tidey  
Somma, Tidey & McMurtrie  
Suite 314 American Building  
1001 East Main Street  
Richmond, Virginia 23219

Not finding Anna Lee Werner or any member of her family upon whom legal process could be served at her usual place of abode. Executed in the County of Henrico, Va. 4-27-70 by leaving a copy of within Petition posted on the front door of her residence 9708 Royeaton Drive that being her usual place of abode.

E. R. Tinsley, Sheriff  
County of Henrico, Va.

By N. W. Metton  
Deputy

page 9 } VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS COURT OF THE COUNTY OF HENRICO

Commonwealth of Virginia, ex rel of  
Michael Armstrong, Complainant  
vs.  
Raymond E. Werner, Defendant  
Docket No. J-9124

Date	Action of the Court
12-23-68	Cont. to 1-13-69
1-13-69	Order to pay \$50.00 per week alimony, commencing 2-7-69.
6-1-70	Dismissed—appeal noted

Filed June 1, 1970

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page 13 }

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IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

\* \* \* \* \*

FINAL ORDER-CASE NO. M-232

This day came the plaintiff, in person and by counsel, and the defendant, in person and by counsel, to be heard upon the plaintiff's appeal from the order and judgment rendered June 1, 1970, by the Henrico Juvenile and Domestic Relations Court.

And after hearing argument by counsel, and upon consideration whereof, the Court does find and determine and Adjudge and Order that the judgment of June 1, 1970, of the Henrico Juvenile and Domestic Relations Court, is erroneous and that said Court does have jurisdiction of the petition for support originally filed December 13, 1968.

Whereupon, it is Adjudged and Ordered that this case and all proceedings herein, and a certified copy of this order be remanded to the Henrico Juvenile and Domestic Relations Court, which shall forthwith reinstate its order of support prior to its dismissal of June 1, 1970, and thereafter con-

tinue with jurisdiction of petition as the circumstances may indicate.

To which ruling of the Court, counsel for the defendant objects and excepts.

Enter: 7/6/70

Edmund W. Hening, Jr., Judge

\* \* \* \* \*

page 16 }

\* \* \* \* \*

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

\* \* \* \* \*

STIPULATION OF FACTS

The parties, by counsel, stipulate the following facts :

1. That on January 13, 1969 the Juvenile and Domestic Relations Court of the County of Henrico, Virginia, in a hearing on nonsupport brought by the plaintiff against the defendant under Section 20-61 Va. Code. Ann. entered an Order stating the following:

“Evidence heard and guilty of non-support. The defendant is to pay to Mr. F. A. Hare, Chief Probation Officer the sum of \$50.00 per week for alimony, commencing 2/7/69 and continuing until further order of court. The defendant must also pay all debts, except 1st and 2nd mortgage.”

2. That subsequent thereto a Bill of Complaint was filed by Anna Lee Werner against the defendant in the Henrico County Circuit Court and on June 26, 1969 a decree *a mensa et thoro* was awarded to the plaintiff in which no mention was made of alimony. On August 14, 1969, the decree of divorce *a mensa et thoro* was merged into a final decree of divorce *a vinculo matrimonii* by the Henrico County Circuit Court and again no mention was made of alimony. Certified copies of which are attached hereto.

3. That the defendant filed a petition on April 23, 1970, in the Juvenile and Domestic Relations Court of the County of Henrico for the termination of the alimony award on the grounds that the plaintiff was now employed on a regular basis.

4. That at a hearing on June 1, 1970, the Juvenile and Domestic Relations Court dismissed the support order on the basis of lack of jurisdiction.

page 17 } 5. The judgment of the Juvenile and Domestic Relations Court was appealed by Anna Lee Werner to the Circuit Court.

Michael Armstrong, p.q.  
George F. Tidey, p.d.

Sept. 2, 1970  
Received & Filed in Office

Teste:  
Helen C. Loving, Clerk

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page 18 } IN THE CIRCUIT COURT OF  
HENRICO COUNTY DECREE

*A MENSA ET THORO*

I-290

This cause came on this day to be heard upon the bill of complaint and exhibit filed therewith; upon proof of proper service of process upon the defendant; upon the depositions of witnesses on behalf of the plaintiff, regularly taken by agreement of counsel for the parties and filed in accordance with law; and was argued by counsel.

Upon consideration whereof the Court finds from the evidence, independently of any admissions of the parties in the pleadings or otherwise, that the parties are members of the white race and over the age of twenty-one years; that they were lawfully married in the City of Richmond, Virginia, on the 13th day of September, 1941; that there were three children born of this marriage, all of whom are now adults; that both plaintiff and defendant are domiciled in and are and have been actual bona fide residents of the Commonwealth of Virginia for a period of more than one year next preceding the commencement of this suit; that the parties last cohabited as husband and wife in the County of Henrico, Virginia; that the defendant did on July 27, 1968, wilfully desert and abandon the defendant, which desertion has continued uninterrupted since that date;

page 19 } It is therefore Adjudged, Ordered and Decreed that Anna Lee Werner be and she is hereby awarded a divorce *a mensa et thoro*, with leave to later merge into a divorce *a vinculo matrimonii*.

This is just a final decree of divorce and neither party

may marry another, and this cause is retained on the docket.

Enter: 6/26/69

John Wingo Knowles

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page 20 }

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IN THE CIRCUIT COURT OF HENRICO COUNTY

\* \* \* \* \*

FINAL DECREE I-290

This cause came on this day to be heard upon the petition of the plaintiff to merge the decree of divorce *a mensa et thoro* heretofore entered in this cause, into a decree of divorce *a vinculo matrimonii*, upon the depositions of witnesses on behalf of the plaintiff, and was argued by counsel.

Upon Consideration Whereof, the Court finds from the evidence, independently of any admissions of the parties in the pleadings or otherwise, that the plaintiff heretofore was awarded a decree of divorce *a mensa et thoro* in this Court upon the grounds of willful desertion and abandonment on July 27, 1968, and the Court further finds from the evidence that more than one year has elapsed since the date of the aforesaid desertion and that no reconciliation has taken place or is probable, and that the separation has continued without interruption since the granting of the divorce decree *a mensa et thoro* and since the date of desertion aforesaid;

The Court, therefore, doth Adjudge, Order and Decree that the aforesaid decree of divorce *a mensa et thoro* heretofore entered be, and the same is, merged into a final decree of divorce *a vinculo matrimonii*; and that the  
 page 21 } bond of matrimony created by the marriage between the parties on September 13, 1941, be, and the same is, hereby dissolved.

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

Enter: 8/14/69

John Wingo Knowles  
 Judge

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page 22 }

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IN THE CIRCUIT COURT OF THE COUNTY OF  
HENRICO

\* \* \* \* \*

NOTICE OF APPEAL AND ASSIGNMENT OF  
ERRORS

The defendant Raymond E. Werner, gives notice of appeal from the judgment of the Court rendered herein on July 6, 1970 and assigns the following error as required by Rules of Court 5:1, Sec. 4:

1. The Court erred in ruling that the Henrico Juvenile and Domestic Relations Court does have jurisdiction of the petition for support originally filed December 13, 1968.

Raymond E. Werner

By George F. Tidey  
Of Counsel

George F. Tidey  
Somma, Tidey & McMurtrie  
Suite 1313 Seventh and  
Franklin Building  
701 East Franklin Street  
Richmond, Virginia 23219

Sept. 2, 1970  
Received & Filed in Office

Teste:  
Helen C. Loving, Clerk.

\* \* \* \* \*

A Copy—Teste:

Howard G. Turner, Clerk.

## INDEX TO RECORD

	<i>Page</i>
Appeal Awarded .....	1
Petition filed in Juvenile and Domestic Relations Court.....	2
Judgment of Juvenile and Domestic Relations Court, January 13, 1969.....	4
Notice of Intention to file Petition for Termination of Order, etc.....	7
Petition for Termination of Order.....	7
Petition denied—June 1, 1970.....	9
Decree appealed from—July 6, 1970.....	9
Stipulation of facts.....	10
Divorce— <i>A mensa et thoro</i> —June 26, 1969.....	11
Divorce—Final—August 14, 1969.....	12
Notice of Appeal and Assignment of Error.....	13