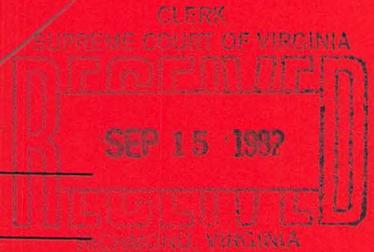


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I N T H E
S U P R E M E C O U R T O F V I R G I N I A
A T R I C H M O N D

Record No. 812084

LELIA KATHRYN SNEAD CARPER

v.

LEO SAMUEL CARPER

APPENDIX

Ellen M. Arthur

The Legal Aid Society of Roanoke Valley
203 North Main Street
Lexington, Virginia 24450

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ORDER OF REFERENCE TO JUVENILE COURT,
entered 6/17/81

Upon the Motion of the Defendant and for good cause shown
it is hereby

ORDERED that this cause be and hereby is reinstated upon the
docket of this Court. It is further

ORDERED that modification and enforcement of the decrees of
this Court and all other matters pertaining to support and maintenance
for Defendant and for maintenance, support and custody of the
children of the marriage are referred to the Juvenile and Domestic
Relations District Court for Alleghany County.

And this cause is ended.

JUVENILE AND DOMESTIC RELATIONS COURT
ORDER, entered 6/24/81
(Also Exhibit C to Statement of Facts)

This day came Plaintiff in person and by Counsel and
Defendant in person and by Counsel upon Plaintiff's motion for
increased support and other relief, and was argued.

Upon consideration of the evidence herein, it is therefore
ADJUDGED, ORDERED AND DECREED:

1. Commencing July 1, 1981, Defendant shall make payments
to Plaintiff in the amount of Two Hundred Forty Dollars (\$240.00)
every two weeks;
2. There are no arrearages due from Defendant to Plaintiff for
mortgage payments ordered to be paid by Decree of the Circuit Court
of Alleghany County dated February 23, 1979;

3. Defendant shall afford to the children of the marriage all medical insurance benefits currently afforded to Plaintiff in connection with his employment; and

4. Any provisions in any previous Orders which are inconsistent with the provisions made herein are hereby modified to conform with this Order.

STATEMENT OF FACTS, filed 10/28/81

1. On March 7, 1979, the Circuit Court for Alleghany County, Virginia entered a decree for pendente lite relief in a certain cause styled Leo Samuel Carper v. Lelia Kathryn Carper for the hearing held on February 23, 1979. A copy of this decree is attached as Exhibit A.

2. A portion of the decree reads "It is further ADJUDGED, ORDERED, and DECREED that the Complainant shall make the mortgage payments on the house . . ." It is the effect of this provision which is at issue in the instant case.

3. The amount of said mortgage payments was \$270.92 per month.

4. On April 2, 1980, the Circuit Court for Alleghany County, Virginia entered a final decree of divorce between Leo Samuel Carper and Lelia Kathryn Snead Carper, a copy of which is attached hereto as Exhibit B.

5. Said final decree orders that the provisions of the decree dated February 23, 1979 remain in full force and effect.

6. On July 16, 1980, Leo Samuel Carper filed a suit for partition of the real estate for which he had been ordered to make mortgage payments.

7. Said real estate was the marital home in which Lelia Kathryn Snead Carper and the three children born of the marriage continued to live.

8. On April 13, 1981, after negotiations between the parties, the partition suit filed by Leo Samuel Carper was dismissed as agreed and settled. The settlement agreed upon was that Lelia Kathryn Snead Carper's parents would purchase Mr. Carper's interest for \$5,000.00 and assume the financing on the residence.

9. A deed dated January 30, 1981 from Lelia Kathryn Snead Carper and Leo Samuel Carper to Lelia Kathryn Snead Carper and her parents for the marital residence was subsequently duly recorded in the Clerk's Office for the Circuit Court for Alleghany County, Virginia.

10. Leo Samuel Carper last made the mortgage payment on the marital residence in February 1981.

11. Lelia Kathryn Snead Carper began the payment of \$150.00 per month to her parents in March 1981. Although her parents continued to pay the same amount in mortgage payments as Mr. Carper had previously paid, Mrs. Carper was unable to pay more than \$150.00 to them. Mrs. Carper's parents made up the difference out of their own pockets.

12. On June 17, 1981, the Circuit Court for Alleghany County, Virginia reinstated the cause of Leo Samuel Carper v. Lelia Kathryn Snead Carper upon the docket and ordered that modification and

enforcement of the decrees of that Court and all other matters pertaining to support and maintenance for Defendant and for the children of the marriage be referred to the Juvenile and Domestic Relations Court for Alleghany County.

13. On June 18, 1981, upon the petition of Mrs. Carper, the Juvenile and Domestic Relations Court for Alleghany County increased the amount of spousal and child support from \$165.00 bi-weekly to \$240.00 bi-weekly but denied Mrs. Carper's request for judgment for arrearages due for mortgage payments from March 1981 to the date of the hearing. A copy of this order is attached hereto as Exhibit C.

14. On August 10, 1981, the Circuit Court for Alleghany County heard evidence de novo and argument on Mrs. Carper's appeal from the denial of her request for judgment by the lower court. The hearing was not recorded.

15. A substantial portion of the evidence and argument concerned the matter of the increase in support payments, which is not the subject of this appeal.

16. Counsel for Mr. Carper argued that his client had no further obligation to make mortgage payments once Mrs. Carper's parents assumed the mortgage and presented into evidence the deed in which Mrs. Carper's parents agreed to indemnify Mr. Carper against liability to the mortgage holder on the real estate.

17. Counsel for Mr. Carper also argued that the Decree of February 23, 1979 requiring Mr. Carper to make mortgage payments is not an order for support because there is another portion of the same decree requiring periodic cash payments which is specifically designated support.

18. Mr. Carper testified that it was his understanding that Mrs. Carper's parents agreed to take over his obligations with respect to housing his children and ex-wife and paying off the mortgage on the house.

19. Mrs. Carper's mother, Edith T. Snead, testified that her intention was to provide a home for her grandchildren, not to relieve Mr. Carper of obligations imposed upon him by the Court.

20. Counsel for Mrs. Carper argued that, under Virginia Code §20-107, the final decree can only be for support of the spouse or children, there being no jurisdiction in the Circuit Court to make any other type of property award. Furthermore, even if Mr. Carper's interpretation of the deed between himself and Mrs. Carper's parents were correct, such an agreement would not modify the Court's order and his duty was to comply with that Order until it was modified. The decree itself, not the intent behind it, determines the respective rights and obligations of the parties.

21. Judge Duncan M. Byrd, Jr. held that the provision requiring Mr. Carper to make mortgage payments could not reasonably be construed to be an order for support and denied judgment for arrears.

22. On September 9, 1981, an order was duly executed by Counsel for both parties and entered by Judge Byrd in accordance with his holding.

DECREE, entered 3/7/79
Exhibit A to Statement of Facts

This cause came on the 23rd day of February, 1979, to be heard upon a bill of complaint properly filed and served upon the

defendant; upon a notice setting this date for a hearing for relief pendente lite properly filed and served upon the defendant; upon the appearance of the parties in person and by their respective counsel; upon the hearing of evidence ore tenus by the court and upon argument of counsel.

It is ADJUDGED, ORDERED and DECREED that the temporary custody of the infant children be and the same is hereby awarded to the defendant with the complainant having reasonable visitation privileges.

It is further ADJUDGED, ORDERED and DECREED that the temporary possession of the property used by the parties as their marital abode be and the same is hereby awarded to the defendant for herself and said children and the use of the furniture is awarded to the defendant, but each of the parties is enjoined and restrained from disposing of the furniture or any personal property without the consent of this court.

It is further ADJUDGED, ORDERED and DECREED that the complainant shall make the mortgage payments on the house and pay to the defendant as support and maintenance for the defendant and said infant children the sum of \$165.00 each Chesapeake and Ohio Railway payday with the first payment becoming due and payable on March 1, 1979, and said payments shall be made through the Alleghany County Juvenile and Domestic Relations District Court. Out of said payment the defendant is ordered to pay the utility payments along with food and clothing for herself and said children. It being represented to the court that sufficient fuel oil has already been purchased for the use of the defendant and said children, no ruling or provision is made at this time concerning heating oil.

It is further ADJUDGED, ORDERED and DECREED that the court does not make any ruling concerning the disposition of the automobile or the payment of the purchase price of said automobile, but directs the parties to attempt to work out this problem between themselves so as to provide reasonable transportation for the defendant.

It is further ADJUDGED, ORDERED and DECREED that the defendant shall not entertain members of the opposite sex in the residence around the children and the complainant shall not do likewise around the children.

It is further ADJUDGED, ORDERED and DECREED that neither of the parties shall create any debts which would affect the credit of the other party, but the complainant is responsible for such debts as the parties had incurred prior to their separation.

It is further ADJUDGED, ORDERED and DECREED that the complainant shall pay to William E. Carson attorney's fees in the sum of \$300.00 within 120 days from the date of this hearing.

It is further ADJUDGED, ORDERED and DECREED that each of the parties hereto is enjoined and restrained from bothering, molesting or interfering with the other party while this cause is pending.

FINAL DECREE entered 4/2/80
Exhibit B of Statement of Facts

This cause came on this day to be heard upon the Bill of Complaint, duly filed and served upon the defendant by the complainant; upon a Notice served upon the defendant by the complainant

for certain relief pendente lite; upon an Answer and Cross-Bill, duly filed; upon a hearing ore tenus; upon a Decree entered the 23rd day of February, 1979; upon depositions of the defendant and another; and was argued.

UPON CONSIDERATION WHEREOF, and it appearing to the Court that the parties hereto were lawfully married in Covington, Virginia, on July 31, 1970; that both of the parties hereto are members of the Caucasian race and over the age of eighteen (18) years; that neither of the parties is a member of the Armed Forces or Naval Services; that both of the parties hereto are actual bona fide residents of and domiciled in the State of Virginia, and have been for at least six months next preceding the filing of this suit; that there were three children born of said marriage; namely Leo Samuel, Jr., born December 12, 1971, Lynette Susanne, born September 14, 1973, and Lane Scott, born January 23, 1975; that the parties hereto last lived together in Covington, Virginia, on February 16, 1979, and that there has been no resumption of cohabitation since said date of February 16, 1979.

UPON CONSIDERATION WHEREOF, it is accordingly ADJUDGED, ORDERED and DECREED as follows:

(1) That the complainant, Leo Samuel Carper, and the defendant, Lelia Kathryn Snead Carper, be and are hereby awarded a divorce a vinculo matrimonii (an absolute divorce) from each other on the grounds of living separate and apart for a period in excess of one year.

(2) That the prior Decree of this Court dated February 23, 1979, shall remain in full force and effect until otherwise amended by Court order.

And this cause is ended.

DECREE entered 9/9/81

THIS CAUSE came on this the 10th day of August, 1981, to be heard upon an appeal from a decision of the Juvenile and Domestic Relations Court for Alleghany County, Virginia. Upon trial de novo and for good cause shown, it is therefore,

ADJUDGED, ORDERED AND DECREED that Respondent shall pay to the Petitioner for spousal and child support the amount of TWO HUNDRED SIXTY DOLLARS (\$260.00) every other week. It is further ORDERED that Respondent shall pay spousal and child support at the rate set by the Juvenile and Domestic Relations Court for Alleghany County, Virginia during the pendency of this appeal.

It is further ADJUDGE, ORDERED and DECREED that the respondent is not in arrears or in contempt for failure to make mortgage payments subsequent to the sale of said marital residence and the Petitioner's request for judgment for same is denied.

DECREE OF SALE entered 1/29/81

This cause came this day to be again heard upon the papers formerly read; upon depositions taken after due Notice; and was argued by counsel.

And it appearing that the complainant has a right to compel partition of the property involved in this suit known as Lots 43 and 44, Intervale Subdivisions with improvements; that the property is not susceptible to partition in kind in any of the modes prescribed by law; that the defendant is unwilling to take the whole property and pay the complainant an offered sum or in the alternative, sell to

the complainant for the same sum; that the interests of those concerned will be promoted by a sale of the entire property and a division of the proceeds; that the proper parties are before the Court to enable the Court to effect such sale in this cause, the Court doth ADJUDGED, ORDER and DECREE that the parcel of real property be sold by the Court in this cause; and to that end the Court appoints William E. Carson and Michael McHale Collins Special Commissioners to make such sale in form and manner as the Court directs, with authority to receive private offers and submit them to the Court for acceptance or rejection.

The Special Commissioners herein named are directed to enter into a bond in the penalty of FIFTY THOUSAND DOLLARS (\$50,000.00), before making said sale.

And this cause is continued.

DECREE entered 4/13/81

It appearing to the Court that the parties hereto have compromised and settled all matters in dispute and request this cause be dismissed with prejudice, it is accordingly ADJUDGED, ORDERED and DECREED that the above styled cause is hereby dismissed with prejudice and the Clerk is directed to place it with the causes ended.