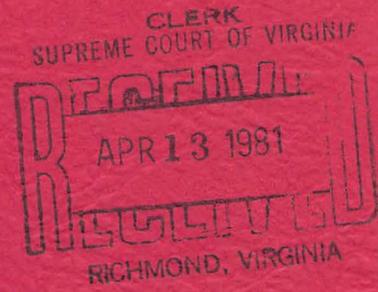
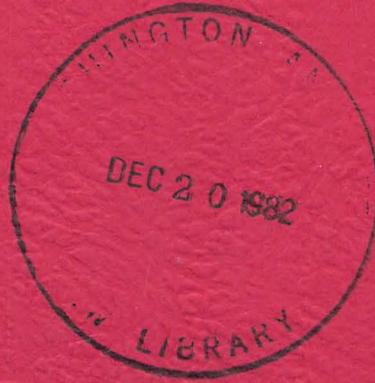


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J. E. CARSWELL nee Masterson	APPENDIX
v.	Record No.
M. J. MASTERSON	801448

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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

RECORD NO. 801448

CHRISTINE E. CARSWELL,  
nee Masterson

Appellant

v.

MICHAEL J. MASTERSON

Appellee

A P P E N D I X

Carl G. Womack, Jr.  
Suite 206  
2000 North 16th Street  
Arlington, Virginia 22201  
(703) 528-4422  
Counsel for Appellant

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TABLE OF CONTENTS OF APPENDIX

<u>TYPE OF PAPER</u>	<u>DATE FILED WITH COURT</u>	<u>PAGE</u>
1. Petition	October 17, 1979	1
2. Decree	January 12, 1980	2
3. Decree	June 12, 1980	4
4. Assignment of Error		6

1.

P E T I T I O N

COMES NOW the Petitioner, CHRISTINE E. CARSWELL, nee Masterson and as grounds for her Petition states as follows:

1. On November 14, 1974 Petitioner obtained a Decree of Divorce *a vinculo matrimonii* from the Defendant in the above styled case.

2. Among other things the Decree awarded custody of the parties' minor children to Petitioner and ordered Defendant, beginning on November 14, 1974, to:

"...pay to the Complainant for support of the minor children the sum of \$85.00 per week. After one year from the aforesaid beginning date, the support payments shall be increased by six per cent (6%) over the first year's amount. Thereafter, in each succeeding year, the amount shall be increased by six per cent (6%) over the previous year's amount."

3. Thereafter, by Order entered on July 12, 1978, the Defendant, Michael J. Masterson, was found to be in arrears in payment of the above support and was ordered to pay the arrears, \$2737.84, to the Petitioner at the rate of Fifty Dollars (\$50.00) every two weeks until he had purged himself of the contempt of the Court.

4. Thereafter, by Order entered on August 17, 1979, the Defendant was again found in contempt of the Court for failure to pay child support and was ordered to pay \$300.00 every two weeks until June 19, 1981, and \$259.13 from June 19, 1981 to November 20, 1981 when he would have purged himself of contempt and paid the arrearages in child support.

5. Defendant has not paid the child support and arrears

as ordered and as of October 15, 1979, is Twelve Hundred Dollars (\$1,200.00) in arrears in payment of the August 17, 1979, Order and is in arrears in the amount of Four Thousand Six Hundred Fifty and 94/100 Dollars (\$4,650.94) in payment of the child support ordered by the Court on November 14, 1974.

6. Defendant is regularly and gainfully employed, and the Petitioner believes that his failure to pay the child support is willful and contemptuous.

WHEREFORE Petitioner prays that

A. A rule issue against the Defendant directing him to show cause why he should not be punished as and for a contempt of the Court for his failure to pay the child support ordered by the Court and requiring him to comply with the Court's Orders;

B. She be awarded her attorney's fees and costs incurred in this proceeding \*\*\* \*

[Above Petition filed with the Court on October 17, 1979]

2.

\*\*\*

D E C R E E

THIS CAUSE came on to be heard on the 4th day of January, 1980, upon the Complainant's Petition for a Rule to Show Cause, upon said Rule, upon service of the Rule on the Defendant, upon Defendant's motion in open Court to suspend imposition of sentence for any contempt found by the Court and upon the testimony of the parties and was argued by counsel. Upon con-

sideration whereof, and

IT APPEARING TO THE COURT that:

1. The total amount of arrearage in payment of child support by the Defendant is Six Thousand Fifty and 94/100 Dollars (\$6,050.94); and

2. The Defendant, MICHAEL J. MASTERSON, is in contempt of this Court for his failure to pay the aforesaid arrearage; and

3. The Defendant has entered into an allotment with his employer in the amount of Three Hundred Twenty Five Dollars (\$325.00) which allotment provides that said \$325.00 shall be paid to the Complainant each and every two weeks as long as it remains in effect; and

4. The Defendant's motion to suspend imposition of sentence should be granted and the Complainant objected to said motion; it is therefore:

ADJUDGED, ORDERED and DECREED that:

A. Judgment is entered against the Defendant in favor of the Complainant in the amount of Six Thousand Fifty and 94/100 Dollars (\$6,050.94);

B. The Defendant, MICHAEL J. MASTERSON, is in contempt of this Court for his failure to pay the aforesaid arrearage in child support;

C. Imposition of sentence for the above contempt is suspended until Friday, March 7, 1980;

D. The Defendant, MICHAEL J. MASTERSON, continue to pay to the Complainant the sum of Three Hundred Twenty Five

Dollars (\$325.00) from each two week pay period by allotment and that the aforesaid allotment remain in effect until further order of this Court and the failure of the Defendant to maintain said allotment in effect shall constitute a further contempt of this Court; and

E. The Complainant's motion for award of attorney's fees is continued.

\* \* \*

ENTERED this 12th day of January, 1980.

/s/ William L. Winston  
WILLIAM L. WINSTON, Judge

\* \* \*

3.

\* \* \*

D E C R E E

THIS CAUSE came on to be heard on the 14th day of March, 1980, upon the Complainant's motion for an award of attorney's fees incurred in pursuing a contempt proceeding against the Defendant for failure to pay child support previously ordered by the Court, upon the decretal papers formerly filed herein and was argued by counsel for the Complainant and by the Defendant who appeared *pro se*.

IT APPEARING TO THE COURT that:

1. A Decree of Divorce was entered by this Court on November 14, 1974, which Decree awarded the Complainant herein a divorce *a vinculo matrimonii* from the Defendant herein;

2. Said Decree ordered the Defendant to pay Complainant certain sums for the support and maintenance of the parties'

minor children;

3. On three occasions this Court has held the Defendant in contempt for failure to pay the aforesaid child support and maintenance and has ordered him to pay arrears on all such occasions;

4. In her last Petition for enforcement of the said support Complainant moved the Court to award her attorney's fees which she would incur as the result of pursuing the Petition;

5. The Complainant has incurred attorney's fees in connection with pursuing the said Petition; and

6. All attorney's fees were incurred after the parties' marriage was terminated by the aforesaid divorce *a vinculo matrimonii*, it is therefore:

ORDERED, ADJUDGED and DECREED that:

A. Complainant's motion for an award of attorney's fees is denied on the basis that after the termination of a marriage this Court has no power to order a former spouse pay counsel fees incurred after said termination by the other spouse in pursuing a contempt petition for the nonpayment of child support, unless by contract the former spouse has agreed to be responsible for the other's counsel fees despite the divorce \*\*\* \*

\* \* \*

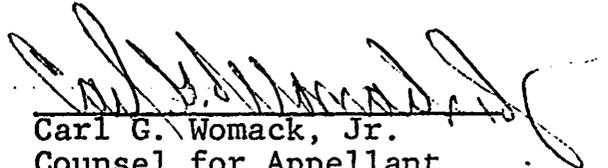
ENTERED this 11 day of June, 1980.

/s/ William L. Winston  
JUDGE

4. ASSIGNMENT OF ERROR

The trial court erred in decreeing that it had no power after the termination of a marriage to order a former spouse to pay the counsel fees of his former spouse incurred after said termination in pursuing a contempt proceeding for the nonpayment of child support and maintenance.

Respectfully submitted,



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