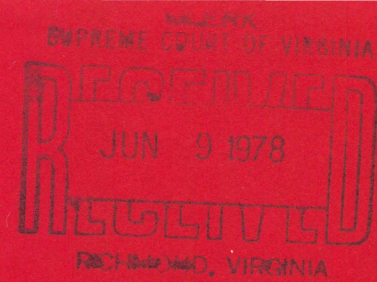


220VA299



IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO.77-1715

MARY GLADYS RICHARDS CARPENTER,
aka: M.G. CARPENTER,

Appellant,

v.

BROWN HUTCHESON CARPENTER,
aka: B.H. CARPENTER,

Appellee.

JOINT APPENDIX

Robert L. Gutterman
245 First Colonial Rd.
Virginia Beach, Va. 23454
Counsel for Appellant

Keith H. Bangel
BANGEL, BANGEL and BANGEL
505 Court St.
Portsmouth, Va. 23704
Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

MARY GLADYS RICHARDS CARPENTER,

Complainant

vs.

IN CHANCERY NO. C-75-1286

BROWN HUTCHESON CARPENTER,

Defendant

STIPULATION AGREEMENT UNDER TITLE 20, SECTION
109 OF THE CODE OF VIRGINIA (1950), AS AMENDED

MARY GLADYS RICHARDS CARPENTER, hereinafter called the Wife, and BROWN HUTCHESON CARPENTER, hereinafter called the Husband, in accordance with Title 20, Section 109 of the Code of Virginia of 1950, as amended, and subject to the approval of the Circuit Court of the City of Norfolk, agree as follows:

1. That there were two children born of the marriage: Brown Hutcheson Carpenter, III, born April 20, 1968, and Helen Stewart Carpenter, born October 10, 1969; that the Wife will have the care and custody of the children with visitation to the Husband every other weekend from 4:00 P.M. Friday until 7:30 P.M. Sunday during the school year and from 4:00 P.M. Friday until 8:30 P.M. Sunday during the summer when the children are out of school; and every Wednesday afternoon from 4:00 P.M. to 7:30 P.M. during the school year and from 4:00 P.M. to 8:30 P.M. during the summer when the children are out of school; and three weeks during the summer vacation period not to interfere with the schooling of the children; that the Husband shall further have visitation with the children on their birthdays, the Husband's birthday, and at Christmas.

2. That the Husband agrees to pay to the Wife as support and maintenance for the infant children \$250.00 monthly; that the Husband will have the right to claim the children on federal

3/17/78
FILED
CIRCUIT COURT
NORFOLK, VIRGINIA

and state income taxes; that the sum of \$250.00 will be payable in installments of \$125.00 on the first and \$125.00 on the 15th days of each month beginning November 1, 1975; that the Husband will pay to the Wife \$177.50 for the remainder of the month of October.

3. That the Wife waives any further claim of alimony, past, present or future.

4. That the parties presently own a home located at 416 Beacon Hill Circle, Norfolk, Virginia 23502 which is valued at or about \$27,000.00 with a balance owing of \$15,000.00 thereupon, more or less; that the Husband agrees to transfer said home to the Wife by deed of assumption and separate equitable estate; that the Wife agrees to assume the mortgage presently recorded thereupon and save the Husband harmless from any liability; that the Wife in consideration of the transfer agrees to give to the Husband a note for \$3,000.00 at no interest payable in installments of \$50.00 monthly on the 15th day of each month beginning November 15, 1975, and which said note and deed of trust will be nonassumable.

5. That the parties have previously divided their furnishings and other belongings. All items in the possession of each shall be theirs and each of the parties waives all right, title and interest in and to those furnishings and articles in the possession of the other as of the time of the signing of this agreement.


6. That the Wife agrees to pay her own counsel fees in this present divorce action and waives all further claim to counsel fees to be paid by the Husband to Louis B. Fine.

7. That there is presently a home improvement loan owed jointly by the parties at First Virginia Bank with a balance of or about \$1,150.00 which the Husband agrees to assume and -

and pay and save the Wife harmless from any liability; that there is also a joint debt payable to General Motors Acceptance Corporation on the Husband's Pinto automobile which the Husband agrees to assume and pay and save the Wife harmless from any liability.

8. Subject to the provisions of this agreement the parties hereto renounce, quit-claim and forever release to the other any and all claims, rights, titles, interests, demands and obligations by way of dower, courtesy, inheritance, descent, or otherwise, which they now have or may hereafter have against each other in and to any and all property, real, personal or mixed, now owned or hereafter acquired.

WITNESS the following signatures and seals this 15th day of October, 1975.


Mary Gladys Richards Carpenter (SEAL)


Brown Hutcheson Carpenter (SEAL)

MARY GLADYS RICHARDS CARPENTER,

vs. Complainant

IN CHANCERY NO. C-75-1286

BROWN HUTCHESON CARPENTER,

C-598-76

Defendant

B. H. CARPENTER,

Complainant

vs.

IN CHANCERY NO. C-75-1288

M. G. CARPENTER,

Defendant

CONSOLIDATED

DECREE

THIS CAUSE came on this day to be heard upon the Bill of Complaint of Mary Gladys Richards Carpenter against Brown Hutcheson Carpenter, the answers of the defendants to the causes herein, the consolidation and both of the cases by decrees of this Court, the depositions duly taken and filed herein, the report of the Commissioner in Chancery, the additional depositions duly taken and filed herein, and was argued by counsel.

UPON CONSIDERATION WHEREOF, and it appearing to the Court upon consideration of the consolidated report of the Commissioner in Chancery, the depositions taken before the Commissioner in Chancery, the depositions taken on March 30, 1976, and it appearing to the Court that no exceptions have been filed to the report of the Commissioner in Chancery, and the Court perceiving of its own motion that there are no errors in the said report of the Commissioner in Chancery, and pursuant to the depositions taken on March 30, 1976; that the parties were married on the 3rd day of September 1966 at Wrightsville Beach, North Carolina; that Brown Hutcheson Carpenter willfully deserted and abandoned Mary Gladys Richards Carpenter on the 13th day of November, 1974; that

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the parties last cohabited in the City of Norfolk, Virginia, and were domiciled in and were actual bona fide residents of the State of Virginia at the time of the commencement of this suit, and had been domiciled in and had been actual bona fide residents of the State of Virginia for more than six months next preceding the commencement of this suit; and that the depositions taken on March 30, 1976 indicate that the parties were continuously separated without interruption since November 13, 1974.

It is, therefore, ADJUDGED, ORDERED and DECREED that Mary Gladys Richards Carpenter be and she is awarded a divorce a vinculo matrimonii from Brown Hutcheson Carpenter, and that the Bill of Complaint filed by B. H. Carpenter vs. M. G. Carpenter, Chancery No. C-75-1288, be and is hereby dismissed.

And it further appearing to the Court that the parties herein have executed a stipulation dated October 15, 1975 and the said stipulation appearing to the Court is equitable and fair, it is, therefore, ADJUDGED, ORDERED and DECREED that the same be and is hereby confirmed and approved *and affirmed, ratified and incorporated in this decree.*

It is further ADJUDGED, ORDERED and DECREED that Brown Hutcheson Carpenter pay to Mary Gladys Richards Carpenter the sum of Two Hundred Fifty (\$250.00) Dollars per month as support money for the support, education and maintenance of their children, Brown Hutcheson Carpenter, III, and Helen Stewart Carpenter.

It is further ADJUDGED, ORDERED and DECREED that the custody of their children Brown Hutcheson Carpenter, III, and Helen Stewart Carpenter be and is awarded to Mary Gladys Richards Carpenter with visitation in accordance with the agreement filed herein.

And this cause is removed from the docket.

ENTER: This 14th day of April, 1976.

I ask for this:

[Signature]
Judge

[Signature]
Of Counsel for Mary Gladys Richards Carpenter

Seen:

[Signature]
Of Counsel for Brown Hutcheson Carpenter

25

LAW OFFICES
L. FINE, LEGUM
& FINE
LAW BUILDING
RICHMOND, VIRGINIA 23510

25

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

MARY GLADYS RICHARDS CARPENTER,

Complainant

vs.

IN CHANCERY NO. C-75-1286

BROWN HUTCHESON CARPENTER,

Defendant

E. H. CARPENTER,

Complainant

vs.

IN CHANCERY NO. C-75-1288

H. C. CARPENTER,

Defendant

PETITION

To the Honorable Judge of Said Court:

Petitioner, Brown Hutcheson Carpenter, shows the Court the following:

1. That by decree previously entered on the 14th day of April, 1976, the care and custody of the two children born of the parties, Brown Hutcheson Carpenter, III, presently age 9, and Helen Stewart Carpenter, presently age 7, was granted to Mary Gladys Richards Carpenter with visitation in accordance with an agreement entered into between the parties and filed with the papers and approved by the Court.

2. That by the agreement Brown Hutcheson Carpenter was to have visitation with the children every other weekend from 4:00 p.m. Friday until 7:30 p.m. Sunday during the school year and 4:00 p.m. Friday until 2:30 p.m. Sunday during the summer months; that in addition thereto he was to have visitation with the children each Wednesday from 4:00 p.m. until 7:30 p.m. during the school year and 4:00 p.m. until 8:30 p.m. during the summer months; that Brown Hutcheson Carpenter also had three weeks summer visitation and was to

see the children on their birthdays, his birthday, and at Christmas time.

3. That Mary Gladys Richards Carpenter has just informed Brown Hutcheson Carpenter that she intends to move from the State of Virginia to New York City; that she at this time has placed the children with Brown Hutcheson Carpenter stating to him that she has gone to New York to interview for jobs.

4. That Brown Hutcheson Carpenter has seen a "For Sale" sign at Mary Gladys Richards Carpenter's townhouse located at 1357 Waddy Oak Court, Virginia Beach, Virginia.

5. That Brown Hutcheson Carpenter verily believes that Mary Gladys Richards Carpenter intends to remove the children from the State of Virginia which will in effect preclude and eliminate effective visitation rights with the children; that Brown Hutcheson Carpenter having visited New York and knowing the environment also believes that this would greatly be to the detriment of the children to leave the Tidewater area of Virginia.

6. That it would be to the best interests of the children that their custody be changed to Brown Hutcheson Carpenter; that Mary Gladys Richards Carpenter's life with the children has been very unstable; that she does not maintain regular hours and constantly changes employment.

7. That Mary Gladys Richards Carpenter's conduct is unreasonable and to the detriment of the children.

8. That there has been a change of circumstances since the entry of the previous order of this Court granting custody.

WHEREUPON, Brown Hutcheson Carpenter prays that this Court enter a temporary injunction enjoining and restraining

Mary Gladys Richards Carpenter from removing the children from the State of Virginia until this matter can come on for hearing before this Court; that upon full hearing the Court enter a permanent injunction enjoining and restraining Mary Gladys Richards Carpenter from moving from the State of Virginia with the infant children; that should the Court feel that same is beneficial to the children that the care and custody of the infant children be changed to Brown Hutcheson Carpenter with reasonable visitation to Mary Gladys Richards Carpenter; that Brown Hutcheson Carpenter receive such other and further relief as the nature of his cause might require or to equity may seem meet.

Brown Hutcheson Carpenter

STATE OF VIRGINIA,

CITY OF PORTSMOUTH, to-wit:

I, _____, a Notary Public in and for the City and State aforesaid, do certify that Brown Hutcheson Carpenter did appear before me on the 18th day of July, 1977, and made oath that the contents of the foregoing Petition are true to the best of his information, knowledge and belief.

Given under my hand this 18th day of July, 1977.

My Commission expires _____.

Notary Public

Bangel, Bangel & Bangel
Law Building
Portsmouth, Virginia 23704

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

MARY GLADYS RICHARDS CARPENTER,

Complainant

vs.

IN CHANCERY NO. C-75-1286

C-598-76

BROWN HUTCHESON CARPENTER,

Defendant

B. H. CARPENTER,

Complainant

vs.

IN CHANCERY NO. C-75-1288

C-599-76

M. G. CARPENTER,

Defendant

ORDER

This day came Brown Hutcheson Carpenter and filed his sworn Petition alleging that Mary Gladys Richards Carpenter has advised him that she intends to move from the State of Virginia and take the infant children with her which conduct is unreasonable and in effect would terminate effective visitation of the children granted by both court decree and by agreement between the parties.

And Brown Hutcheson Carpenter having requested a temporary injunction until such time as a full hearing by the court may be had.

WHEREUPON, it is ADJUDGED, ORDERED and DECREED that Mary Gladys Richards Carpenter be, and herewith is, enjoined and restrained from removing the infant children, Brown Hutcheson Carpenter, III, and Helen Stewart Carpenter, from the State of Virginia, either on a temporary or permanent basis; that this matter shall come on for hearing upon the Petition of Brown Hutcheson Carpenter on the 1st day of August, 1977, at 10⁰⁰ am A.M. at which time Mary Gladys Richards Carpenter shall appear and show cause

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why this injunction should not be made permanent.

A Copy of this order shall be served on Mary Gladys Richards Carpenter at 1357 Ruddy Oak Court, Virginia Beach, Virginia.

This cause shall remain on the docket.

Enter: 7/19/77

S. L. Ryan

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

MARY GLADYS RICHARDS CARPENTER,

Complainant

vs.

IN CHANCERY NO. C-75-1286

BROWN HUTCHESON CARPENTER,

Defendant

B.H. CARPENTER,

Complainant

vs.

IN CHANCERY NO. C-75-1288

M. G. CARPENTER,

Defendant

ORDER

This cause came on for hearing August 3, 1977, at 10:00 a.m. to be heard upon the Petition of Brown Hutcheson Carpenter moving the Court to enjoin and restrain Mary Gladys Richards Carpenter from removing their infant children, Brown Hutcheson Carpenter, III, and Helen Stewart Carpenter, from the State of Virginia on a permanent basis; the parties having appeared and offered evidence and was argued by counsel.

It is ADJUDGED, ORDERED and DECREED that Mary Gladys Richards Carpenter be, and herewith is, permanently enjoined and restrained from removing the infant children, Brown Hutcheson Carpenter, III, and Helen Stewart Carpenter, from the State of Virginia on a permanent basis without permission of this Court.

And nothing further remaining to be done in this cause, it is removed from the docket.

Enter:

8/17/77

S. L. Ryan

Judge

*for Brown Hutcheson Carpenter
seen and objected to
212*

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

MARY GLADYS RICHARDS CARPENTER, :
Complainant, :
v. : IN CHANCERY NO. C-75-1286
BROWN HUTCHESON CARPENTER, :
Defendant. :
B. H. CARPENTER,
Complainant, :
v. : IN CHANCERY NO. C-75-1288
M. G. CARPENTER, :
Defendant. :

PETITION

NOW COMES Mary Gladys Richards Carpenter, your
Petitioner and represents as follows:

1. That since the hearing wherein the Court made a
decision to enjoin your Petitioner from taking the children out
of the State permanently on the 3rd of August 1977, your Petitioner
has been to New York City to seek employment in the chemical
field.

2. That your Petitioner has been offered a bona fide
job in and about the City of New York, at a weekly income of
approximately \$175.00 per week, working in graphic arts.

3. That said job is to become available to your
Petitioner on August 29, 1977 and that your Petitioner has
tentatively made arrangements to either stay with your Petitioner's
mother, or rent an apartment within a block or so of your
Petitioner's mother, subject to the Court's decision in this
matter.

WHEREFORE, your Petitioner prays that the previous Injunction be eliminated and that your Petitioner be permitted to take the said children with her to New York and that the Court set specific visitations of the children for Mr. Carpenter.

Mary Gladys Richards Carpenter
MARY GLADYS RICHARDS CARPENTER

N O T I C E

TO: Brown Hutcheson Carpenter
c/o Mr. Richard S. McLellon
Bangel, Bangel and Bangel
505 Court Street
Portsmouth, Virginia

TAKE NOTICE: That on ~~Friday~~ ^{Thursday} ~~August~~ ^{Sept} 25, 1977, at 10:00 a.m., I will move the aforesaid Court to eliminate the previous Injunction and to permit your Petitioner to remove said children from the State of Virginia, pursuant to the foregoing Petition.

MARY GLADYS RICHARDS
CARPENTER

By *HE H. R.*

Of Counsel

MORRIS H. FINE, p.q.
720 Law Building
147 Granby Street
Norfolk, Virginia 23510

I hereby certify that a true and correct copy of the foregoing Petition and Notice were mailed this 19th day of August 1977, to Mr. Richard S. McLellon, Attorney at Law, 505 Court Street, Portsmouth, Virginia, counsel for Brown Hutcheson Carpenter.

HE H. R.

MARY GLADYS RICHARDS CARPENTER,

Complainant,

vs.

BROWN HUTCHESON CARPENTER,

Defendant

IN CHANCERY NO. C-75-1286

FILE C-598-76

B.H. CARPENTER,

Complainant,

vs.

M. G. CARPENTER,

Defendant.

IN CHANCERY NO. C-75-1288

FILE C-599-76

DECREE

THIS CAUSE came to be heard on September 2, 1977, upon the Petition, Notice, the evidence heard ore tenus before the Court, both parties appearing in person and by counsel and was argued by counsel.

UPON CONSIDERATION WHEREOF and for good cause shown, it is ADJUDGED, ORDERED and DECREED that the Petition to dissolve the injunction, be and hereby is denied; and

It is further ADJUDGED, ORDERED and DECREED should Mary Gladys Richards Carpenter decide to permanently reside out of the Commonwealth of Virginia, that the custody of the infant children of the parties shall be awarded unto Brown Hutcheson Carpenter and the previous Decree of Court enjoining Mary Gladys Richards Carpenter from taking the children out of the State of Virginia shall continue in full force and effect until further Order of this Court.

15

Richard S. McLellan
Richard S. McLellan

M. H. Fine
Morris H. Fine

ENTER: This 15 day of September, 1977.

[Signature]
JUDGE

IN SENATE / CHANCERY COURT OF THE CITY OF NORFOLK

MARY GLADYS RICHARDS CARPENTER,

Complainant,

vs.

CHANCERY NO. C-75-1286

BROWN MATTHEW CARPENTER,

Defendant.

MARY GLADYS RICHARDS CARPENTER,

Complainant,

vs.

CHANCERY NO. C-75-1286

BROWN MATTHEW CARPENTER,

Defendant.

NOTICE OF APPEAL

MARY GLADYS Mary Gladys Richards Carpenter and notes her appeal from an Order of the Circuit Court of the City of Norfolk, dated August 12, 1977, to the Supreme Court of Virginia, pursuant to Article VI of the Constitution of the Commonwealth of Virginia.

The transcript testimony is to be hereinafter filed.

MARY GLADYS RICHARDS CARPENTER

BY _____

Witness my hand and seal this 7th day of September, 1977, at Norfolk, Virginia.

Notary Public for Virginia

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal was mailed this 7th day of September, 1977, to Richard S. McMillon, Esquire, Bangel, Bangel and Bangel, Law Offices, 206 Court Street, Portsmouth, Virginia 23703, for delivery to Brown Matthew Carpenter.

ASSIGNMENT OF ERROR

1. THE COURT ERRED IN FAILING TO FIND THAT THE BEST INTERESTS OF THE CHILDREN WOULD BE SERVED BY PERMITTING THE MOTHER TO TAKE THE CHILDREN FROM THE STATE OF VIRGINIA.

There are several questions involved in this appeal, all of which relate to the single assignment of error set forth above. The questions are as follows:

1. May the Mother, who has previously been granted custody of the children, take the children out of the State of Virginia in order to seek better employment opportunities for herself and to provide a more secure, stimulating, and rewarding environment for the children?

2. Does the Father's complaint that his opportunities for visitation with the children will be diminished justify the Court in enjoining the Mother from removing the children from the State of Virginia?

3. Is there any justification in law or fact for enjoining the Mother from taking the children across the Virginia boundary, while permitting her to move the children a greater distance from the Father, so long as the children remain in Virginia?

4. Does the decision of the Mother to move with the children to New York amount to a change of circumstances sufficient to justify the Court in changing custody to the Father?

May 10, 1978

Supreme Court of Virginia
Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

Attention: Allen L. Lucy, Clerk

Re: Mary Gladys Richards Carpenter, a/k/a, etc.
v. Brown Hutcheson Carpenter, a/k/a, etc.
Record No. 771715

Dear Mr. Lucy:

Pursuant to Rule 5:36, the appellant designates the following parts of the record which she intends to include in the appendix:

1. Petition of Appellee to enjoin and restrain Appellant.
2. Order entered August 17, 1977, enjoining and restraining Appellant.
3. The Assignment Of Error.
4. The following pages of the transcript of the hearing of August 3, 1977: Pages 6, 7, 12, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 31, 32, 33, 36, and 37.
5. Consolidated Decree, entered April 14, 1976, Chancery Number C-75-1286 and C-75-1288, File Number C-598-76, awarding divorce A Vinculo Matrimonii to Appellant.

Very truly yours,

Robert L. Cuttermann

RLG:dst

VIRGINIA: IN THE SUPREME COURT OF VIRGINIA

MARY GLADYS RICHARDS CARPENTER, etc.,

Appellant

vs.

RECORD NUMBER 771715

BROWN HUTCHESON CARPENTER, etc.,

Appellee

DESIGNATION OF PARTS OF RECORD FOR PRINTING BY APPELLEE

Appellee herewith comes and designates the following portions of the record for printing:

1. Stipulation Agreement under Title 20, Section 109 of the Code of Virginia, 1950, as amended, signed October 15, 1975, by the parties and filed March 17, 1976.
2. Consolidated Decree of Absolute Divorce entered April 14, 1976.
3. Petition of Appellee to enjoin and restrain Appellant from removing children from the State of Virginia filed July 19, 1977.
4. Order of July 19, 1977, enjoining and restraining Appellant from leaving the State of Virginia with the infant children until the question of the propriety of leaving could come on for hearing.
5. Order of August 17, 1977, enjoining Appellant from removing the infant children from the State of Virginia on a permanent basis without permission of the Court.
6. Petition of Appellant of August 19, 1977, to vacate the previous injunction.
7. Order of September 15, 1977, dismissing Appellant's Petition to vacate the injunction.
8. Full transcript of testimony of hearing of August 3, 1977, including page 3, line 3, through page 37, line 10.

⑨. Full Transcript of testimony of hearing of September 2, 1977, including page 3, line 1, through page 50, line 15.

BROWN HUTCHESON CARPENTER, etc.,

By Frank S. Miller

Of Counsel

Bangel, Bangel, & Bangel
Law Building
Portsmouth, Virginia 23704

I hereby certify that I have this 16th day of May, 1978, mailed a true copy of the foregoing to Robert L. Gutterman, Attorney at Law, 245 First Colonial Road, Virginia Beach, Virginia 23454.

Frank S. Miller

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

MARY GLADYS RICHARDS CARPENTER.

MARY GLADYS RICHARDS CARPENTER. :

Complainant,

vs.

IN CHANCERY NO. C-75-1286

BROWN HUTCHESON CARPENTER.

Defendant

TRANSCRIPT OF TESTIMONY

TRANSCRIPT OF TESTIMONY

Following is stenographic transcript of the testimony introduced and proceedings had upon the trial of the above entitled case, in said court, on the 3rd day of August 1977, before The Honorable Edward L. Ryan, Jr., Judge of said court.

introduced and proceedings had upon the trial of the

above entitled case, in said court, on the 3rd day of

August 1977, before The Honorable Edward L. Ryan, Jr.,

Judge of said court.

APPEARANCES: MORRIS H. FINE, ESQ.,
FINE, FINE, LEGUM & FINE,
Attorney for the Complainant

APPEARANCES: MORRIS H. FINE, ESQ.,
FINE, FINE, LEGUM & FINE,
Attorney for the Complainant

FINE, FINE, LEGUM & FINE.

Attorney for the Complainant

**RICHARD S. McLELLON, ESQ.,
BANGEL, BANGEL & BANGEL,
Attorney for the Defendant**

BANGEL, BANGEL & BANGEL,

Attorney for the Defendant

* * * * *

dv

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
CARPENTER, Brown Hutcheson (Recalled)	8-15 32-35	15-17	18
CARPENTER, Mary Gladys Richards	19-26	26-29	31

* * * * *

MR. FINE: If Your Honor, please, there is a problem that I would like to raise with the Court. For the first time, this morning, I did receive a copy of the petition that was filed, upon which the order was entered in this case; but the petition was not served on my client; only the order; and the order, as you will see, only enjoined her from taking the children out of the State of Virginia during the period of time until the matter could be heard. There was nothing in the order concerning any custody; nor was a copy of the petition, nor the order, sent to counsel; so for the first time this morning, I asked Mr. McLellon for a copy of this petition; and I showed Mrs. Carpenter the copy of this petition; and I find, in the petition, that Mr. Carpenter asks that should the Court feel it beneficial, that the custody of the children be turned over to him.

I am not prepared for this; nor was I notified of any custody change.

THE COURT: Mr. Fine, the Court ruled that the children couldn't be taken to New York; and Mrs. Carpenter went to New York; so what could we do with the children?

MR. FINE: I'm surprised, Your Honor.

THE COURT: What do you mean, you're surprised?

MR. FINE: Judge, I'm taken by surprise.

THE COURT: How much, a great deal, a little bit, or what?

MR. FINE: First of all, I don't know the basis of any change of custody. If it's only the fact that she was going to New York --

THE COURT: That's what we're here for today, to decide, isn't it? But if you want to continue it to this time next week, if by surprise you've been taken, we'll continue it.

MR. FINE: Judge, if in fact,

1 counsel is intent on going through
2 with a change of custody hearing,
3 Judge, I would have to move for a
4 continuance; because paragraph 8
5 says, "There has been a change of
6 circumstances since the entering of
7 the previous order of this Court,
8 granting custody"; that's in their
9 petition; and that was not served on
10 my client; nor did I receive a copy
11 of it.

12 Now, I don't know if they're
13 just seeking to enjoin my client from
14 going to New York; but in the event
15 that --

16 THE COURT: You mean that you can
17 face it better if you have witnesses
18 that say the mother is the best one
19 suited for custody and so forth; is
20 that what you're talking about?

21 MR. FINE: Yes, sir; and also
22 conditions, and that sort of thing.

23 THE COURT: I feel either one of
24 these parents is fit to have these
25 children, don't you?

1 MR. FINE: I assume, Judge.

2 THE COURT: It's not a question
3 of fitness. It's a question of relocating
4 these young children. How old are these
5 children?

6 MR. McLELLON: Nine and seven.

7 The main reason for putting that in
8 there, Judge, is to keep them from
9 going to New York.

10 MR. FINE: There's a question
11 about that; and you will hear the
12 evidence; but if that's the Court's
13 feeling; and that would be the only
14 reason for the change of custody --
15 it's just that I don't want to be
16 taken by surprise, by the Court saying --

17 THE COURT: You have no evidence
18 that Mrs. Carpenter is not fit to have
19 the care and custody of these children,
20 do you?

21 MR. McLELLON: No, sir, Judge.

22 The main purpose for that is if she
23 decides --

24 THE COURT: The Court ruled over
25 and over again that Mrs. Carpenter is

fit to have custody; right?

MR. McLELLON: Yes, sir. It would just be if she left the State.

THE COURT: Would it be bad for these children to take them up to New York?

MR. McLELLON: Yes, sir.

THE COURT: All right. That's what I want to hear the evidence on.

MR. McLELLON: Judge, I assume it's up to us to proceed; because we actually filed for a temporary injunction, and wanted to enlarge that into a permanent injunction.

I believe the petition states that Mr. Carpenter found out his ex-wife intends to take the children to New York; and of course, we are asking the Court to hear us on that.

THE COURT: All right, sir. You may proceed.

* * * * *

* * * * *

BROWN HUTCHESON CARPENTER, Defendant,
having been first duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

EXAMINED BY MR. McLELLON:

Q Your name is Brown Hutcheson Carpenter?

A Yes, sir.

Q Of course, you're the father of the two
children involved in this case?

A Yes, I am.

Q The children are presently what ages?

A My boy is nine years old; and my little
girl is seven.

Q And your ex-wife presently lives where?

A She lives on Ruddy Oak Court, in the
Green Run Community, Virginia Beach.

Q And you're presently living where?

A I live in the Cape Story neighborhood,
in Virginia Beach.

MR. McLELLON: Judge, I would
like for Your Honor to take note
that there was a stipulation entered
into on October 15, 1975, providing
for specific times of visitation; also,

the summer visitation; and this was adopted in a decree of April 14, 1976.

THE COURT: Okay.

MR. McLELLON:

Q Now, Mr. Carpenter, since the agreement was finally reached concerning the visitation of the children, how much have you been seeing your children?

A I see them quite a lot. I've seen the children practically every weekend I was supposed to see them; and on the week night I was supposed to see them; and I see them in the summer, three weeks; and I've always done that. In addition to that, I have kept the children frequently for weeks at a time for my wife when she was occupied; and I kept them for an extra week in the summer while she went to New York City.

Q So you had your regular three weeks visitation this summer?

A I have; plus a week.

Q What did you do with the children when you had them?

A This year -- I live within walking distance of the Chesapeake Bay, so we spent a great deal of time on the beach. I also took them to my home town, South Boston, Virginia, to visit my mother for a few days; and I left them with their grandmother; and she put them in

1 a day camp for a week.

2 Q What did you do with the children in
3 the summer of 1976?

4 A That year I took them on vacation.
5 Part of it was at the beach, too; but I took them to the
6 mountains -- Cumberland Gap -- and let them see Kentucky.

7 Q Did you also visit with your parents?

8 A Yes; with my folks. We spent some time
9 there, too.

10 Q And I believe your stepfather recently
11 died?

12 A Yes, he did.

13 Q All right. Now, you mentioned that you
14 kept the children certain weeks at other times; why?

15 A Well, last year I kept them practically
16 a month, while my wife was moving from the old house in
17 Norfolk, to the one she lives in now; and this year I
18 kept them for an extra week while she was in New York
19 City; and there have been times when I kept them -- one
20 of the jobs she had involved working strange hours, so
21 I kept them off and on during that time.

22 Q All right. What do you normally do with
23 them on your weekly evening visitation?

24 A I cook supper for them; and they mostly
25 play out in the yard with their friends, which I encourage;

1 and I go over their school work -- whatever they bring
2 home -- I look over it; report cards, when I see them.

3 Q I believe you have bicycles at your
4 house for the kids, don't you?

5 A I bought two bikes; yes, sir.

6 Q Did you also buy bikes for your kids
7 at your ex-wife's home?

8 A I bought my son a bike, to be kept at
9 my ex-wife's; and my mother bought a bike for my little
10 girl, so they had bikes at both places.

11 Q Do you love your children?

12 A Yes, sir; very much.

13 Q Do your children show affection for you?

14 A Yes, they do.

15 Q Do you think it would be in the best
16 interest of the children if your ex-wife moved to New
17 York?

18 A I certainly don't.

19 Q When did you first find out --

20 THE COURT: Why do you say
21 that?

22 A What was the last question?

23 THE COURT: Why shouldn't the
24 children go to New York; you said you
25 didn't think they should?

1 A I don't think they should go to New York;
2 because I think children, in general, need a father
3 that pays a lot of attention to them; and this is just
4 my feelings; but I think an awful lot of kids get in
5 trouble because their daddy isn't around; and I don't
6 think a divorce is an excuse; and my little girl is
7 a daddy's girl -- I think you know the type -- and I
8 think it would hurt her tremendously to be taken from
9 me; and my son, again, he's my boy, named after me; and
10 I don't want to lose him; and I think New York City is
11 a totally different environment from this area. I think
12 there are certain people that can live there, and enjoy
13 it. I don't think my kids would, though. They're active
14 kids.

15 THE COURT: There are four
16 or five boroughs in New York; do you
17 have any idea which borough your wife
18 is planning to go to?

19 A Her mother recently moved to Queens. I
20 guess that's where she's looking. She never told me
21 anything specific about what borough of New York she
22 wants to live in; but I've been to New York, and several
23 boroughs; and that's not where I want my kids to grow up.

24 MR. McLELLON:

25 Q You have been to New York, and seen it, so

1 that just the word "New York" makes you feel that way?

2 A Yes, sir.

3 Q Do you know the approximate mileage from
4 Norfolk to Queens?

5 A I'd say over four hundred miles.

6 Q And the driving time -- have you ever
7 driven to New York?

8 A I used to drive to college through New
9 York; and it seems to me it took a good eight, nine hours
10 or more. It was in that general category.

11 Q All right. If your wife did move to
12 New York, how often would it be that you would feel you
13 would have sufficient time to get off, to go to see them,
14 taking the driving time and expense?

15 A I can't even think about it. All I'd
16 ever get would be a weekend and a Friday night. I do
17 get vacations -- three weeks -- and I think, unless
18 there's some holidays -- with just three-day weekends,
19 I don't see how I could see them regularly. It would
20 just be two, three times a year. I don't know how I
21 could see them much more than that.

22 Q I believe it's been stated in the petition
23 here; but have you noticed whether or not your wife's
24 townhouse has a "For Sale" sign on it?

25 A It has, as of Sunday.

1 THE COURT: Tell me about
2 their roots in Norfolk; where they
3 go to school; who their friends are?

4 A Well, the children, of course, live at
5 both houses; and I don't know much about her house. I
6 know they go to Green Run Elementary School.

7 THE COURT: How long have
8 they been going there?

9 A A year; and before that, they were in
10 Poplar Halls. They were there for two years; and they
11 sort of know this area.

12 They have a lot of friends in my
13 neighborhood, too. They play with a lot of kids; and
14 they go out in the summer, in the morning, and I don't
15 see them the whole day just about; and they've never
16 lived anywhere else but this area. They were born here.

17 THE COURT: They were born
18 here, and lived here all their lives?

19 A Yes, sir.

20 THE COURT: Short lives?

21 A (Witness nods head in the affirmative.)

22 MR. McLELLON:

23 Q Let me ask you this: I believe in the
24 divorce settlement, you transferred the home in Poplar
25 Halls to your ex-wife; is that correct?

A Yes, sir; a dead of trust.

Q And she chose to move to Virginia Beach?

A Yes, sir; she did.

THE COURT: We've been through
all that, haven't we?

A I think so.

MR. McLELLON: Answer Mr. Fine's
questions, please.

CROSS-EXAMINATION

EXAMINED BY MR. FINE:

Q Mr. Carpenter, how far is South Boston,
Virginia from Tidewater?

A A hundred and sixty miles.

Q And you said you've been to Cumberland
Gap, Virginia?

A Yes, sir; just on vacation.

Q How far is that; how many miles is that
from Tidewater?

A It's --

Q It's about the same distance as New York,
isn't it?

A I'd say it's comparable. I don't know
exactly.

Q I take it, also, that you would object if
your wife moved to Cumberland Gap?

1 A I probably would.

2 Q And that's in Virginia?

3 A I'm aware of that.

4 Q And the difference is the distance; is
5 that right?

6 A The difference?

7 Q I mean, the difference is that one is in
8 New York, and the other is in Cumberland Gap, Virginia;
9 it is the distance which you're objecting to, that your
10 children are being taken away to; is that correct?

11 A That's one thing I'm objecting to.

12 Q Do you object to New York, per se?

13 A Yes; I think so.

14 Q Are you aware of the great cultural
15 advantages of the City of New York?

16 A Mostly adult cultural advantages.

17 Q No children's?

18 A I'm sure they have them.

19 THE COURT: The Museum of Natural
20 History; I went there once as a child.

21 MR. FINE:

22 Q Have you lived there?

23 A I visited there once.

24 Q Do you know where her mother lives?

25 A In Queens. I don't know where she lived

1 when we visited there several years ago; but I believe
2 she's moved since then.

3 Q You never had any problem visiting with
4 your children, even with your wife, did you?

5 A Nothing too great. There were a few
6 disputes; but nothing drastic.

7 Q You all have always been able to
8 accommodate what you feel is in the best interest of the
9 children, and accommodate your schedules; is that right?

10 A Yes; pretty much.

11 Q Would you object if your wife moved, say,
12 to Arlington, Virginia?

13 A I would object; but I'm aware of the
14 legal point there; but I wouldn't like it, though.

15 Q So really, reducing this down to the
16 irreducible minimum, you feel that her taking the
17 children up to New York, because of the environment in
18 New York, is bad for the children; right?

19 A That is one objection; and the distance
20 also.

21 Q But if she moved to Cumberland Gap,
22 which is equally distant from Tidewater as New York,
23 would you object?

24 A I would object. I wouldn't like it.

25 THE COURT:

Mr. Carpenter,

1 do you know why she's moving to
2 New York?

3 A No, sir; I don't.

4 MR. FINE: I have nothing
5 further of the witness.

6 MR. McLELLON: I have a few
7 questions.

8 REDIRECT EXAMINATION

9 EXAMINED BY MR. McLELLON:

10 Q How long has your ex-mother-in-law lived
11 in New York City?

12 A In Queens?

13 THE COURT: What is her
14 name?

15 A Mrs. Ruth Gameron.

16 MR. McLELLON:

17 Q Does your ex-wife here have any other
18 relatives up in New York, outside of her mother?

19 A That's the only one I know of.

20 Q And how long has she lived up there?

21 A I'd say since about 1971.

22 Q And where did she live prior to that?

23 A Atlanta, Georgia.

24 MR. McLELLON: All right. That's
25 all I have. Do you have any other

questions, Mr. Fine?

MR. FINE: No, I don't.

MR. McLELLON: Judge, that's
all we have.

THE COURT: All right. Mr.
Fine?

* * * * *

MARY GLADYS RICHARDS CARPENTER, Complainant,
having been first duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

EXAMINED BY MR. FINE:

Q State your full name and your address,
please.

A Mary Gladys Richards Carpenter, 1357
Ruddy Oak Court, Virginia Beach, Virginia.

Q And Mrs. Carpenter, how old are you?

A Thirty.

Q And how old is Mr. Carpenter?

A Thirty-five, thirty-six.

Q What is your educational background,
Mrs. Carpenter?

A I have a Bachelor of Science Degree in
chemistry; and some graduate school in business administration.

Q And what has been your occupations over

1 the last three or four years?

2 A Clerical work, and temporary Kelly girl-
3 type of thing.

4 THE COURT: What has been
5 your occupation over the last
6 several years?

7 A Clerical work, basically.

8 MR. FINE:

9 Q Now, Mrs. Carpenter, have the children
10 had a good relationship with your mother?

11 A Yes.

12 Q And where does your mother live?

13 A Elmsford, in Queens, in New York.

14 Q And who does she live with there?

15 THE COURT: What borough of
16 Queens is that in, northern, eastern,
17 western, southern? Tell me about it.

18 A It's more central east.

19 THE COURT: Central east; all
20 right.

21 MR. FINE:

22 Q And who does she live with there?

23 A My stepfather; and I have three stepbrothers;
24 but they're not at home any more. They're at college in
25 various sections of New York. I also have a cousin

1 in New York that I'm close to.

2 Q What are the reasons that you want to move
3 to New York; I take it that you want to move to New York?

4 A Yes.

5 Q And what reason do you have, Mrs.
6 Carpenter, to move to New York?

7 A In picking New York, as opposed to here,
8 it's because I need to move to --

9 THE COURT: I can't hear
10 you.

11 A I need to move to have more opportunity
12 to look for jobs; and in New York City, and in New Jersey,
13 and the surrounding areas that are very close by there,
14 there's a very heavy concentration of jobs for a chemist,
15 as opposed to here; and I have not found a suitable job
16 here.

17 MR. FINE:

18 Q What was your college major?

19 A Chemistry; and there's no good chemistry
20 jobs here.

21 THE COURT: Have you tried
22 DuPont, in Richmond?

23 A No. I haven't tried Richmond or any
24 place else outside of Tidewater because I prefer to go
25 some place where I have family.

THE COURT: How about Allied

Chemical in South Boston?

MR. FINE:

Q That's just as far away as New York,
isn't it?

A Yes, it is.

Q And Mrs. Carpenter, did you take into
consideration the fact that Mr. Carpenter would not
have the easy access to the children as he does now, in
making this decision about moving to New York?

A Yes; but he wouldn't discuss this with
me; so in my own mind, what I prepared, and hopefully what
we would be able to arrange, was that he would be able to
visit them for at least a week in the springtime vacation
and six weeks to two months during the summer; so that
they could have frequent visits with him; because it's
very reassuring to them to have their father; but I know
that they know what is going on. They're adapted to it.
They're well-adjusted children.

Q Are you prepared to make them available
for all the school vacations, to come down here, Mrs.
Carpenter?

A Yes. I would like Thanksgiving with my
family. Traditionally, that's my family holiday; but
other than that, I have no particular preference. I don't

1 know exactly what their school schedules are; but he is
2 very free to see them.

3 Q Have you ever had problems with him
4 seeing the children?

5 A Well, during the time I was working with
6 this spring job that required all the hours, and I had
7 to work over the weekend, he had to keep them two or
8 three weekends in a row; and somehow or another, after
9 that, he kind of dropped seeing them; and I called and
10 asked him to come visit them.

11 Q Other than that problem, have there been
12 any particular problems about his seeing the children,
13 and your making them available?

14 A No, no. I'm generous; and he sees them
15 at the time that we agreed to initially; and then some.

16 Q In other words, the fact that you have
17 specific times and places, the court order has been ignored
18 basically, hasn't it?

19 A No. We stuck to that, basically; and he
20 gets extra, that's all.

21 Q But you're prepared, in accordance with
22 the Court's ruling, to give him extremely liberal
23 visitation in the summer time?

24 A Yes. I have all along.

25 Q And are you willing to let him have the

1 children much longer than he is now seeing them?

2 A Yes; and I think, overall, as far as
3 rating them, now, I think there is a substantial effect
4 to having them several weeks, instead of two days at a
5 time.

6 Q What child support are you receiving now?

7 A Two hundred and fifteen dollars a month.

8 Q Do you have any income yourself, to help
9 support yourself and the children?

10 A Unemployment Compensation; that's all.
11 My mother has provided the rest; and that's why I'm
12 selling the house; because no matter what happens, I
13 can't maintain it any more.

14 Q Would it be fair to say that you have to
15 support yourself and the children to some degree because
16 of this limited amount you're receiving from Mr. Carpenter?

17 A Oh, yes.

18 Q And is that the reason you're seeking jobs
19 up in New York?

20 A Certainly. No one can live on two-fifteen
21 a month, plus unemployment. That's impossible. We have
22 a nice home; and I fully planned to maintain it; but I
23 need a job; and I found that there are interesting jobs
24 in New York.

25 Q Mrs. Carpenter, what things are there in

1 New York, that are available to the children, that are not
2 available here?

3 A Well, first of all, there's my family.
4 Here we have no one, except Brown; and we have to travel
5 anywhere to visit family; but up there, of course, are
6 their grandparents and uncles, which is what my stepbrothers
7 are; and they're very warm towards my children; and there's
8 my cousins, and the people I grew up with as a child; and
9 I think that's important; and well, just educationally,
10 they're both gifted.

11 I saw Hutch's test scores -- National
12 test scores -- and he scored in the top one percent of
13 the country; and he was anxious to start into first
14 grade; and I have letters from Hutch's teachers that
15 Hutch is gifted in creative writing and art; and Helen
16 is gifted in math and leadership; and as pointed out,
17 New York is a cultural area. There are many beautiful things
18 there, and many opportunities. Of course, it will take a
19 while for me to catch up financially; but there are so
20 many things up there for them, particularly Helen; and
21 Hutch, too. Helen is very well adapted.

22 Q Mrs. Carpenter, would you intend on taking
23 these children out of Tidewater, Virginia, to prevent
24 Mr. Carpenter from seeing those children?

25 A No, I'm not. No one has ever asked me

1 this; and it has never been my intention.

2 Q Have you ever discussed it with Mr.
3 Carpenter before he filed this petition?

4 A No. I told him I was going to have to
5 move, to find a decent job, to support us; and he just
6 never said anything. He just said, "Goodbye"; and then
7 I get the injunction within a half an hour after returning
8 home from the trip to New York; and then he asked for
9 custody; and he never consulted me about it. I had no
10 idea he felt that way.

11 Last year, when he had them for the three
12 weeks, when I moved from the house in Poplar Halls to
13 Green Run -- at the end of that time he was exhausted;
14 and he told me that he did not see how anyone wanted to
15 raise two children by themselves; that he just couldn't
16 do it; and no question of custody has ever come up since
17 then.

18 MR. FINE: Your witness.

19 CROSS-EXAMINATION

20 EXAMINED BY MR. McLELLON:

21 Q Mrs. Carpenter, I know the Judge has asked
22 you concerning the boundaries of Virginia, Richmond, about
23 a job; I assume that you have not tried Allied Chemical
24 Company, up in Hopewell, Virginia?

25 A Allied Chemical; no.

1 THE COURT: What about

2 Virginia Chemicals, right across
3 the street here?

4 A I've put in an application there. I've
5 applied all over this area.

6 MR. McLELLON:

7 Q Well, you worked for the Borden Chemical
8 Company as a chemist, did you not?

9 A Uh-huh; and in my own behalf, I was fired,
10 as was every single female in that position before me
11 and since me. I don't know; that was a strange job, a
12 strange situation.

13 Q Now, you have no apartment up in New York,
14 do you?

15 A My family has an apartment with two extra
16 bedrooms that are empty.

17 Q You would plan to move in with your
18 mother, then?

19 A Well, I have things well in the works;
20 and as soon as I can make myself available for the jobs,
21 I can have my own apartment, which I have made application
22 to four companies up there.

23 THE COURT: You have four
24 jobs available to you, which you
25 have made application to, and have

1 been accepted?

2 A They haven't made me offers yet; but
3 they're all in the process. I have a letter from Mobil
4 Oil, in Scarsdale, New York; and I think that's a very
5 nice area; and at the compnay in Linden, New Jersey,
6 they're checking my references now.

7 MR. McLELLON:

8 Q Right now, you've had no offer; correct?

9 A No, I don't have an offer; but I've never
10 had so much encouragement in this area, even when I was
11 hired.

12 Q Are you sending out the same resume that
13 you sent out two years ago?

14 A No. That one was a mess. I've redone
15 one; and I have a copy, if you like.

16 Q Let's take a look at it.

17 A The last quarter of the year my children
18 had perfect attendance; they had perfect attendance for
19 the whole year.

20 Q I was asking you about the resume.

21 A I was just telling him what that is; but
22 this is my resume.

23 Q What address have you put down on your
24 applications?

25 A That address that I've put down is my

1 mother's address in Elmsford, which is completely in
2 agreement with her, and with my stepfather, also.

3 Q All right. Now, have you considered the
4 cost of living in New York?

5 A Yes, I have.

6 Q It is much higher than it is down here,
7 is it not?

8 A Food-wise; no. The only thing is the
9 rent; and I'm going to use the proceeds from the sale
10 of my townhouse to pay off my bills as nearly as possible;
11 so it would only be the rent; and I have found a couple
12 of areas so far that I know that I can afford reasonably
13 after I pay off my bills, if I maintain an adequate income.

14 MR. McLELLON: All right. That's
15 all I have, Judge.

16 THE COURT: I haven't heard a
17 word about the accommodations that
18 Mr. Carpenter would provide for these
19 children in Norfolk.

20 A He doesn't even have beds for them. They
21 sleep on a cot and a day bed, that he took from the house;
22 and they sleep in the same room; and I have never put them
23 in that kind of circumstances. I provide a very good home
24 for them. I provide much more for them, really, than he
25 does.

1 MR. McLELLON: Judge, I was going
2 to put him back on.

3 THE COURT: All right. What's
4 this?

5 MR. FINE: Judge, these are the
6 report cards from the school. I thought
7 you might want to see those; and also
8 the attendance certificates.

9 THE COURT: Do you want to
10 introduce these?

11 MR. FINE: I think, probably,
12 Judge, that she wants to keep them.

13 THE COURT: I should think so.
14 I'll look them over.

15 MR. McLELLON: We would like to
16 have the Court take note that Mr.
17 Carpenter signed one of these as a
18 parent, on the report card.

19 MRS. CARPENTER: That's because
20 he picked them up on Wednesday; and
21 he's not supposed to do that. According
22 to the school, all complaints from the
23 school, or anything from the school,
24 should have come to me.

25 MR. FINE: I have a few more

questions, Judge.

REDIRECT EXAMINATION

EXAMINED BY MR. FINE:

Q Now, you were asked about this resume that you prepared; is this the resume you've been sending to the various and sundry companies, seeking job positions?

A Yes, sir.

THE COURT: Do you want that introduced?

MR. FINE: Yes, sir.

A Brown also has a somewhat lax attitude--

MR. FINE: Don't volunteer anything; just answer our questions.

A Okay.

MR. FINE:

Q Mrs. Carpenter, what are these certificates of attendance?

A They're for being in school every single school day; for them not missing any days of school the entire year.

MR. FINE: That's all I have.

MR. McLELLON: Judge, if she could step down, I would like to put Mr. Carpenter on for just a moment.

THE COURT: All right.

* * * * *

BROWN HUTCHESON CARPENTER, Defendant,
recalled, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATIONEXAMINED BY MR. McLELLON:

Q All right. Mr. Carpenter, your ex-wife testified that you would not discuss with her the possibility of her moving to New York; did you all have any discussion concerning her going to New York?

A Only that she was going to move up there; and I asked her was she aware of the cost of living and things like that; but we did not discuss it any further than that. There was never any request or talk about the visitation, not to my knowledge.

Q Was there any refusal by you to talk to her about this?

A Not at all.

Q Now, what are the cultural advantages of living in Virginia Beach, Norfolk and the general Tidewater area?

A I think the cultural advantages here are remarkable. You have some beautiful beaches. My children love nature; and we've been to the Back Bay Wildlife Refuge. I take them to Seashore State Park, which is

1 right near where I live; and Busch Gardens, over in
2 Williamsburg, they've been there twice; and they get
3 a kick out of the tunnel.

4 Q How about the museums around here?

5 THE COURT: I know all about
6 that. How about the provisions he
7 has for them?

8 MR. McLELLON:

9 Q All right. Now, talking about the
10 cultural things still, did your ex-wife take them to any
11 cultural things in this area?

12 A I never heard of anything.

13 Q Do you think you would have known about
14 it if they went to the symphony or anything of this
15 nature?

16 A I think I would have known about it.

17 THE COURT: Why are you going
18 to take a child to a symphony?

19 A I like symphonies.

20 MR. McLELLON: It depends on the
21 child, I guess.

22 Q Now, you have lived in the same location
23 how long now?

24 A Three years; just about three years.

25 THE COURT: Where's that?

1 A Cape Story; Oak Street, in Cape Story,
2 which is next to Seashore State Park.

3 MR. McLELLON:

4 Q And you, of course, have two bedrooms?

5 A I have two bedrooms, mainly because, as
6 everybody knows, when filing for a divorce, you are
7 limited in funds; and I couldn't afford a three-bedroom
8 apartment. I have looked into getting one, because I
9 think the children should be in separate bedrooms when
10 they visit me; and this winter, if this New York thing
11 hadn't come up, I would probably have gotten a bigger
12 place.

13 Q But if the children did come to live with
14 you, and the Judge decided that they should stay here,
15 would you provide an adequate apartment for them?

16 A Absolutely. I wouldn't have any child
17 support; and I could very easily put a deposit down on
18 an apartment, and move in instantly.

19 Q How much furniture do you have?

20 A I have a fully furnished two-bedroom
21 apartment.

22 Q And over the past -- what -- year now,
23 the children have spent at least eight weeks with you?

24 A Oh, yes.

25 Q When she moved, I know, they stayed with

1 you; and when she was sick; right?

2 A Right.

3 THE COURT: During what period
4 of time is this?

5 MR. McLELLON:

6 Q During the past year, those children have
7 lived in your home at least eight weeks, besides the
8 regular visitation; is that right?

9 A Well, not besides. I'd say in the last
10 year and a half, though, it was that long a time in
11 addition to my regular visitation; because when she
12 moved, that was a little over a year ago; so it's
13 probably been at least eight weeks overall, in addition,
14 since then.

15 Q Did they have any problems living with
16 you?

17 A No; no problems.

18 MR. McLELLON: All right.

19 Answer Mr. Fine's questions.

20 MR. FINE: I have no
21 questions, Judge.

22 THE COURT: Any further
23 evidence?

24 MR. McLELLON: No, sir, Judge;
25 but I do have a few comments, if you

would hear them.

THE COURT: I would be
happy to hear them.

(Mr. McLellon presents closing
arguments on behalf of the
Defendant.)

(Mr. Fine presents closing
arguments on behalf of the
Complainant.)

THE COURT: I think it's all
fancy at this point; and I'm going
to make the injunction permanent.

MR. FINE: Judge, what would
be the injunction?

THE COURT: What are you asking
for?

MR. FINE: That she not move
out of the Tidewater, Virginia area?

MR. McLELLON: We ask that she
not remove the children from the State
of Virginia; that's what we are
requesting.

THE COURT: Okay.

MR. FINE: She can't even remove
them from the State of Virginia on visits?

1 She has her people up there, Judge.

2 MR. McLELLON: Judge, I think
3 it was on a permanent basis before,
4 that we requested that she not be
5 allowed to remove the children.

6 THE COURT: Permanently, from
7 the State of Virginia; right?

8 MR. McLELLON: Yes, sir, Judge.

9 THE COURT: All right.

10 MR. FINE: Note my exception.

11 * * * * *


STATE OF VIRGINIA AT LARGE,

CITY OF NORFOLK, to-wit:

I, Diane M. Vercruysse, hereby certify that I was the Court Reporter in the Circuit Court of the City of Norfolk, Virginia, on the 3rd day of August 1977, at the time of the trial of the case of Mary Gladys Richards Carpenter, Complainant, vs. Brown Hutcheson Carpenter, Defendant.

I further certify that the foregoing transcript is a true and accurate record of the testimony and other proceedings of the hearing herein.

Given under my hand this 22nd day of September 1977.


Diane M. Vercruysse, Court Reporter

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

MARY GLADYS RICHARDS CARPENTER,

Complainant,

vs.

BROWN HUTCHESON CARPENTER,

Defendant

IN CHANCERY NO. C-75-1286

TRANSCRIPT OF TESTIMONY

Following is stenographic transcript of the testimony introduced and proceedings had upon the trial of the above entitled case, in said court, on the 2nd day of September 1977, before The Honorable Edward L. Ryan, Jr., Judge of said court.

APPEARANCES: MORRIS H. FINE, ESQ.,
FINE, FINE, LEGUM & FINE,
Attorney for the Complainant

RICHARD S. McLELLON, ESQ.,
BANGEL, BANGEL & BANGEL,
Attorney for the Defendant

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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>
CARPENTER, Brown Hutcheson	27-41	41-44
CARPENTER, Mary Gladys Richards (Recalled)	14-21 45-49	21-27
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1	Letter from New York	15
2	Group of seven photographs	17

* * * * *

MR. FINE: Judge, as you know, there was an order entered by the Court after the last hearing, wherein my client was permanently enjoined from taking the children out of the State permanently.

THE COURT: Yes.

MR. FINE: Since that time, Your Honor, there have been additional facts and changes to merit this petition.

The facts will be, if Your Honor, please, that Mrs. Carpenter does in fact have a definite job offer; and she also has an apartment. We have pictures of it. It's right across the street from the school, and also her mother.

Her mother is here today; and she will testify to you about the family situation up there in New York, and her situation, and her husband's situation, and other people in the family; and how they would tend to the children if Your Honor would approve

the plan; and based on that, we would ask the Court to dissolve the permanent injunction.

MR. McLELLON: Judge, very briefly, I would like to say that we did not feel the fact that a person wants to take a job in another State is sufficient grounds to take children away from their father.

I cited to Your Honor the last time the citations from Amjur that I've given you. and will argue later on.

There's not a single case involving custody where the Court approved taking a child or children out of the State where it was simply for a change of job. There were other reasons, like health, and things like that; but we would contest this, Your Honor.

THE COURT: All right. First witness?

* * * * *

* * * * *

RUTH GAMERON, Witness called by Attorney
for the Complainant, having been first
duly sworn, was examined and testified
as follows:

DIRECT EXAMINATION

EXAMINED BY MR. FINE:

Q Would you tell us your name, please?

A Mrs. Ruth Gameron.

Q And Mrs. Gameron, you are the mother of
Mrs. Carpenter?

A That's right.

Q Where do you live, Mrs. Gameron?

A I live at 230 56th Avenue, in Elmsford,
New York, Apartment 6J, which is in the Borough of Queens.

Q And Mrs. Gameron, tell us, if you will,
how old you are.

A I'm sixty.

Q And what is your health, Mrs. Gameron?

A Oh, I'm fine.

Q And tell us what employment you might
have.

A I'm an executive secretary to a law firm --
a patent law firm -- in New York City, in Manhattan.

Q And how long have you been employed there?

A Seven and a half years.

Q And Mrs. Gameron, are you married?

A Yes.

Q And what is your husband's name?

A Abraham Carney Gameron.

Q What does he do?

A He's a consultant -- a real estate consultant -- in the hotel and hospitality business.

Q Mrs. Gameron, do you have other children, besides Mrs. Carpenter?

A Yes. I have a daughter, and I have three stepsons.

Q Do any of those children live in the New York area?

A Two of the boys do right now.

Q Do you have other relatives that live in New York?

A Yes; my mother-in-law and various cousins.

Q And Mrs. Gameron, should the Court approve the taking of the children out of the State, would you and your husband be in a position to accommodate Mrs. Carpenter and the two children, either on a temporary or permanent basis?

A Yes.

Q Tell us what facilities you might have

to accommodate them?

A Well, since the boys are at college, we have two available bedrooms and a bath; and the rest of our apartment -- we have a spacious six-room apartment, two baths, and ample facilities. The rooms are nice and large.

Q Now, relative to schools, where is your apartment?

A Oh, we're just directly cater-cornered from the school.

Q That's an elementary school?

A Yes; that's elementary school.

Q Are you willing to take in your daughter on a temporary or permanent basis, so that she would live with you, and her children would live with you?

A Yes.

Q And do you ask the Court to allow you to do that?

A Yes.

Q How close are you to the children?

A Oh, how close am I to those children?

THE COURT: You love them like I love my grandchildren, I'm sure?

A That's right.

MR. FINE: That's all, Your Honor.

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CROSS-EXAMINATION

EXAMINED BY MR. McLELLON:

Q Mrs. Cameron --

MR. FINE: Gameron.

A G, Gameron.

MR. McLELLON:

Q Mrs. Gameron, did you obtain this job
for your daughter?

A No, no.

Q Did your husband obtain it for her?

A No.

Q Do you know where the company is that
she plans to go to work for?

A Yes.

Q Has she told you what she plans to do?

A Yes. She plans to learn cartography
and public relations and --

THE COURT: Photography?

A No; cartography; map drawing.

THE COURT: Oh, sure.

MR. McLELLON:

Q This has nothing to do with her chemistry
major; is that correct?

A No.

Q And your daughter told you that she --

wanted to move to New York in order to get a job with a chemical company; isn't that right?

A No. She told me she wanted to move to New York because she couldn't make a living wage here in Norfolk.

Q I guess you stay in close contact with her, don't you?

A Oh, yes.

Q She has had six different jobs over the last three, four years, hasn't she?

A I don't know.

Q You don't know anything about that?

A No. I don't think she has.

Q Now, you indicate that you have three bedrooms in this apartment?

A Yes.

Q What floor of the building is this apartment on?

A Sixth.

Q How tall is the building?

A Six floors.

Q Is it a building -- I assume it's an apartment-type building, located right on the street?

A Yes.

Q No yard, nothing of this nature?

A Oh, no, no. We have a play yard, and a sitting area for our elderly residents. It's a co-op apartment. We own our apartment.

Q How many people are there in this apartment building?

A Seventy-four families.

Q It's a large building, then?

A No; not by New York standards.

Q But there are seventy-four families in this building?

A Yes; it's --

Q It's a small apartment building?

A Not small; it's moderately sized.

Q You indicate this apartment has a small play yard that the elderly people use?

A No, no. The elderly people have their own sitting area, with benches and trees.

Q But you indicate you have three bedrooms?

A Yes.

Q Your husband has children by a previous marriage, doesn't he?

A Yes.

Q And I know you have indicated that you have one other daughter who is not living with you?

A Right; Shirley Simms. She's married; and

is living in Marysville, Ohio.

Q She has nothing to do with New York then?

A No.

Q Your husband's children by his previous marriage, does he have two sons?

A He has three sons.

Q How old are they?

A Twenty-one, twenty and eighteen.

Q Do they live with you all?

A When they're not going to school -- not in college.

Q Have they lived with you all this summer?

A Yes; but let me clarify this: Now, the oldest one is married; and is in Berkeley, California, going to graduate school.

Q So he wasn't there this summer?

A No; just an occasional visit home.

Q How about the other one, the one that's twenty?

A He was home during college vacation.

Q He stayed with you all summer?

A Uh-huh.

Q Now, how about the one who is eighteen?

A He's going to college.

Q Where at?

A He's going out of the country for a year.

Q But he was home this past summer?

A Oh, sure.

Q The one who is eighteen, what is his name?

A Joseph.

Q And where will he be going to college?

A He's going to Israel for a year right now.

Q Is he going to college now?

A Yes. He'll be going to Jerusalem University.

Q Your husband is Jewish?

A Yes.

Q Your daughter is of the Protestant religion, is she not?

A Yes, she is.

Q The one who is twenty goes to what college?

A Buffalo State, Buffalo.

Q Which would be in the neighborhood, for the record, maybe two hundred miles from New York City?

A Yes.

Q But they still maintain that apartment as their home; correct?

A That's their legal address.

Q And it's your plan that your daughter and the two children should come up and stay with you?

A Yes. The rooms would be available; and are available.

Q You are -- I know you've lived in New York what, seven and a half years now?

A Eight and a half years.

Q Prior to that you lived in Atlanta?

A Uh-huh.

Q But you have no permanent attachment to New York, outside of living there?

A Except my husband; and my husband makes it very permanent.

Q Do you and your husband plan to retire soon, and go to Florida?

A No.

MR. McLELLON: That's all I have, Judge.

MR. FINE: You may come down, unless the Court wished to question you.

THE COURT: No, sir.

* * * * *

* * * * *

MARY GLADYS RICHARDS CARPENTER, Complainant,
having been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

EXAMINED BY MR. FINE:

Q Mrs. Carpenter, since the last hearing
in this case, have you journeyed to New York to seek
employment?

A Yes.

Q And have you been successful in receiving
a job offer?

A Yes.

Q Do you have a job offer in writing, and
the terms of the job, with you?

A Yes.

MR. McLELLON: Judge, of course,
I would normally object to this; but
we'll let Your Honor see it for what
it's worth.

THE COURT: All right, sir.

MR. FINE: I would like to
introduce that.

THE COURT: I'll make this

Petitioner's Exhibit Number 1, a letter

from New York.

Suppose I read this, Mr. Fine.

MR. FINE: All right.

(The Court examines letter.)

THE COURT: All right, sir.

MR. FINE:

Q Mrs. Carpenter, in that letter, I think it addresses you by the first name; do you know the person who wrote that letter?

A Yes. It's my cousin's wife.

THE COURT: Your cousin's --

A Wife; yes.

THE COURT: How's that?

A It's my cousin's wife.

THE COURT: Your cousin's wife;
your cousin-in-law?

A Right.

MR. FINE:

Q What would be your job; can you give us some kind of a job description of what you would be doing?

A Maps. May I show you?

Q Sure. Is it in here?

A Yes; the two top books. I think the best way to describe it -- initially, the technical word for it -- it is somewhat like a draftsman.

Q Are these examples of the products these people produce?

A These people do everything in this book, except the writing, and this type of map right here.

Q On the front of this book?

A Yes. They do everything, as well as keeping records and things like that.

MR. McLELLON: Is she testifying they did this book?

A Yes, I am.

MR. FINE:

Q Did they produce these books?

A No. They work for publishers, or whatever. I don't know what you mean by that.

THE COURT: The art work; they did the art work?

A Yes; the graphics.

MR. FINE: Judge, I would not want to introduce these; but I will let the Court see them.

THE COURT: They did all the graphics in this book?

A Yes; everything except the words.

THE COURT: Except the text?

A Yes.

(The Court examines the books.)

THE COURT: All right, sir.

MR. FINE:

Q Now, Mrs. Carpenter, how far away from where you will be living is the headquarters of this place?

A About fifteen minutes.

Q Now, do you have some pictures taken from your mother's apartment?

A Yes.

Q Of the area there in Elmsford, New York?

A Yes.

Q May I have those?

A The top picture shows the --

Q Let me show them to Mr. McLellon first.

MR. FINE: Judge, we offer those as exhibits; and I would ask her to describe them.

THE COURT: I'll mark -- I'll staple them together -- and mark them Petitioner's Exhibit Number 2.

I'll number them in the right-hand corner, in reverse order, number 1 through 7; and I'll take a look at them.

Is this the school your mother spoke of?

A Yes, sir.

THE COURT: All right, sir.

MR. FINE:

Q Mrs. Carpenter --

A Do you want me to explain what they are?

Q Maybe you ought to come over here; and this first picture, number 7; what is number 7?

A Number 7 shows the window sill from my mother's apartment. It was taken from her apartment on the sixth floor; and this fifth floor apartment, right here, is a six and a half bedroom apartment. This is one that is available to me the end of September; and that's the school right there.

Q That's number 6?

A Number 6 is the school. Number 5 is the school, with the wrought iron gate, and the front of the school. The same thing again. Then, the ledge of my mother's apartment window, and the school beyond it; and that's a good one, showing the whole school -- well, most of it.

Q You said just then in your testimony that you can have an apartment in that building, illustrated, I think, in particular, in 1, 2 and 3 of the photographs?

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A Yes.

Q What is your present plan if the Court permits you to take the children?

A Well, they will hold it for me through the end of this week; and I assume, until the first day of school. On the 8th I have to get up there and give them a deposit; and if not, find something comparable; because there are other things there.

Q Do you plan to live with your mother on a temporary basis?

A Yes. That apartment is available on October 1st.

Q All right; and what would be your plan for schooling for the children?

A They'll go to the one across the street; and they'll be tested -- I talked to the School Board there; and they have special intellectually gifted classes; and they will be tested for those.

Q Mrs. Carpenter, has there ever been any intent on your part to deprive your former husband, father of these children, visitation?

A No; on the contrary; never, no.

THE COURT: Tell me again how old these children are.

A Nine and seven and a half.

MR. FINE:

Q And have you always been liberal, in terms of allowing the children to visit their father?

A Yes, uh-huh.

Q And is it your stated intent to continue that as far as you are able?

A Yes. I'll help, so as they can visit him. I think it's important to a point.

Q Would you be amenable to having them available for -- say, for instance -- the whole summer, next summer, if you were up in New York and living there with the children; so they could come down here and stay the whole summer with their father?

A We haven't talked about visitation. He didn't want to talk about it. He said he would love to have them for the summer; and that is fine; and I have a schedule of their school vacations; and I haven't been able to go over it with him yet; but there are more school vacations there than there are here; and he said he would look at those after this hearing today.

Q And would you be more than willing to have the children available to him on their entire vacation, and away from you?

A Yes. It would average about four days every six weeks, that they could spend with him, four days

in a row.

Q Mrs. Carpenter, did you seek out any further jobs in the job market in the Tidewater, Virginia area during the period from August to the present time?

A No. My plans were made. I had nothing to do but to keep going with them. This all happened right in the middle of selling my house; and having already done extensive job hunting, and having talked to these people about this job a good bit ahead of time, not knowing what would come up, I've gone ahead with my plans.

Q Are you in the process of selling your house here, in Virginia Beach, in Green Run?

A Yes. It's sold. I have to move out this weekend.

MR. FINE: Answer Mr.

McLellon's questions, please.

CROSS-EXAMINATION

EXAMINED BY MR. McLELLON:

Q I notice you said you would allow your ex-husband to see the children; and you suggested something like four-day holidays; so this would be when the kids would be out of school?

A Yes.

Q You would expect him to travel up to

77

New York to see the children; is that right?

A I have not -- no; that isn't right.

Q In other words, you're telling the Court you would bring them down here for four days?

A I'm not telling you that at all.. I have been telling you that I haven't been able to make any arrangements; because we haven't had a chance to discuss it; but I am open to any arrangements.

Q And that is because he has contested you taking the children out of the State of Virginia, isn't it?

A No. It is not because of that.

Q What do you say the reason is? What is the reason that you say he would not discuss making visitation arrangements?

A I don't know.

Q What is your explanation as to why he would not talk to you about making visitation arrangements out of New York?

A Because he has told me --

Q It is the fact that he contested you taking the children to New York, isn't it?

A To a point.

Q Now, --

A He doesn't want custody of them. He told

me that.

Q He told you that he didn't want custody?

A I asked him --

Q First of all, let me ask you this: Do you have anything in writing on that?

A No; but I have the discussion between a father and a mother.

Q Do you have any person that he has made that statement in front of, to testify to that, as a witness for you?

A No. I didn't ask anyone else to come.

Q Is it simply your statement that he does not want custody of your children?

A It's his statement. It's the truth.

Q All right. Now, your children have absolutely no connection with New York, outside of the fact that their grandmother has lived there seven and a half years; isn't that correct?

A They have me.

Q But you don't live in New York now, do you?

A Not at the present time; but that is my permanent address, with my mother and my family.

Q All right. Did you say that the apartment you had looked at, and that you showed the Judge photographs

of, has six and a half bedrooms?

A No.

Q How did you say it?

MR. FINE: She said six
and a half rooms.

MR. McLELLON:

Q What is the rental on that apartment?

A Three eighty-five.

Q Per month?

A Yes.

Q And then you have utilities on top of
that?

A No.

Q It's only three eighty-five per month?

A Water; I have to pay some water.

Q You do have to pay a water bill?

A Yes.

Q You had difficulty making payments on
your townhouse down here, at two-forty a month, didn't
you?

A That townhouse ran about the same thing.

Q But I asked you if you didn't have
difficulty in making payments at two-forty per month on
your townhouse?

A This is because I took the money that I

1 had and made a down payment on that townhouse; and when
2 I take that money out again, I have a car and rent; and
3 that's it. Food and regular costs of living I can
4 maintain. I'm no longer paying off the repairs on the
5 house in Poplar Halls.

6 Q Has Anita Carl made a definite agreement
7 with you as to what you will make?

8 A Five dollars an hour.

9 Q That's over two hundred dollars a week,
10 then, isn't it?

11 A Generally speaking.

12 Q Well, why did she put in that letter a
13 hundred and seventy-five?

14 A Because I'm going to go to school, too.

15 Q Have you done anything whatsoever in
16 this field; you claim you have a job in graphic arts;
17 have you ever worked in anything like that?

18 A I have not done draftsmanship; but there
19 is more to it than that.

20 Q You are still looking for other jobs,
21 aren't you?

22 A Not really.

23 Q It isn't your desire to be a chemist?

24 A In a situation when it's a tight job
25 market -- and we are, according to the news on Wednesday,

sliding into a depression, like 1937 -- an interesting job is a very, very good thing to have; and accepting an interesting job is a very good thing to do.

Q Now, you say Anita Carl is your cousin's wife?

A Yes.

Q Now, your cousin is who, your mother's brother's son, or what?

A Uh-huh.

Q Did you go to them and ask them for a job?

A No. It just kind of arose.

Q What's that?

A It just kind of arose. We kept talking; and we just kept talking; and I was telling them about my ideas; and they made suggestions; and they were talking about what they were doing.

Q Why didn't you bring that letter down to court three weeks ago?

A Why didn't I bring it up; I did. I called the minute I got it, to schedule a hearing.

Q I mean three weeks ago, why didn't you bring it?

A It was scheduled and delayed.

Q Why didn't you tell the Judge last time

that you had a job with Anita Carl?

A I didn't have it then. Brown knew it. I hadn't told anyone else. It wasn't an affirmed job yet. I was still thinking of interviewing with other places, too.

MR. McLELLON: All right. That's all.

MR. FINE: That's all we have, Judge.

THE COURT: What's her employment record?

MR. McLELLON: Judge, I was going to ask Mr. Carpenter about that. He can review it for you.

THE COURT: All right.

* * * * *

BROWN HUTCHESON CARPENTER, Defendant,
having been first duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

EXAMINED BY MR. McLELLON:

Q Of course, your name is Brown Hutcheson Carpenter?

A Yes, sir.

Q And Mr. Carpenter, did you ever make any

statements to your wife about not wanting the custody of your children?

A I never made any statements to my wife about not wanting custody of my children. It's all a record of this court that I want custody.

Q First of all, let's get to what the Judge asked, concerning her employment record; I think she graduated from college with a degree in chemistry in September 1975, did she not, or was it June?

A Well, May, I believe, of '75.

Q Did she work that summer?

A No, she didn't.

Q Did she find a job after that?

A Yes; at Borden Chemicals.

Q When was that?

A I believe it was in September 1975.

Q And they're located where?

A Chesapeake.

Q When did she leave there?

A December of that year.

Q What was the next job she had?

A She worked as a Kelly girl, a sort of temporary-help-type thing, until about late March or early April, when she got a job with the restaurant on the island near the Chesapeake Bay Bridge Tunnel,

as a waitress.

Q The Seagull Fishing Pier?

A Yes; the Seagull Fishing Pier.

Q Had she previously worked as a waitress?

A She used to have jobs waitressing during school.

Q Where did she go after this?

A The Thunderbird, at Virginia Beach.

Q And when did she go to work there?

A June '76.

Q And how long did she stay there, do you know?

A Just a very few weeks. She left that job and again resumed being a Kelly girl.

Q All right. Where did she go to work thereafter?

A After that, I think it was September or early October, when she went to work at Kitchen-Towne.

Q That would be September, October 1976?

A Right.

Q And she stayed there how long?

A Oh, close to six months.

Q And where was the next job she took?

A After that, I think it was early this spring '77, she took a job as an inventory taker with an

outfit in Virginia Beach; and I don't remember the name.

Q You've given it to me before, Accurate Inventory Service?

A I believe that's it; yes, sir.

Q Where did she -- excuse me -- how long did she work there?

A I'd say four to six weeks, until late spring; and then she said she was going to New York.

Q All right. Now, you've heard your ex-wife suggest the possibility of like you visiting New York for -- well, I think she suggested -- four days or so; would it be possible for you to do this, do you think?

A It would be terribly difficult. I went to college in New England; so I used to travel that New York route; and I remember that Baltimore Tunnel and the New Jersey Turnpike; and I remember the traffic jams in those places. It's not an easy drive.

MR. McLELLON: All right. Your Honor, I don't think there's probably any reason to go into all the testimony we presented three weeks ago, unless Mr. Fine particularly wants to.

Remember, we discussed the cultural situation, a little bit of everything, I guess.

THE COURT: I want you to go into it. I've had a lot of cases in the last three weeks; and this is vague.

MR. McLELLON: Your Honor, I was going to ask that the previous testimony from three weeks ago be adopted into this case.

THE COURT: Have you got a transcript of it?

MR. McLELLON: Well, we had a reporter here three weeks ago also.

THE COURT: Suppose you go into it. This is a situation I don't want to consider lightly. I want to hear it -- the whole case.

MR. McLELLON: All right.

Q Mr. Carpenter, you, of course, are a reporter here?

A Yes, sir.

Q And you've been here in the State of Virginia how long now?

A Well, I was born in Virginia; and I've lived in Tidewater eleven years.

THE COURT: So I won't have to

call back your wife; where was she
born?

A Mary was born in Ohio; and when she was
young, I think junior high school, she went to Pittsburgh;
and then they came from there, and she was in high school
in Virginia Beach; and then, when we were married, she
was living in North Carolina; and then we moved back up
here.

THE COURT: How many years

has she been associated with Virginia?

A She's lived here eleven years, when she
lived with me; and she went to high school here, in
Virginia Beach, so I guess that gives her another four
years.

MR. McLELLON:

Q Now, the children were born here, in the
State of Virginia?

A Right; in Tidewater.

Q And they've gone to the Tidewater schools?

A Yes, sir.

Q And the older boy, what is his name?

A Hutch.

Q And he's how old?

A Nine years old.

Q He's named after you?

A Yes, sir.

Q And he has completed the third grade; is that correct?

A Yes. He'll go into the fourth grade this year.

Q The younger child is who?

A Helen; and she'll go into the third grade this year.

Q I believe your mother resides in Virginia, South Boston, does she not?

A Yes, she does. Most all of my relatives do.

Q To review this: Your visitation has been on every other weekend, and one evening during the week, and three weeks in the summer, and holidays?

A Yes.

Q You and your ex-wife have been separated now about three years; right?

A Three years.

Q And during that period of time, have you missed any of your visitation?

A Perhaps one or two evenings, due to the flu or something; but no, I haven't for any other reason.

Q And you have a court decree that you get the children three weeks summer visitation?

A Yes.

Q And have you taken the three weeks every year?

A Yes.

Q Besides that, how much other time have you kept the children?

A Oh, I would say at least six or seven more weeks, in addition. When Mary moved from Norfolk to Virginia Beach, well, during the process of moving, I kept them a couple of weeks, and assorted weeks here and there; and I had them last weekend, which wasn't my weekend, and other times, too; weekends here and there; days here and there.

Q Have you kept the children during any illness of your wife, or anything like that?

A Yes. She had the flu or something in the spring of '76; and I kept them for about a week.

Q What do you do with the children when you have them?

A Oh, they -- I don't go overboard in trying to entertain them; I just like them to be at the house; and go out and play with their friends; go out and chase dogs, ride bicycles, and do the things that children do.

Q Where did they get the bicycles?

A I bought them.

Q You have them at your apartment?

A Yes. I bought the two bikes for my apartment; and one bike for her apartment; and my mother bought the other one for her apartment.

Q Now, how long have you lived in Virginia Beach now?

A Three years.

Q And that was just since right after your separation?

A Yes. We separated, and I moved.

THE COURT: Where in Virginia Beach is that?

A The Cape Story section of Virginia Beach. It's right next to Seashore State Park.

MR. McLELLON:

Q And of course, when the children are with you, I guess they have the use of the beach and all its facilities?

A I usually go with them; but we can walk to the beach or bicycle to the beach; yes, sir.

Q Besides being around home, do you ever take them any place?

A Oh, yes. We go down to the State park a lot. We go back to South Boston a lot. I've taken them out to see the mountains of Virginia last summer; and we

had a good time there.

Q How have the children done in school here in Virginia?

A Fine.

Q Do you ever have occasion to help them with any of their school work, or anything like that?

A Oh, yes, sir; I have. Well, I qualify that, I don't do it for them; but I see to it that they do it.

Q How do you get along with your children?

A Great.

Q Do you think it would be to their advantage that they move to New York?

A Absolutely not.

Q Of course, you are familiar with New York City yourself, are you not?

A Oh, yes.

Q Have you lived up there?

A No. I visited it a lot. I went to school in the north; and we used to go with my folks on visits there from time to time.

Q Just to review this again, for the record, what is the driving time between here and Queens, New York?

A Oh, I'd say, I think about nine hours.

THE COURT:

In your work, can you

just go to your superior and say,

"I want to take off for four days"?

A No way.

MR. McLELLON:

Q How much vacation time do you get every year?

A Three weeks.

Q Now, you've been working for the newspaper for how long?

A Eleven years.

Q Can you recall anything else that we reviewed last time? I know she mentioned something about the cultural aspects of New York; and I think you also testified to the cultural aspects of Tidewater?

A I think the cultural aspects of Tidewater are more inclined to be used by children. I think New York's cultural aspects are more for grown-ups; and this area, with its beaches and parks and pretty spread-out areas, yards and trees and things like that, it's more for children.

Q Is there anything else you can recall that you testified to last time?

THE COURT: How about how he can accommodate them when she goes off to New York?

MR. McLELLON:

Q If she did go to New York, I think you testified last time that you presently have a two-bedroom apartment?

A Yes, sir.

Q And you, in any event, have made some plans about that, have you not?

A Yes. I think my children are growing up; and I think they should have their own bedrooms when they visit me; so this winter I've been looking at the ads; and I did plan to move into a larger place; and there's no problem there. I can give them thirty days notice; and be in a larger place in less time than that; but I think thirty days is standard.

THE COURT: What about schooling?

MR. McLELLON:

Q The children in your area -- that, of course, is Virginia Beach?

A Yes; Cape Story.

Q And that's pretty close to --

A John B. Dey Elementary.

Q And if they were to go with you, they would go where?

A If they lived with me, we found a place

in Cape Story, which would be easiest; and they would be going to John B. Dey Elementary School, which is on Great Neck Road.

Q And they have gone to schools in Virginia Beach?

A Yes; Green Run Elementary, near my wife's -- former wife's -- place.

Q But this area, I mean, down here, as far as you feel, is good for the children?

A I think so.

Q And do you feel a frequent contact with the children, on your behalf, is good for them?

A Oh, definitely. I think a father is important.

MR. McLELLON: All right, Judge.

THE COURT: I think something about his accommodating the children here; babysitting, what his hours are; does he work nights?

MR. McLELLON:

Q Tell the Judge what your hours are.

A My hours as a reporter are pretty flexible. About eight to four is a normal working day that I have.

THE COURT: What's your

task now with the newspaper?

A I'm writing the Hotline column; and I edit the Compass. You might have seen it -- it's those little tabloids.

THE COURT: So you're not in the field of reporting, really?

A No, sir.

THE COURT: What about night work?

A I haven't gone out on night assignment since I took over these jobs. Now, I do write features.

THE COURT: Repertorial; you're not editorial?

A More or less.

MR. McLELLON:

Q I believe I've asked you this before; but you have, at times, like when your ex-wife has been sick, been available to take care of the children?

A Yes, I have. I've always done this.

Q And this is when you had to work during the daytime?

A Yes; I believe it was spring break; and I did need a babysitter during the day.

Q I know, also -- I think you testified that you keep your visitation up -- weekly visitation?

A Yes, sir.

Q What do you normally do with them then?

A Well, usually, they have homework, which I try to get them to do.

Q What time do you pick them up during the weekly visitations?

A Right after work, four-thirty to five.

Q And who cooks supper?

A I do.

Q And you return them at what time?

A Eight-thirty this summer; but I think it's seven-thirty during the school year.

MR. McLELLON: Do you have anything else?

THE COURT: I don't believe so.

MR. McLELLON: Mr. Carpenter, answer Mr. Fine's questions.

CROSS-EXAMINATION

EXAMINED BY MR. FINE:

Q Mr. Carpenter, that area where you live now, along Shore Drive is divided, so that the Chesapeake Bay side and the land side of Shore Drive is sort of divided by Shore Drive; is that right?

A Yes, sir, it is.

Q And which side of the street do you live on?

A I live on the side away from the beach.

Q On the land side?

A On the land side.

Q And the children, in order to go to school, would have to probably cross Shore Drive to catch the bus, wouldn't they?

A No. The bus comes on my street; right there in front of my house is the bus stop, as a matter of fact.

Q Now, is it my understanding that you work five days a week, eight to four every day?

A That's my schedule; yes.

Q You work five days a week, you say?

A Five days; yes, sir.

Q Do you work any nights at all?

A Occasionally, on some nights, when we're putting together the Compass, which is Tuesday night, and we've got to put it all together, I stay later than four; but part of that staying late was learning how to do it. I never did it before; and now we're getting to the stage where we know how to do it.

Q But you do work late, and were there as late as eight o'clock at times, weren't you?

A When I was learning how to do it, you bet. I never did layout before.

Q Now, do you find that visiting the children for limited periods of time is more rewarding to you and the children than it would be if you had them for a longer period of time, say for three months at a time during the summer?

A No. I find my children rewarding, period. You know, the situation now, is simply a fact of life. We're divorced; so I visit them; but I can't say that I find it rewarding to see them on a limited basis; no.

Q Would you say, seeing them for three months in the summer, say, would be of more value to them and yourself than the present visitation situation?

A No. I think the present situation, I like, because I see them frequently. In other words, rarely does four or five days go by that I don't see the kids; so I think they feel the presence of their father; instead of feeling the presence, say, of someone like a relative, that you visit for a few weeks, that you haven't seen for a long time. There's a difference there.

THE COURT: If you have long spaces of separation from the children, you mean, you tend to drift away?

A Definitely. I've read books on that; and

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I think it's true. It's like visiting your grandmother or something.

MR. FINE:

Q Do you have a car?

A Yes.

Q What kind of car do you have?

A I have a Pontiac Sunbird. It's kind of like a Mustang.

Q What year is that?

A I bought it in March of '76. It's a '76 car.

Q Is it in good mechanical order?

A Yes.

MR. FINE: All right. I have no further questions of Mr. Carpenter.

MR. McLELLON: Do you have anything else, Judge?

THE COURT: No, sir.

MR. McLELLON: You can step down, Mr. Carpenter.

MR. FINE: Judge, I would like to put Mrs. Carpenter back on.

THE COURT: All right, sir. You're welcome to do that.

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MARY GLADYS RICHARDS CARPENTER, Complainant,
recalled, having been previously sworn,
was examined and testified as follows:

DIRECT EXAMINATION

EXAMINED BY MR. FINE:

Q Mrs. Carpenter, first, let us get the
air clear about what your intentions are if the Court
rules that you can't go to New York; are you ready,
willing and able to give the custody of the children to
Mr. Carpenter?

A No; not at all.

Q And you will just stay here in Virginia?

A Yes.

Q And Mrs. Carpenter, what relatives do you
and Mr. Carpenter have, besides yourself and your children,
in the Tidewater, Virginia area?

A None. He has one cousin here, that is
much older; and I think he hasn't seen them since we saw
them right after we were married.

THE COURT: How about friends?

Sometimes friends are better people
than your relatives.

A Yes; Jim Pfeffer, who is a good friend
of his; but their house is for sale, because the inside

of it burned out when he fell asleep smoking a cigarette; and his good friend, Paul Stewart. He had dinner with him last Thursday night.

MR. FINE:

Q Don't go into that; but do you both have friends here?

A I don't; and I don't think Brown has very many.

THE COURT: The selection of friends can be richer to you than relatives sometimes.

A I don't know any people now, having moved. I have a few long term friends from high school.

MR. FINE:

Q Do you have good friends up in New York?

A Easily; yes. I have people writing back and forth and whatnot, wanting to see me.

Q Do you have a car?

A Yes.

Q Would you be willing to bring the children down here for various and sundry of the holidays, on your own, so that they can visit with their father?

A Yes. I've been invited to stay here three different times, three different places, to come back and visit.

THE COURT: Isn't it kind of rough on the children, dragging them back and forth?

A I think so, to a point.

MR. FINE:

Q Mrs. Carpenter, do you take issue with the fact that Mr. Carpenter says he wants to have an association with the children?

THE COURT: What do you mean by that?

MR. FINE: That the children need a father; you don't take issue with that, do you?

A No. I'll agree they need a father.

Q And the fact that he is seeing the children over the years; you don't take issue with that, do you?

A No, I don't; but I don't think it's quite as lovely as he said it was. The way it's set up now is not that positive.

Q Are there cultural activities in New York that you know about, that you could tell the Court about, that the children would be afforded, that they're not afforded here in this area?

MR. FINE: Judge, I think we went into this before; and you may

remember this.

THE COURT: You may go into
it again. I want a full hearing.

A Okay. There are one hundred and twenty museums there. There are things like the cloisters from England, and old famous buildings, the Museum of Natural History, beautiful, beautiful parks. There are things like the Rockefeller Center, and the shows that go on there. There's just so much, I don't know where to start.

MR. FINE:

Q Are there any beaches?

A Yes; just a ride down the street is Jones Beach, which is a very famous beach. Elmsford is a good location; and you can take the Orient Express to Jones Beach, which is just a twenty-minute drive.

Q Do the children seem to enjoy their visits up to New York up to this point?

A Oh, they love it.

Q And maybe you better describe the abilities of the children to the Court, so that the Court gets an idea of their intellectual abilities?

A All right. Well, both of them -- let's see -- Hutch is -- I've seen his test scores; and he scored in the top one percent of the children in the country, as he entered first grade, in his aptitude for

learning; and he has got the breakdowns that they send you -- the computerized breakdowns of their achievements; and he scored in the top six to seven percentage group on the tests given to Norfolk, Virginia Beach schools; and Helen's achievement is a little bit better. She's a more well-rounded child. She didn't score in the top one percent; but she's a very, very bright girl; and I have gotten letters that they both are gifted and/or talented; and in talking to Hutch's principal at Poplar Halls, I learned that he is gifted in creative writing and art. He's a very good boy, very typically boy. He's a little pushy, like boys are; and Helen is gifted in math and leadership; and Mr. Stevenson said, probably art; and that she will do well anywhere she goes; and Hutch will do well, too.

Hutch is a very likable boy, according to the notes on their report cards and things, and the comments that I always keep.

MR. FINE: Your witness.

MR. McLELLON: Judge, I have nothing further.

I assume Mr. Fine does want to submit arguments. I know that I would like to submit argument.

THE COURT: All right, sir.

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(Mr. Fine presents closing
argument on behalf of the
Complainant.)

(Mr. McLellon presents closing
argument on behalf of the
Defendant.)

THE COURT: I think the best
interest of the children would be
promoted by denying the motion, and
making the injunction permanent; and
making provisions that custody shall
automatically revert to Mr. Carpenter
if Mrs. Carpenter leaves this area
for employment elsewhere. Your motion
is overruled.

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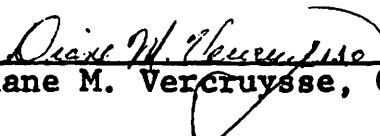
STATE OF VIRGINIA AT LARGE,

CITY OF NORFOLK, to-wit:

I, Diane M. Vercruysse, hereby certify that I was the Court Reporter in the Circuit Court of the City of Norfolk, Virginia, on the 2nd day of September 1977, at the time of the trial of the case of Mary Gladys Richards Carpenter, Complainant, vs. Brown Hutcheson Carpenter, Defendant.

I further certify that the foregoing transcript is a true and accurate record of the testimony and other proceedings of the hearing herein.

Given under my hand this 22nd day of September 1977.



Diane M. Vercruysse, Court Reporter

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