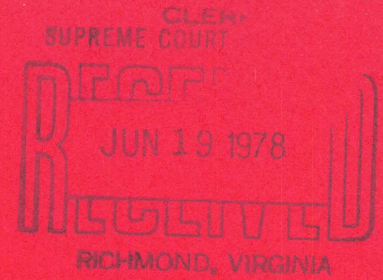


220VA443



IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

Record No. 780118

PHYLLIS FEATHERSTONE,

Appellant,

v.

HENRY S. BROOKS,

Appellee.

JOINT APPENDIX

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PROPERTY SETTLEMENT AGREEMENT

THIS IS AN AGREEMENT, made on the 9 day of April, 1975, by and between PHYLLIS FEATHERSTONE BROOKS, hereinafter referred to as "Wife" and HENRY BROOKS, hereinafter referred to as "Husband."

The parties hereto are husband and wife and they are now living separate and apart from each other and they desire by this instrument to adjust and settle all matters, financial and otherwise, relating to and arising out of their marital relationship and all other rights of the parties to any and all property of the other, whether such rights to such property be now existent or may hereinafter exist by reason of their marital status.

THEREFORE, the parties hereto do hereby agree as follows:

1. The parties shall continue to live separate and apart. Each shall be free from interference, authority, and control, direct or indirect, by the other.

2. The parties agree that the Husband shall have sole and complete custody of their three (3) children born of this marriage, with reasonable visitation rights reserved to the wife. During the periods of time that the children are with the wife she is to make sure that they continue to receive their religious training and she will be responsible for their support and maintenance.

3. The parties do hereby waive any rights they may have to alimony.

4. The wife agrees to transfer her interest to the husband in the real property owned jointly by them and located in Annandale, Virginia and Alexandria, Virginia. The wife will execute all deeds and papers as are necessary to transfer the ownership and title of said properties to the husband to be his absolutely and in fee simple without any right of dower or other interest remaining in the wife.

5. The husband will pay to the wife the sum of \$22,500.00 in full and complete settlement of the claim of the wife to any of the property, real and personal jointly owned by the parties during their marriage. The sum of \$11,250 shall be paid upon the transfer of the real property to the husband and another \$11,250 shall be paid to the wife eighteen (18) months after the date of transfer to the husband of the real property. These payments are to buy out the wife's complete interest in the profits accrued but not realized in the residences in Annandale and Alexandria, Virginia as of the date of transfer.

6. The wife will continue to retain present control and have the use of a 1.6 carat diamond solitaire ring which she hereby gives as a gift to her son Benjamin, and when he is mature and responsible enough to possess it but in no event later than his twenty-fifth birthday, she shall turn it over to him. Similarly, the wife will continue to retain control and have the use of a fourteen inch strand of Mikimoto pearls which she gives as a gift to her daughter Helen, and when she is mature and responsible enough to possess it, but no

later than her twenty-fifth birthday, she shall turn it over to her. This paragraph shall be binding upon the wife's executor or administrator. The wife will keep both articles adequately insured.

7. It is agreed by the parties that the husband shall have complete ownership and control over all household goods, including furniture, and a 1968 Dodge Dart, except for those items which the parties through mutual agreement have designated to be the property of the wife and which is attached hereto as Exhibit A. In addition she shall have her clothing, personal belongings, art supplies, books and records, personal papers, and personal memorabilia.

8. Subject to the provisions of this agreement, each party has remised, released and forever discharged and by agreement does for himself or herself and his or her heirs, legal representatives, executors, administrators and assignees, remise, release and forever discharge the other, of and from all cause or causes of action, claims, rights or demands, whatsoever in law or in equity, which either of the parties hereto ever had or now has against the other, except any or all causes of action for divorce.

9. Subject to the provisions of this agreement, each of the parties may in any way dispose of his or her property, of whatsoever nature, real or personal, and the parties hereto each for himself and herself respectively, and for their respective heirs, legal representatives, executors, administrators and assignees, hereby waive any right of election which he or she may have or hereafter acquire, regarding the estate of the other or to take against any last will and testament of the other, whether heretofore or hereafter executed, as

provided for in the law of the State of Virginia or any other state or foreign country, and renounce and release all interest, the right or claim of distributive share or intestate succession or dower, or otherwise, that he or she now has or might otherwise have against the other or the estate of the other, on the property of whatsoever nature, real or personal, of the other under or by virtue of the laws of any state or country and each will, at the request of the other or their legal representatives, executors, administrators, and assignees, execute, acknowledge and deliver any and all deeds, releases, or any other instruments necessary to bar, release or extinguish such rights and claims, or which may be necessary to effectuate any of the provisions of this agreement. Each of the parties renounces and relinquishes any and all claims and rights which he or she may have or may hereafter acquire to act as executor or administrator of the other party's estate.

10. The wife agrees to pay her own legal fees for professional services rendered to her by the firm of Thomas, Haddock & Sewell.

11. The husband agrees to pay his own legal fees for professional services rendered to him by Cohen & Vitt, P.C.

12. The parties hereto agree to accept and do hereby accept the covenants and conditions hereinbefore mentioned as a full and complete and final settlement of any and all claims, and demands of every kind, whether the same be in law or in equity, except as otherwise provided by the terms of this agreement.

13. The parties hereto acknowledge that each of them is making this agreement of his or her own free will and volition and acknowledge that no coercion, force, pressure or undue

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influence has been used against either of the parties to this agreement or by any other person or persons. The parties declare that each has had disclosed to him or her the full nature and extent of and has been fully informed of the true assets and liabilities of each, and of the legal rights of each thereto, and that after such advice, knowledge and information, each signed this agreement freely and voluntarily, neither relying upon any representation from any person whomsoever other than those expressly set forth herein. No oral statement or written matter made prior to this agreement shall have any force or effect unless incorporated in this agreement.

14. This agreement shall not be modified or annulled by the parties hereto except by written instruments signed, sealed and acknowledged in the same way as this instrument has been executed. The failure of either party to insist upon the strict performance of any provision of this agreement at any time shall not be deemed to be a waiver thereof.

15. The parties agree that in the event that any temporary interlocutory or final judgment decree or order of divorce or separation shall be rendered in any action or proceeding between the parties, this Property Settlement Agreement shall be submitted to the court entering such judgment, decree or order, for affirmation, ratification and incorporation into its decree. The parties further agree that upon the court affirmation, ratification and incorporation of this agreement into its decree, the agreement shall be deemed for all purposes to be a term of the decree and enforceable in the same manner as any provision of such decree.

16. This agreement shall be executed in triplicate,

each copy of which so executed shall be deemed an original and shall constitute one and the same agreement.

WITNESS the following signatures and seals.

Phyllis Featherstone Brooks (SEAL)
(PHYLLIS FEATHERSTONE BROOKS)

Henry Brooks (SEAL)
HENRY BROOKS

STATE OF VIRGINIA)
To-wit:
CITY OF ALEXANDRIA)

I, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Phyllis Featherstone Brooks, whose name is signed to the foregoing and hereto annexed writing bearing date on the 9 day of April, 1975, personally appeared before me in my City and State aforesaid and acknowledged the same to be her act and deed.

GIVEN under my hand this 9th day of April, 1975.

Bern B. Leming
Notary Public

My commission expires: 11-22-77

STATE OF VIRGINIA)
To-wit:
CITY OF ALEXANDRIA)

I, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Henry Brooks, whose name is signed to the foregoing and hereto annexed writing bearing date on the 9 day of April, 1975, personally appeared before me in my City and State aforesaid and acknowledged the same to be his act and deed.

GIVEN under my hand this 10 day of April, 1975.

Bern B. Leming
Notary Public

My commission expires:

11-22-77

EXHIBIT A

PHYLLIS BROOKS PERSONAL PROPERTY

1. all jewelry (other than as provided in Paragraph #6)
2. skis, ski poles
3. binoculars
4. Arthur Smith drawing
5. framed San Blas mola
6. library table
7. Bokhara oriental rug
8. Hans J. Wegner blue couch & matching chair
9. antique drop leaf table
10. teak double dresser
11. silver plate samovar & tray
12. 800-silver flatware
13. cloisonne cigarette case and ash tray
14. carved wood flutist figurine
15. laquer bowl and lid
16. large Danish kitchen vase
17. red patch-work quilt
18. single bed spread, white with purple flowers, white fringe
19. ginger jar lamp
20. Julia Child's The Joy of French Cooking, Gloria Bley
21. Miller's The Thousand Recipe Chinese Cookbook

Phyllis Featherstone Brooks
PHYLLIS FEATHERSTONE BROOKS

Henry Brooks
HENRY BROOKS

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

HENRY S. BROOKS)	
Complainant,)	
vs.)	IN CHANCERY NO. 6332
PHYLLIS FEATHERSTONE BROOKS)	
Defendant.)	

FINAL DECREE

THIS CAUSE came on to be heard upon the Bill of Complaint filed by your complainant, the defendant having been personally served in Alexandria, Virginia, and having filed her Answer and Cross-Bill of Complaint on September 5, 1974; the matter having been duly matured was referred to Gordon P. Peyton, Special Commissioner in Chancery who proceeded to take the testimony of the complainant and his witness, Jeff A. Braswell, and reported to the Court.

It appearing from the evidence submitted, independent of the admissions of either party hereto that the parties herein were lawfully married in Alexandria, Virginia, on the 21st day of August, 1965, and that both parties herein are over the age of 18 years; and neither is a member of the Armed Forces of the United States; that the complainant was a resident of the Commonwealth of Virginia for more than one year immediately preceding the institution of this suit; that the defendant was at the time of filing a resident of the City of Alexandria, Virginia; and that the defendant did unjustifiably abandon and desert the complainant on the 18th day of September, 1973, and the parties have continued

to live separate and apart without cohabitation and without interruption since that date; that there is no possibility of reconciliation.

AND IT FURTHER APPEARING TO THE COURT that the parties hereto entered into a property settlement agreement executed on the 9th day of April, 1975, which the complainant requests be made a part of this Decree in its entirety, it is

ORDERED, ADJUDGED AND DECREED that the complainant, Henry S. Brooks, be and he hereby is awarded a Final Decree of Divorce (A VINCULO MATRIMONII) on the ground that the defendant willfully abandoned and deserted the complainant and that they have lived separate and apart and without cohabitation and without interruption for a period of more than one year; and it is further

ORDERED, ADJUDGED AND DECREED that the complainant, Henry S. Brooks, shall have the complete custody and control of the minor children of the parties hereto, to-wit: Edwin, born April 6, 1966; Helen, born January 27, 1968, and Benjamin, born May 31, 1971, with reasonable rights of visitation reserved to the defendant; and it is further

ORDERED, ADJUDGED AND DECREED that the property settlement agreement executed on the 9th day of April, 1975, is ratified, confirmed and adopted and made a part of this Decree.

AND this cause is final.


ENTERED this 5th day of June, 1975.


JUDGE

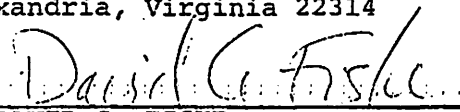
ENTERED: June 5, 1975

We Ask For This:

COHEN AND VITT, P.C.
320 King Street
P.O. Box 117
Alexandria, Virginia 22313

By: 
BERNARD S. COHEN
Counsel for Complainant

THOMAS, HADDOCK & SEWELL
607 Prince Street
Alexandria, Virginia 22314

By: 
DAVID G. FISKE
Counsel for Defendant

TESTIMONY OF HENRY S. BROOKS

App. 11

1 Court, please?

2 A. My full name is Henry Sidney Brooks.

3 Q. Mr. Brooks, you were formerly married to this
4 lady, Phyllis Jane Featherstone?

5 A. Yes, ma'am.

6 Q. You were divorced from her, is this correct,
7 in June of 1975?

8 A. That is true.

9 Q. Now, in June of 1975, did you live in the
10 house in which you live now?

11 A. Yes, ma'am.

12 Q. What is the address of that house?

13 A. 3830 South Fortworth Avenue.

14 Q. Did you live there with the three minor children
15 in June of 1975?

16 A. Yes, ma'am. I lived there in June of 1975. I
17 also lived there on September 19, 1973.

18 Q. Is that when you and Miss Featherstone moved
19 in there?

20 A. No, we moved in there in May of '73, and on
21 September 19, 1973 --

22 Q. Don't get ahead of me.

23 You and Miss Featherstone, this was prior to

App. 12

1 the separation, you moved into that house together, is
2 that true?

3 A. Yes, ma'am.

4 Q. Is that house located on Seminary Ridge in
5 Alexandria?

6 A. Yes, ma'am.

7 Q. You continued to live there with the minor
8 children during the course of the divorce dispute, and
9 continue to reside there today, is that true?

10 A. Yes, ma'am.

11 Q. At the time that you and Mrs. Brooks separated --
12 Excuse me, at the time that you actually divorced in
13 June of 1975, what was your approximate income?

14 A. \$29,800.00.

15 Q. As a matter of fact, the tax return you filed
16 that year shows an excess of \$30,000.00, is that true?

17 A. That's correct.

18 Q. And, you supplied counsel with that tax return,
19 did you not?

20 A. Yes, ma'am.

21 Q. At the present time, you've listed your income
22 as \$34,473.00, is that correct?

23 A. That's an increase of 13% over the former income.

App. 13

1 Q At the time that you and Mrs. Brooks divorced
2 one another, where was Mrs. Brooks living, in June of
3 1975, I'm sorry?

4 A She had already moved to New York.

5 Q She had moved to New York?

6 A Yes, ma'am. She moved in May, I think it was,
7 the end of April, May, '75.

8 Q Was Mrs. Brooks seeing the children around
9 that time ---

10 MR. GRONEL: I object to this. Based on counsel's
11 opening statement, I can see that she is trying to get
12 into a line of testimony that we submit, Your Honor, is
13 irrelevant and immaterial to the issue.

14 The only issue before this Court now is Mr.
15 Brooks' financial ability to provide child support for
16 these children. As the case of Harris -- I'm sorry,
17 Morris and Hammers which we will show Your Honor, it is
18 the sole issue here, and we would object to any testimony
19 concerning what the circumstances were around Mrs. Brooks
20 then seeing the children, and not having seen the children
21 since that time.

22 THE COURT: If she was seeing the children on
23 a regular basis and contributing to their support, would

App. 14

1 that make a difference, Mr. Gromel?

2 MR. GROMEL: I don't believe so, Your Honor,
3 because first we have to get over the hurdle of this
4 man demonstrating to this Court that the financial -- That
5 his own financial ability has been substantially altered
6 so that he cannot now live up to the agreement which
7 was incorporated in the final decree. So, I don't
8 believe it would be material in any sense.

9 THE COURT: I am not going to consider any such
10 testimony for any other reason other than to show what
11 contributions she was making back in 1975 for their
12 support, and what contributions she might be making
13 today.

14 MR. GROMEL: Note my exception, Your Honor.

15 THE COURT: Yes, sir.

16 BY MRS. GRENADIER:

17 Q Mr. Brooks, just prior to and at that time,
18 what was the visitation arrangement with Miss Featherstone?

19 A She took them every other weekend, and she had
20 them for two weeks in the summer, and she would buy
21 them presents, and she would take them places, and she
22 would spend money on them.

23 Q Did she help with their clothes?

App. 15

1 A. Yes, she did. She made clothes for Helen, and
2 she bought coats and stuff like that for Edward and
3 Benjamin.

4 Q Subsequent to, say, the end of summer, 1975,
5 has Miss Featherstone visited with the children?

6 A. Excuse me?

7 Q Subsequent to, say, September of 1975, has
8 there been any contact between the children --

9 MR. GROMEL: Note my continuing objection.

10 THE COURT: You're sustained as to any contact
11 or visitation. The question is support.

12 MRS. GRENADIER: I was going to go on with that
13 question, Your Honor.

14 BY MRS. GRENADIER:

15 Q With regard to any contribution that she may
16 have made to the children subsequent to September, 1975,
17 what has occurred?

18 A. It's tapered off to where it's nonexistent.

19 Q Now, Mr. Brooks, prior to your requesting this
20 Court for assistance, did you seek assistance from your
21 wife, ex-wife, before you came to Court?

22 A. Yes, right.

23 Q When was the first time that you informed your

App. 16

1 wife that you needed some assistance from her?

2 A. In the fall of '76.

3 Q Did you get any response?

4 A. She said she wouldn't pay.

5 Q Subsequent to the entry of the final decree,
6 you were required to pay to Miss Featherstone \$22,500.00,
7 did you pay that money?

8 A. Yes, ma'am.

9 Q Now, you have prepared at my request an expense
10 list, is that correct?

11 A. Yes, ma'am.

12 Q And, you have shown your income on this sheet
13 as \$34,473.00, is that right?

14 A. Yes, ma'am.

15 Q And, an average monthly net of approximately
16 \$2,100.00?

17 A. Yes, ma'am.

18 Q Now, on the second page that you have supplied
19 to the Court that I asked you prepare which purports to
20 be a list of the expenses which have changed from June
21 of 1975.

22 A. Yes, ma'am.

23 Q Would you explain to His Honor what you did, and

App. 17

1 how you computed these changes so that he can see the
2 difference?

3 A. What I did was, I went back and got my electricity
4 bills for around June of '75, and the last few bills I
5 got for electricity now, and I averaged them out; and
6 fuel oil, I took what I spent in the winter of '74 - '75,
7 and averaged it out over the whole year, 12 months, and
8 I did the same for this last winter, which was, admittedly,
9 a cold winter, but the price per gallon of fuel oil has
10 gone up from 19.9 cents then to an excess of 46 cents now.

11 Q. Did you have a car payment at the time, in
12 June of '75?

13 A. No. I had a '68 Dodge Dart which I had to sell
14 a few weeks ago because the transmission went out on it,
15 and I had to buy a new car, so I bought a new station
16 wagon, which I thought was very conservative. I paid
17 less than \$5,000.00 for it.

18 It's a Dodge Aspen station wagon.

19 Q. Did you have day camp costs for the children;
20 that is, summer camp, is it not?

21 A. No, you have to realize back then, when Phyllis
22 left me, the kids were 2, 5 and 7, and they were very
23 small. Now, they are getting to be 11, 9 and 6, and they

App. 18

1 have more activities. They have more things they want
2 to do. They wanted to go to day camp. They have music
3 lessons. They are very talented, gifted children, and
4 they want to do things, and they are very outgoing and
5 have a lot of friends, as you well know.

6 Their teeth need to be fixed.

7 Q Have you been to the orthodontist with the
8 two oldest children?

9 A I went up to Dr. Wittman in Seminary Towers,
10 and it cost me \$1,600.00 for Edward, and \$1,600.00 for
11 Helen.

12 Q You have estimated that at \$50.00 a month a
13 piece? That's where you got the \$100.00?

14 A Yes, ma'am. It's a matter of, you know, do you
15 want them to go through the rest of their life without
16 teeth, and they don't look nice, and they can't chew.
17 They have periodontal disease, according to -- unless they
18 have them fixed, according to Dr. Levin.

19 Q There are expenses that have changed that you
20 did not list here, isn't that true?

21 MR. GROMEL: Object, Your Honor.

22 THE COURT: Sustained.
23

App. 19

1 BY MRS. GRENADIER:

2 Q Are there expenses that you didn't list here?

3 MR. GROMEL: Object, Your Honor, she's leading.

4 THE COURT: Sustained.

5 BY MRS. GRENADIER:

6 Q I'll rephrase the question.

7 With respect to your son, Benjamin, do you --

8 A Oh, yes, Benjamin --

9 MR. GROMEL: Your Honor, I --

10 THE COURT: I'll allow her to complete the
11 question.

12 BY MRS. GRENADIER:

13 Q Are their medical expenses connected with
14 Benjamin?

15 MR. GOMEL: Objection, leading.

16 THE COURT: Objection overruled.

17 THE WITNESS: Benjamin, in June of '75, did not
18 have any medical problems. Today, he has bronchial asthma,
19 and he has to have -- see a doctor once a week. He has
20 to have special serum, and he has to go to Dr. Howard
21 up on Fox Hall Square to be looked at.

22 And, he's had bronchial pneumonia, which is
23 asthma induced. He's had fragile health, and those

App. 20

1 medical expenses are very high.

2 BY MRS. GRENADIER:

3 Q Did you have those in June of 1975?

4 A No, I didn't.

5 Q Mr. Brooks, if you don't receive any help from
6 Mrs. Brooks, what is the alternative?

7 A Well, up until now, I've been living off my
8 savings, and right about now it's all gone. I have a
9 few more stocks. I sold a few more stocks the other day
10 so I could pay for my continuing expenses, and if I don't
11 get any help, then I'll have to fire my housekeeper.

12 And, you'll have to realize my children are
13 very small. It means they are going to go wild. I don't
14 get home until 6:00 at night, and I am gone for two weeks
15 at a time sometimes inspecting field offices that are
16 with the Department of Energy, and I need somebody in
17 that house. And, it doesn't come cheap.

18 And, I'd have to move out of the neighborhood,
19 maybe move into an apartment. And, that would be awful
20 because I've had emotional problems with my oldest son.
21 I had to go to Family Services in Northern Virginia, and
22 they said that the basic problem with Edward is his
23 security is being threatened. When his mother left us,

App. 21

1 he was in love. He loves his mom. She's not around, and
2 he has a real problem.

3 MR. GROMEL: At this time, I am going to have
4 to object, Your Honor. The witness is now rambling in
5 an area that is not responsive to any question that is
6 relevant and material.

7 THE WITNESS: I'm about to get to that.

8 THE COURT: Sustained.

9 THE WITNESS: What I wanted to say --

10 THE COURT: Just be responsive to counsel's
11 questions.

12 BY MR. GRENADIER:

13 Q Why do you not want to sell the house and move
14 the children? I think this is extremely important.

15 A It will threaten their security. They are
16 very insecure now. That's why I wanted to say that because
17 they have all their friends there. As you know, Helen's
18 best friends live next door and up the block.

19 And, Edward plays soccer on a soccer team in
20 his neighborhood, and they are very active in school. They
21 have a lot of friends there.

22 And, for me to uproot them now, this is the
23 reason I was willing to pay Phillis that money to begin

App. 22

1 with, to keep them in that house. This is their security.
2 It's the only security they have, and for me to uproot them
3 at this time doesn't make any sense emotionally to the
4 children.

5 And, no sense economically, because when I
6 bought that house that was a \$77,000.00 house. If I
7 bought another house, I'd have the same payment because
8 that a 7-1/4 % mortgage, and mortgages are now 9%.

9 So, where am I going to have to live? I'm going
10 to have to live down in Fredericksburg to save any money,
11 and then I'd have transportation expenses.

12 It just doesn't wash, to sell the house, at all.
13 It's a \$60,000.00 mortgage.

14 MR. GRENADIER: I have no further questions,
15 Your Honor.

CROSS EXAMINATION

16
17 BY MR. GROMEL:

18 Q. Mr. Brooks, by whom are you employed?

19 A. The Federal Energy Administration.

20 Q. You are a Civil Service employee?

21 A. Yes, I am.

22 Q. Day after tomorrow, do you receive a 7.05%
23 cost of living raise?

1 A. Yes, I do.

2 Q. Have you calculated what that will bring your
3 annual salary to?

4 A. Yes. I've calculated a few things, if I could
5 get to that. Since June of '75, my salary has gone up
6 13%. My expenses, the cost of living here in Washington,
7 has gone up 22.2%. That raise will bring it up to about
8 17% because the increment between \$34,400 and \$36,700,
9 which I'll be getting, practically all of it, the increment,
10 well, almost half of it, will go to income tax, and other
11 deductions.

12 Out of that, I will get approximately -- approxi-
13 mately \$100.00 a month more in net income which should --
14 just about pay for the car.

15 Q. Somewhere in there, Mr. Brooks, I believe you
16 said -- and tell me if I'm correct -- that you calculated
17 what that raise will bring you in your salary as of
18 October will be \$36,700 a year?

19 A. About that, yes. But, you have to realize that
20 increment, when you get up to that tax bracket, means
21 that Uncle Sam keeps about 40% of it, 40 to 50, about
22 40% of it, between the 7% retirement, between the State
23 tax, Federal tax. What you see -- Sounds like a lot of

App. 24

1 money, but what you see is a lot less.

2 Q Mr. Brooks, at the time that you entered into
3 the settlement agreement, was it your understanding that
4 you would be responsible for the children's support
5 while you had custody?

6 A No. It was only understood that she would have
7 responsibility for support when she had custody, and that's
8 what that agreement says. It doesn't say anything about
9 my signing away support rights for those children.

App. 25

12 "Question: So it was your intention to be
13 responsible for their support?"

14 "Answer: That's right."

15 "Question: Except during those periods when
16 your wife had the children, is that correct?"

17 "Answer: That's correct."

18 Did I read that accurately, Mr. Brooks, the
19 testimony you gave before the court reporter back on
20 Monday, September 19th?

21 Q Yes, that's true, but you see, you asked me some-
22 thing else. You asked me whether or not that support
23 agreement said that I would be responsible for support

App. 26

1 of those children, and my wife can have them. All it
2 says is my wife will be responsible for them when she had
3 them.

4 Now, I fully well expected to be able to support
5 my children when I had the children. It doesn't say

16 MRS. GRENADIER: I think there is a misunder-
17 standing here which may be deliberate on Mr. Gromel's
18 part. If I understand what Mr. Gromel is attempting to
19 get at, there is no question that in June of '75, with
20 the circumstances existing at that time, Mr. Brooks did
21 not ask his wife for support.

App. 27

3 Q Mr. Brooks, what is the fair market value of
4 your Alexandria home today?

5 A I don't rightly know. It's in excess of
6 \$100,000.00.

7 Q Until September of this year, 1977, you also
8 owned another house, did you not?

9 A Yes, sir.

10 Q Where was that located?

11 A In Annandale, Virginia.

12 Q And, you sold that property in September of this
13 year?

14 A That's right.

15 Q What was the sales price that you received?

16 A \$76,250.00.

17 Q What was the value of that Annandale property
18 in June of '75?

19 A Roughly, \$65,000.00.

20 Q During that period of time, from June of 1975,
21 until approximately September of 1977, did you rent that
22 Annandale property?

23 A Yes, I did.

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1 Q What was your approximate --

2 A For part of the time, excuse me, not for the
3 whole time.

4 Q You rented the property, I believe, for the
5 entire year of 1975?

6 A Yes.

7 Q What was the approximate amount of rental income
8 that you received?

9 A In excess of expenses, or what?

10 Q Total rental income.

11 A Gross?

12 Q Gross rental income, yes, sir.

13 A It was \$400 -- \$405 a month, I think it was.

14 Q Approximately \$4,300.00 a year?

15 A You have my tax return.

16 Q And, you rented that property all during 1976,
17 did you not?

18 A Yes, during most of '76.

19 Q And, you received approximately the same amount
20 for rental income?

21 A Right.

22 Q Mr. Brooks, how much money do you have in your
23 savings account today?

1 A. Roughly \$2,000.00.

2 Q. What is the value of the stocks that you own
3 today?

4 A. Roughly \$3,000.00.

5 THE COURT: What did you do with the money from
6 the sale of the house in Annandale?

7 THE WITNESS: I paid off the loans. I had loans.
8 \$22,500.00, I paid her off, and then I have a loan with
9 the IRS I paid off.

10 I had \$11,000.00 in loans.

11 THE COURT: Your loan with IRS, is that for
12 past due taxes, or were you employed with IRS?

13 THE WITNESS: I have loans out with them in
14 excess of \$11,000.00 now.

15 BY MR. GROMEL:

16 Q. Mr. Brooks, in June of 1975, how much did you
17 pay for the housekeeper that you then had employed, that is,
18 just prior to the divorce?

19 A. She got \$80 or \$85, I don't remember right off.

20 Q. And, she had been with you while you and your
21 wife were still living together, is that not true?

22 A. No.

23 Q. When did you first employ a housekeeper?

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1 Corner Dodge, if you want to check.

2 MR. GROMEL: That's all the questions I have,
3 Your Honor.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION

6 BY MRS. GRENADIER:

7 Q Mr. Brooks, with regard to the net income
8 situation that Mr. Gromel asked you about, do you recall
9 what your net income was in 1975, in June?

10 A I calculated it, I think, it was something like
11 \$1,850.00 a month.

12 Q At the present time, I think you calculated it
13 at \$2,100.00, or whatever that figure is?

14 A \$2,114.00.

15 Q With regard to the tax situation that you're
16 in, claiming 17 exemptions, last year you had the deprecia-
17 tion on that second house that you and your wife owned
18 in Annandale, is that true?

19 A Right, that gave me some tax shelter.

20 Q Do you have that this year?

21 A No, I don't. In fact, I have to change my
22 exemptions.

23 Q Do you know how much, if anything, you are going

App. 31

1 to owe in taxes this year, over and above what you're
2 having withheld?

3 A. It would be just a guess, but I'm sure I would
4 have to owe something.

5 Q. Have you not calculated it at this point?

6 A. No.

7 Q. Have you changed with the withholding from the
8 17 exemptions?

9 A. No, I haven't. I should do that.

10 MR. GROMEL: I am going to object to the last
11 two questions and answers and ask that they be stricken
12 from the record. I think they call for speculative
13 testimony, testimony which this witness is not capable of
14 giving because it is not yet the end of the tax year of
15 1977.

16 THE COURT: Objection will be noted for the
17 record, and it's overruled.

18 MRS. GRENADIER: I have no further questions at
19 this time, Your Honor.

20 THE COURT: Anything further of this witness?

21 MR. GROMEL: Not on recross, Your Honor.

22 THE COURT: Thank you. You may step down.

23 MRS. GRENADIER: We'd like to call Miss Featherstone

TESTIMONY OF PHYLLIS FEATHERSTONE

App. 32

1 Q You were formerly married to Mr. Brooks, and
2 the mother of the three children, is that correct?

3 A That's correct.

4 Q In June of 1975, you were employed at the Board
5 of Governors, Federal Reserve System, is that true?

6 A That's true.

7 Q Was it correct that your approximate salary
8 was approximately \$9,500.00?

9 A Yes, that's correct.

10 Q At the present time, you are employed with the
11 Federal Reserve Bank of New York?

12 A Yes.

13 Q And, your salary is, according to your counsel,
14 \$13,825.00?

15 A That's right.

16 Q Did you receive the \$22,000.00 from Mr. Brooks
17 that he was obligated to pay you for the equity in the
18 property?

19 A Yes.

20 Q What have you done with that money?

21 MR. GROMEL: I object, Your Honor. I don't see
22 how that is in any way relevant or material. The money
23 she received pursuant to the settlement agreement should

App. 33

1 not go to the issue of whether the financial position of
2 Mr. Brooks, or, for that matter, of Miss Featherstone
3 has changed. The whole point is the law requires that
4 there be a change from the date of the property settlement
5 agreement to today, and a material and substantial change.

6 And, that was a payment pursuant to the property
7 settlement agreement, and that should in no way enter into
8 the Court's consideration.

9 THE COURT: The objection will be noted for
10 the record, and the objection is overruled. Go ahead,
11 Ms. Freedman.

12 BY MRS. GRUNADIER:

13 Q What did you do with the \$22,500.00?

14 A Payed \$700.00 in attorney's fees, and I with -
15 my brother-in-law bought a house in New York. I paid
16 \$17,500.00 as a downpayment.

17 Q How much did that house cost you and your
18 brother-in-law?

19 A \$53,500.00.

20 Q And, you bought this house, and it's in your
21 name and your brother-in-law's name?

22 A That's correct.

23 Q Did you put half the downpayment down, or did

App. 34

1 you put all the downpayment down?

2 A. All the downpayment.

3 Q. You just made a gift of half of it to your
4 brother-in-law?

5 A. I don't know why that would be a gift. I don't
6 understand.

7 Q. My question is, ma'am, you put the whole down-
8 payment on this house? You bought this house, is that
9 correct?

10 A. We bought it together, but I put down the
11 downpayment.

12 Q. And, you put this house in your name, and half
13 in your brother-in-law's name?

14 A. Yes.

15 Q. And, he made no contribution to this house at
16 all in the downpayment?

17 A. Not on the downpayment, no. And, I paid the
18 closing costs also which were approximately \$3,000.00.
19 The closing costs were approximately \$3,000.00, and the
20 remainder of the money I spent and paid off the mortgage
21 on my car.

22 Q. I understand, the loan you owed on your car.

23 Now, ma'am, do you live in this house, now, at the present

1 time?

2 A. Yes.

3 Q Who lives in that house with you?

4 A. My sister, her husband, and their daughter, and
5 me.

6 Q How much is the mortgage payment on that house?

7 A. I don't have my expense sheet.

8 That's only half. I only have my share of the
9 bills on that. That's not the entire mortgage.

10 MR. GROMEL: Perhaps we could ask her -- or,
11 I'll do it on cross, if you want me to, to refresh her
12 recollection.

13 BY MRS. GREHADIER:

14 Q Your mortgage is approximately \$36,000.00, isn't
15 that what you testified to in your interrogatories?

16 A. It is exactly \$36,000.00.

17 Q You put the entire downpayment. How much of
18 the mortgage outstanding each month are you paying?

19 A. Half.

20 Q You are paying half, and your sister, and your
21 brother-in-law and your niece are living with you in that
22 house?

23 A. That's right.

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1 Q And, you are paying one-half of the mortgage
2 payment?

3 A That's correct.

4 Q Did you bring any cancelled checks with you
5 to show to the Court that you are making that one-half
6 mortgage payment?

7 A I was not required to do so, as far as I knew.

8 Q You have indicated to the Court in the inter-
9 rogatories which you have answered that the house is
10 furnished, and that you do have some small saving account,
11 is that true?

12 A Yes.

13 Q Have you, in the last year-and-a-half, or to
14 make the time frame easier, contributed to the support
15 and maintenance of the minor children?

16 MR. GROMEL: I am going to object, Your Honor.
17 Earlier, when I posed the objection to Mr. Brooks' testimony,
18 that was without the benefit of cross examination which
19 revealed that when this final divorce decree was entered,
20 at that time, Miss Featherstone had already moved to New
21 York, and there were no payments forthcoming at about that
22 time.

23 It was clear from his cross examination that

1 MR. GROMEL: Would the Court like to me try
2 and clarify that?

3 THE COURT: I understand it now. I thought that
4 it was a \$50,000.00 house that she paid some \$25,000.00
5 down on, leaving a balance of \$25,000.00. And, I thought
6 a mortgage payment of \$400.00 a month on a \$25,000.00
7 loan was excessive.

8 THE WITNESS: The downpayment was \$17,500.00.

9 THE COURT: Yes, ma'am. I understand that now.

10 BY MR. GROMEL:

11 Q Miss Featherstone, what was your understanding
12 of the obligations of you and your husband with respect
13 to support at the time you entered into the property
14 settlement agreement?

15 A My understanding was that when the children
16 were with me on a vacation, or on a weekend, that I would
17 pay for their food or whatever else they required at the
18 time.

19 When Benjamin was with me a year ago this summer
20 for two weeks, I took him for his inoculations once a
21 week, and I paid for that.

22 Q If you were financially able to do so, would
23 you contribute to the support of your children?

1 A If I had to by law, and if I had to by law, I
2 would do so because I would have to. If I felt that there
3 was a need, a legitimate need, I certainly would contribute
4 if I felt that they really needed it if I could.

5 Q Are you in a financial position now to make
6 that contribution?

7 A I really am not. I am just making it, making
8 it from day-to-day.

9 MR. CROMEL: Your Honor, that's all we have.

10 MRS. GRENADIER: Your Honor, we have some recross.

11 REDIRECT EXAMINATION

12 BY MRS. GRENADIER:

13 Q On your expenses, you indicated to the Court
14 you had paid off your car with the remaining money that
15 Mr. Brooks gave you. Are you spending \$132.00 on gas
16 and oil for transportation?

17 A I am paying for public transportation which I
18 take to work. I am paying for car insurance, and I am
19 paying for extensive repair bills on my car, maintenance
20 of the car.

21 Q You indicated to the Court that it comes to
22 a total of \$132.00 a month?

23 A Averaged out over a 12 month period, yes.

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1 A. Six month period.

2 Q And, you received a refund anyway of \$372.00
3 in 1976? Do you want to see your statement? Do you
4 want to refresh your recollection?

5 Now, this year, you will take off 12 months of
6 what you are calling one-half of the payments, is that
7 true?

8 A. Yes.

9 Q How many exemptions do you claim?

10 A. Myself.

11 Q You just claim one exemption?

12 A. Yes.

13 Q Have you figured out how much the return is
14 that you are going to get this year?

15 A. No.

16 Q You have not? Now, where did you live prior
17 to moving into this house?

18 A. We rented a house.

19 Q You rented a house. And, how much was the rent
20 on that house?

21 A. About \$300.00 a month.

22 Q And, you paid one-half of the expenses on that?

23 A. Yes.

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1 you indicated would take thirty minutes, but that's true
2 to form, I suppose.

3 MRS. GRENADIER: With regard to this situation,
4 I can't help but feel that if this situation were reversed,
5 as I indicated before, that -- and Mrs. Featherstone, or
6 Miss Featherstone was Mr. Brooks, that there would be no
7 question in this Court's mind that he would have to con-
8 tribute to the support and maintenance of the minor
9 children.

10 But, the law in Virginia is very clear, and that
11 is that each parent contributes to the extent that they
12 are financially capable of so doing, on some sort of a
13 pro rata basis.

14 Now, there is no question that Mr. Brooks has
15 a good income, an excellent income, but the expenses,
16 some necessitated by the age change of the children, and
17 some by just the sheer, incredible increase in utilities
18 and taxes in this area, have outpaced even what he can do.

19 Since June of 1975, he's had about a 13% increase
20 in his gross income, and she has had a 40% increase in
21 her gross income. Since June of 1975, conservatively,
22 his expenses have gone up at least \$600.00, and that's
23 net because they are out-of-pocket expenses, and his net

App. 41

1 income is going to -- will have gone up approximately
2 \$350.00 to \$400.00 a month.

3 Now, if you look at Mr. Brooks' expense sheets,
4 in some areas it is pathetic. He has a high mortgage, but
5 he had that when they separated, and he had it when
6 they married and moved into the house. And, the taxes
7 have gone up considerably, but not out of line, \$20.00 or
8 \$30.00 a month. The house repairs, the furniture, and
9 appliance repairs, the electricity, the food, including
10 the housekeeper's food, the car payment, we have to look at
11 Mr. Brooks as though he is the head of the household because
12 he is, and he has the custody of three small children.

13 He didn't have a car payment in 1975, and he
14 didn't have the utility bills that he has now because
15 they are a lot more.

16 In addition, and I think the testimony is pretty
17 clear, Mrs. Brooks doesn't visit that often with the
18 kids, and he doesn't get that much vacation period, so
19 he sends them to summer camp because the vacation expense
20 for four people is listed at \$5.00 a month.

21 So, he sends the kids to summer camp which did
22 not occur because she had them the summer following the
23 divorce.

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1 The children have piano lessons. They were
2 too young, they were 2, 5 and 7 when she left. They
3 are now 6, 9 and 11.

4 On the left-hand side are essential expenses
5 that he has to pay to survive in the same house in which
6 she was living with increases in them.

7 Now, let's look at the right-hand expenses. He
8 only spends \$25.00 a month per person on clothes which
9 is incredible. He spends \$38.00 on the doctor. He has
10 \$100.00 a month new expense for the children for orthodontia.
11 For Christmas and birthdays for the kids, a total of
12 \$5.00 for four people; that's incredible.

13 \$30.00 a month for four people in entertainment
14 expense; that's unbelievable.

15 If you look down this list of expenses that he
16 has, they are pathetic, and he makes a good salary. But,
17 he has been caught in a bind.

18 When he and his wife lived together, when they
19 were in this particular neighborhood, in this house, they
20 could afford it. Nobody expected the utilities to go up
21 almost 40 to 50%. Nobody expected that the taxes were
22 going to rise. But, everybody, I would imagine, has got
23 to understand that with the increased ages of the children,

App. 43

1 the needs change. I don't think these children should
2 have to leave their home. I don't think Mr. Brooks should
3 be claiming 17 exemptions so that he can stretch his
4 income out this high, and, oh, God knows what at the
5 end of the year, so that he can make the payments for this.

6 I think the circumstances have necessitated
7 a change in the request for the support from Mrs. Brooks.
8 She is not now seeing the children on any basis, let
9 alone even an irregular basis. There is no real con-
10 tribution to her or from her to the children, and yet
11 Mr. Brooks faces approximately, about, \$7,000.00 increase,
12 net increase in his needed income.

13 And, his net income isn't keeping pace with it.
14 I don't feel that the children should be penalized in
15 this situation because they are living with their father
16 instead of their mother.

17 And, I do feel very strongly that Mrs. Brooks
18 should not be penalized to the extent that she has to
19 pay \$200.00 per month per child. Nobody is asking her
20 to do that, Your Honor.

21 But, we are asking that she make a reasonable
22 contribution.

23 There is a serious question in my mind as to this

App. 44

1 situation, that Mrs. Brooks has testified to. She makes
2 a salary of almost \$14,000.00 a year. She takes her
3 total savings, buys a house, which is not unreasonable,
4 and installs three other people who are only paying,
5 allegedly, one-half the mortgage and not three-quarters
6 of the mortgage, not all of the mortgage, since she put
7 the downpayment, and the house -- She's telling the truth --
8 is in her brother-in-law's name and her name.

9 And, I would suggest to Your Honor that possibly
10 the brother-in-law's making the full mortgage payment, or,
11 at least, he should be making the full mortgage payment,
12 or she should be making a fourth of the mortgage payment.

13 The tax situation, if one looks at her 1976
14 taxes, and figures in, which I did, the deductions which
15 she will have now, show an --

16 MR. GROMEL: Your Honor, I hesitate to interrupt
17 closing argument, but I think it's clear now that counsel
18 is about to get into an area that is not in evidence.
19 I don't believe there has been any expert testimony as
20 to what the tax consequences would be. I don't believe
21 it would be appropriate, given all the factors that need
22 to be considered, for the Court to take this counsel's represent-
23 tions of what those tax consequences might be.

App. 45

1 For that reason, we object to this closing
2 argument.

3 THE COURT: Are you going to speculate as to
4 what her tax situation is going to be next year?

5 MRS. GRENADIER: In 1978? No, sir. What I
6 was going to say is that she herself has indicated that
7 the return may or may not be greater. I mean, she is
8 going to take off more deductions. There's no question
9 about that. She's testified to that to the Court.

10 Mrs. Brooks would have us indicate, Your Honor --
11 or would indicate to the Court that it is important for
12 her to have almost \$750.00 or \$800.00 a month at least
13 net income, plus her thrift, her savings plan, of \$75.00
14 a month for herself to live on.

15 If you divide up Mr. Brooks' net income, you
16 have about \$550.00 per person in the house. I can assure
17 Your Honor that Mr. Brooks did not want to come in here
18 to ask for this increase unless it was essential.

19 If you look at his expenses, and the change of
20 circumstances that he's faced since June of '75, he has
21 two choices: Either get some assistance from his wife,
22 or he has got to move, and he has got to move well out of
23 the area because as I indicated before, the left-hand column,

1 with the exception of the piano and the summer camp, are
2 essentials.

3 And, I don't feel that these children should be
4 deprived of summer camp and piano and orthodontia when
5 this lady has indicated to us that she needs these things.
6 I mean, she has expenses down here of \$132.00 for
7 transportation. She spends \$54.00 a month at the church,
8 which, if you can afford it, is fine.

9 When the children are having a hard time with
10 their orthodontia expenses, I think that's a little more
11 important. The church pledge could be lowered.

12 She indicates that she needs almost \$200.00 a
13 month for groceries. They don't spend \$200.00 a month per person
14 for groceries in Mr. Brooks' household, and they have
15 five people living there including the housekeeper. They
16 don't spend anywhere near it.

17 She indicates that she makes most of her clothes,
18 but she still spends \$50.00 a month on clothing. And,
19 I would again reiterate, Your Honor, that while her
20 expenses may not be unreasonable in the standard sense
21 of the phrase, I think that when one looks at the three
22 children, they have certain needs, too.

23 They were left. They were the victims of this

App. 47

1 situation. The record is very clear as to what happened
2 in this situation.

3 It isn't the fault of the children, and I feel
4 that there has been enough change in circumstance for Mrs.
5 Brooks to make a contribution of whatever size the Court
6 deems appropriate for her to make towards the support and
7 maintenance of the children.

8 I don't think it's right to have to uproot the
9 children, to deny them the orthodontia. I can't tell
10 Mr. Brooks that he has to cut his electric bill any more,
11 or that he has to cut the mortgage payment or the car
12 payment, because these expenses are things he's got. He
13 can't do without these, the homeowners insurance, the life
14 insurance for the children.

15 None of these expenses that he has listed are
16 out of line.

17 It's unfortunate that they live in this area, but
18 she left them in this area, and the circumstances have
19 gone up at least 22%, which was the last figure quoted by
20 the CPI in the last two years.

21 He's not keeping pace with it, Your Honor. His
22 income isn't keeping pace with it, and it is the children
23 who are going to suffer for it.

App. 48

1 I think Your Honor can see that the majority
2 of his income goes to support those children, and keep
3 that roof over their heads, and all we are asking is that
4 this woman spend as much as she spends on her thrift and
5 her church and a little bit of her groceries to help
6 support the children so that at least the orthodontia,
7 and, perhaps, maybe even the piano lessons, don't become
8 overbearing, where the kids can have that without his
9 constantly dipping in.

10 Mrs. Brooks hasn't dipped into her resources at
11 all, and he has testified that his are going right down
12 the drain.

13 She has taken every resource she has and plunked
14 it down into a house for herself, and, for some reason,
15 half of it has just been given to her brother-in-law.

16 THE COURT: Mrs. Freedman, suppose I do as you
17 suggest and order her to pay something in the neighborhood
18 of \$150.00 a month for support and maintenance of these
19 three children. Would that have such an adverse effect
20 on Mr. Brooks' income tax situation that it would really
21 work to his detriment rather than to his benefit?

22 MRS. GRENADIER: No, sir.

23 THE COURT: She would be entitled to some tax

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1 break for the support that she pays, wouldn't she?

2 MRS. GRENADIER: No, sir. The way that child
3 support works, Your Honor, is that whoever pays over one-
4 half for the support and maintenance of the children --

5 THE COURT: I understand that.

6 MRS. GRENADIER: Takes them as exemptions.

7 THE COURT: But, if the Court orders that some
8 sum be paid, if it's in excess of \$150.00 a month, there's
9 a presumption that works in favor of that party, isn't
10 there?

11 MRS. GRENADIER: No, sir. It's if it is in
12 excess of \$100.00 per month per child. And we are not
13 asking the Court to award that amount of money.

14 That would be \$300.00 and some odd dollars a
15 month, and there is no question that this woman -- You know,
16 even if in good faith, she had just taken an apartment
17 and bagged her \$22,000.00, or bought herself a little
18 house, there's no way on her income that we would ask
19 her to pay that amount of money.

20 The problem is, Your Honor, is that it's not
21 a question of taxes. It's a question of dollars and
22 cents. I am not sure my client has made a very wise
23 decision, taking 17 exemptions. I'm not his financial

App. 50

1 advisor, but it's the only way he can make it.

2 I think it's stupid, to be candid with Your Honor,
3 because I think Your Honor can have a picture of what
4 is going to happen at the end of the year. But, the only
5 way from month-to-month that he can survive in this
6 area -- It's a sad thing about this particular area with
7 the utilities and the costs as they are, but I feel
8 strongly that there has been a very substantial change
9 in circumstance.

10 When a child goes from 7 to 11, his teeth need
11 to be fixed. These children, it's been testified, and
12 certainly not rebutted, that they are talented, gifted
13 children who take piano and other sorts of things.

14 There is no question, and Mr. Brooks has testified,
15 that they have undergone a tremendously traumatic experience
16 over this, and that they need things like summer camp.
17 He hasn't gone overboard with it.

18 It's obvious that he takes them to McDonald's
19 once a month, and that's about it for their entertainment
20 for the month, but I don't feel the tax consequence, I
21 just have to say, well, we'll just have to let them and
22 IRS worry about that. That extra \$150.00 to \$200.00 a month
23 that she would contribute would be a relief. It would pay

App. 51

1 the orthodontia bills for the two children, and it would
2 pay the piano lesson and a summer camp.

3 It could help with the one month that he needed
4 the bills for the younger child. It's not a drop in the
5 bucket so far as you or I might be concerned, but it is
6 for this gentlemen who is walking around claiming 17
7 exemptions in order to make ends meet.

8 I just don't feel -- I understand what Mr.
9 Gromel's point is. I mean, he is trying to portray to
10 the Court that, well, look, in June of '75, he said,
11 okay, I'll take the children and take care of them when
12 they are in my custody.

13 But, 21.08 is very clear that if there is a
14 change of circumstances, you can come back in and ask for
15 increased help, help that you didn't have before, and
16 so forth.

17 I don't think it would be fair to deprive the
18 children in this regard simply because Miss Featherstone,
19 having put herself in this situation where she's paying
20 half the mortgage payment, allegedly, that three other
21 people sharing the house with her, I would suggest that
22 one-quarter would be her legitimate payment.

23 There is no question of need, Your Honor, and insofar

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1 as Mr. and Mrs. Brooks are concerned. It is a question
2 that the kids have a roof over their heads, which is
3 expensive, and it's the same roof they had over their
4 heads when they got divorced, and with increased expenses,
5 I think Your Honor can see by the rest of the expenses
6 that they are not having a lot spent on them, practically
7 nothing for Christmas or birthdays, nothing for entertain-
8 ment to speak of, nothing for vacations to speak of.

9 And, he needs the help. Just as she would need
10 it if the situation were reversed. And, I feel very
11 strongly that this Court would give it to her.

12 And, I feel that under the circumstances it would
13 be most unfair to deny the children the difference simply
14 because it's their mother that does not have custody
15 rather than the father.

16 I am not asking for a huge contribution. I know
17 she can't afford it. But, I think a reasonable contri-
18 bution for her to pay is reasonable, broken down on a per
19 child basis, that she should contribute.

20 THE COURT: Mr. Gromel.

21 MR. GROMEL: May it please the Court, Mr. Brooks
22 here is petitioning the Court, as counsel has told Your
23 Honor, to alter the final decree and the property settlement

9 THE COURT: The Court does find that there has
10 been a material and substantial change in the circumstances
11 that would warrant a support payment to Mr. Brooks from
12 Miss Featherstone, and the Court also recognizes the
13 dilemma that Miss Featherstone has, and the limited amount
14 of income that she has.

PHYLLIS J. FEATHERSTONE

September 26, 1977

Gross Monthly Salary: 1,152.10

Deductions:

Social Security	67.51
State Tax	48.91
City Tax	19.29
Federal Tax	197.56
Thrift	75.00
Greater N.Y. Fund	2.17

Net Income 742.30

Expenses:

Mortgage Payment	195.47
Electricity	16.00
Fuel Oil	40.00
Gas	8.00
Telephone	12.50
Payment on Furnace Converter	20.00
(All of the above expenses are $\frac{1}{2}$ the total bill per month)	
Transportation	132.00
Church Pledge	54.00
Medical	15.00
Groceries and Food	184.00
Charge Account Payments (clothing, furnishings, cosmetics, gifts, etc.)	50.00
Home Maintenance, Housewares	25.00

Total Expenses: 751.97

-9.67

All of the above utility payments are based on expenditures prior to recent utility rate hikes in New York City.

MONTHLY EXPENSES OF HENRY S. BROOKS & 3 children
INCOME ON AVERAGE MONTHLY BASIS OF 4 1/3 Weeks

Occupation Federal Employee
Employed by Federal Energy Administration
Address Washington, DC 20461
Pay Period Bi-weekly
Next Pay Day 10/5/77
Rate of Pay \$34.473 per annum
Exemptions claimed _____

Average Gross wage
per pay period \$2872.13
Less Deductions: Income tax 511.24
Social Security 201.05
Retirement 43.35
Insurance 2.16
Other Combined Fed. Emp. 2.16
Average Monthly net pay \$2114.33

EXPENSES ON AVERAGE MONTHLY BASIS OF 4 1/3 weeks

Household:

Mortgage payment/rent \$ 597.01
Lawn 5.00
Property taxes (incl. in mtg) _____
House repairs 30.00
Furniture/appliance repair 50.00

Utilities:

Electricity 90.00
Fuel oil 40.79
Gas _____
Telephone 15.00
Water/sewer 20.00
Garbage _____

Food:

Groceries 474.66
Lunches 40.00

Automobile:

Payment/depreciation 124.96
Gas and oil 20.00
Repair 20.00
License tags/inspection 2.00
Other transportation 36.00
Personal property taxes 25.00

Insurance:

Automobile liability 20.00
Health (deducted from pay) _____
Home owners 5.00
Life insurance 17.50

Children's Expenses:

School supplies 5.00
Nursery school _____
School tuition _____
Lunch money 18.00
Allowance/sports 15.00
Babysitter 508.00
Summer Day Camp 40.00
Piano Lessons: Helen & Henry 50.00

Fixed Debts with Interest:

Name of Creditor

IRS/CREDIT UNION
Credit Union

Clothing:

New \$ 100.00
Dry cleaning, laundry 18.00
Special/uniforms _____

Health expenses:

Doctor 38.00
Dentist 12.00
Eye glasses 3.00
Hospital _____
Clinic membership _____
Medicines, vitamins 5.00
Orthodontia needed for Edwin
Gifts: & Helen (\$3,200.) 100.00
Church/charity 20.83
Christmas/birthdays 5.00

Entertainment

Vacations 30.00
5.00

Dues:

Membership 20.83
Social clubs _____
Pool _____
Other (PWP) 5.00

Sundries:

Newspapers 6.00
Magazines 5.00
Personal grooming 5.00
Cosmetics, hair cuts 15.00
Other _____

Pets:

Vet _____
Other (fish) 2.00

Miscellaneous:

Maid, yard work _____
Seed, fertilizer 4.00
Legal expenses 50.00
Taxes _____
Other _____

Balance Due

\$5,500.00 114.18
\$5,119.00 (see car payment \$124.96 above)

CURRENT BILLS OWED: (Over and above monthly expenses)

Raleigh's \$ 125.00
BankAmericard \$1,415.00

TOTAL CURRENT BILLS:

ASSETS:

Cash on hand \$2041.51
Stocks, bonds, notes \$3000.00
Real Property owned: Home & "sold rental"
Automobiles 1977 Dodge Aspen

Other personal property

TOTAL ASSETS:

TOTAL MONTHLY INCOME: \$2114.33

TOTAL MONTHLY EXPENSES: \$2832.76

(+ or -) BALANCE: - \$ 718.43

SIGNATURE

26 September 1977

DATE

#6332

CHARCLY NUMBER

HENRY S. BROOKS & 3 children; EXPENSE INCREASES ON MONTHLY BASIS

	JUNE 1975	to	September 1977	
Electricity	25.00		90.00	
Fule oil	25.73		40.79	
Water	7.35		20.00	
Day Camp	00.00		40.00	
Car payment	00.00		124.96	
Personal loan payments	00.00		114.18	
Medical costs		same		
Orthodontia	00.00		100.00	
Music Lessons	00.00		50.00	
Property tax	132.70		156.25	
Personal property tax	2.00		25.00	
House maintenance	10.00		30.00	*
	<u>\$202.78</u>		<u>\$791.18</u>	
			<u>- 202.78</u>	
			<u>\$588.40</u>	DIFFERENCE

*Actual expenses; need about \$75.00 monthly

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

HENRY S. BROOKS	:	
Complainant	:	
vs	:	
PHYLLIS FEATHERSTONE (BROOKS)	:	IN CHANCERY NO. 6332
Defendant	:	ORDER

THIS CAUSE came on to be heard this 28th day of September, 1977 upon motion of Complainant, with proper notice given, that he be awarded support and maintenance for the minor children of the parties hereto; and the Court having noted that both parties and counsel personally appeared before this Court, and the Court having considered the testimony of the witnesses, exhibits and argument of counsel, finds that there has been sufficient change in the circumstances of the minor children and the parties to justify the request for support and maintenance for the minor children from the Defendant to the Complainant, and also finds that the Defendant, Phyllis Featherstone, should pay the Complainant, Henry S. Brooks, the sum of \$100.00 per month for the support and maintenance of the minor children of the parties, it is, therefore,

ADJUDGED, ORDERED and DECREED that, beginning on the 13th day of November, 1977, the Defendant shall pay to the Complainant for the support and maintenance of the minor children Edwin Brooks, Helen Brooks and Benjamin Brooks the sum of \$100.00 per month, said payments to be made on the 13th day of each and every month thereafter until further changed by order of this Court; and

It further appearing to the Court that the Defendant has filed a motion, pursuant to §8.01-676 of the Code of Virginia, 1977 Repl. Vol., indicating her intention to seek an appeal to the Supreme Court of Virginia and moving the Court to suspend execution of the judgment of this Order, it is hereby

ORDERED and DECREED that the execution of the judgment of this Order is hereby suspended so long as Defendant timely prosecutes the appeal and

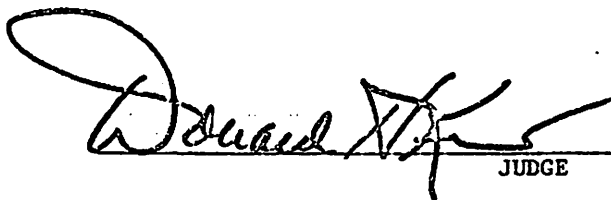
App. 58

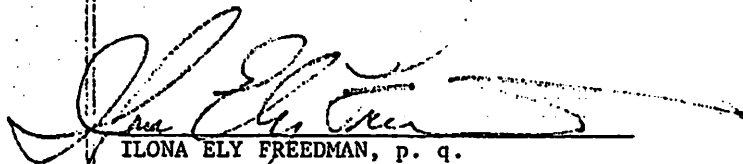
thereafter so long as the matter is under consideration by the Supreme Court, provided that Defendant files a bond in the amount of \$1,000 with surety approved by the Court, all as required by §8.01-676 of the Code of Virginia, 1977 Repl. Vol., within thirty (30) days from the entry of this Order.

The Clerk shall cause copies teste of this order to issue to counsel of record.

ENTERED:

October 26, 1977


JUDGE



ILONA ELY FREEDMAN, p. q.
(Mrs. Albert H. Grenadier)
532 North Washington Street
Alexandria, VA 22314

HUNTON & WILLIAMS

By: _____

Counsel for Defendant
P. O. Box 1535
Richmond, VA 23212

ENTERED October 26, 1977

BOOK

PAGE

A COPY TESTE:

ALVIN W. FRINKS, CLERK

BY: J. J. Reave

Deputy Clerk

copies

Appellant's Assignments of Error

Entered January 26, 1978

1) The trial court erred in finding that a material and substantial change in circumstances had occurred so as to justify an amendment to the Final Decree dated July 5, 1975.

2) The trial court's award of support was excessive.

Appellee's Assignment of Cross-Error

Entered February 9, 1978

1) The trial court did not err in finding that there was material and substantial change in circumstances occurring such as to justify an amendment to its final decree of June 5, 1975, but it did err in its award of only \$100 per month for three children. The award of child support should have been higher.