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# Record No. 4759

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**ALFRED W. NEWTON, ET AL.**

v.

**RICHARD V. WILSON, ET AL.**

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FROM THE CIRCUIT COURT OF NORFOLK COUNTY

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## RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

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

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

199VA864

**NOTICE TO COUNSEL**

This case probably will be called at the session of court to be held.

NOV 1957  
You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

H. G. Turner, Clerk.





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

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**Record No. 4759**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 11th day of June, 1957.

ALFRED W. NEWTON, ET AL., Appellants,  
*against*

RICHARD V. WILSON, ET AL., Appellees.

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From the Circuit Court of Norfolk County

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Upon the petition of Alfred W. Newton and Catherine M. Newton an appeal and *supersedeas* is awarded them from an order entered by the Circuit Court of Norfolk County on the 28th day of January, 1957, in a certain proceeding then therein depending, entitled; In the Matter of Adoption of an infant to be named James Newton Wilson; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said Circuit Court in the penalty of three hundred dollars, with condition as the law directs.

**RECORD**

\* \* \* \* \*

**PETITION.**

To the Honorable Judge of the aforesaid Court:

Your Petitioners, Richard Vance Wilson and Florence Newton Wilson, respectfully represent:

1. That they are husband and wife, and reside at 4111 North Highland Avenue, Norfolk County, Virginia, and are members of the white race.

2. That there was born in wedlock to Alfred Weston Newton and Catherine Mahoney Newton, on July 2, 1943, a child named James Edward Legere Newton, which child has since February, 1952, resided, and is presently residing, with petitioners, having been placed with petitioners by his parents.

3. That the parents of the said infant child are willing that said petitioners adopt said child as shown by their written consent, signed and acknowledged by both parents and attached to this Petition and marked Exhibit "A".

4. That Petitioners are financially able and morally fit to care for and train the said child; that the child whose adoption is now proposed is in good mental and physical condition.

5. That they desire the name of the child to be James Newton Wilson.

WHEREFORE Petitioners pray that all proper proceedings be had and inquiries made as by statutes for such cases made and provided; to the end that a final order of adoption of said child by petitioners may be entered and said child may be and become their child by adoption and the page 2 } said child's name be changed to James Newton Wilson.

**RICHARD VANCE WILSON.  
FLORENCE NEWTON WILSON.**

\* \* \* \* \*

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\* \* \* \* \*

Filed in the Clerk's office the 31 day of Dec., 1954.

Teste:

MAJOR M. HILLARD, Clerk.  
By M. J. EVANS, D. C.

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\* \* \* \* \*

ORDER OF REFERENCE.

This day came, Richard Vance Wilson and Florence Newton Wilson and filed their petition to adopt a male child, not theirs by birth, and to change the name of said child to James Newton Wilson.

And it appearing that said petitioners are husband and wife and reside at 4111 North Highland Avenue, Norfolk County, Virginia; that said child is now living at the home of petitioners; and that by statute for such cases made and provided this court has jurisdiction of said petition;

It is Ordered that the Clerk of this court forward a copy of the petition to the Commissioner of Public Welfare, who shall, as requested by statute, make a thorough investigation of the matter and report thereon in writing to the court within sixty (60) days after the copy of the petition is forwarded to him.

And this proceeding is continued awaiting the filing of such report by the Commissioner of Public Welfare.

Enter Jan. 6, 1955.

E. L. OAST.

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\* \* \* \* \*

## INTERLOCUTORY ORDER.

This day came again Richard Vance Wilson and Florence Newton Wilson, petitioners in the above matter, and the Commissioner of Public Welfare having filed his report as required by statute and formal order in this matter; and it appearing that all requirements of the statutes for this case made and provided have been complied with; that petitioners are financially able and morally fit adequately to maintain, care for and train the child in the petition mentioned; that the child is suitable for adoption and that the best interest of the child will be promoted by adoption.

It is ordered and declared that the male child in the petition mentioned, born of Alfred Weston Newton and Catherine Mahoney Newton, on July 2, 1943, at Los Angeles, California, and now called James Edward Legere Newton; henceforth, subject to the probation period by statute provided for, and to the final order of adoption, be to all intents and purposes the child by adoption of petitioners, Richard Vance Wilson and Florence Newton Wilson, husband and wife.

And the petition having included a prayer for the change of the child's name, and the court being satisfied that such change is for the best interest of the child, it is Ordered that upon entry of the Final Order the name of the child shall be James Newton Wilson.

An attested copy of this Interlocutory Order shall be forwarded forthwith by the Clerk of this Court to the Commissioner of Public Welfare.

Enter June 20, 1955.

E. L. OAST.

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## PETITION.

To the Honorable Edward Oast, Judge:

Your petitioners, Alfred W. Newton and Catherine M. Newton, husband and wife, respectfully represent:

1. That they are the natural parents of the said James Edward Legere Newton, an infant of the age of thirteen years.



2. That they previously consented to the adoption of their said child by their daughter and son-in-law, Mr. and Mrs. Richard V. Wilson.

3. That an interlocutory order has been entered in said matter pending the visitations of the Department of Public Welfare and the approval of the Commissioner of Public Welfare.

4. That the supervision of said matter has been transferred from the State of Virginia due to the fact that Mr. and Mrs. Wilson moved from the State of Virginia.

5. That the said James Edward Legere Newton, is now in the home of your petitioners, Alfred W. Newton and Catherine M. Newton.

6. That the said James Edward Legere Newton desires to remain in the home of your petitioners and has steadfastly refused to return to the care and custody of the said Mr. and Mrs. Richard V. Wilson.

7. That your petitioners realize that they made a mistake in consenting to the adoption and that said mistake has been brought home to them very forcefully since their son, James Edward Legere Newton, returned to their home.

8. That their primary reason for consenting to said adoption was their feeling that younger parents could give more natural companionship to a child such as your petitioners experienced while raising their older children; that the said

James Edward Legere Newton was born to them  
page 9 } fairly late in life and that they felt that he would  
be happier with younger parents; that they now realize their mistake having learned that their son wants them as they are and that it is his insistent and persistent desire that he remain with them.

9. That the said James Edward Legere Newton has been baptized a Roman Catholic; that it is our earnest desire that the said child be reared in a Catholic home.

10. That the said Mrs. Richard V. Wilson has been married four times, having married the said Richard V. Wilson in a ceremony believed by your petitioners to have been Mormon; that your petitioners find no fault with other religions but it is their earnest desire that the said child be reared in a Catholic home; that the home of the said Mr. and Mrs. Richard V. Wilson is not such a home and your petitioners feel that their rights in this regard are protected by statute even though they have previously executed their consent to the adoption.

11. That in addition to all of the above reasons, your petitioners are fearful of the safety of their son if he is returned

to the home of the said Mr. and Mrs. Richard V. Wilson inasmuch as he is so determined that he will not leave the home of your petitioners and they therefore fear that he has built up such a rebellion within himself that he will harm himself rather than return to the home of the said Mr. and Mrs. Richard V. Wilson.

WHEREFORE, your petitioners pray that the Interlocutory Order of Adoption which has been entered in this matter be revoked and that the adoption proceeding pending in this Honorable Court be dismissed and that they may be afforded such other relief as to equity may seem meet and just.

ALFRED W. NEWTON.  
CATHERINE M. NEWTON.

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#### ORDER OF ADOPTION.

This cause came on this date to be again heard upon the papers formerly filed; upon the written reports of the Commissioner of Public Welfare for the Commonwealth of Virginia, dated June 3, 1955, and August 14, 1956, and exhibits and reports of participating out of state welfare agencies filed and attached thereto; the interlocutory order entered June 20, 1955, and the petition of Alfred W. Newton and Catherine M. Newton filed July 30, 1956, and was argued by counsel.

Upon consideration of which the Court doth deny the petition of Alfred W. Newton and Catherine M. Newton to withdraw consent to said adoption; that all material matters alleged in their petition being known to Alfred W. Newton and Catherine M. Newton at the time consent was executed and the probationary period, as provided by statute, having passed, the Court deeming it unnecessary to take further evidence other than that contained in the record.

And it appearing from the said reports and exhibits filed by the Commissioner of Public Welfare that the petitioners to adopt in this cause, Richard Vance Wilson and Florence Newton Wilson, husband and wife, are financially able and morally fit adequately to maintain, care for and train the said

infant child, James Edward Legere Newton; that said infant child is suitable for adoption by said petitioners and that the said Commissioner of Public Welfare raises no objection to the adoption of the infant child by the adopting petitioners, and the Court, after mature consideration, deems that the entry of a final Order of Adoption of said infant child should be granted;

page 12 } WHEREUPON, the Court being satisfied that all of the requirements of law have been complied with and that the best interest of the child will be served thereby, doth ADJUDGE, ORDER and DECREE that henceforth said infant child, James Edward Legere Newton, shall to all intents and purposes be the child of said petitioners, Richard Vance Wilson and Florence Newton Wilson, his wife, and shall be entitled to all the rights and privileges and subject to all the obligations of a child of said petitioners, Richard Vance Wilson and Florence Newton Wilson, his wife, born in lawful wedlock.

And it further appearing to the Court that the petition in this cause includes a prayer for the change of the name of said infant child from James Edward Legere Newton to James Newton Wilson, the Court doth further ADJUDGE, ORDER and DECREE that henceforth the name of said child shall be James Newton Wilson.

And the Court doth further ORDER that upon the entry of this order the Clerk of this Court shall forward forthwith an attested copy of this order to the Commissioner of Public Welfare for the Commonwealth of Virginia. And the Court doth further direct the Clerk of this Court to report to the Bureau of Vital Statistics the final adoption of said infant, James Newton Wilson.

The said Alfred W. Newton and Catherine M. Newton duly except by counsel to the denying of their petition and entry of the final Order of Adoption in this cause.

Enter Jan. 28, 1957.

E. L. OAST.

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## AMENDED PETITION.

To the Honorable Edward Oast, Judge:

Your petitioners, Alfred W. Newton and Catherine M. Newton, husband and wife, respectfully represent:

1. That they previously filed a petition in this honorable court asking that the Interlocutory Order of Adoption be revoked and that the adoption proceeding be dismissed.

2. That since the filing of their original petition certain other facts have come to light which they feel that the court should be apprised of.

3. That they are therefore filing their amended petition to be considered by the court in conjunction with their original petition already filed.

4. That during *habeas corpus* hearing held on January 8, 1957 in the County of Yolo, California, the following facts were brought out which facts should be considered by this court:

a. Mrs. Wilson on several occasions threatened to do bodily harm to James Newton and on other occasions has told him that "she would break every bone in his body."

b. Mr. and Mrs. Wilson have also adopted another boy who was a nephew of Mr. Wilson. He was taken by them from a correctional school. The boy was in said school because of stealing and since his adoption he has been guilty of stealing on many occasions. The said boy is definitely a bad influence on James Newton.

c. During the hearing abovementioned, Mrs. Wilson admitted under oath that in addition to the four page 14 } marriages she has also lived with other men to whom she was not married.

WHEREFORE, your petitioners pray that their amended petition be filed and considered by this court not in lieu of their original petition but in conjunction with it and that the Interlocutory Order previously entered be revoked and that the adoption proceeding be dismissed.

ALFRED W. NEWTON.  
CATHERINE M. NEWTON.

\* \* \* \* \*

Filed 1/28/57.

E. L. OAST.

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\* \* \* \* \*

ORDER.

This cause came on this day to be heard upon an amended petition filed by Alfred W. Newton and Catherine M. Newton, praying that the interlocutory order and the final order entered in the above styled cause be revoked and the adoption proceeding be dismissed, and was argued by counsel.

WHEREUPON, the Court, after considering matters rising in the petition and the record; doth deny the relief requested in said petition, and to such denial the said Alfred W. Newton and Catherine M. Newton, by counsel, duly except.

Enter Jan. 28, 1957.

E. L. OAST.

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PETITION.

This day came the petitioners, Alfred W. Newton and Catherine M. Newton, by counsel, and state as follows:

1. They are the natural parents of James Edward Legere Newton.
2. That they previously filed a petition in this honorable court asking that the interlocutory order of adoption entered in this cause be revoked and that the adoption proceeding be dismissed.
3. That they also filed an amended petition setting forth additional facts and asking that the adoption proceeding be dismissed.
4. That both of the aforesaid petitions were dismissed by this court without hearings and that on the 28th day of January, 1957, the final order of adoption was entered to which order they excepted.
5. That they are preparing to appeal to the Supreme Court of Appeals of the State of Virginia.

WHEREFORE, your petitioners pray that the force and effect of the final order of adoption entered on January 28, 1957, be stayed for a period of sixty (60) days to allow your petitioners an opportunity to perfect their appeal to the Supreme Court of Appeals.

ALFRED W. NEWTON AND  
CATHERINE M. NEWTON,  
By PHILIP L. RUSSO,  
Of Counsel.

February 1, 1957.

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\* \* \* \* \*

ORDER.

This day came the petitioners, Alfred W. Newton and Catherine M. Newton, by counsel, asking that the force and effect of the final order of adoption entered in this cause on January 28, 1957, be stayed for a period of sixty (60) days to allow them an opportunity to appeal to the Supreme Court of Appeals of the State of Virginia;

Upon consideration whereof, it appearing to the Court that the best interests of the child, James Newton Wilson would be served by denying the prayer of said petition, it is hereby ordered that this petition be dismissed, to which action of the Court the petitioners except.

Enter Feb. 1, 1957.

E. L. OAST.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

*Notice of Appeal.*

Alfred W. Newton and Catherine M. Newton, petitioners herein to revoke the Interlocutory Order of Adoption, hereby note their appeal in the above styled case.

*Assignments of Error.*

Alfred W. Newton and Catherine M. Newton, petitioners herein to revoke the Interlocutory Order of Adoption, hereby assign the following errors:

1. The Court erred in dismissing their petition to revoke the Interlocutory Order of Adoption without allowing them to be heard on their petition, and an opportunity to present additional evidence.

2. The Court erred in dismissing their amended petition to revoke the Interlocutory Order of Adoption without allowing them to be heard on their amended petition, and an opportunity to present additional evidence.

3. The Court erred in not revoking the Interlocutory Order of Adoption.

4. The Court erred in entering the final order of adoption.

5. The Court erred in not granting their request to stay the force and effect of the Final Order of Adoption for a period of sixty (60) days to allow them an opportunity to appeal to the Supreme Court of Appeals.

ALFRED W. NEWTON and  
CATHERINE M. NEWTON.  
By PHILIP L. RUSSO,  
Of Counsel.

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Filed in the clerk's office the 4th day of Feb., 1957.

Teste:

MAJOR M. HILLARD, Clerk.  
By H. T. GILLETTE, D. C.

\* \* \* \* \*

A Copy—Teste:

H. G. TURNER, Clerk.

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