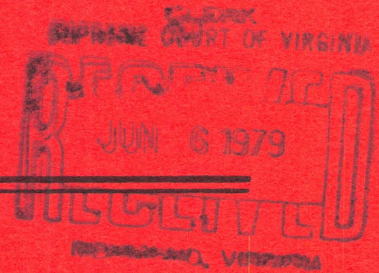


221 VA 792



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IN THE

# Supreme Court of Virginia

AT RICHMOND

---

RECORD NO. 781787

---

ROLAND DAVID CUNNINGHAM, JR.,

.....Appellant

v.

ROSALIND M. GRAY  
and CHARLES M. GRAY,

.....Appellees

---

JOINT APPENDIX

---

William W. Muse  
Brookfield Bldg. Suite 418  
6620 West Broad Street  
Richmond, Virginia 23230

H. Franklin Taylor, III  
6924 Lakeside Avenue  
Richmond, Virginia 23228

Counsel for Appellant

Counsel for Appellees



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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

In the matter of the  
adoption of a child by  
CHARLES W. GRAY

PETITION

To the Honorable Judges of the aforesaid Court:

Your petitioners respectfully represent as follows:

1. That they are residents of the City of Richmond, Virginia, residing at 605 South Nansemond Street; that they are husband and wife, that she is the natural mother of Tracy Michelle Cunningham, and that they desire that he be allowed to adopt the said child, an infant child under the age of fourteen (14) years, not his by birth, whose natural father is Roland David Cunningham, Jr., said child having been born on December 10, 1969, during her marriage to the said Roland David Cunningham, Jr., in Plainfield, New Jersey.

2. That the said natural mother has given her consent to the adoption of the said child, which said consent is attached hereto, marked "Exhibit A", and made a part of this Petition.

3. That said child has lived with her mother since birth, and has lived with the petitioners in this matter since their marriage on August 28, 1976.

4. That she and the said Roland David Cunningham, Jr., were divorced on December 6, 1972, in Elizabeth, New Jersey and that she was awarded custody of the child by the Court.

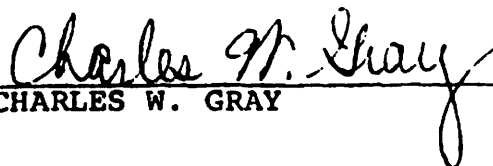
5. That although she did receive support for a short period after the divorce, she has not received any support from the natural father of the child for approximately five (5) years,

and that he last saw the child in October of 1973. In addition, he does not make any attempt to contact the child either by telephone, personal visits, or correspondence.

6. That the last known address of Roland David Cunningham Jr., is the residence of his mother, Mrs. Lottie Cunningham, 357 Rushmore Avenue, Plainfield, New Jersey 07063.

WHEREFORE, your petitioners pray leave for Charles W. Gray to adopt Tracy Michelle Cunningham, not his by birth, and that the name of Tracy Michelle Cunningham be changed to Tracy Michelle Gray, and to this end that all necessary and proper orders may be entered.

April 14, 1978.

  
CHARLES W. GRAY

  
ROSALIND M. GRAY

H. Franklin Taylor, III  
H. Franklin Taylor, III, Inc.  
Attorney for Petitioners  
6924 Lakeside Avenue  
Richmond, Virginia 23228

By   
Of Counsel

CONSENT OF NATURAL MOTHER

KNOW ALL MEN BY THESE PRESENTS: That I, Rosalind M. Gray, the natural mother of Tracy Michelle Cunningham, an infant child born on the 10th day of December, 1969, of my marriage to Roland David Cunningham, Jr., do hereby consent that said infant may be adopted by Charles W. Gray, my husband, and her name changed to Tracy Michelle Gray, and that the adopted father be vested with all the rights, powers and obligations with reference to said infant as are provided by law.

April 14, 1978

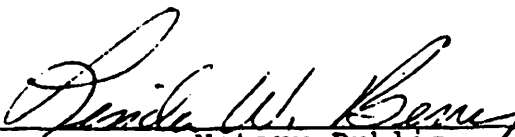
  
ROSALIND M. GRAY

COMMONWEALTH OF VIRGINIA  
CITY OF RICHMOND, to-wit:

I, Linda W. Berry, a Notary Public in and for the City and Commonwealth aforesaid, do hereby certify that Rosalind M. Gray, whose name is signed to the foregoing writing, bearing date on the 14th day of April, 1978, has acknowledged the same before me in my said jurisdiction.

Given under my hand this 14th day of April, 1978.

My commission expires: 10/13/81

  
Notary Public

City of Richmond  
Department of Public Welfare  
Social Service Bureau



505 N. Ninth Street  
Richmond, Virginia 23219

May 12, 1978

Mr. Roland David Cunningham Jr.  
357 Rushmore Avenue  
Plainfield, New Jersey 07063

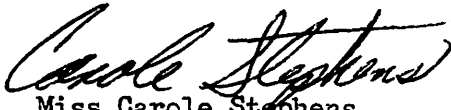
Dear Mr. Cunningham:

I am writing in regards to a petition filed in the Circuit Court of Richmond by Charles W. Gray and Rosalind M. Gray to adopt your child, Tracy Michelle Cunningham. We are making an investigation for the court which is for the protection of the child and the natural parent, as well as, to determine the suitability of the adoptive parents. The court would like to know your feelings regarding this matter. Do you feel that the adoption would be in the child's best interest?

It would also be helpful if you could send some background information on yourself, such as, your physical description, age, education, work history, and health. This information will be included in our confidential report to the court which is available for the child to view when she is eighteen years of age.

We would appreciate your prompt attention to this matter. Enclosed you will find a self-address envelope for your use. We hope to hear from you within the next ten days. Thank you for your cooperation. I will be looking forward to hearing from you soon regarding this important matter.

Sincerely,

  
Miss Carol Stephens  
Adoption Case Worker

CS/bw

Enclosure

VIRGINIA

Date: June 29, 1978

In the Circuit Court of the City of Richmond, Division I

In Re: Adoption of Tracy Michelle Cunningham  
To Be Named Tracy Michelle Gray  
By Charles W. Gray  
And Rosalind M. Gray  
Address 605 South Nansemond Street  
Richmond, Virginia

To the Honorable Judges of the Circuit Court of the City of Richmond, Division I:

The City of Richmond Department of Public Welfare having received an Order of Reference to make an investigation in the above styled case, pursuant to Section 63.1-223, Code of Virginia, makes the following report:

The child to be adopted is a Black female, born on December 10, 1969 in Plainfield, New Jersey (Verified - Certificate Number 2619). She is known on her birth certificate as Tracy Michelle Cunningham and is the child of the female petitioner.

Suitability of the Petitioners to Adopt:

Mr. and Mrs. Gray are a Black couple, ages 31 and 32, respectively. They were married on August 28, 1976 in Richmond, Virginia (Verified). No children have been born to this union. This is the first marriage for Mr. Gray. Mrs. Gray has had one previous marriage which terminated in divorce on January 31, 1973 in Union County, New Jersey (Verified). The adoptee was the only child born to this marriage and at the time of the divorce her custody was given to Mrs. Gray.

Mr. Gray is a college graduate. He has been employed by the Federal government for eight years and has been in his present position of Personnel Staffing and Employee Relations Specialist with the Defense Supply Agency for one and a half years. He reports that he is in good health. Mrs. Gray completed college and has done some work toward her master's degree in microbiology. She has been employed by Eskimo Pie Corporation for four and a half years where she is a Quality Control Manager. She states that she is in good health.

Mr. Gray earns \$18,861 and Mrs. Gray earns \$13,860 per year from their respective jobs. They own two cars. They are buying their home which is valued at \$28,000 and on which the monthly payments are \$132.69. There are savings and bonds totaling \$10,500 on which they receive interest of \$33 per month. Also, Tracy has a \$600 savings account and the interest goes back into the account. There are monthly payments totaling \$65 on a debt balance of \$1,500. The family is covered with hospitalization insurance by Metropolitan. There is life insurance coverage of \$95,000 including accidental death on Mr. Gray, of \$58,000 on Mrs. Gray and of \$10,000 on Tracy.

The Gray's live in a white frame bungalow surrounded by a well-kept yard and located in Richmond's West End. The house has two bedrooms, a living room, a dining room and a kitchen. This home is nicely furnished and good house-keeping standards are maintained.

References who have known the Grays from two to fourteen years responded favorably and highly recommended the adoption.

Condition of the Child:

Tracy is an attractive, active eight year old girl. She enjoys school, is a good student and was in the second grade this year. She is a friendly, talkative child who enjoys bicycling, camping, and swimming. Her health is good. Tracy appears to understand about the adoption and she is happy about it.

Separation From the Natural Parents:

Mrs. Gray describes the natural father as 5 ft. 8 in. tall, slender, medium complected and as having dark brown hair and eyes. He reportedly completed two years of college and during his marriage to Mrs. Gray, worked at many different jobs including fireman and factory work. He has no known medical problems.

Mrs. Gray reports that she and Tracy's father were separated in 1971 and that the last time she saw him was in October, 1973. Reportedly he paid a total of less than \$200 in support. Mrs. Gray reports that she did talk with the natural father about the proposed adoption and he did not agree. This agency sent a registered letter to the natural father which was signed for on May 18, 1978. However, there has been no response to this letter.

Consent:

The natural mother has consented to the adoption by joining in the petition with her husband and by signing a notarized statement on April 14, 1978. The natural father has not consented and has not responded to the agency's contact.

Circumstances of Placement:

The adoptee has resided with the female petitioner since birth and with both petitioners since their marriage.

Mr. and Mrs. Gray appear to be a mature couple who are providing a secure, stable home for the adoptee. This family enjoys activities they can do together such as traveling and bicycling. Tracy and Mr. and Mrs. Gray appear to have a good relationship. Tracy seems to be progressing well in this home. The adoption appears to be in the child's best interest.

Recommendation:

When the court is satisfied with the matter of consent, the agency recommends that a Final Order of Adoption be entered, omitting the Interlocutory Order of Adoption and period of probation, as provided by Section 63.1-229, Code of Virginia.



Respectfully submitted,



Clinton Strane  
Senior Supervisor  
Division of Child Welfare



Carole Stephens  
Adoption Caseworker

/gmb

In The Circuit Court for the City of Richmond, Division I

In Re: Adoption of Tracy Michelle Cunningham  
To be named Tracy Michelle Gray

By: Charles W. Gray  
Also known as Charles Wade Gray

And Rosalind M. Gray  
Also known as Rosalind Elaine Menefield Gray  
605 South Nansemond Street  
Richmond, Virginia

July 7, 1978

To the Honorable Judges of the Circuit Court of the City of Richmond, Division I:

The Commissioner, pursuant to Section 63.1-223 of the Code of Virginia, submits the following report:

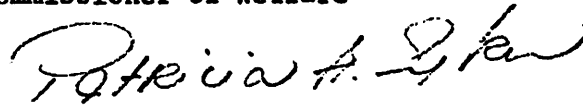
The child to be adopted is a Negro female born December 10, 1969 in Plainfield, New Jersey (verified - birth certificate no. 2619). She is identified on her birth certificate as Tracy Michelle Cunningham. The female petitioner is the child's natural mother.

Commissioner's evaluation: The Commissioner has reviewed the Report of Investigation dated June 29, 1978, which was prepared and submitted by the Richmond Department of Social Services. The Commissioner has no additional information or comments for the court's consideration.

Commissioner's recommendation: If the court is satisfied with the matter of consent, the Commissioner recommends that the final order of adoption be entered, omitting the interlocutory order and period of probation as provided by Section 63.1-229 of the Code of Virginia.

Respectfully submitted,

WILLIAM L. LUKHARD  
Commissioner of Welfare

  
By Patricia A. Sykes, Supervisor  
Adoption Reports and Resource Section

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I  
the 13th day of July, 1978

Re: Tracy Michelle Cunningham

Show Cause

Infant.

It appearing to the Court that Roland David Cunningham, Jr., father of the infant, has not consented to the adoption of the infant by the petitioners, Rosalind M. Gray and Charles W. Gray, husband and wife, and that the mother of the said infant has consented to the proposed adoption, IT IS ORDERED that Roland David Cunningham, Jr. appear before this Court, Room 310, John Marshall Courts Building, Richmond, Virginia, -----  
on -----, August 21, 1978 at 3:00 o'clock P.M., to show cause why the petition for adoption of the infant should not be granted.

IT IS FURTHER ORDERED that an attested copy of this Order be mailed to Roland David Cunningham, Jr., 357 Rushmore Avenue, Plainfield, New Jersey 07063, by certified mail with return receipt requested.

A Copy,

Teste: EDWARD G. KIDD, Clerk

by Lorence W. Wood D.C.

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I  
IN RE: Adoption of Tracy Michelle Cunningham, infant

ANSWER

Comes now Roland David Cunningham, Jr., natural father of Tracy Michelle Cunningham, and hereby states that he objects to the adoption of said infant by the petitioners, Rosalind M. Gray and Charles W. Gray, and asks that the matter be set down for hearing before this Court.

ROLAND DAVID CUNNINGHAM, JR.

By \_\_\_\_\_  
Of Counsel

William W. Muse  
Blanton and Muse  
Brookfield  
6620 West Broad Street Road  
Richmond, Virginia 23230

CERTIFICATE

I hereby certify that on the 17th day of August, 1978, I mailed a true copy of the above Answer to H. Franklin Taylor, III, Esquire, 6924 Lakeside Avenue, Richmond, Virginia.

\_\_\_\_\_  
William W. Muse



# Virginia:

## In the Circuit Court of the City of Richmond, Division 1,

THE 28th DAY OF ----- September -----, 19 78

Re: Tracy Michelle Cunningham,

Infant.

### FINAL ORDER

This day came Roland David Cunningham, Jr., in person and by counsel, and likewise came the petitioners, Rosalind M. Gray and Charles W. Gray, in person and by counsel, pursuant to legal and timely notice, to be heard upon the objection of Roland David Cunningham, the natural father, to the adoption, and was argued by counsel.

Upon evidence heard ore tenus before the court, the court is of the opinion that the petitioners have proved by clear and convincing evidence that it is in the best interest of the infant, Tracy Michelle Cunningham, that the adoption be granted and that consent of the natural father is withheld contrary to the best interests of the child. Accordingly, it is Ordered that the adoption be granted without such consent, to which action of the court the said Roland David Cunningham, Jr., by counsel, objected.

Upon consideration of the petition heretofore filed, and the reports of the Commissioner of Public Welfare and of the Board of Public Welfare of the City of Richmond, this day filed, it appearing that the infant is the child by birth of the petitioning wife, and the court being satisfied that no consent of, nor notice to, any other person is required, and being of

the opinion that the entry of an interlocutory order would otherwise be proper, it is Ordered that the probationary period and the interlocutory order be omitted; and the court being satisfied that all legal requirements have been met, that the petitioning husband is financially able, morally suitable, and a proper person to care for and train the infant, that the infant is suitable for adoption by him, and that the best interests of the infant will be promoted by such adoption, it is now, by this final order of adoption, adjudged and decreed that the said infant is henceforth to all intents and purposes the child of Charles W. Gray, the adoptive father, as well as of Rosalind M. Gray, his wife, the mother by birth, whose maiden name was Menefield, and that the name of infant is hereby changed to Tracy Michelle Gray.

The Clerk is directed to return the reports of the Commissioner and of the Agency to the Commissioner of Public Welfare, retaining the copies furnished by them.

The Court doth order that the papers be placed in the ended files, indexed in the new as well as the old name of the infant, and that they be sealed with an endorsement showing they are not to be opened or inspected except upon permission of this court after such notice as the court may require.

A Copy,

Teste: EDWARD G. KIDD, Clerk  
by Reveree W. Wood D.C.

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

Re: TRACY MICHELLE CUNNINGHAM, Infant

WRITTEN STATEMENT OF FACTS

On April 21, 1978, Rosalind M. Gray and Charles M. Gray filed in this Court a petition praying for the adoption by Mr. Gray of Tracy Michelle Cunningham, an infant and the natural child of Mrs. Gray. On the same day this Court entered an order referring the matter to the Commissioner of Public Welfare for his investigation and recommendation.

On May 12, 1978, Miss Carole Stephens, an adoption case worker for the Department of Public Welfare of the City of Richmond, wrote Roland David Cunningham, Jr., of Plainfield, New Jersey, natural father of the child and former husband of Mrs. Gray, asking him his feelings with regard to the proposed adoption and also requesting some background information to be included in her report to the Court. Mr. Cunningham made no reply.

On June 29, 1978, the Department of Public Welfare of the City of Richmond submitted its report and recommended the adoption if the Court could satisfy itself with the matter of consent. A copy of the report is attached and made a part of this statement.

On July 7, 1978, the Commissioner of Public Welfare adopted the said report and made the same recommendation. A copy of this evaluation is attached and made a part of the statement.

On July 7, 1978 an order was entered and sent to Mr. Cunningham requiring him to show cause why the adoption should not be granted.

On August 21, 1978, Mr. Cunningham filed an Answer objecting to the proposed adoption and requesting that the matter be set down for hearing before this Court.

On September 28, 1978, a hearing was held with the Honorable Marvin F. Cole, Judge, presiding. Present were Roland David Cunningham, Jr., in person, his attorney, William W. Muse, Rosalind M. Gray and Charles M. Gray, in person, and their attorney H. Franklin Taylor, III.

On direct examination by Mr. Muse, Mr. Cunningham testified that he was a resident of Plainfield, New Jersey, and is the former husband of Rosalind M. Gray and the natural father of Tracy Michelle Cunningham. He stated that he and Mrs. Gray had been married in July, 1968, that the child was born on December 10, 1969, and that the marriage was terminated by a divorce decree entered by the New Jersey court on December 6, 1972. The New Jersey decree provided for custody of the child by the mother (now Mrs. Gray) and granted Mr. Cunningham reasonable rights of visitation. He further stated that the decree required him to pay \$15.00 per week through the court as child support.

Mr. Cunningham further testified that he was presently unemployed but had taken a Civil Service examination for a job with the Post Office. He said he had not remarried and was presently living with his parents.

He admitted that he has ceased making the child support payments when his former wife moved from New Jersey. He said he was told by a lawyer in his home state that such payments were no longer required when she left the jurisdiction. He admitted that although he acted on



such advice in good faith, he knows now that it was incorrect. However, he stated that he was willing to submit himself to the jurisdiction of this Court for a determination of the arrearages and would do what the Court required of him to become current with his payment.

With regard to his attempts to see the child since her move to Richmond, he testified that several attempts were made to no avail. He stated that he had only actually seen her once. Mr. Cunningham testified that during Christmas of 1976 he came to Richmond to bring his daughter gifts and visit with her and that Mrs. Gray knew he was coming. However, when he went to her apartment he found the name plate removed and nobody would answer the door. He returned to New Jersey and the next day his mother, Mrs. Lottie Cunningham, went to the apartment and brought the gifts and visited with Tracy. He stated that Tracy asked his mother where her daddy was. While his mother was there, he called on the telephone and asked to be allowed to speak to his daughter, but Mrs. Gray refused. He further testified that Mrs. Gray asked who had sent each present to Tracy and that those from Mr. Cunningham were refused and sent back with his mother.

Finally he stated that attempts to contact Tracy in recent months have become infrequent in light of his earlier frustrations, but he asked this Court to deny the adoption and grant him specific rights of visitation.

On cross-examination by Mr. Taylor, Mr. Cunningham stated that at the time they were married in 1968 he was working for the fire

department. He testified that he had changed jobs frequently and that the longest he had worked at any one job was three or four years with a printing company following his graduation from high school in 1964. He said that his 1977 income tax return showed an income of between \$5,000.00 and \$6,000.00 but that he could not estimate what his earnings in 1978 had been. He indicated that he was presently drawing unemployment and occasionally working for his cousin. He admitted that during their marriage they once lost their apartment for non-payment of rent.

When questioned about his lack of response to Miss Stephens' letter of May 12, 1978, he said he felt that it was not part of any legal proceeding and that he did not have to voluntarily answer it. He added that he responded immediately through his attorney when contacted by the Court.

He further testified that his only scrape with the law was a conviction of trespassing in 1977, for which he served 40 days in jail from November 9, 1977, to December 20, 1977.

Mrs. Lottie Cunningham was then called to testify, She stated that she was a resident of Plainfield, New Jersey, and the mother of Roland David Cunningham, Jr. She said that she had visited with Tracy about once a year and that Mrs. Gray made no objection to her visits. She further stated that her son had telephoned his daughter as he had testified, but that Mrs. Gray had refused to let Tracy talk to him. She indicated that on more than one occasion she brought gifts for Tracy from Mr. Cunningham, but that Mrs. Gray had told her that if they were from him Mrs. Cunningham would have to take them back.

Mr. Muse rested his case in chief and Mr. Taylor then called Rosalind M. Gray to the stand. Mrs. Gray testified that she and Mr. Cunningham lived together in New Jersey until their separation in February, 1971. The child had been born in December, 1969, and she

had returned to work in August, 1970. She stated that during their marriage, Mr. Cunningham had worked "on and off" and that while she was on maternity leave they lived on unemployment compensation. She stated that the longest period he worked at any one job was for four months. He worked as a delivery man, then in a department store, and in various other jobs. She testified that Tracy was fifteen months old when Mr. Cunningham left and went to live with his parents. She said that after they separated she remained in New Jersey for about two and a half years before moving to Richmond. She stated that at this time he was not working, his car had been repossessed, and she was receiving no support from him. During that time Mr. Cunningham saw his daughter about ten times during that two and a half year period. She said that on occasion he would miss a prearranged visitation. Mrs. Gray testified that she had been struck once by Mr. Cunningham during their marriage, and said that this is why she did not notify him that she was moving to Richmond. On several occasions, he had become violent and upset the child.

She further testified that although she had not told Mr. Cunningham in advance of her move to Richmond, he had come by the day she moved and talked to her parents. She said she was sure he knew where they were going.

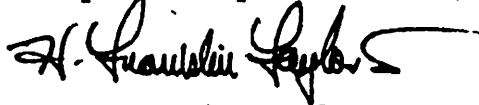
With regard to visitation in Richmond, Mrs. Gary stated that Mr. Cunningham had come by in October of 1973 on his way to South Boston and stayed for about an hour. She denied refusing his telephone calls or letting him contact Tracy. She added that Tracy is well aware that she has a natural father and that she has a scrapbook with his pictures in it. She said she last received any support from Mr. Cunningham in 1973.

Mrs. Gray testified that she married Charles W. Gray on August 28, 1976, and that he is a government employee. She is presently working for the Eskimo Pie Corporation. Tracy is now in the third grade and doing well in school. She has a good relationship with her step-father.

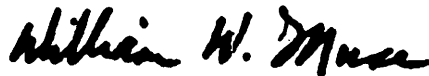
On rebuttal, Mr. Cunningham characterized as a lie his former wife's testimony that he had never worked longer than four months at any one job and said that he had worked for the Progressive Life Insurance Company for a longer period than she had indicated. He also referred to her testimony that she had not refused his contacts with Tracy as a lie.

After hearing the evidence and arguments by counsel, this Court found that the Gray's had proved by clear and convincing evidence that it was in the best interest of the infant to grant the adoption and that the consent of the natural father was being withheld contrary to the best interests of the child. A Final Order to that effect was entered on September 28, 1978.

Respectfully submitted,



H. Franklin Taylor, III,  
Counsel for Charles W. Gray and  
Rosalind M. Gray



William W. Muse,  
Counsel for Roland David Cunningham



V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

In Re: Tracy Michelle Cunningham, Infant

NOTICE OF APPEAL

Please take notice that I, Roland David Cunningham, Jr., natural father of Tracy Michelle Cunningham, hereby appeal the Final Order of this Court dated September 28, 1978, whereby the adoption of my child by Charles W. Gray was awarded without my consent. A statement of facts shall hereafter be filed.

ROLAND DAVID CUNNINGHAM, JR.

By \_\_\_\_\_  
Of Counsel

William W. Muse  
Blanton and Muse  
Brookfield  
6620 West Broad Street Road  
Richmond, Virginia 23230

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice of Appeal was mailed this 25th day of October, 1978, to H. Franklin Taylor, III, Esquire, 6924 Lakeside Avenue, Richmond, Virginia.

\_\_\_\_\_  
William W. Muse

ASSIGNMENT OF ERROR

The court erred in finding that it was in the best interest of the child to grant the adoption.