

**Record No. 5884**

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**In the  
Supreme Court of Appeals of Virginia  
at Richmond**

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**RUTH AUDREY HASEMEYER COFER**

**v.**

**HARDY DASHIELLS COFER**

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**FROM THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND**

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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 this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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.

**HOWARD G. TURNER, Clerk.**

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



NOTICE TO COUNSEL

This case probably will be called at the session of court  
to be held NOV 1964 or JAN 1965

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

Print names of counsel on front cover of briefs.

Howard G. Turner, Clerk

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND.

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Record No. 5884

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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 Friday the 24th day of April, 1964.

RUTH AUDREY HASEMEYER COFER,                      Appellant,  
*against*

HARDY DASHIELLS COFER,                                      Appellee.

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From the Law and Equity Court of the City of Richmond  
Robert L. Young, Judge

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Upon the petition of Ruth Audrey Hasemeyer Cofer an appeal is awarded her from an order entered by the Law and Equity Court of the City of Richmond on the 6th day of November, 1963, in a certain chancery cause then therein depending wherein the said petitioner was plaintiff and Hardy Dashiells Cofer was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said Law and Equity Court in the penalty of three hundred dollars, with condition as the law directs.

## RECORD

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## FINAL DECREE

This cause came on this day to be heard on the papers formerly read, on petition and application of the complainant this day filed by leave of court, upon the depositions of witnesses duly taken and filed in support of said petition and application, and was argued by counsel.

ON CONSIDERATION WHEREOF, the Court finds from the evidence, independently of the admissions of either party in the pleadings or otherwise, as established thereby, the following facts: That the complainant was granted a divorce from bed and board from the defendant by decree herein entered on the 9th day of September, 1957, on the grounds of desertion and abandonment on the 30th day of June, 1957; that the said separation has continued without interruption, and that no reconciliation between the parties has taken place or is probable.

The Court doth therefore ADJUDGE, ORDER and DECREE that the said decree of September 9, 1957, granting said divorce from bed and board to the complainant  
 page 23 ] from the defendant, be, and the same is hereby merged and enlarged into a decree of divorce from the bond of matrimony, and that the marriage so solemnized between the parties on the 3rd day of January, 1953, be, and the same is hereby dissolved.

The court doth further adjudge, order and decree that the care, custody and control of the three infant children of the parties, Robert Lester Cofer, born September 19, 1953, John Stuart Cofer, born August 5, 1955, and Susan Davis Cofer, born May 17, 1957, be awarded to the complainant, with leave reserved to the defendant to see the said children under suitable and reasonable conditions not inconsistent with the proper rearing of the said children.

The court doth further adjudge, order and decree that the defendant, Hardy Dashiells Cofer, do pay unto the complainant, Ruth Audrey Hasemeyer Cofer, the sum of \$300.00 per month, of which \$200.00 shall be for the maintenance and support of the three children of the parties, and \$100.00 shall

be for the maintenance and support of the complainant, all of which shall be paid until the further order of the court.

It is further ordered, as provided by law, that neither Ruth Audrey Hasemeyer Cofer nor Hardy Dashiells Cofer shall marry another within four months from the date of this decree.

The parties to this suit are both members of the white race.

Nothing further appearing to be done in this cause, it is ordered that it be stricken from the docket and the page 24 ] papers placed among the ended causes, with leave reserved to either of the parties to move to have the same reinstated upon the docket to enforce any of the provisions of this decree or for any proper cause.

I ask for this:

JESSE M. JOHNSON  
Attorney for complainant

I have seen this:

HARDY DASHIELLS COFER  
Defendant

Enter  
R. L. Y.

Mar 27, 1959

STATE OF VIRGINIA  
CITY OF RICHMOND

I Mrs. Elsie T. Slough, a Notary Public in and for the City aforesaid in the State of Virginia, do certify that Hardy Dashiells Cofer, whose name is signed to the foregoing writing has acknowledged the same before me in my City and State aforesaid.

My commission expires on the 16th day of June 1962  
Given under my hand this 9th day of March 1959.

MRS. ELSIE T. SLOUGH  
Notary Public

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## ORDER

This day came the petitioner, Hardy Dashiells Cofer, by counsel, upon his petition duly filed herein, upon proof of due notice, and also came the defendant, in the petition, Ruth Audrey Hasemeyer Cofer, by counsel, it being agreed that Ruth Audrey Hasemeyer Cofer is now employed, able bodied and capable of maintaining and supporting herself and that the sum of \$255.00 per month is needed from the petitioner for the support and maintenance of the parties' infant children which sum the petitioner is able to pay and was argued by counsel.

In consideration whereof, the court does adjudge, order and decree that the petitioner, Hardy Dashiells Cofer, is relieved of the duty of support and maintenance of his former wife, Ruth Audrey Hasemeyer Cofer, and the court doth further adjudge, order and decree that Hardy Dashiells Cofer pay to Ruth Audrey Hasemeyer Cofer the sum of \$255.00 per month for the support and maintenance of the parties' three infant children until the further order of this court.

Nothing further appearing to be done in this cause, it is ordered that it be stricken from the docket and the papers placed among the ended causes with leave reserved to either of the parties to move to have the same reinstated upon the docket to enforce any of the provisions of this decree or for any proper cause.

Enter

R. L. Y.

Feb 16, 1960

page 28 ]

Filed Jun 28 1963

Teste :

LUTHER LIBBY JR., Clerk

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NOTICE

To: Ruth Audrey Hasemeyer Cofer  
In care of Jesse M. Johnson  
Attorney at Law  
Mutual Building  
Richmond 19, Virginia

TAKE NOTICE that on the 12th day of July, 1963, at the courtroom aforesaid, at 9:15 a. m., I shall move the Law and Equity Court to grant the prayer of my Petition, a copy of which is attached to this notice.

HARDY DASHIELLS COFER  
By IVY P. BLUE, JR.  
Of counsel

LAW OFFICES OF:  
Ivy P. Blue, Jr.  
Attorney at Law  
728 East Main Street  
Richmond 19, Virginia

CERTIFICATE

I certify that on this 27th day of June, 1963, a copy of the foregoing Notice was mailed to counsel for the complainant, Jesse M. Johnson, Johnson & Schrieberg, Mutual Building Richmond, Virginia.

IVY P. BLUE, JR.

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PETITION

Your petitioner, Hardy Dashiells Cofer, the defendant in this cause, respectfully represents as follows:

1. On March 27, 1959, a final decree of divorce was entered in this cause, divorcing the parties from the bond of matrimony and setting forth certain support payments to be made by your petitioner to the complainant, Ruth Audrey Hasemeyer Cofer, and the papers were placed among the ended causes.

2. On February 16, 1960, the aforesaid final decree was modified by order entered in this cause insofar as the support payments were concerned, and the papers were again placed among the ended causes.

3. Subsequent to the date of February 16, 1960, the complainant in this cause moved from the State of Virginia to the State of Pennsylvania, thereby depriving your petitioner of seeing his children unless he went to considerable expense so to do, and at the time, your petitioner expressed his dissatisfaction about the complainant's moving to Pennsylvania.

4. In addition to the complainant's moving, your petitioner suffered a change of condition, to-wit: in an attempt to better himself he accepted new employment with what he felt to be a greater potential, but in the beginning the new employment reduced his available income.

5. Because of her move to Pennsylvania and because of the change of condition on the part of the petitioner, the complainant, Ruth Audrey Hasemeyer Cofer, in January of 1962, entered into an agreement with your petitioner whereby she voluntarily reduced the amount of support to be paid to her from \$255 each and every month and accepted, for the first six months of 1962, the sum of \$100 per month and then, agreed to accept the sum of \$150 per month for the last six months in 1962; and your petitioner performed under this new agreement; but, he did not ask the Court to modify the Order entered on February 16, 1960, because he felt that the complainant was acting in good faith and that there would be no difficulty arising between them.

6. In January of 1963, because his children were living in Pennsylvania and because he had remarried and his new employment had not produced the anticipated income, your petitioner approached the complainant, asking her to agree to something less than \$255 per month for the support of their children. This was done so that your petitioner could continue to see his children as often as possible and to do the many small things he had done over and above his duty to support them.

7. By letter dated January 17, 1963, your petitioner set forth his circumstances and his thinking in a letter addressed to the complainant.

8. Apparently because of your petitioner's request for a voluntary permanent reduction, the complainant  
page 31 ] had now taken the *the* position that there was never any agreement between her and the peti-



tioner and is now threatening to garnishee his wages for arrearage which she claims amounts to *some thing* in excess of \$1,325.00.

9. After several attempts to negotiate this matter, all efforts have been of no avail and the petitioner finds that it is necessary to ask the Court for relief.

10. In view of the complainant's move to Pennsylvania, unless he is granted a reduction, the petitioner will not be able to visit with his children as often as he does. When the support payments were decreed on February 16, 1960, the complainant did not represent to the Court that she was going to move to Pennsylvania.

11. Your petitioner cannot and does not believe that he should be required to pay any arrearage in view of his agreement with the complainant in January of 1962.

12. If his wages are garnisheed, the petitioner may lose his employment.

WHEREFORE, your petitioner moves the Court to reinstate this cause on the docket; to reduce the support payments set forth in the Order dated February 16, 1960, to \$175.00 per month; to purge him of any arrearage; or in the alternative, to decree the amount of arrearage now owed to the complainant.

HARDY DASHIELLS COFER  
By IVY P. BLUE, JR.  
Of counsel

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## ORDER

This day appeared the defendant, in person and by counsel, pursuant to due notice and moved the Court to reinstate this cause on the docket and grant him leave to file his petition.

Upon Consideration *Wherof*, it is Ordered that, this cause be, and it is, reinstated on the docket and the defendant's petition be, and it is filed. The complainant is granted ten (10) days from July 12, 1963, to answer said petition if she be so advised.

Further, since the complainant, Ruth Audrey Hasemeyer Cofer, has counsel of record in this cause who was duly notified, it is Ordered that service of process be, and it is, dispensed with.

Enter

R. L. Y.

July 15, 1963

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### ORDER

This day came the petitioner, by counsel, and moved the Court to grant the prayer of his Petition filed in this cause on the 28th day of June, 1963, and it was argued by counsel.

Upon Consideration Whereof, it appearing from the record in this cause that the complainant, Ruth Audrey Hasemeyer Cofer, was duly represented by counsel and on July 15, 1963, said counsel endorsed the sketch of an order entered in this cause wherein the complainant was granted ten (10) days to answer the Petition of the defendant, Hardy Dashiells Cofer, if she be so advised and service of process was dispensed with since counsel for the complainant had been duly notified; and it further appearing that the complainant, Ruth Audrey Hasemeyer Cofer, has failed to answer the Petition of the said defendant, it is ADJUDGED, ORDERED and DECREED that the prayer of the Petition be granted and the petitioner, Hardy Dashiells Cofer, from this day henceforth is purged of any contempt of this Court and relieved of paying any arrearage due to the complainant pursuant to an order entered in this cause on the 16th day of February, 1960.

page 35 ] It is also ADJUDGED, ORDERED and DECREED that commencing with the month of September of 1963 and each month thereafter that the petitioner, Hardy Dashiells Cofer pay to the complainant Ruth Audrey Hasemeyer Cofer, for the support and maintenance of the three (3) infant children of the parties, the sum of One Hundred and Seventy-Five Dollars (\$175.00) until further order of this Court.

And there appearing nothing further to be done in this

cause, it is ORDERED that it be stricken from the docket and the papers placed among the ended causes.

Enter:

R. L. Y.

Sept. 4, 1963

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LIST OF EXPENSES

Daytime Babysitting & Maid	\$216.00
Milk	20.00
Rent ( $\frac{3}{4}$ of total)	105.00
School lunches	4.03
Clothes	50.00
Utilities ( $\frac{3}{4}$ of total)	20.00
Drugs	5.00
Cub Scouts	2.00
Food ( $\frac{3}{4}$ of total)	97.50
Tutoring (Bobby)	43.33
Haireuts	5.00
Pediatrician & Dentist	5.00

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MONTHLY TOTAL	\$573.16
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Mr. Johnson: Here are my monthly expenses in raising my three children, Robert L., John S., and Susan D. Cofer as you requested. I will see you on Nov. 6th. Expect to arrive late on Nov. 5th and will stay at the John Marshall Hotel that night. Can we get together in your office early on *The* 6th for a short discussion?

RUTH A. COFER  
885 Easton Rd., Apt. 9A4, Glenside, Pa.  
TUreer 7-3638, Bus. Phone  
KIngsley 5-7700

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Filed Sep 30 1963

Teste:

LUTHER LIBBY, Clerk

## NOTICE

To: RUTH AUDREY HASEMEYER COFER  
In care of Jesse M. Johnson  
Attorney at Law  
Mutual Building  
Richmond 19, Virginia

PLEASE TAKE NOTICE that on the 24th day of October, 1963, at 9:15 a.m., or as soon thereafter as I may be heard, I shall move the Court to quash notice of hearing on October 24, 1963, at 9:15 a.m., on the grounds that the Court has no jurisdiction to nullify an order entered in this cause on September 4, 1963, by virtue of Rule 2:22.

HARDY DASHIELLS COFER  
By IVY P. BLUE, JR.  
Of counsel

LAW OFFICES OF  
Ivy P. Blue, Jr.  
Attorney at Law  
728 East Main Street  
Richmond 19, Virginia

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice was mailed on this 28th day of September, 1963, to counsel for the complainant, Jesse M. Johnson, Attorney at Law, Mutual Building, Richmond, Va.

IVY P. BLUE, JR., p.d.

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## NOTICE

To Hardy Dashiells Cofer  
c/o Ivy P. Blue, Jr.  
Attorney for defendant  
728 East Main Street  
Richmond, Virginia, 23219

You are hereby notified that on Thursday, October 24, 1963, at 9:15 A. M., I shall move the Law and Equity Court of the City of Richmond, Virginia, for an order nullifying the order



entered in this cause on September 4, 1963, in that said order was improvidently entered due to the fact that Rule 2:18, which reads as follows: "Drafts of orders and decrees shall be endorsed by counsel of record or notice given of the time and place of presentation for entry," was not complied with.

You are further notified that I shall ask that the amount of support for our three (3) children be substantially increased.

RUTH AUDREY HASEMEYER COFER,  
By JESSE M. JOHNSON, p.q.

Jesse M. Johnson  
Attorney for complainant  
Mutual Building  
Richmond, Virginia

page 41 ] CERTIFICATION

I certify that a copy of this petition was on the 6th day of November, 1963, given to Ivy P. Blue, Jr., Esq., counsel for the defendant, in person.

JESSE M. JOHNSON, p.q.

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In the Law and Equity Court of the City of Richmond, the  
6th day of November, 1963

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This day again came the complainant, in person and by counsel, and the defendant, by counsel, and the cause came on to be heard upon complainant's motion to vacate the order herein of the 4th day of September, 1963, and upon complainant's motion to increase the amount of the support money for the three infant children of the parties hereto, and upon the testimony of the complainant. Upon consideration whereof it is ordered that complainant's motion to vacate the order herein of the 4th day of September, 1963, be, and the same is hereby, denied, at appearing that said order was entered after non-compliance by, or on behalf of, the complainant with the order herein of the 15th day of July, 1963, entered

by agreement of counsel. It is further ordered that the further hearing of complainant's motion to increase support money be, and the same is hereby, continued to the 26th day of November, 1963, at 9:15 o'clock, A. M., for the further hearing of evidence.

Enter

R. L. Y.

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### ORDER

On motion of the complainant, by counsel, by and with the consent of the defendant, by counsel, the hearing on the matter of the question of support for the three infant children of the parties, is continued to Friday, January 10, 1964, at 9:15 o'clock A. M.

I ask for this:

Jesse M. Johnson, p.q.

I have seen this:

Ivy P. Blue, Jr., p.d.

Enter this order: / /

R. L. Y.

Judge

Dec. 4, 1963

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### ORDER

On motion of the complainant, by counsel, the hearing on the matter of the question of support of the three (3) infant

children of the parties is continued to Friday, January 10, 1964, at 9:15 o'clock A. M.

The complainant, by counsel, objects and excepts to the order entered herein on September 4, 1963, and objects and excepts to the order entered herein on November 6, 1963.

I ask for this:

Jesse M. Johnson, p.q.

I have seen this and object thereto:

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Ivy P. Blue, Jr., p.d.

Enter this order: / /

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Judge.

Denied

R. L. Y.

Dec. 4, 1963

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Filed Dec 13 1963

Teste:

LUTHER LIBBY, Clerk

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## NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

To: Luther Libby, Jr., Clerk of said Court:

This is to notify you that it is my intention to appeal to the Supreme Court of Appeals of Virginia, from the order of the court entered herein November 6, 1963.

My assignments of error are as follows:

1. The court erred in entering the order of November 6, 1963, denying complainant's motion to vacate the order entered herein on September 4, 1963, for the reason that the

latter order was entered without having been endorsed by, or notice given to, counsel of record for the complainant, of the time and place of presentation for entry, as required by Rule 2:18. Nor could the action of the court in entering said order, without notice to opposing counsel, come under “. . . other situations deemed appropriate . . .” as permitted under Rule 2:19.

2. The court erred in its order of November 6, 1963, denying complainant's motion to vacate the order herein of September 4, 1963, because in the latter order the defendant  
page 46 ] was relieved of support money for the three (3)  
infant children of the parties, which had already  
accrued under the order of February 16, 1960, entered in this  
cause, which sum then remaining unpaid amounted to \$1,600-  
.00.

Respectfully,

RUTH AUDREY HASEMEYER COFER,  
By JESSE M. JOHNSON, Counsel

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A Copy—Teste:

H. G. TURNER, Clerk.



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