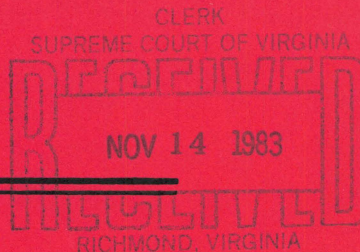


227 VA 82



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

\_\_\_\_\_ MAY 23 1984

RECORD NO. 822102  
\_\_\_\_\_

HERBERT LEE LYONS,

Appellant,

v.

MARGARET VERITY FLOWER LYONS,

Appellee.

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

Gordon P. Peyton  
Post Office Box 19209  
Alexandria, VA 22320

Bruno A. Ristau  
1218 16th Street, N.W.  
Washington, DC 20036

Betty A. Thompson  
1800 N. Kent Street  
Plaza East  
Suite 1001  
Arlington, VA 22209

Counsel for Appellant

Counsel for Appellee



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FILED

APR 30 1982

JAMES E. HOOFNAGLE  
Clerk of the Circuit Court  
of Fairfax County, Va.

V I R G I N I A :

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

HERBERT LEE LYONS, :

Complainant :

vs. :

IN CHANCERY NO. \_\_\_\_\_

MARGARET VERITY FLOWER LYONS, :

Defendant :

BILL OF COMPLAINT

1. Your Complainant has been an actual bona fide resident and domiciliary of the Commonwealth of Virginia, specifically Fairfax County, for a period of more than six (6) months immediately preceding the institution of this suit. The whereabouts of the Defendant are unknown.

2. Both the Complainant and the Defendant are members of the caucasian race and over the age of eighteen (18) years; neither is a member of the Armed Forces of the United States.

3. The Complainant and the Defendant were married on September 13, 1972, in Arlington County, Virginia.

4. There was one (1) child born of this marriage, to-wit: HERBERT GAVIN LYONS, whose whereabouts are unknown to the Complainant at this time.

5. The Complainant and the Defendant last cohabited as husband and wife in the County of Fairfax, Virginia.

6. On April 13, 1982, the Defendant wilfully deserted and abandoned your Complainant, without just cause or excuse,



and the parties have lived separate and apart without any interruption since that date.

7. There is no hope or possibility of a reconciliation in this marriage.

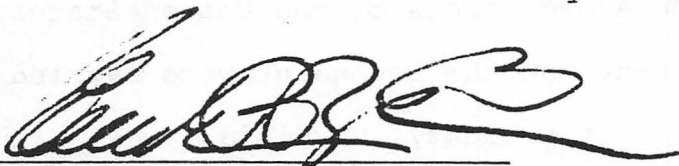
IN CONSIDERATION WHEREOF, and as the Complainant is without remedy, save in a Court of equity where all such matters alone are properly cognizable, Complainant prays:

1. That he be awarded a decree of divorce a mensa et thoro from the Defendant on the ground of wilful desertion and abandonment from April 13, 1982, with leave to apply for a merger of the same into a divorce a vinculo matrimonii at the expiration of the statutory period.

2. That he be awarded the complete care, custody, and control of the infant child of the parties hereto.

3. That he be awarded such further and general relief as the nature of his case may require, and which to this Honorable Court may seem meet, proper and just.

HERBERT LEE LYONS  
By Counsel



Gordon P. Peyton  
Post Office Box 294  
Alexandria, Virginia 22313-0294  
Counsel for Complainant

GORDON P. PEYTON ATTORNEY AT LAW ALEXANDRIA, VIRGINIA 22313

AFFIDAVIT AND MOTION FOR AN ORDER OF PUBLICATION

COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
City of Alexandria )

This day personally appeared before me, the undersigned Notary Public, in and for the Commonwealth aforesaid, HERBERT LEE LYONS, the Complainant in a divorce action pending in the Circuit Court of Fairfax County, Virginia, and made oath before me that MARGARET VERITY FLOWER LYONS, who is the Defendant in the said divorce action, is to the best of his knowledge and belief a non-resident of the Commonwealth of Virginia, and/or

That due diligence has been used by and in behalf of the Complainant to ascertain in what County or Corporation the said Defendant is, without effect, and/or

That the last known address of the said Defendant was the marital home, to-wit: 1101 Gladstone Place, Alexandria, Virginia 22308.

Herbert Lee Lyons  
HERBERT LEE LYONS

Sworn and subscribed to before me this 26<sup>th</sup> day of April, 1982.

Laura G. Shifflett  
Notary Public

My Commission expires:

September 26, 1983



AFFIDAVIT REQUIRED BY §20-132  
OF THE 1950 CODE OF VIRGINIA, AS AMENDED

GORDON P. PEYTON ATTORNEY AT LAW ALEXANDRIA, VIRGINIA 22313

COMMONWEALTH OF VIRGINIA     )  
  ) to-wit:  
City of Alexandria,            )

THIS DAY personally appeared before me, the undersigned Notary Public in and for the jurisdiction aforesaid, HERBERT LEE LYONS, who, being duly sworn, did depose and say the following:

A. The present address of the child referred to in these pleadings has been withheld from the Defendant and he therefore cannot state it; the child lived at 1101 Gladstone Place, Alexandria, Virginia 22308, before he was removed to an undisclosed location by the Defendant.

1. He has not participated as a party, witness, or in any other capacity, in any other litigation concerning the custody of the same child in the Commonwealth of Virginia or any other state.

2. He has no information of any custody proceeding concerning the children in a Court of the Commonwealth of Virginia or any other state.

3. He knows of no person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child inasmuch as he has no idea where the child is.

B. He agrees to comply with §20-132 (B) of the 1950 Code of Virginia, as amended.

C. He agrees to comply with §20-132 (C) of the 1950 Code of Virginia, as amended.

AND FURTHER THIS AFFIANT SAYETH NOT.

Herbert Lee Lyons  
HERBERT LEE LYONS

Subscribed and sworn to before me this 26<sup>th</sup> day of  
April, 1982.

Laura A. Shifflet  
Notary Public

My Commission expires:

September 26, 1983.

TON ATTORNEY AT LAW ALEXANDRIA, VIRGINIA 22313



# REQUEST

## FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

### DEMANDE

### AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ÉTRANGER D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 Novembre 1965.

#### Identity and address of the applicant Identité et adresse du requérant

M. Wayne Huggins  
Shariff of Fairfax County  
Courthouse  
4000 Chain Bridge Road  
Fairfax, Virginia 22030  
U. S. A.

#### Address of receiving authority Adresse de l'autorité destinataire

The Senior Master of the Supreme  
Court (Queen's Bench Division)  
Royal Courts of Justice  
Strand  
London WC2A 2LL  
England

The undersigned applicant has the honour to transmit—in duplicate—the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.,  
(identity and address)

Le requérant soussigné a l'honneur de faire parvenir—en double exemplaire—a l'autorité destinataire les documents ci-dessous énumérés, en la priant conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, savoir:  
(identité et adresse) Margaret Verity Flower Lyons, 159 Broadmarsh Lane,  
Freeland, Oxford

☒ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.\*

a) selon les formes légales (article 5, alinéa premier, lettre a).

☐ (b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5)\*:

b) selon la forme particulière suivante (article 5, alinéa premier, lettre b) : \_\_\_\_\_

☐ (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)\*.

c) le cas échéant, par remise simple (article 5, alinéa 2).

The authority is requested to return or to have returned to the applicant a copy of the documents—and of the annexes\*—with a certificate as provided on the reverse side.

Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte—et de ses annexes—avec l'attestation figurant au verso.

#### List of documents

#### Énumération des pièces

Bill of Complaint

Summons (Subpoena in Chancery)

Done at \_\_\_\_\_, the  
Fait à Fairfax, Virginia, le May 28, 1982

Signature and/or stamp.

Signature et/ou cachet.

*M. Wayne Huggins*

1

Sheriff of Fairfax County VA

\*Delete if inappropriate.  
Rayer les mentions inutiles.

CERTIFICATE  
ATTESTATION

C 76188

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,  
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,

FILED

1) that the document has been served \*

1. que la demande a été exécutée

—the (date)

—le (date)

—at (place, street, number)

—à (localité, rue numéro)

Monday 7<sup>th</sup> June 1982

JUN 30 1982

109 Broadmarsh Lane, Freland, Oxon

JAMES E. HOOENAGLE  
Clerk of the Circuit Court  
of Fairfax County, Va.

—in one of the following methods authorised by article 5—

—dans une des formes suivantes prévues à l'article 5:

☐ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention\*.

a) selon les formes légales (article 5, alinéa premier, lettre a).

☒ (b) in accordance with the following particular method\*:

b) selon la forme particulière suivante :

☐ (c) by delivery to the addressee, who accepted it voluntarily.\*

c) par remise simple.

The documents referred to in the request have been delivered to:

Les documents mentionnés dans la demande ont été remis à:

—(identity and description of person)

—(identité et qualité de la personne)

Margaret Verity Flower Lyons

—relationship to the addressee (family, business or other):

—liens de parenté, de subordination ou autres, avec le destinataire de l'acte:

In Person

2) that the document has not been served, by reason of the following facts\*:

2. que la demande n'a pas été exécutée, en raison des faits suivants :

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*.

Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint.



Annexes

Annexes

Documents returned:

Pièces renvoyées:

copies marked 'Original'

In appropriate cases, documents establishing the service:

Le cas échéant, les documents justificatifs de l'exécution:

Done at

Fait à

London

, the

le

16-6-82

Signature and/or stamp.

Signature et/ou cachet.

A. L. H. H. H.

\*Delete if inappropriate.

Rayer les mentions inutiles



ORIGINAL

SUMMARY OF THE DOCUMENT TO BE SERVED  
ELEMENTS ESSENTIELS DE L'ACTE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

*Convention relative à la signification et à la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 Novembre 1965.*

(article 5, fourth paragraph)

(article 5, alinéa 4)

Name and address of the requesting authority:

Nom et adresse de l'autorité requérante: Circuit Court of Fairfax County, Virginia, by  
M. Wayne Huggins, Sheriff of Fairfax County

Particulars of the parties\*:

Identité des parties: Herbert Lee Lyons, Plaintiff, versus Margaret Verity  
Flower Lyons, Defendant

JUDICIAL DOCUMENT\*\*

ACTE JUDICIAIRE

Nature and purpose of the document:

Nature et objet de l'acte: Complaint and Subpoena in Chancery in a divorce action  
instituted by Herbert Lee Lyons against Margaret Verity  
Flower Lyons

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:

Nature et objet de l'instance, le cas échéant, le montant du litige: Proceedings for absolute divorce and  
care, custody and control of the minor Herbert Gavin Lyons

Date and place for entering appearance\*\*: Within twenty-one (21) days after the service of

Date et lieu de la comparution: the attached documents; at the Clerk's Office  
of the Circuit Court of Fairfax County, Courthouse,

Court which has given judgment\*\*: 4000 Chain Bridge Road, Fairfax, Va. 22030, U.S.A.

Jurisdiction qui a rendu la décision: Not applicable

Date of judgment\*\*:

Date de la décision: Not applicable

Time limits stated in the document\*\*:

Indication des délais figurant dans l'acte: \_\_\_\_\_

EXTRAJUDICIAL DOCUMENT\*\*

ACTE EXTRAJUDICIAIRE

Nature and purpose of the document: Not applicable

Nature et objet de l'acte: \_\_\_\_\_

Time limits stated in the document\*\*:

Indication des délais figurant dans l'acte: \_\_\_\_\_

\* If appropriate, identity and address of the person interested in the transmission of the document.

*S'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte.*

\*\* Delete if inappropriate.

*Rayer les mentions inutiles*

ANSWER

LAW OFFICES BETTY A. THOMPSON, ARLINGTON, VA.

COMES NOW the Defendant, MARGARET VERITY FLOWER LYONS, by counsel, and for her Answer to the Bill of Complainant filed herein, says:

1. That the Defendant admits the allegation of Paragraph 1 of said Bill of Complaint, but denies that her whereabouts are unknown as she has been served with said Bill of Complaint.

2. That the Defendant admits the allegations of Paragraph 2 of said Bill of Complaint .

3. That the Defendant admits that the parties were married in Arlington County, Virginia, but denies that the date of the marriage was September 13, 1972, as alleged in Paragraph 3 of said Bill of Complaint, and asserts that the parties were married on September 13, 1971.

4. That the Defendant admits the allegation of Paragraph 4 referring to the birth and name of the minor child, but denies that his whereabouts are unknown.

5. That the Defendant admits the allegations contained in Paragraph 5 of said Bill of Complaint.

6. That the Defendant denies she willfully deserted and abandoned the Complaint, without just cause or excuse, as alleged in Paragraph 6 of said Bill of Complaint, but admits that they have lived separate and apart without any interruption since April 13, 1982.

7. That the Defendant admits the allegations contained in Paragraph 7 of said Bill of Complaint.

WHEREFORE, having duly answered, Defendant prays that said Bill of Complaint be dismissed.

CROSS-BILL

LAW OFFICES BETTY A. THOMPSON, ARLINGTON, VA.

AND NOW for further Answer and by way of Cross-Bill of Complaint asking for affirmative relief, the said MARGARET VERITY FLOWER LYONS, respectfully represents unto the Court as follows:

1. That your Cross-Complainant and the Cross-Defendant were lawfully married on the 13th day of September, 1971, in Arlington County, Virginia.

2. That there was one child born of the aforesaid marriage, namely, Herbert Gavin Lyons (born July 24, 1975).

3. That both parties hereto are members of the Caucasian race, over the age of eighteen years and neither is a member of the Armed Forces of the United States.

4. That your Cross-Complaint is a non-resident of the State of Virginia, presently residing in England.

5. That the Cross-Defendant is a bona fide resident of and domiciled in Fairfax County, Virginia and has resided and has been domiciled in the State of Virginia for more than six months immediately preceding the institution of this suit.

6. That the parties hereto last cohabited in Fairfax County, Virginia.

7. That for a long period of time the Cross-Defendant has treated your Cross-Complainant in a cruel and abusive manner, endangering her health and safety; that said Cross-Defendant has repeatedly humiliated, embarrassed and verbally abused your Cross-Complainant; that by his acts and conduct the Cross-Defendant has

inflicted such indignities upon the Cross-Complainant as to cause her great bodily pain and mental anguish; that by reason of all of said treatment at the hands of the Cross-Defendant, your Cross-Complainant was compelled to leave the marital home and seek a home elsewhere than under the roof of the Cross-Defendant.

8. That Cross-Defendant for a number of years past, has been and remains a habitual user of alcohol. By his words and acts, he has attempted by devious means to alienate the child, Herbert Gavin Lyons, from his mother, has interfered with your Cross-Complainant's efforts at communicating, participating in and maintaining a viable relationship with said child, thereby causing him to be confused. Cross-Defendant has shown he is unable to control and direct the child; that in his home the influences likely to be exerted upon the child are not conducive to his best interest, growth and development.

9. That the Cross-Defendant is not a fit and proper person to have the custody of said minor child in that he is emotionally unstable; that your Cross-Complainant is the better parent and the one in whose custody the welfare of the minor child will be best promoted.

WHEREFORE, your Cross-Complainant prays:

1. That she be granted a divorce a mensa et thoro from the Cross-Defendant with leave granted to your Cross-Complainant to merge the same into a decree of divorce a vinculo matrimonii at the expiration of one year from the date of the desertion aforesaid.

2. That the care and custody of Gavin Herbert Lyons, the minor child of the parties, be awarded to your Cross-Complainant, both pendente lite and permanently.




3. That the Cross-Defendant, HERBERT LEE LYONS, be required to pay to your Cross-Complainant a sufficient and reasonable sum of money for the her maintenance and support and the maintenance and support of said minor child, both pendente lite and permanently.

4. That the Cross-Defendant, HERBERT LEE LYONS, be required to pay to your Cross-Complainant a sufficient sum of money to enable her to prosecute this suit, including court costs and legal fees.

5. That she may have such other and further relief as the Court may deem proper.

  
MARGARET VERITY FLOWER LYONS  
By Counsel

  
BETTY A. THOMPSON  
Counsel for Defendant/  
Cross-Complainant  
1800 North Kent Street  
Suite 1001  
Arlington, Virginia 22209

CERTIFICATE

I HEREBY CERTIFY that a true copy of the foregoing Answer and Cross-Bill was mailed, postage prepaid, this 24th day of June, 1982, to Gordon Peyton, Counsel for Complainant/Cross-Defendant, P. O. Box 294, Alexandria, Virginia 22313-0294.

  
BETTY A. THOMPSON

FILED  
JUN 28 1982

ANSWER TO CROSS-BILL

COMES NOW the Complainant, HERBERT LEE LYONS, by Counsel, and for Answer to the Cross-Bill of Complaint filed herein against him, respectfully represents unto this Honorable Court the following:

1. He admits the allegations contained in Paragraphs (1), (2), (3), (5) and (6) of the said Cross-Bill.

2. He denies the allegations contained in Paragraph (4) of the Cross-Bill and states affirmatively that the Defendant is a resident alien lawfully admitted to the United States for permanent residence who is presently sojourning in the United Kingdom.

3. He denies each and every allegation contained in Paragraph (7) of the Cross-Bill, demands strict proof thereof, and states affirmatively that, prior to the time the Defendant wilfully deserted and abandoned the Complainant without any just cause or excuse, the Complainant was continuously subjected to such cruel and abusive treatment by his wife that he would have been justified in leaving the marital home himself for the sake of his own health, safety, and welfare.


4. He denies each and every allegation contained in Paragraph (8) of the Cross-Bill, demands strict proof thereof, and states affirmatively that it is she, the Defendant, who has been guilty of interfering with and effectively preventing the natural and ordinary communication which exists between father and son by taking the child out of this country by stealth. This unilateral action by the Defendant is the cause of any confusion

which may exist in the mind of the child and not any words spoken or acts done by the Complainant.

5. He denies each and every allegation contained in Paragraph (9) of the Cross-Bill and states affirmatively that the Defendant is not a fit and proper person to have custody of the child in that she is emotionally unstable and manifestly irresponsible as is shown by her having abducted the child by stealth and removed him from his homeland and from the elementary school in which he was regularly enrolled in Fairfax County.

IN CONSIDERATION WHEREOF, Complainant respectfully prays that the Cross-Bill of Complaint filed herein against him be dismissed and that all relief thereunder be denied; that this Honorable Court assess attorneys' fees and costs in an amount sufficient to reimburse the Complainant for the expenses he has incurred to obtain access to his son and effect his return to the United States; that the Court strike the Defendant's Answer because she has not complied with §20-132 of the 1950 Code of Virginia, as amended; and that he have such further and general relief which this Honorable Court may deem meet, proper, and just.

HERBERT LEE LYONS  
By Counsel

  
Gordon P. Peyton  
Post Office Box 294  
Alexandria, Virginia 22313-0294  
Counsel for Complainant

Bruno A. Ristau  
Kaplan, Russin & Vecchi  
1218 Sixteenth Street, N. W.  
Washington, D. C. 20036  
202/638-0060  
Of Counsel

FILED  
JUL 19 1982  
JAMES E. DUFFINAGLE  
CLERK OF THE CIRCUIT COURT  
OF FAIRFAX COUNTY, VA.

N O T I C E

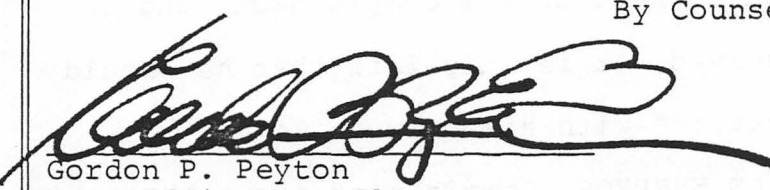
GORDON P. PEYTON ATTORNEY AT LAW ALEXANDRIA, VIRGINIA 22313

TO: MARGARET VERITY FLOWER LYONS  
c/o Betty A. Thompson  
Attorney at Law  
1800 North Kent Street, #1001  
Arlington, Virginia 22209

PLEASE TAKE NOTICE that on the 23rd day of July, 1982,  
at 10:00 A.M., or as soon thereafter as Counsel may be heard,  
I shall appear before one of the Judges of the Fairfax Circuit  
Court and move the Court for the entry of an Order compelling  
the Defendant to return the child of the parties to the United  
States, and specifically to the jurisdiction of this Court  
forthwith and that I shall further move the Court for the entry  
of a Decree of Reference in this cause so that the matter of the  
divorce may be heard on its merits.

YOU WILL PLEASE GOVERN YOURSELF ACCORDINGLY.

HERBERT LEE LYONS  
By Counsel



Gordon P. Peyton  
Post Office Box 294  
Alexandria, Virginia 22313-0294  
Counsel for Complainant

Bruno A. Ristau  
Kaplan, Russin & Vecchi  
1218 Sixteenth Street, N. W.  
Washington, D. C. 20036  
Of Counsel

FILED  
JUL 19 1982



MOTION FOR ORDER ALLOWING TELEPHONE ACCESS

COMES NOW the Complainant, HERBERT LEE LYONS, by Counsel, and respectfully moves this Honorable Court for entry of an Order permitting him telephone access to his son pending his return to the United States, and in support thereof respectfully represents unto this Honorable Court the following:

1. The Defendant has permitted the Complainant to speak to his son for a total of twenty-nine (29) minutes during the month of July, to-wit: six (6) minutes on July 10, four (4) minutes of July 15, five (5) minutes on July 18, nine (9) minutes on July 24 and five (5) minutes on July 28.

2. The Defendant has advised the Complainant that he will be permitted no further telephone conversations with his son.

3. Inasmuch as the Defendant took the son to England without the knowledge and consent of the Complainant, and in view of the distance involved, it is only fair that he should have some form of "visitation" with his only child.

IN CONSIDERATION WHEREOF, Complainant prays that this Court enter an Order directing the Defendant to allow the Complainant telephonic access to his son during waking hours for a period of at least thirty (30) minutes per week.

HERBERT LEE LYONS  
By Counsel

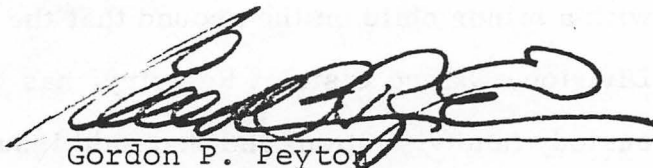


Gordon P. Peyton  
Counsel for Complainant

FILED  
AUG 30 1982

CERTIFICATE OF SERVICE

10 I, Gordon P. Peyton, do hereby certify that I have this day of August, 1982, mailed a true copy of the foregoing Motion for Order Allowing Telephone Access to Miss Betty A. Thompson, Attorney at Law, 1800 Kent Street, Suite 1001, Arlington, Virginia 22209, Counsel for Defendant.


A handwritten signature in black ink, appearing to read "Gordon P. Peyton", is written over a horizontal line.

Gordon P. Peyton

RESPONSE TO MOTION FOR VISITATION

COMES NOW the Defendant, MARGARET VERITY FLOWER LYONS, by counsel, and moves this Honorable Court for entry of an Order refusing to hear Complainant's Motion for telephone visitation with a minor child on the ground that the High Court of Justice, Family Division, Oxford District Registry, has jurisdiction over the issues of custody (and visitation) and that said issues are pending before said Court; and tht the Circuit Court of Fairfax County has not entered any order finding that this Court should not give full faith and credit to the orders of the English courts and should take jurisdiction of the issues of custody (and visitation).

  
MARGARET VERITY FLOWER LYONS  
By Counsel

  
NAN M. JOSEPH  
Counsel for Complainant  
1800 North Kent Street  
Suite 1001  
Arlington, Virginia 22209

CERTIFICATE

I HEREBY CERTIFY that a true copy of the foregoing Response to Motion for Visitation was mailed, postage prepaid, this 26 day of August, 1982, to Gordon P. Peyton, Esquire, P. O. Box 294, Alexandria, Virginia 22313.

FILED

AUG 30 1982

JAMES E. HODGE  
Clerk of the Circuit Court  
of Fairfax County, Va.

  
NAN M. JOSEPH

FILED

PARTIAL TRANSCRIPT

SEP 6 1982

1

812102

JAMES E. HOOFNAGLE  
Clerk of the Circuit Court  
of Fairfax County, Va.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

HERBERT LEE LYONS,

Complainant,

vs.

MARGARET VERITY FLOWER LYONS,

Defendant.

In Chancery No. 76188

Fairfax, Virginia

Monday, August 30, 1982

The proceedings commenced at 10:00 a.m.

BEFORE:

THE HONORABLE BURCH MILLSAP.

APPEARANCES:

BRUNO A. RISTAU, Esq., Kaplan, Russin  
& Vecchi, 1218 Sixteenth Street,  
Northwest, Washington, D.C. 20036,  
and

GORDON P. PEYTON, Esq., 117 North  
Fairfax Street, Alexandria,  
Virginia 22314-3293, counsel  
for the complainant.

NAN M. JOSEPH, Esq., 1800 Kent Street,  
Suite 1001, Arlington, Virginia  
22209, counsel for the defendant.

RECEIVED  
OCT 7 1982  
CLERK OF THE CIRCUIT COURT  
OF FAIRFAX COUNTY, VIRGINIA

DEC 13 1982  
RECEIVED  
CLERK OF THE CIRCUIT COURT  
OF FAIRFAX COUNTY, VIRGINIA





P R O C E E D I N G S

(Whereupon, the Court Reporter was sworn.)

\* \* \* \* \*

THE COURT: In reaching a decision attempting to interpret the order from the Court of Appeals in England as it relates to the requirements of the Oehl case, the Court does not have much problem with reference to the Court of England with reference to one and two of the requirements of the Oehl case.

I think the child and the mother being in England, the English Court would have jurisdiction under their Guardianship For Minors Act. On the other side of the coin, this Court also has jurisdiction. The father is a resident of Fairfax County, Commonwealth of Virginia. The mother has submitted to the jurisdiction of this Court, so this Court also would have jurisdiction to make a decision in the case.

The only remaining issue for the Court to determine is under the Oehl case if there is sufficient order and decision in England that this Court has to give full faith and credit and comity to. In trying to decipher what happened in England, that would be binding upon the parties, could be only the decision of the Court of Appeals.

There was, in effect, a vacation of the lower



1 court ruling in England where the lower court directed the  
2 mother to return the child to this country. When it  
3 vacated that order and reversed the lower court, it saw fit  
4 to then in turn enter its order. The Court can only assume  
5 its order is based on the transcript that was submitted on  
6 appeal.

7           Item Three of the order from the Court of Appeals  
8 directs that the child shall remain in the interim care and  
9 control of the plaintiff until further order of the Court.  
10 Now, when the Court gives that direction, that is equivalent  
11 to, the Court would assume, a pendente lite decree in this  
12 court where they make a decree that the child shall remain  
13 in the care and control of one parent until further order.

14           Once they make that decision, the Court would  
15 conclude that that satisfies Item Three of the Oehl case.  
16 It is a Court of Appeals decision and a direction that the  
17 child remain in the interim care and control of the plaintiff.  
18 Once it makes that determination, the Court would have to  
19 conclude that the Court of Appeals would not have made that  
20 determination without giving consideration that it would be  
21 in the best interest of the child to remain until further  
22 order of the Court under the care and control of the  
23 plaintiff, the mother.



1           So having concluded that all three items of the  
2 Oehl case have been complied with, the Court would have to  
3 deny the request for an affirmative ruling from this Court  
4 directing the mother to return the child to the jurisdiction  
5 of this Court.

6           The only other outstanding matter would be the  
7 request by the father for an order of the Court to direct  
8 telephonic communications. Since this Court does have  
9 jurisdiction of the parties, the same as the English Courts,  
10 the Court cannot see any reason why this Court cannot rule,  
11 and also review the Appeals Court decision, that the father  
12 should have reasonable access to the child.

13           Reasonable access to the child and in interpretation  
14 of the order, which is not ambiguous, would mean telephonic  
15 communication with the child. And the Court would so rule.  
16 The Court would deny the affirmative relief directing the  
17 mother to return the child to this jurisdiction; but also  
18 in interpretation of the order, reasonable access with the  
19 child would mean that the father could have telephonic  
20 communication with the child.

21           Now, since this is an interpretation of the  
22 jurisdiction and the procedural and substantive law applied  
23 by the English Court and the interpretation of the order of



1 the English Court, I believe that this would have sufficient  
2 finality that the father can exercise his immediate right  
3 of appeal for a consideration by the Supreme Court. As  
4 counsel ably argued, time is of the essence. The longer  
5 the child stays in England, the further he gets away from  
6 the father and the community of which he was uprooted. So  
7 the Court would ask that counsel forthwith submit a decree  
8 to be entered by this Court.

9 MR. RISTAU: Your Honor, may I respectfully ask  
10 for one brief clarification of Your Honor's order?

11 THE COURT: Sure.

12 MR. RISTAU: Would Your Honor be amenable to an  
13 application at a future date to have the child returned  
14 for the trial of the custody matter, or does Your Honor's  
15 order right now foreclose the return of the child at any  
16 time?

17 THE COURT: At this time the Court has concluded  
18 that the question of custody or guardianship lies in the  
19 English Court. The Court, in making that conclusion, could  
20 not require the return of the child; but at the same time,  
21 on a rehearing on the lower court level in England, since  
22 the father prevailed originally, then it may be a useless  
23 act to continue this further with reference to proceedings





1 here until such time as the lower court in England has taken  
2 up a review or reconsideration of the original petition.

3 The lower court may again conclude the best  
4 interest of the child would be to return to this country.  
5 From the facts and conclusions reached by the trial judge,  
6 I cannot see how the trial judge would do an about face;  
7 although in reading the decision of the Appeal Court, it  
8 seems to be a reversal not as to the conclusions reached  
9 by the trial judge or the application of the law by the  
10 trial judge but because of the inconsistencies of the trial  
11 judge in reaching that opinion.

12 I think once it goes back down there, ultimately  
13 it probably will make a decision that the child should be  
14 returned to this country for a final determination. If  
15 that is ultimately the decision of the trial judge and  
16 being affirmed by the Appeals Court, then this Court would  
17 take jurisdiction at that time.

18 MR. RISTAU: Thank you.

19 THE COURT: Anything else?

20 MS. JOSEPH: Your Honor, I would ask for one  
21 other piece of clarification. You indicated that you would  
22 enter an order requiring telephonic visitation. Could you  
23 be very specific in terms of how much or what times? I



1 suspect that may be something that we should get a ruling  
2 on rather than have to try to work it out.

3 THE COURT: The Court cannot rule now without  
4 any evidence whatsoever. I don't know if the mother is  
5 employed or not employed, the hour differential between  
6 here and England. Calls would have to be made at a reasonable  
7 hour for the child, a seven-year-old child, in the evening  
8 because of school during the day or on Saturdays and Sundays.

9 Now, I think that counsel would be better advised  
10 to try to reach some agreeable time that the father might  
11 place the call and giving consideration that a seven-year-  
12 old child has a time that he may go to bed at night. The  
13 call is to be received at reasonable hours in England to  
14 talk with the child.

15 MS. JOSEPH: Thank you.

16 MR. RISTAU: The only thing we would ask for,  
17 Your Honor, if it is material, is access to the child  
18 twice a week for up to 20 minutes during waking hours of  
19 the child.

20 THE COURT: That is not unreasonable.

21 MS. JOSEPH: Okay.

22 THE COURT: As far as the Court is concerned, the  
23 father may exercise those rights twice a week, 20 minutes per



1 call.

2 MR. RISTAU: During waking hours of the child.

3 THE COURT: Yes, without interference of the mother.

4 MR. RISTAU: Thank you, Your Honor.

5 MS. JOSEPH: Thank you, Your Honor.

6 (Whereupon, at 11:45 a.m., the proceedings  
7 in the above-entitled matter were concluded.)

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ORDER

THIS CAUSE came on to be heard upon the Motion of the Complainant/Cross-Defendant for entry of an Order compelling the Defendant/Cross-Complainant to return the child of the parties to the jurisdiction of this Court and upon the Motion of the Complainant/Cross-Defendant for entry of an Order permitting him telephone access to the minor child of the parties; upon the pleadings filed herein; upon the argument of counsel heard on July 23, 1982; upon the Memoranda of Law submitted by each party; upon the record of the proceedings instituted in England filed with the Court; and, upon further argument of counsel heard on August 30, 1982.

IT APPEARING TO THE COURT that the issue of whether an Order should be entered requiring the return of the minor child, Herbert Gavin Lyons, to the jurisdiction of this Court has been litigated by the parties in England and that an Order was entered on July 6, 1982 by the Supreme Court of Judicature, Court of Appeal that (1) discharged an Order issued on June 28, 1982, by the High Court of Justice, Family Division, which required the return of the child to the United states; and (2) Ordered that the "child Herbert Gavin Lyons do remain in the interim care and control of the Plaintiff Margaret Verity Lyons until further order with reasonable access to the Defendant Herbert Lee Lyons;" and (3) that there be a fresh hearing of the summons; and

IT FURTHER APPEARING TO THE COURT that the Order of the English Court of Appeal meets the three-pronged test established by the Virginia Supreme Court in the Oehl case, specifically,

that the English Court had jurisdiction over the parties and the subject matter; that the procedural and substantive law applied by the English Court was reasonably comparable to that of Virginia; and, that in awarding interim care and custody of the minor child to Margaret Lyons the English Court would not have made such an Order without considering that it was in the best interests of the child to remain, until further Order of the Court, under the care and control of the Plaintiff, the mother; and

IT FURTHER APPEARING TO THE COURT that this Court has to give full faith and credit and comity to the English Order; and

IT FURTHER APPEARING TO THE COURT that this Court also has jurisdiction of the parties since the Complainant/Cross-Defendant is a resident of Fairfax County and the Defendant/Cross-Complainant has submitted to the jurisdiction of this Court, and this Court can review and interpret the decision of the English Court of Appeal regarding access to the child; it is therefore

ADJUDGED, ORDERED AND DECREED that this Court will grant comity to the Order of July 6, 1982, entered by the Supreme Court of Judicature, Court of Appeal, England and, as the question of custody lies in the English Court, this Court will deny the Motion of the Complainant/Cross-Defendant for an affirmative ruling directing the return of the minor child to this jurisdiction; and, it is further


ADJUDGED, ORDERED, AND DECREED that this Court orders that the Complainant/Cross-Defendant shall be entitled to telephone visitation with the minor child, Herbert Gavin Lyons, twice each week during waking hours, for periods of up to twenty (20) minutes each.

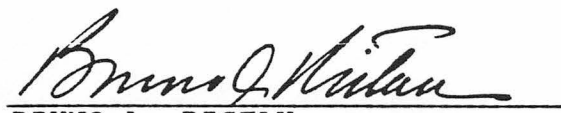


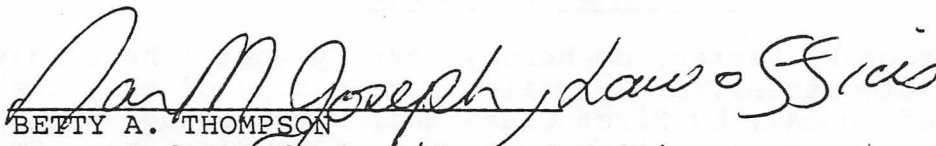
AND THIS CAUSE IS CONTINUED.

ENTERED this 23rd day of September, 1982

  
BURCH MILLSAP  
JUDGE

  
GORDON P. PEYTON  
Counsel for Complainant/Cross-Defendant  
P.O. Box 294  
Alexandria, Virginia 22313-0294

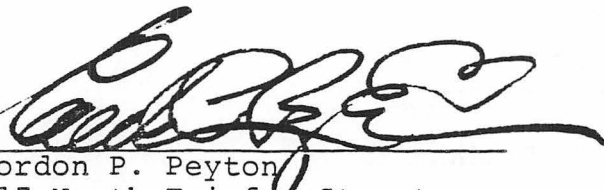
  
BRUNO A. RISTAU  
Of Counsel for Complainant/Cross-Defendant  
1218 16th Street, N.W.  
Washington, D.C. 20036

  
BETTY A. THOMPSON  
Counsel for Defendant/Cross-Complainant  
1800 North Kent Street  
Suite 1001  
Arlington, Virginia 22209

NOTICE OF APPEAL

COMES NOW the Complainant, HERBERT LEE LYONS, by counsel, and pursuant to Rule 5:6 of the Supreme Court Rules hereby notes his appeal from the final Order of this Honorable Court entered in favor of the Defendant on September 23, 1982. A transcript of testimony will be hereafter filed.

HERBERT LEE LYONS  
By counsel

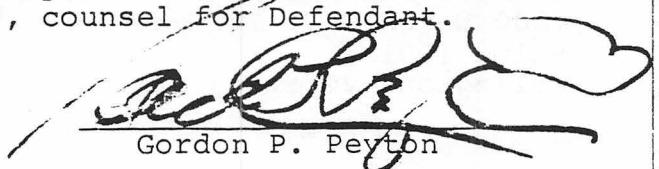


Gordon P. Peyton  
117 North Fairfax Street  
Alexandria, Virginia 22313-0294  
Counsel for Complainant

Bruno A. Ristau  
KAPLAN, RUSSIN & VECCHI  
1218 Sixteenth Street, N.W.  
Washington, D. C. 20036  
Of counsel

CERTIFICATE OF SERVICE

I, Gordon P. Peyton, do hereby certify that I have this sixteenth day of October, 1982, mailed a true copy of the foregoing Notice of Appeal, by First Class Mail with postage prepaid, to Miss Betty A. Thompson, Attorney at Law, 1800 North Kent Street, #1001, Arlington, Virginia 22209, counsel for Defendant.



Gordon P. Peyton

FILED

OCT 16 1982

DECREE OF DIVORCE A MENSA ET THORO

GORDON P. PEYTON ATTORNEY AT LAW ALEXANDRIA, VIRGINIA 22313

THIS CAUSE came on this day to be heard upon the Bill of Complaint, accompanied by the Affidavit required by §20-132 of the 1950 Code of Virginia, as amended; upon proper service of process of the same upon the Defendant; upon the Answer and Cross-Bill of Complaint then filed by the Defendant; upon the Answer to Cross-Bill then filed by the Complainant; upon the Decree of Reference entered herein by the Honorable Burch Millisap on July 23, 1982, wherein Stephen L. Best, Esquire, a Commissioner in Chancery of this Court, was directed to take the testimony of the parties and their witnesses and to make a report of his findings and recommendations with reference to the truth of the allegations contained in said pleadings filed herein; upon proper Notice for the taking of said depositions, the Complainant having appeared at the hearing held on October 7, 1982 in person accompanied by his attorney of record; the Defendant having appeared by Counsel; upon the Report of the Commissioner in Chancery filed on October 19, 1982, no exceptions having been taken thereto; and upon proper Notice to the Defendant for the presentation of this Decree.

UPON CONSIDERATION WHEREOF, the Court finds from the evidence, duly corroborated, that the Complainant is an actual bona fide resident and domiciliary of the Commonwealth of Virginia and that he had been such for a period of more than six (6) months immediately preceding the commencement of this suit;

that the parties hereto were married on September 13, 1971, in Arlington County, Virginia; that the parties hereto last cohabited as husband and wife in the County of Fairfax; that the Defendant willfully deserted and abandoned the Complainant, without any just cause or excuse, on April 13,

1982, with the intention of remaining away permanently; and that the parties hereto have lived separate and apart, without any interruption and without any cohabitation, since that date.

It further appearing to the Court that one child was born of the marriage, to-wit, Herbert Gavin Lyons, born July 24, 1975, whose custody is in dispute; that both parties to this suit are over the age of eighteen years and that neither is a member of the Armed Forces of the United States; and that the Complainant is entitled to the relief prayed for. It is therefore

ADJUDGED, ORDERED and DECREED that the Complainant, HERBERT LEE LYONS, be, and he hereby is, awarded a divorce a mensa et thoro from the Defendant, MARGARET VERITY FLOWER LYONS, on the ground of willful desertion and abandonment from April 13, 1982, with the privilege of applying for a merger of the same into a divorce a vinculo matrimonii at the expiration of the statutory period. It is further

ADJUDGED, ORDERED and DECREED that the prayers for a divorce a mensa et thoro and for spousal support contained in the Defendant's Cross-Bill of Complaint filed herein be, and the same are, dismissed with prejudice inasmuch as the Defendant willfully deserted and abandoned the Complainant without any just cause or excuse; but it is further Ordered that the Cross-Complainant's prayer for counsel fees and costs be, and the same hereby is reserved for determination by this Court at the time of the entry of a Final Decree herein.

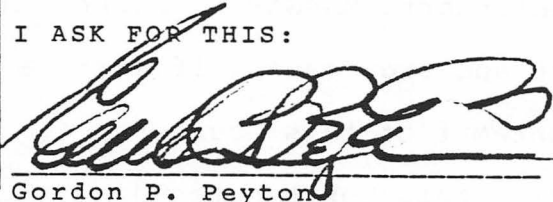
THIS IS NOT A FINAL DECREE OF DIVORCE, AND DOES NOT PERMIT EITHER OF THE PARTIES HERETO TO MARRY ANOTHER, BUT THIS

CAUSE IS RETAINED ON THE DOCKET FOR SUCH FURTHER PROCEEDINGS HEREIN AS MAY BE PROVIDED BY LAW.

ENTERED this 3rd day of December, 1982.

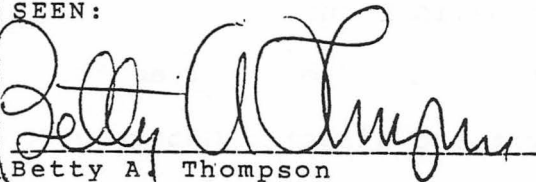
  
J U O G E

I ASK FOR THIS:



Gordon P. Peyton  
Counsel for Complainant

SEEN:



Betty A. Thompson  
Counsel for Defendant

GORDON P. PEYTON ATTORNEY AT LAW ALEXANDRIA-VIRGINIA 22313



ORDER TO SHOW CAUSE

THIS CAUSE came on to be heard on December 3, 1982, upon the Petition of the Complainant, HERBERT LEE LYONS, for a Rule to Show Cause against the Defendant, MARGARET VERITY FLOWER LYONS to appear before this Court and show cause, if any she can, why she should not be held in contempt of this Court for her failure to comply with the Order of this Court entered September 23, 1982, providing for telephonic access to the Complainant with his son, Herbert Gavin Lyons.

The undersigned Circuit Court Judge received the Petition and accompanying Affidavit and directed George J. Shapiro, who was appearing for Counsel of Record in this case because of a conflict with the Virginia Supreme Court's docket, to prepare this Order, but first to confer with Betty A. Thompson, Counsel of Record for the Defendant so as to obtain a convenient date for both sides.

And it appearing to the Court from the representations of Counsel for the Complainant that he did indeed confer with the said Betty A. Thompson, and did obtain an agreed date of January 21, 1983 for a hearing on this matter, and Counsel for the Complainant having been asked by the said Betty A. Thompson to represent to this Court that she objects to the entry of this Order, and the Court being of the opinion that the entry of this Order is proper, it is therefore

ADJUDGED, ORDERED and DECREED that MARGARET VERITY FLOWER LYONS be, and she hereby is, ordered to appear before the bar of this Court on January 21st, 1983 at 10:00 A.M. to show

cause, if any she can, why she should not be held in contempt of this Court for her failure to abide by the Order hereinabove referred to. It is further

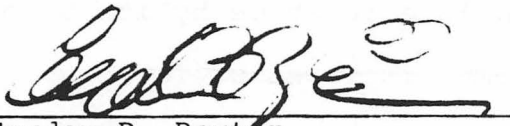
ADJUDGED, ORDERED and DECREED that a certified copy of this Order be mailed by the Clerk of this Court forthwith to Betty A. Thompson, Counsel for Defendant.

AND THIS CAUSE IS CONTINUED.

ENTERED this 8th day of December, 1982.

/s/ Richard J. Jamborsky  
Richard J. Jamborsky  
Circuit Court Judge

I ASK FOR THIS:

  
Gordon P. Peyton  
Counsel for Complainant

(OBJECTION OF BETTY A. THOMPSON NOTED IN BODY OF ORDER).

ADJUDICATION OF CONTEMPT

THIS CAUSE came on this 21st day of January, 1983, pursuant to the Order to Show Cause previously entered herein directing the Defendant to appear before the Bar of this Court on this date to show cause, if any she can, why she should not be held in contempt of this Court for her failure to abide by the previous Order hereof with respect to telephone visitation.

And the Court having heard the testimony of the Complainant, who appeared in person accompanied by his attorney of record, Gordon P. Peyton, and having considered the argument of Counsel for the Defendant as well, it is therefore

ADJUDGED, ORDERED and DECREED that the Defendant MARGARET VERITY FLOWER LYONS be, and she hereby is, found in contempt of this Court for her failure to abide by its Orders, ~~and her punishment for said contempt is fixed as follows:~~

ENTERED this 21<sup>st</sup> day of January, 1983.

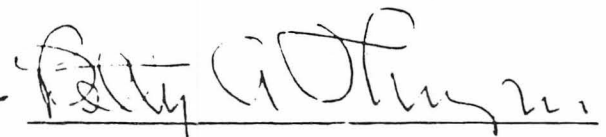
  
J U D G E

I ASK FOR THIS:



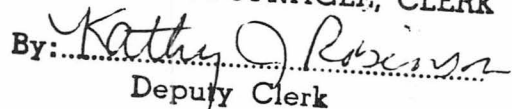
Gordon P. Peyton  
Counsel for Complainant

SEEN:



Counsel for Defendant  
A COPY RESIDE:

JAMES E. HOOFNAGLE, CLERK

By:   
Deputy Clerk

### ASSIGNMENTS OF ERROR

1. The Circuit Court erred in declining to exercise jurisdiction in a custody dispute involving a minor whose home state is Virginia, and who has been abducted by the mother from his home state and taken to a foreign country.

2. The Circuit Court erred in deferring to the jurisdiction of the courts in England to hear the custody dispute in the future.

3. The Circuit Court erred in misapplying and misconstruing this Court's decision in Oehl v. Oehl, 272 Va. 618, 272 S.E.2d 441 (1980).



Originating Summons (Wardship/Guardianship)

IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION

No. of  
Matter 1982 L 161

(1) Complete  
and/or delete as  
appropriate.

OXFORD Principal/District Registry<sup>(1)</sup>

NOT FOR SERVICE OUT  
OF JURISDICTION

IN THE MATTER of

HERBERT GAVIN LYONS

being a Minor

(2) If necessary  
delete as  
appropriate.

(2) And in the matter of Section 41 of the Supreme Court Act 1981

(2) And in the matter of the Guardianship of Minors Acts  
1971 and 1973

Between

MARGARET VERITY LYONS Plaintiff

and

HERBERT LEE LYONS Defendant

To

HERBERT LEE LYONS

of

1101 GLADSTONE PLACE  
ALEXANDRIA  
VIRGINIA 22308

IMPORTANT NOTICE: It is a contempt of Court, which may be punished by imprisonment, to take any child named in this summons out of England and Wales even to Scotland, Northern Ireland, the Republic of Ireland, the Channel Islands or the Isle of Man, without the leave of the Court.

(3) Delete as  
appropriate.

Let the Defendant, within 14 days after service of this Summons on  
h... counting the day of service, return the accompanying  
Acknowledgment of Service to (3) [~~the Principal Registry of the~~  
Family Division] the OXFORD District Registry of  
the High Court].



By this Summons, which is issued on the application of the Plaintiff,

MARGARET VERITY LYONS  
of 109 BROADMARSH WANE  
FRESHWATER, OXON.

the Plaintiff claim(s) against the Defendant the  
following relief: namely:—

1. THAT THE SAID MINOR BE MADE A  
WARD OF THIS HONOURABLE COURT
2. THAT THE CARE AND CONTROL OF  
THE MINOR BE COMMITTED TO THE  
PLAINTIFF.
3. THAT THE COSTS OF THE APPLICATION  
MAY BE PROVIDED FOR.

(4) On a wardship  
application state  
the present  
whereabouts of  
the minor(s) or  
that the Plaintiff is  
unaware of the  
whereabouts of  
the minor(s).

(4) The present whereabouts of the minor are  
109 BROADMARSH WANE  
FRESHWATER, OXON.

(5) The minor HERBERT GAVIN LYONS was born on 26<sup>th</sup> JULY 1962

(5) On a wardship  
application state,  
if possible, the  
date of birth of  
each minor.

A certified copy of  
the birth certificate

(or entry in the  
Adopted Children  
Register) must be  
lodged in the  
registry on issuing  
the Summons or  
before or at the  
first hearing, or  
directions must be  
obtained at the  
first hearing as to  
the manner of  
proof of birth.

(6)

If the Defendant does not acknowledge service, such judgment may  
be given or order made against or in relation to him as the Court  
may think just and expedient.

Dated the 14<sup>th</sup> day of APRIL

1982

(6) On a wardship application the name of each party to the proceedings is to be qualified by a brief description in the body of the summons, of his interest in, or relationship to, the minor.

NOTE.—This Summons may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

This Summons was taken out by LINDEN & NORRIS  
SOLICITORS  
12 KING EDWARD ST  
OXFORD  
(AEC/KW)

Solicitor for the said Plaintiff whose address is as stated above.

## IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

(7) Delete the whole of this notice if the application is made solely under the Guardianship of Minors Acts 1971 and 1973.

(7) TO THE DEFENDANT(S) (other than the minor)

TAKE NOTICE that, pursuant to Order 90, rule 3 (5) and (6) of the Rules of the Supreme Court—

(1) you must forthwith after being served with this Summons lodge in the above-mentioned Registry a notice stating your address and the whereabouts of the minor (or if it be the case, that you are unaware of the minor's whereabouts) and, unless the Court otherwise directs, you must serve a copy of such notice on the plaintiff; and

(2) if you subsequently change your address or become aware of any change in the minor's whereabouts you must, unless the Court otherwise directs, lodge in the above-mentioned Registry notice of your new address or of the new whereabouts of the minor, as the case may be, and serve a copy of such notice on the plaintiff.

(8) If the matter is proceeding in a District Registry, substitute the address of that Registry.

Any notice required to be lodged in the above-mentioned Registry should be sent or delivered to <sup>(8)</sup> the ~~Principal Clerk (CD), Principal Registry of the Family Division, Somerset House, Strand, London WC2R 1LP.~~

THE OXFORD DISTRICT REGISTRY  
HARCOURT HOUSE  
MARSTON ROAD  
OXFORD

TO THE APPLICANT AND HIS/HER SOLICITOR

A copy of the appended notice should be served on the Defendant (or, where the Defendant is a minor, on the person on whom the originating summons is served) with the originating summons, the original being produced at the time of service. A copy may also be served on any other person who should be made aware that the minor is a ward of Court.

Whenever the age and situation of the minor are such that he or she may be in need of advice and assistance a copy of this notice should also be served on him or her, not he or she is the Defendant.



HIGH COURT OF JUSTICE  
FAMILY DIVISION  
OXFORD DISTRICT REGISTRY

No. 161 of 1982.

TAKE NOTICE that **HERBERT GAVIN LYONS**

became a Ward of Court on **14<sup>th</sup> APRIL 1982**, pursuant to the provisions of Section 9(2) of the Law Reform (Miscellaneous Provisions) Act 1949.

Without the leave of the Court a Ward of Court may not marry or go outside England and Wales, nor should there be any material change in the arrangements for his or her welfare, care and control or education without such leave.

Where necessary, a guardian (probably the Official Solicitor) will be appointed to present the Ward's views to the Court and give any necessary assistance. If the Ward is in doubt about what to do, he or she may approach the Official Solicitor, 48/49 Chancery Lane, London WC2A 1JR (Telephone number 01-405 7641 Extension 3038), who will give advice pending the formal appointment of a guardian.

IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION  
OXFORD DISTRICT REGISTRY

No. of matter  
1982 L 161



IN THE MATTER of

HERBERT GAVIN LYONS. being a Minor

And in the matter of Section 41 of the Supreme Court Act 1981  
And in the matter of the Guardianship of Minors Act 1971 and  
1973

B E T W E E N :

MARGARET VERITY LYONS

Plaintiff

and

HERBERT LEE LYONS

Defendant

---

A F F I D A V I T

---

I ALISON ROSEMARY JANE CLARK Solicitor with Linnell & Murphy  
of 12 King Edward Street, Oxford, MAKE OATH and say as  
follows:-

1. I have been instructed to act on behalf of the Plaintiff,  
Margaret Verity Lyons in connection with Wardship Proceedings  
relating to her son, Herbert Gavin Lyons d.o.b. 24th July  
1975.



2. The brief history of this matter is that Mrs Lyons who had previously been living in America, her address there being 1101 Gladstone Place, Alexandria, Virginia 22308, United States, left her husband and America on Monday 12th April 1982.

JCI: Mrs. Lyons and her son, Herbert Gavin Lyons returned to this 109 Broadmarsh Lane, Freeland, Oxford. This property is owned by the Plaintiff's parents and is a four bedroomed house with all the usual facilities. Herbert Gavin Lyons has his own room at the house and will be attending the school in Freeland for the time being.

JCI: 3. The Plaintiff was extremely concerned that the Defendant would make an attempt to kidnap his son and take him back to America with him. The Plaintiff therefore sought legal advise and I immediately issued an Originating Summons on the 14th April 1982 and the Minor, Herbert Gavin Lyons was made a Ward of Court on the 14th April 1982.

4. In view of the fact that I have had to apply for leave to serve the Originating Summons out of the jurisdiction of England and Wales and the obvious difficulties involved in arranging for process servers to serve the Summons in America, it will be impossible to arrange for a hearing of the Summons within 21 days. In the circumstances, I make this Affidavit in support of the Plaintiffs Application for

an Order that the Minor Herbert Gavin Lyons continue to be  
a Ward of Court after the expiration of 21 days from the  
14th April 1982.

Sworn by ALISON ROSEMARY JANE CLARK

AT 8 KING EDWARD ST. OXFORD

THIS

27<sup>th</sup>

DAY OF

April

1982

Before Me.

X Alison  
Clark

Joanna C. Thoin  
Solicitor

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Mayor and City of London County  
Court

Monday 28th June 1982

Before:

His Honour Judge Ranking

HERBERT LEE LYONS

(Applicant)

-v-

MARGARET VERITY LYONS

(Respondent)

(Transcribed from the official court tape recording by Harry Couns  
& Co., 61 Carey Street, London, WC2A 2JG)

MR S. HUGHES (instructed by Messrs Linnell & Murphy of Oxford)

appeared on behalf of the mother/respondent

MR J. HOLMAN (instructed by Messrs Herbert & Gowers of Oxford)

appeared on behalf of the father/applicant

J U D G M E N T

(Not revised)

A JUDGE RANKING: This is an application by ( husband and father that  
the child of the family, Herbert Gavin Lyons, be returned to the  
jurisdiction of the Commonwealth of Virginia in the United States  
of America. It is an application which is opposed by his wife  
and the mother of Gavin. It is necessary to look at the backgrou  
of this matter before one goes into the law.

B The background is this. Gavin was born on the 24th July  
1975, so he is 7 next month, and the husband and wife married in  
September 1971 in America. The father is an American. He is a  
C lawyer in the employ of the Government service. The mother is  
English, and she went to the United States in the 1960s. After  
she went there she visited her parents back in England - they live  
here still - from time to time. The matrimonial home was at  
D 1101 Gladstone Place, Alexandria, Virginia, and that is some eight  
miles from Washington. The house is in joint names, and throughou  
Gavin's life it has in fact been his home, and he was being  
educated at that place.

E The marriage became unhappy. It is admitted that the  
husband was drinking far too much. He says that the wife drank  
heavily. She in her affidavit says that in addition to his  
drinking he was surly and a bad influence on the boy. He was  
F inclined to acts of violence. The marriage broke down really  
sometime ago, and the wife was anxious that her husband would leave  
the matrimonial home. But he was not prepared to leave, and so  
they went on living there together until April 1982.

G In so far as the husband's drinking was concerned that is  
as I understand it no longer a problem. He has been able to cure  
himself of the habit. I have seen him in the witness box, and I  
must say that I was rather impressed by him as a witness. He  
H seems to me to be a responsible person who takes his responsibility

A in this matter seriously. He is, in my view, devoted to his son, as of course is his mother - there is no doubt about that. There is no dispute that the mother Mrs Lyons is a good mother and has looked after Gavin during his life well.

B On the 11th April 1982 the husband went to Indiana on business, and while he was away his wife took the opportunity of flying back to the United Kingdom with Gavin without her husband's consent, without his knowing that she was going and also without leaving any note for him at all, or any address that he could communicate with to contact her. That fact really puts this case into the category of what are called kidnap cases, although I must say the fact that it does fall within that category does not really influence my mind to any great extent. C I simply recite what happened as part of the history. D

E When the husband returned to the matrimonial home he of course was in a state of great anxiety not being able to find his wife or son, and he sent messages, having contacted the American police, to the wife's parents at the address at which he knew they lived, but they unhappily had moved to another address, 109 Broad-marsh Lane, Freeland, near Oxford, and so his endeavours to contact them in England were fruitless. The wife had in fact gone with F Gavin to England and when she got to England on the 14th April 1982 she made Gavin a ward of Court. Then there was an order on 30th April 1982 continuing the wardship. Gavin is a ward to this day. G

H Meantime the husband had issued proceedings in Virginia. On the 30th April 1982 he filed what was the equivalent of a petition for judicial separation alleging his wife's desertion, and asking for the custody, care and control of Gavin. Those

A proceedings were issued in the Fairfax Circuit Court. On the  
20th May 1982 the husband first discovered where his wife and  
Gavin were, when he was served with the Originating Summons  
constituting Gavin a ward of Court. His wife's address was of  
course in the Originating Summons. The wife was duly served  
with his proceedings. The husband instructed solicitors in the  
B United Kingdom, and on the 11th June 1982 he issued this application  
with a return of Gavin to the jurisdiction of Virginia for the  
decision of the American Court as to his custody, care and control

C In the case I have had before me an affidavit by the  
wife, and an affidavit by the husband. Both those persons have  
given evidence. Then there is the affidavit of a Mr Keith, who is  
the headmaster of Gavin's school in America. An affidavit from  
D Mrs Engleton, who was his teacher in America. Then there was a  
draft affidavit from <sup>Mr</sup> Mrs Daniels, who also came to Court and  
gave evidence on behalf of the husband. Then on the wife's behalf  
in addition to her own evidence there was the evidence of Mr and  
E Mrs Flower on affidavit, who are her mother and father and Gavin's  
maternal grandparents.

F It is quite obvious that the marriage is at an end; both  
the husband and the wife take that view. As I have said and  
repeat I am quite satisfied that they have both got a deep  
affection for their son Gavin, as one would naturally expect.

G The evidence so far as it goes is sketchy and nothing like  
sufficient for any court to decide custody or care and control,  
and it is not necessary that in these proceedings there should be  
the material on which the Court could carry out an investigation  
in depth as to who should have the custody, care and control of  
H Gavin. On this particular application, which is to return Gavin



A an American boy. He spent all his life in the United States,  
he has friends in the United States, his schooling is in the  
United States; and that the American Court is the proper forum  
decide his future. The husband's witnesses are in America,  
and it is desirable, of course, that all relevant witnesses  
B should be before the Court, and obviously more convenient from  
that point of view if the hearing is in America. If Gavin stays  
here there will in due course be proceedings for custody, care and  
control in the High Court pursuant to the wardship proceedings,  
C but until those proceedings are heard it is difficult to see how  
his father could have access to him, and difficult too to see how  
the American witnesses could effectively be heard.

D The wife's case is that Gavin has settled very well here  
with his maternal grandparents, and I do not think there can be  
any real doubt about that, and she feels that as she has decided  
to make her future here Gavin's future should be with her here,  
and it is better that an English Court should have the decision  
E as to custody, care and control.

I was referred to a number of cases. They were In re T  
F [1968] 3 All ER 411; In re TA reported in the Solicitors Journal  
volume 116, page 78, issue dated 28th January 1972; In re L  
[1974] 1 WLR 250; and then on behalf of the wife In re C [1978]  
2 All ER 230. It seems to me that in a passage in that last  
case, Re C, Lord Justice Ormrod really states the law in a  
G convenient way, and it is the law which appears to me should be  
applied in this case. He says at page 235C:

H "The principles to be applied, therefore, in cases of this  
kind, /and they are what are called kidnap cases/ where the  
court is called on to consider whether or not to make an  
order for the peremptory return of the child, are exactly  
as in all other decisions relating to the welfare of the

children. Those principles were set out by Lord MacDermot in the very well known passage in J -v- C which is quoted by Lord Justice Buckley. I will read it, in case this judgment finds its way to America:

"Reading these words in their ordinary significance, and relating them to the various classes of proceedings which the section has already mentioned, it seems to me that they must mean more than that the child's welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby when all the relevant facts, relationships, claims and wishes of parents, risks choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules on or determines the course to be followed'.

"In other words, using for a moment the American terminology all decisions relating to the welfare and future of children have to be decided on the 'best interests' of the children principle and no other glosses are to be put on that test. The learned judge, in thinking that he had to find some obvious moral or physical danger was clearly, in my judgment, putting on Lord Justice Buckley's judgment a gloss which was unwarranted."

So really the law is this; that the welfare of the child is paramount, and it is necessary in a case such as this to take into account a number of factors as in the ordinary straightforward case and perhaps the most important factor is who should have the day to day care of the child. That is obviously a very important factor here. But it seems to me that the American factor is also one of great importance. I am satisfied that Gavin should be with his mother. She has been and is a good mother. She has, I am quite sure, his interests at heart. He is not yet seven, and I think at the moment is certainly too young to be in his father's exclusive care. So I take the view that he should be with his mother and it would be something of a risk to hand him over to his father away from the presence of his mother.

As to the American factor, I attach very considerable importance to that, because Gavin is an American boy. His background is American. His heritage is American, and my view is that the

proper Court to decide his future should be the American Court. That is where he spent his life, that is where he was born; and as I say again he is an American boy. Most of the witnesses, except for the wife's mother and father who are in England, are persons who reside in the United States, and I appreciate that if the hearing were here it would be very difficult to get all the witnesses here. Mere affidavits are not always all that satisfactory. So for that reason alone it seems to me that the United States is the right place for this matter to be tried.

On the question of delay there was some argument as to which Court would be likely to decide the matter more quickly, whether it would be the American Court or whether it would be the English Court under the wardship proceedings, and it seems to me that there is not a great deal of difference in the likely time it will take for these proceedings to come before the Court. As I understand the evidence, and there is very little of it, it is likely that interim custody, care and control proceedings in America could come on in about a month. The state of the case here being as it is - obviously it is a case where a welfare report would be necessary and a number of more affidavits would be necessary - I should have thought a month here would also be the likely delay before the matter came before the Court. So on the question of delay I do not think there is very much to choose between the two jurisdictions.

But the question arises as to whether these two factors, the boy being with his mother until custody, care and control is decided and the American Court being the proper Court to have jurisdiction, can be reconciled, because the wife has not got independent means, she is legally aided, and as I have said she

A has expressed the intention to settle in this country. It is a  
difficult point really to decide, but in the course of the case  
the husband made certain offers in the form of undertakings which  
in my view solve it quite decisively in favour of the hearing  
being in America. He has offered to vacate the matrimonial  
B home in Alexandria, Virginia, to pay for the mother's and the boy's  
fares to return to the United States, so she will not have any  
financial liability there; and further to pay her a certain sum,  
which is in the region of \$100 a week, and all the outgoings on  
C the house, mortgage and so on, while she is there until the  
custody proceedings have been determined.

My view is that those undertakings are undertakings which  
are genuine. They are undertakings which the husband intends to  
D abide by, and if they are in fact complied with, as I believe  
they will be, it does enable the wife to return to America, to  
go back to her old home and the husband will not be there, and I  
can understand her reluctance to live under the same roof as him  
E as things are, and to have the boy with her and have the day to  
day care of him until something more permanent has been decided;  
and also to have an income on which she can provide for herself  
and for the boy.

F Only two points really arise on this in my view. The first  
is that once the husband has got back to America it would not be  
possible, while he was in America, to enforce those undertakings.  
G Here they can be enforced by an application for breach of an  
undertaking which is contempt of Court, but that cannot be done in  
an American Court in respect of an undertaking given in an English  
Court. Really in respect of these undertakings the Court has to  
H rely on the impression it forms of him as a man, and as I say he



A gave his promise and he seems to me to be a man of his word, and  
I think the Court can rely on his word. I propose to accept the  
undertakings.

B The other difficulty which might arise and which I ought to  
deal with is supposing the wife refuses to leave and return to the  
United States, in spite of the fact that she has been provided  
with the fare and has a home to go to there and a monthly income.  
C The question arises if she refuses to go should this order stand,  
in other words should the boy be returned to the jurisdiction of  
the United States Court. I think he should; I think the order  
must stand. Although I think it is best that Gavin should be with  
his mother if that cannot be satisfied because she is not  
prepared to go back to the United States, then I am afraid that  
D Gavin must be returned. I think he would be properly looked after  
by his father who is conscientious. It would be a very serious  
blow to him to be parted from his mother, but I think he would  
have to go back and those proceedings be heard in America. I  
E must say that I hope and expect the mother will feel herself able  
to go back in the light of these undertakings.

F So the order of the Court is that on the undertakings given  
the order will be on the lines of the draft which has been prepared  
but which has not been finalised by counsel.

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## IN THE HIGH COURT OF JUSTICE .

## FAMILY DIVISION

Oxford District

PRINCIPAL REGISTRY

Before Mr His Honour Judge Ranking  
(Sitting as a Judge of The High Court)

in Chambers

In the matter of Herbert Gavin LYONS

a minor

Supreme Court Act 1982

and in the matter of the /~~Law Reform (Miscellaneous Provisions) Act 1940~~

and in the matter of the Guardianship of Minors Acts 1971 and 1973

Between Margaret Verity LYONS

Plaintiff

and Herbert Lee LYONS

Defendant

Upon hearing Counsel for the Plaintiff and Counsel for the Defendant and upon reading the affidavits set out in the Schedule hereto and having taken the oral evidence of the Plaintiff and of the Defendant and of the witness on his behalf and;

Upon the Defendant/Husband undertaking to the Court, through Counsel and personally,

1. <sup>NOT</sup> To pay in advance the fares for the Plaintiff/Wife and the minor Herbert Gavin LYONS to return to the Matrimonial Home at 1101, Gladstone Place, Alexandria, Virginia, U.S.A.
2. To vacate the said Matrimonial Home before Friday 9th July 1982 so as to permit the Plaintiff/Wife and the minor Herbert Gavin Lyons to live there and thereafter not to return thereto unless and until a Court of Virginia, U.S.A. otherwise orders or permits;
3. To pay <sup>£1,000</sup> under and until a Court of Virginia, U.S.A. otherwise orders or directs;
  - a. the mortgage (including all local taxation)
  - b. reasonable household bills to include reasonable water, gas, electricity, telephone, car repair and medical bills and
  - c. to the Plaintiff/Wife the weekly sum of £/125.00 payable weekly in advance for the maintenance of the Plaintiff/Wife and the minor Herbert Gavin Lyons the first such payment to be made on the day ~~dated the~~ <sup>day of</sup> (Continued Overleaf) 10



that the Plaintiff/Wife actually resumes living at the said Matrimonial Home;

And upon the Plaintiff/Wife and Defendant/Husband each undertaking not to remove or damage any items of furniture or valuables presently situated in the said matrimonial home unless and until a Court of Virginia, U.S.A. otherwise orders or permits.

IT IS ORDERED THAT:

1. The Plaintiff/Wife do return the minor Herbert Gavin Lyons to 1101 Gladstone Place, Alexandria, Virginia, U.S.A., not later than Friday the 9 July 1982.
2. The minor Herbert Gavin Lyons do cease to be a Ward of Court on the 30 September 1982 unless meantime the Wardship is extended or discharged upon the application of either party on notice.
3. No order as to costs save that the costs of the Plaintiff/Wife be taxed on a common fund basis in accordance with the provisions of Schedule 2 to the Legal Aid Act 1974.
4. Liberty to apply; reserved to His Honour Judge Ranking (sitting as a Judge of the High Court).

AND IT IS RECORDED THAT:

1. The said undertakings are given by the Defendant/Husband on the terms stipulated by the Court as the condition of making the order herein;
2. The said undertakings remain binding upon the Defendant/Husband until;
  - a. Orders are made by a Court of Virginia, U.S.A. to supersede them,
  - b. The wardship cease under the provision of paragraph 2 of ~~the~~ this order, or
  - c. The Defendant/Husband is released from them by the Court, whichever shall be the earlier.
3. The undertaking to pay the fare is without prejudice to the Defendants/Husbands right to argue in any matrimonial property proceedings between the parties that he should be credited with the amount of such fares.

Dated this 28th day of June 1982.

SCHEDULE OF AFFIDAVITS

DEPONENT

DATE OF SWEARING

Plaintiff	22nd June 1982
Defendant	28th June 1982
Herman Keith	18th June 1982
Donna Engelson	18th June 1982
Carl Allison Daniels	25th June 1982
Fred Flower	24th June 1982
Elizabeth Flower	24th June 1982
Alison Rosemary Jane Clark	27th April 1982
Alisqr Rosemary Jane Clark	27th April 1982



FILED

SEP 2 1982

JAMES E. HOOFNAGLE  
Clerk of the Circuit Court  
of Eastern District, Va.IN THE SUPREME COURT OF JUDICATURECOURT OF APPEALON APPEAL FROM THE HIGH COURT OF JUSTICEFAMILY DIVISION(His Honour Judge Ranking sitting as a Deputy  
Judge of the Family Division)Royal Courts of JusticeTuesday 6th July 1982

Before:

LORD JUSTICE ORMRODLORD JUSTICE MAY

and

MR. JUSTICE LATEY

Re "L" (Minor)

(Transcript of the Shorthand Notes of The Association of  
Official Shorthandwriters Limited, Room 392, Royal Courts  
of Justice, and 2 New Square, Lincoln's Inn, London WC2).MR. J.F. GIBBONS (instructed by Messrs Linnell & Murphy, solicitors,  
Oxford) appeared on behalf of the Appellant (Plaintiff).MR. ROGER I. GRAY, Q.C. and MR. E.J. HOLMAN (instructed by  
Messrs Herbert & Gowers, solicitors, Oxford) appeared on  
behalf of the Respondent (Defendant).J U D G M E N T

(Revised)

A LORD JUSTICE ORMROD: This is an appeal by a mother from an order  
made in wardship proceedings by His Honour Judge Ranking sitting  
as a High Court Judge on 28th June this year. The learned judge  
made what is sometimes called "a peremptory" order for the  
B return of this child to the United States in order that the  
decision-as to the child's future should be made by the relevant  
court, the court of Virginia. The mother now appeals to this  
court against that order.

C The facts briefly, because we only have a brief  
outline, are these. The mother who is English - her parents live  
just outside Oxford - has lived in America for a considerable  
number of years; long before she was married. In 1971 she  
D married the father, who is a State Attorney in America, and they  
'had one child called "G" who was born on 24th July 1975. (I  
should say at this stage that this is a case which must not be  
reported in a form in which the parties are identifiable).

E The father is 48 and the mother 37. He is a United  
States' citizen; she is a United Kingdom citizen. They lived  
for some time in Alexandria, just outside Washington, in a  
jointly owned house.

F As I have said, I will say very little about the  
background because we do not know much about it, but the marriage  
was plainly one of great unhappiness, which has continued for some  
time. It is common ground that the father had developed an  
G alcohol problem and he concedes that he had developed this  
condition which, by May of last year, had become really serious and  
necessitated treatment. He says that since then he has largely  
recovered, and there is no evidence that he has not. He makes  
H allegations about the mother's drinking habits also; whether  
58 that is right, we do not know. There is obviously also an issue

A between the father and the mother about the mother's state of mind. That, we cannot resolve in these proceedings, although it will have to be resolved at a later date.

B On 11th April 1982, while her husband was away on business, the mother finally left her home in Alexandria with the child and came to this country to her parents' house. She and the boy have been here ever since. The boy will be 7 later this month. She immediately consulted solicitors on 14th April and issued her originating summons making the child a ward, and C on 20th May that summons was served on the father. It is right to say, and from his point of view it is a matter that he will be justly aggrieved about, he had no idea where the mother was and his efforts to get in contact with her failed, until he discovered D her address when the summons was served upon him. With great promptitude on 11th June 1982 he made an application in the wardship proceedings for an order that the child be returned forthwith to the United States. The little boy had been at E school in Virginia for a year or two.

The problem we have to resolve is whether or not the peremptory order should have been made on the facts of this case.

F We have the advantage of an extremely careful judgment by Judge Ranking in which, as far as I can see, he has taken into account all the relevant matters, subject to one serious comment. He was impressed by the father as a witness. He G noted - and this is very important - that, in the father's affidavit, there was no suggestion whatever that the mother was anything other than a good mother, who had looked after this little boy all his life. He was faced with an exceedingly difficult H situation where, from the point of view of convenience, and so on, one would feel that this was a case which would be better dealt 59



A with by the court in Virginia, rather than in England; and, of  
course, the fact that the mother had acted unilaterally and  
brought the child to this country, naturally means that any court  
starts with a certain sympathy for the father who has been treated  
B in this way. I put it in that way because we do not know  
anything about the circumstances which led up to the mother's  
decision. When investigated, it could well be that the mother's  
decision turns out to be a sensible and reasonable one in the  
C circumstances; equally it may turn out not to be. We are,  
again as I say, in the state of not knowing the real position.

I think the law is now reasonably clear, and I hope  
it was clearly stated in my judgment in the case of Re "R" (Minors)  
D reported in 1981 2 Family Law Reports, p.416. That was a judgment  
in which I reviewed all the relevant cases on this matter and  
the conclusion of that judgment is quite shortly stated in a  
passage at the bottom of page 425, when I said:

E "It follows that the strength of an application for  
a summary order for the return of the child to the  
country from which it has been removed, must rest,  
not on the so-called 'kidnapping' of the child, or  
an order of a foreign court, but on the assessment  
of the best interests of the child. Both, or either,  
F are relevant considerations, but the weight to be  
given to either of them must be measured in terms of  
the interests of the child, not in terms of penalizing  
the 'kidnapper', or of comity, or any other abstraction.  
'Kidnapping', like other kinds of unilateral action  
in relation to children, is to be strongly discouraged,  
but the discouragement must take the form of a swift,  
realistic and unsentimental assessment of the best  
interests of the child, leading, in proper cases, to  
G the prompt return of the child to his or her own  
country, but not the sacrifice of the child's welfare  
to some other principle of law."

At this stage we are looking at the problem in a short  
focus, considering whether the best interests of the child would  
H be served by ordering his immediate return to Virginia and for  
60 the proceedings about his future to take place there, or whether

A it would be better for him to remain in the care of his mother,  
pending the determination of his future in the courts in this  
country. I say that, fully aware of the pull which in such  
B circumstances the court of the nationality of the child inevitably  
has, but pulls of nationality operate on parents and not very much  
on children.

C The question is, what are the rival proposals in this  
case? The mother has a perfectly good home for the time being  
with her parents, where the little boy is properly looked after,  
perfectly safe and, apart from being separated from his father  
(which is a serious matter from his point of view) he is for  
the time being perfectly all right. He has often stayed with  
D his grandparents and knows them very well, and for him his  
abrupt removal from the United States is little more than a  
slight change in the pattern of life to which he has been accustomed  
in the past. From the father's point of view, of course, it is  
E a very serious matter. He feels extremely strongly about it.

In his judgment the learned judge made a great effort to  
find a compromise between these two conflicting views; the  
conflict between the boy's best interests at the moment, and the  
F natural feeling that his future ought to be decided in the  
country from which he comes. He tried to balance them. At  
the luncheon adjournment the father offered some very far-reaching  
undertakings to the mother: He offered that, if she would come  
G back with the child, he would remove himself from the matrimonial  
home and provide her with means to live on, keep up the mortgage,  
pay all the household bills, and so on, so as to enable her to  
return and for their matrimonial proceedings to be settled in  
H the court of Virginia. The mother was equivocal, so we are



A told, in her response to that last minute proposal by the father,  
but we are told now by counsel that she is not prepared to  
return to the United States, relying on those undertakings.  
We, therefore, have to deal with the case on the footing that,  
if the order stands, the child will go alone, or with his father,  
B back to Virginia and be separated from his mother pending the  
further proceedings in that State.

C The learned judge, obviously from his judgment, was very  
hopeful that the mother would accept the father's proposal and  
return with the child to the United States, and there is no doubt  
that, if she had been prepared to do that, no court in this  
country would have made any difficulty about it; rather the  
contrary. But the judge faced the alternative to some extent,  
D at the end of his judgment, where he says:

E "The question arises if she refuses to go should this  
order stand, in other words should the boy be returned  
to the jurisdiction of the United States Court. I think  
he should; I think the order must stand. Although I  
think it is best that G should be with his mother if  
that cannot be satisfied because she is not prepared  
to go back to the United States, then I am afraid that  
G must be returned. I think he would be properly  
looked after by his father who is conscientious."

F Earlier in his judgment he had made a finding that, in  
his view - and one can well understand it - it was very much to  
this boy's interests not to be separated at this stage from his  
mother. That was obviously good sense, having regard to the  
age of the child and the fact that he has a perfectly good mother.

G The question that we have to consider is slightly  
different from the one which the learned judge had to consider  
and that is, whether it is in this child's interests to be sent  
back to Alexandria in the care of the father? On that  
H point we have virtually no evidence. There is nothing in  
the father's affidavit as to any plans that he has to meet the

A problem. He has not got any immediate plans. There is nothing  
B from which one can infer that he might be able to get help; his  
C mother is dead: there is nothing about friends who could stand  
D in. All we have - and I do not minimise it - is that the father  
E impressed the learned judge favourably and he felt he would make  
F suitable arrangements, but, alas, that is not the issue. The  
G question we have to decide is, if the mother will not accept the  
H proposal, is it in the best interests of the child that he should  
return to the United States? I ask myself the question, "what  
advantages are there for this child, in those circumstances, if  
a peremptory order is made?" What advantage does the child  
gain? I cannot answer that question. I cannot see that the  
child's interests will be preserved or forwarded. There is no  
real difficulty, from the father's point of view, in conducting  
subsequent proceedings in this country. Certainly no greater  
difficulty for the father than the mother, if the position is  
reversed. Ought we to take the risk of sending this child back  
to the father, a father who is bound to be away from home a  
great deal, if his present way of life continues; a father  
with an uncertain history in the past and with no back-up, so  
far as one can see? So there are real disadvantages to the  
child in his going back to Virginia without his mother and no  
real advantage. Of course, there may be advantages in the  
child's future being decided in the country of his origin, which  
may be real, but that has to be set off against the actual day  
to day considerations of who will look after him.

In the background of the case, one has to say this.  
It is not at all clear that the father has faced the fact that  
his marriage has finally come to an end, and that the overwhelming  
probability is that the mother, in any event, will live in England

A It is not at all clear to me that he has faced up to the problems  
which now confront him, so far as this little boy is concerned.  
Further thought on his part might well mean that, if there is no  
possibility of a reconciliation, perhaps inevitably a child of  
B this age should be with the mother, having regard to his own  
difficulties, and therefore it would not be sensible to send this  
child back to America at this moment.

C All we are dealing with at the moment is a short-term  
issue. I know the apprehension of counsel that, once this court  
gets hold of it, then the child will inevitably spend the rest  
of his young life in England. It may be that that is going to  
be the answer, but we do not know that; we are not deciding that  
D at this stage. One thing that is surely clear is that, when  
this matter is heard on its merits, one of the factors which will  
be uppermost in the mind of the judge dealing with it, is, is  
this child in the future going to grow up as an American child  
with an English mother, or as an English child with an American  
E father? By not making a peremptory order, I do not think that  
that decision will in any way be prejudiced. It would be  
lamentable if a short delay, a matter of six weeks or two months,  
F whatever it is, should be used as an argument for saying that the  
child should stay here. That is a very primitive form of  
argument and not one to which much weight should be given, in my  
view. At the most, this child will be spending six months in  
G England which, at the age of 7, is not very long. I do not,  
for my part, take at all seriously the suggestion that, if the  
matter comes to be dealt with in this court, the ultimate  
decision as to this child's future will be prejudiced one way  
H or the other. It would be lamentable if it were so.

A Looking at it in the short term, as I have said I cannot discover  
any advantage to the child in his being returned without his  
mother to the United States, and therefore I think the learned  
judge's order should be varied in the light of the new circum-  
stances, those being the mother's refusal to go back to America.

B I know quite well that that is an extremely irritating  
situation. It appears that the mother can manipulate the situa-  
tion simply by flatly refusing. But one has to be a little more  
C realistic than that. What her prospects are, if she goes back  
to the United States and conducts the litigation there, is far  
from clear to me. There is no indication of how she would be  
legally represented in what may be an expensive and long-drawn  
D out battle. Her position may be exceedingly difficult when she  
gets there and I do not think that it is merely a forensic  
manoeuvre by her to decide that she will not go back in any  
circumstances. I think that what she is saying is the realistic  
E statement that her marriage having completely broken down, having  
no roots and no connections in the United States, her obvious  
course is to return to her family in England, and that is the  
reality of the situation. To my mind this case, like all these  
F cases, needs to be faced in terms of the reality of the situation  
and not in any other fashion. The court should hesitate a long  
time before putting extreme pressure on the mother to return to  
Virginia.

G I do not think that the learned judge had sufficient  
factual information before him to deal with the problem that we  
have had to deal with and, as I have indicated, it is obvious  
from his judgment that he hoped he would not have to deal with  
H it. Had he had to deal with it, of course, he would certainly



have required a great deal more evidence.

A For those reasons, I would discharge the learned judge's  
order and, simply for the sake of completion, make an interim  
care and control order in favour of the mother and direct that  
B the substantive issue in this case be tried at the earliest  
possible moment in London, certainly during the vacation if  
possible, and, if the father intends to fight it, the evidence  
should be kept to the minimum that is required for the purpose  
C of making a decision as to whether or not the boy should spend  
the next few years here with his mother, or in the United States  
with his father. I do not think that an enormous amount of  
history of the background is required, although it may be that  
the father will wish to put some evidence before the court if he  
D continues to say that the mother is mentally unstable. But my  
hope is that the matter will be dealt with as quickly as possible  
in this court, and it can be dealt with very quickly if the  
parties can be ready.

E I would therefore allow the appeal.

LORD JUSTICE MAY: I, too, would allow the appeal for the reasons  
referred to by my Lord, and would only wish to add two comments  
F of my own.

First, in the course of the argument, counsel for the  
father suggested that if this court was in no position, on the  
material before it, to decide what was in the boy's best interests  
G then (as he put it) "one is thrown back to the second part of  
the lock and thus to the courts of the country in which the boy  
was born and brought up until April of this year". That  
argument necessarily involves the suggestion that this court  
H should abdicate what is, in fact, its duty in coming to a

A decision upon this application today in these proceedings.  
B These are proceedings within section 1 of the Guardianship  
of Minors Act 1971 and it is our duty to decide the relevant  
question for our decision on the basis that the interests of  
the child are paramount. When one approaches it from that  
point of view, as I have said, I agree entirely with the analysis  
that my Lord has set out.

C The second point which I would wish to make, and to which  
my Lord has also referred, is that understandably and forensic-  
ally, counsel for the father also submitted that if the court  
were to decide that the order below should be discharged, the  
court was making it more and more difficult as the months or  
D weeks passed, for a court, if it should be the right decision  
to make, to decide to send the child back to Virginia, parti-  
cularly having regard to the background of the child to date.  
That, I think, is a forensic point. I do not believe that any  
E court, faced with the necessary long-term decision within the  
next few months, or indeed weeks, is going to be in any  
substantial way affected by the mere fact that the child has  
been in this country since April or May. That is a matter  
F which will weigh lightly, if at all, with the court faced  
with the final decision. With those additional comments, I  
would also be in favour of discharging the order below.

G MR. JUSTICE LATEY: I agree wholly with what has been said by  
both my Lords, and have nothing to add.

H Appeal allowed. Costs reserved to the trial  
judge. Interim order for care and control to  
the mother. Reasonable access to the father.  
Undertakings discharged.



# In the Supreme Court of Judicature

COURT OF APPEAL

(DIVORCE)

OXFORD DISTRICT REGISTRY

FILE NO: 1982 L 161

Before Lord Justice Ormrod  
Lord Justice May  
Lord Justice Latey

sitting at the Royal Courts of Justice, Strand, London

on the 6th day of July 1982

LYONS against LYONS

(Interlocutory appeal in the matter of the Supreme Court Act 1982 and in the matter of the Guardianship of Minors Acts 1971 and 1973 between, Margaret Verity Lyons, the Plaintiff and Herbert Lee Lyons, the Defendant).

On reading the notice of appeal dated the 2nd day of July 1982 filed by the Plaintiff the mother by way of an appeal from the order of His Honour Judge Ranking sitting as a Judge of the High Court on the 28th day of June 1982 and on hearing Counsel thereon on behalf of the Appellant (mother) and Counsel on behalf of the Respondent (father).

IT IS ORDERED THAT:-

1. The said appeal be allowed.
2. The said order and undertakings given to His Honour Judge Ranking on the 28th day of June 1982 be discharged.
3. The child Herbert Gavin Lyons do remain in the interim care and control of the Plaintiff Margaret Verity Lyons until further <sup>order</sup> with reasonable access to the Defendant Herbert Lee Lyons.
4. There be a fresh hearing of the summons to be heard as early as possible upon application to the Clerk of the Rules. Certified fit for vacation.
5. There be submitted to the Court a Court Welfare Officer's report such report to be expedited.

Costs reserved to trial Judge.

Costs of the Plaintiff to be taxed on ~~discretionary~~ <sup>fixed</sup> fund basis in accordance with the provisions of Schedule 2 to the Legal Aid Act 1974.



*Heather Angel*  
Registrar.

RECEIVED  
JAN 10 1984  
RICHMOND, VIRGINIA

RECORD NO. 822102

2. That the Appellant was present at the hearing

before the High Court; was represented by counsel and presented evidence on his behalf.

3. That Section 20-146 of the 1950 Code of Virginia, as amended, when read in conjunction with Section 20-136, requires that custody decrees of foreign nations be recognized and enforced by the courts of this State, " ... if reasonable notice and opportunity to be heard were given to all affected persons".

4. That Appellant had reasonable notice of each and every hearing in England and was present and represented at each stage of the proceedings.

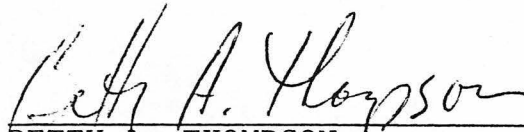
5. That since the conditions set forth in Section 20-146 for the recognition and enforcement of custody decrees of foreign nations have been complied with, the courts of this State are required to recognize and enforce the Order of the High Court of Justice entered on December 20, 1982, granting the control and care of Gavin Lyons to the Appellee, Margaret Lyons.

WHEREFORE, the Appellee respectfully requests that this appeal be dismissed as being moot, since a valid custody decree has been entered by the High Court of Justice; and that since the courts of this State are required to recognize

and enforce the said decree, the issues before this Court have been rendered moot.

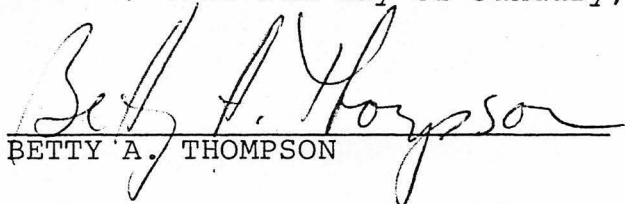
Respectfully submitted,

MARGARET VERITY FLOWER LYONS  
By Counsel

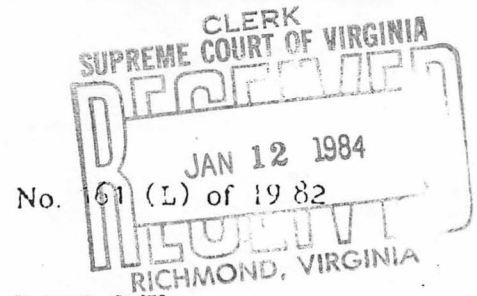
  
\_\_\_\_\_  
BETTY A. THOMPSON  
COUNSEL FOR APPELLEE  
1800 N. Kent Street, Suite 1001  
Arlington, Virginia 22209

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion was mailed, postage prepaid, to Bruno A. Ristau, Esq., 1218 Sixteenth Street, N.W., Washington, D.C. 20036, and Gordon P. Peyton, Esq., 117 North Fairfax Street, Alexandria, Virginia 22313, Counsel for Appellant, this 9th day of January, 1984.

  
\_\_\_\_\_  
BETTY A. THOMPSON

Order



# IN THE HIGH COURT OF JUSTICE

## FAMILY DIVISION

OXFORD DISTRICT REGISTRY PRINCIPAL-REGISTRY

Before Mr Justice Wood

in Chambers

In the matter of RE: Herbert Gavin LYONS

a minor

and in the matter of the Supreme Court Act 1981

and in the matter of the Guardianship of Minors Acts 1971 and 1973

Between Margaret Verity LYONS

Plaintiff

and Herbert Lee LYONS

Defendant

Upon hearing Counsel for the Plaintiff and Defendant on the originating summons herein dated the 14th April 1982 the proceedings herein having been restored for hearing by order of the Court of Appeal dated the 6th July 1982;

And Upon reading the Court Welfare Officers reports and affidavits as set out hereunder and having taken the oral evidence of Mr Pitcher, (Court Welfare Officer) and of the Plaintiff and the witnesses on her behalf and of the Defendant and a witness on his behalf;

### IT IS ORDERED:-

1. That the minor Herbert Gavin Lyons do remain a Ward of this Court during his minority or until further order;
2. That the said minor do remain in the care and control of the Plaintiff until further order;
3. That the Defendant be allowed access to the said minor 3 times a year in the United States of America as follows:-
  - (a) 2 weeks in the Easter holidays in 1983;
  - (b) 6 weeks in the Summer holidays in 1983;

... after the Christmas holidays in 1983 (the actual Christmas holiday to be spent in England) and thereafter annually;

Dated the

day of (Continued Overleaf)

19

That there be further reports from the Court Welfare Officers as follows:-

- (a) In respect of the U.S.A. holidays by the reporting officer after each period of access; and
- (b) By the English Court Welfare Officer in the Autumn of 1983 on the question of access;

That there be no order as to costs here or the hearing before the Court of Appeal on the 6th July 1982 save that the costs of the Plaintiff be taxed on a common fund basis in accordance with the provisions of Schedule 2 to the Legal Aid Act 1974;

IT IS DIRECTED that the proceedings herein be reserved to Mr. Justice Wood with leave to both parties to apply to Mr. Justice Wood ex parte if the occasion arises;

SCHEDULE OF COURT WELFARE OFFICERS REPORTS

AND

AFFIDAVITS READ

1. U.S.A. Court Welfare Officer's report by Arlene M Starace dated the 12th June 1982;
2. Mr Pitcher Court Welfare Officer dated the 14th December 1982;

AFFIDAVITS

Deponent

Sworn

Plaintiff

22nd June 1982

" "

13th December 1982

Defendant

28th June 1982

Donna Engelson

18th June 1982

Hermann Keith

18th June 1982

Carl Allison Daniels

28th June 1982

Fred Flower

24th June 1982

Elizabeth Flower

24th June 1982

Mary Ann Vernallis

18th August 1982

Molly Lear

13th December 1982

Grace Virginia Woodward

30th November 1982

Pamela Stokes

18th August 1982

Pauletta Wild

19th August 1982

Florence Meschter

26th August 1982



Dated the

20th

day of

December

1982



B E T W E E N :

MARGARET VERITY LYONS

Plaintiff

- and -

HERBERT LEE LYONS

Defendant

JUDGMENT OF WOOD, J  
20th DECEMBER 1982

The issue before me is as to the care and control in the foreseeable future of the little boy Gavin who was born on the 24th July 1975. His father is American and his mother is English. The mother was born on the 17th January 1942 and is forty and the father was born on the 18th February 1934 and is forty-eight.

The father still lives at the matrimonial home 1101 Gladstone Place, Alexandria, Virginia, U.S.A., which is towards the outskirts of Washington. The mother is now living with her parents at 109 Broadmarsh Lane, Freeland, Oxfordshire, which is a village to the west of Woodstock and between Woodstock and Burford. It is a small village.

On the 12th April 1982, the mother left the matrimonial home in

Alexandria and came to this country bringing Gavin with her. She moved out lock stock and barrel leaving the bicycle and ping-pong table. She sold the piano. It was a carefully organised move. Proceedings were started by an originating Summons dated the 14th April and as is apparent on the face of it the Summons cannot be served later than twelve months from issue. The matter was brought before the District Registrar in Oxford on the 27th April, who gave leave for a service of the originating Summons out of the jurisdiction but no time limit for this achievement. The matter came before him again and on the 30th April, he ordered the Wardship should continue. By a letter which has not been seen by me dated the 4th May, the Solicitors requested the Order. On the 12th May the papers were sent to Virginia and were served on the 20th May. Until that time despite attempts of discovery of the whereabouts of the mother and the child, the father was unable to find anything. The mother's parents have recently moved from Leadbury to Freeland. There was a conspiracy of silence preventing the discovery.

The father discovered the whereabouts by the service of the originating Summons. On the 11th June he issued a Summons here for an Order that Gavin be returned to the U.S.A. On the 14th June the mother issued a Summons asking for care and control. On the 21st June, the District Registrar order Affidavits and <sup>setting</sup> down and expedition of the father's Summons. This was heard by His Honour Judge Rankin on the 25th June who gave his Judgment on the 28th June and made a complicated Order with certain undertakings that Gavin be returned to the U.S.A. I have a copy of the Judgment of the learned Judge before me and note what he says about the father i.e. that he was impressed by him. On the 2nd July there was a notice of appeal and on the 6th July 1932 the Court of Appeal reversed the decision of the learned Judge on the basis that at that stage the Order was a summary order i.e. before

full evidence was heard. The view was expressed that there was no prejudice to the father with whom they sympathised <sup>because</sup> before of the mothers carrying out of her intentions and delay. No-one could take

the point that a boy of seven could have become established in the country over that time. The Judgments of the Court of Appeal are before me.

Matters were not idling on the other side of the Atlantic. On the 30th April 1982 in the Circuit Court of Fairfax County the father filed his Bill of Complaint for divorce and care and control of Gavin. An Answer and Cross-Petition were filed by the mother and an application for care and control and financial relief. In July the father had moved for a motion that Gavin be returned to Virginia. This came back before the Court on the 3rd August and an Oral Order was made which was drawn up on the 23rd September. Having read the Order of the Court of Appeal, the Court in Fairfax County refused the father's application for an Order returning Gavin on the basis of comity with the Court of Appeal. They did however order telephone access twice a week up to twenty minutes.

On the 26th October the father appealed to the Supreme Court of Virginia but the appeal was not allowed.

On the 7th October the Decree of divorce was recommended on the basis of desertion and the mother's Cross-Petition was dismissed with prejudice which means her claims for financial relief for herself were also dismissed. It was recommended that the final Decree be obtained at the end of twelve months but it is not clear whether that is from the desertion or the hearing.

On the 24th November the father applied to the Supreme Court on the custody issue which is to be heard. <sup>He</sup> The Petition<sup>to</sup> commit the mother for failing to comply with the telephone access order. On the 3rd December she was ordered to appear on the 21st January 1983.

This is a complicated history of proceedings. On the appeal the Court of Appeal directed that the matter be reheard. Unfortunately the two weeks envisaged by the Court of Appeal became nearly six months in length.

With regard to the history of the marriage, there are fairly detailed Affidavits and oral evidence. I do not think that this is essential for a proper understanding to go into a detailed history.

The parties met in 1968 when the mother was 26 and the father 34. by 1970/71 they were living separately and seeing a lot of each other. Picture given by the father which I accept is that the mother was keen to get married. He said alright. They went to the Court house got a licence, had their blood tested and the whole thing was over in half an hour.

The earlier years were quite happy and on the 24th November 1972, there was a church ceremony. There was a bit of subterfuge for the benefit of the father's mother.

In March 1979, the father's mother died and this affected him deeply. In the autumn of 1979 he was suffering from a minor degree of depression. It could not have been too bad as he was a senior Counsel in the Civil Aviation Department of the Department of Justice in Washington i.e. responsible for advising the Government in enquiries in connection with air crashes and was at the top of his particular ladder.

By 1979 after eight years of marriage, the mother had decided that it was over and never changed her mind. In 1980 she told the father that she was taking advice. The physical side of the marriage was at an end.

The father concedes that he had a drinking problem and undoubtedly was drinking too much. He was away from home a great deal. The mother complains he was jealous of her and accused her of affairs. There were a few rows in front of Gavin. She complained about his habits i.e. watching television to the early hours of the morning. She says this was disruptive as to their way of life and is probably right. She says on occasions that he was violent towards her but I do not think that serious.

The pressure between the two was building up and the relationship of the father and his in-laws was strained. He was not prepared to pay for all the trips to England and there was therefore friction.

The mother took advice from at least three firms and there was a discussion over settlement over a substantial number of years. These discussion always broke down over Gavin. The father said that one way of solving the problem in Virginia was by having a joint custody order. The parents would each occupy a dwelling within reach of the school and if possible in the same area and would then have for example alternate years with each. He was looking for that sort of settlement.

By the end of May 1981, the pressure was extreme and the father went on a fortnight's drinking bash. He drank grossly and ended up in hospital in a very serious physical state. He was in the psychological ward. He was out after a few weeks and since that time has not touched alcohol in any real sense. The Doctors say that if he did

it would be fatal. I am satisfied that he has pulled himself together on that front.

Since the summer of 1981, the mother says that the father is trying

to alienate Gavin's affection. I agreed with him that her fears were exaggerated. His vision is clear because he was not drinking but spending more time with Gavin. He often went on trips when the mother would not want to go. By this time there was nothing he could do right in her eyes.

In October 1981 Gavin was showing some symptoms - wetting his trousers from time to time, not sleeping well, whining and feeling the pressures of the household. The mother took him on the advice of her lawyer to Dr Gantz who is a child psychiatrist. He asked the mother to go six or seven times. Gavin went once and the father wants to find out what was going on. The analysis was not finished and during February 1982, the mother cancelled the whole series of appointments and Dr Gantz had not achieved the analysis although he said there was nothing much wrong. The mother was already plotting to leave and had clearly decided to carry out her plan to go to England. The father had warned her that he would prevent her by injunction.

She left on the 12th April. She now has no further interest in the U.S.A. save that she owns a half interest in the matrimonial home. Her half share is valued at £18,500. She has always had capital available there. This capital will be available subject to the costs of the U.S. received as there is a charge from the proceeds of the house and the costs here which the mother will have to pay.



The father for some six weeks did not know where Gavin was. On the 20th May he tried to speak to Gavin and it was put to him to deal with the mother through her lawyers. There was no reaction from the lawyer. On the 30th May he was refused the call again. On the 6th June it was the first time he was in touch with Gavin. There were some problems with the telephone calls in August hence the Order and there have been some problems since. The mother did not see fit to let the father know wherethey were or that Gavin was safe and well and it is a sad comment on the bitterness in this case but this has to be said.

With regard to the families on each side:- The mother's parents are both living. The Grandmother is 73 and the father is 72. The Grandfather was a senior civil servant and his funds available. He was able to help provide fares for his daughter to leave and give her financial support since she has been here on Social Security. She has a sister Joy and nephew Christian who is six, who also live in Freeland. There is accommodation there and possible the mother might move in there. Joy herself has been through divorce after a five year marriage to a German Doctor, and again the Grandparents helped in the final solution. Christian sees his father occasionally.

The father's family is small.

Since those proceedings the father has seen Gavin on three occasions:-

1. On the 26th June 1982 on a Saturday at the time of the hearing of Judge Rankin. Access was arranged between 10.00am to 6.00pm and the father and Mr Daniels who is Gavin's Godfather,

and retired Lawyer got a taxi from Oxford driven by a Mr Jenkins, who had contacts with the U.S.A. They arrived in Freeland.

Apparently the Police had been notified of the access and a police Constable in uniform had been to the house earlier. The number of the taxi had been taken and Joy was encouraging Gavin to come back earlier if he wanted to stop. The handover could scarcely been worse.

However, the visit was a success. After the initial period of being uptight, Gavin relaxed although he was worried about being late back but it seemed be a splendid day.

2. Sunday 12th December. The father and Mr Daniels came to Oxford to the Randolph. Gavin spent the night there and had a pleasant weekend. Mr Pitcher, the Welfare Officer, was there and comments about that period of access on page three of his report. (This is the bit to do with Gavin being in tears when he left, which caused the mother to speed her departure although before leaving she made him change his shoes. A golden opportunity for the mother to show some rapport before the father and Gavin was missed). This was a successful period of access. The father told me about the talks and his notes on the envelope.

3. On the 18th December there was perfect access.

With regard to each parent, the mother is described as a good mother and the word mechanical is used in that connection, which indicates that her day to day care of Gavin is beyond criticism but does not consider that her action has been in the best interests of Gavin over the last few months to year. I take the view that she has been a good mother in the practical sense but the symptoms Gavin was showing in the States arise from the friction between the parents in the home and lie at the door of either parents.

The mother is highly intelligent but very bitter. She calculated her actions. She is rightly described as ruthless. There was a deliberate campaign to hide Gavin and she calculated to cause the greatest possible hurt to the father. This can not be in the best interests of the possible future relationship of the two parents which is vital to the well-being of Gavin. I think that she is very misguided and she rendered her apologies through Counsel and I accepted. I hope my comments will not go unheeded. Mr. Pitcher was worried about the bitterness of her attitude and felt that the greatest danger was of Gavin failing to have a lasting relationship with the non-custodial parent if Gavin was with his mother. This is an extremely important factor in any child's life.

The father impressed both Judge Rankin and me. He had minimised his drink problem. He is trying to be accurate and not to express his views too strongly about the way the mother had behaved. The mother says he had no real affection for Gavin but I do not accept that at all. She would not accept that they were devoted and I also reject that. She told me he is not capable of looking after Gavin emotionally, capably and psychologically. She in this respect she stated that the father was not sufficiently consistent as a disciplinarian, he spoils him and is away from home too much. He may spoil him which is a bit of a mistake but it is something many a parent or grandparent would have to admit to. Consistency may be lacking. He could not help being away but now he is head of his department he can minimise travel.

With regard to the mother's allegations of cruelty:-

a) The father has not paid any maintenance. He simply has not been asked. The mother has't even written to the father asking for it. I do not find it surprising there has been no voluntary offer of

maintenance as the cost of these proceedings has been enormous.

Absolve him of any criticism.

b) The bicycle. This is one of the two articles the mother left in the United States. The cost of importing would be more than the cost of the bike. There were a number of letters in which Gavin was asking about his bicycle. Eventually the father sent the money to Mr. Jenkins but this was not enough and the mother would not let Mr. Jenkins make the difference. I do not see why a second <sup>have</sup> bicycle would not have been purchased. On October 20th the bicycle arrived. Even now the father is worried about the bicycle in Freeland as the busy main road is so close. This incident has been blown up. Gavin says phone calls are too expensive but the father says he can call collect. The father says that the bicycle incident shows a great amount of suspicion.

The law I must use in this case I shall set out as this Judgement will probably be read in other jurisdictions. I will rely on three authorities. There a number of decisions in this area which show the prevalence of kidnap cases due to travel facilities.

1) In re L 1974 one weekly law reports 250 Buckley J this case analyses a number of authorities upto that date.

2) Re R 1981 two family law reports 416.

Although these cases deal with summary orders the principles are clear that the interest of the child is first and paramount.

3) J v C 1970 appeal 668 page 710 G this shows the locus classicus. Lord McDermott. Reading the words there must mean that the interest of the child are more than the top item. It is the process when all

the factors taken into account the course to be followed is that which is most in the interest of the child's welfare.

Gavin is 7½ years old and loves both the United States father and the English mother. He has spent all his life in America at the matrimonial home. He was at school there for two years and was making adequate progress infact slightly better than that. He had lots of friends and neighbours. Although the mother said that these were only acquaintances I feel that they were more than that. He became upset. Gavin had been over here on anumber of occasions but the grandparents have now moved. He is undisturbed settling down making friends and making sound progress at school. Whatever may be the right approach about the nine months here there is no doubt he is establishing himself in a community in Freeland and this is not something that can be ignored.

The father's proposal is as set out in the two welfare reports. Gavin should go back to the U.S.A. to the matrimonial home and return to the school and father will reduce his nights away nearly to zero. He will not be back to collect Gavin from school but Mrs. Duncan next door can do so and look after him in the two hours after school. The Daniels family will look after him if the father is away over night. If any problems arise he would employ a housekeeper.

Gavin is a U.S. boy with U.S. heritage and clandestine removal although it has been given less weight in the Court of Appeal decision is something to be taken into account although the object is not to punish.

Mr. Gray's arguement is that the long term best is for Gavin to be

his father and not surrounded by women. Aunt Joy is someone that I have not seen and she is perhaps someone who is not suitable. The whole family is so bitter against the father and the chances of Gavin maintaining a relationship is slim and he points to the fears and doubts of the welfare officer.

The mother's case is that this boy has managed to survive radical alteration in his life and the mother was forced to take the steps she did but I am not entirely convinced with this argument. Gavin has relations here whom he has visited before the mother is soon to be looking for a house for herself. Gavin has settled down. He has friends. He is only 7½ and needs his mother. She is looking for a job which will fit in with the day to day care. She will continue to stay with her parents and possibly move to Joy or get her own house. He will go to the same school and have the same friends around. She proposes initially would comply with any access orders. I am not convinced enough that they have thought about access.

There are two most helpful welfare officer reports before me:-

1) The custody investigator of Fairfax. (Some points here were highlighted by the Judge that Gavin had been distressed, father's expense and not returning to alcohol, being a devoted father and would recommend the father).

2) Mr. Pitcher the Senior Welfare Officer in the High Court in London. He made a number of important comments. He also deals with Gavin's views about the problems and that he recognises that his immediate future is being decided. He is happy with both parents and wishes to spend half of his time with each. He would spend the maximum time with the non-resident parent. He may be suffering emotional damage due to the strain between the parties. He liked



talking about the gifts and the child's confusion is even more acute.

I am satisfied that this is what Gavin told Mr. Pitcher.

The problems therefore are these:-

If Gavin remains here what about his relationship with his father?

Mr. Pitcher in his evidence said that the relationship with the mother was good, not loving and more reserved. It would <sup>be</sup> more encouraging to see more warmth from the mother. Unless her attitudes change the links with the father may diminish. She is bitter. I feel that each are extremely fond of Gavin and this of paramount importance that there is communication between about his future and the maximum contact between Gavin and the non-custodial party. I share Mr. Pitcher's fears.

One of the main questions in my mind even though I am satisfied at Gavins age he needs the day to day care consistent with staying with his mother I am deeply concerned with the attitude of her and her family to the father and the harm that this is capable of doing.

I shall keep an eye on this case and insist that a school report should be sent to each parent. The mother is to write once a month to the father if he is ill or there are any particular presents that he wants etc.

Re access provided the father can manage it financially there should be access three times a year to the father in Virginia approximately:-

- 1) A fortnight at Easter 1983.
- 2) Six weeks in the Summer of 1983.
- 3) 10 days to a fortnight after Christmas 1983.

Then go round the circle again. Actual Christmases are to be spent in England.

With regard to phone calls I suggest once every three weeks and the ability for the boy to ring his father collect.

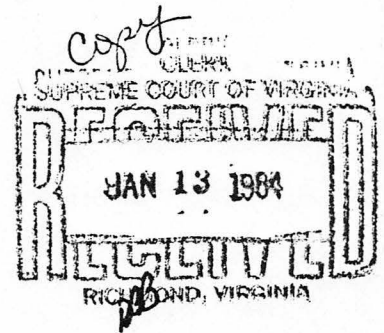
I would like a report from the welfare officer in Virginia after each access for the first year and report from Mr. Pitcher next Autumn and the two welfare officers to liase perhaps on the phone.

If any problem arises in this case the matter is to be brought before me at once and if necessary ex parte. (At this point Judge Wood was advised that Mr. Pitcher will have retired by next Autumn).

I would much rather that Gavin rang his father rather than having to wait for the call. I hope that if the father is in the U.K. over a week-end that he can ring up at short notice and take his

order for costs save Legal Aid Taxation here in the Court of appeal.

IN THE SUPREME COURT OF VIRGINIA  
AT RICHMOND



HERBERT LEE LYONS,

Appellant,

v.

MARGARET VERITY FLOWER LYONS,

Appellee.

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RECORD NO. 822102

APPELLANT'S OPPOSITION TO APPELLEE'S MOTIONS TO DISMISS

On January 9, 1983--well over four weeks after appellee filed her brief in this cause, and after this appeal was docketed and scheduled for oral argument--appellee filed two independent motions to dismiss this appeal on the grounds (1) that appellant failed to comply with Rule 5:36(a) of the Rules of this Court, which may be prejudicial to appellee, and (2) that this appeal is moot as a result of a custody hearing that was held in England in December 1982.

We respectfully urge that both motions be summarily denied and that this Court consider the appeal as briefed and presently scheduled for oral argument on January 18, 1983.

1. Appellee's contention that the appellant's failure to comply with Rule 5:36(a) has denied the appellee the opportunity to get into the appendix certain legal memoranda which the parties filed with the Circuit Court is palpably devoid of substance.

As relevant here, Rule 5:37 requires that the following be included in the appendix: the pleadings, the order appealed

from, and the assignments of error. The appendix filed by the appellant includes not only these requisite documents but also all English documents considered by the court below in rendering the order under appeal. Appellant's designation of the parts of the record to be reproduced in the appendix was complete.

Legal memoranda filed by the parties with the court below are not germane to appellant's assignments of error and are devoid of probative value; under the express terms of Rule 5:38, such documents must not be included in the appendix, since they are irrelevant. In consequence, appellee's contention that she has suffered prejudice due to the absence from the appendix of these irrelevant materials is without merit.

2. In her second motion to dismiss, appellee contends that the English court's judgment of December 20, 1982, granting care and control of the parties' minor son to the appellee-wife, has rendered this appeal moot.

This contention is obviously an afterthought, designed to abort this appeal at the last minute. The "mootness" argument should have been raised either by timely motion after this appeal was granted, or at the latest in appellee's main brief, which is singularly silent on this point. Appellee was aware of the existence of the English court's order when this appeal was granted, and when appellee filed her brief. Not having been timely raised by motion or in her brief, appellee has waived the argument.

More importantly, however, the principal issue here--the jurisdiction of the Circuit Court to entertain appellant's

custody petition--must be resolved on the record as it stood on September 23, 1982, when the Circuit Court declined to exercise its jurisdiction under the UCCJA. Nothing that has or may have happened in England after that date has mooted that jurisdictional issue. On the contrary, there is a live and justiciable controversy; there are two adverse parties before this Court, vigorously asserting diametrically opposed views as to the proper interpretation of the UCCJA; and it is in the public interest that the lower courts be given guidance by this Court as to the jurisdictional reach of the UCCJA under circumstances as here.

This appeal, therefore, affords to this Court a unique opportunity to clarify this important area of family law, and to interpret authoritatively the UCCJA. As the record here amply demonstrates, the appellant has proceeded with all deliberate speed in the Virginia courts. Appellant cannot be faulted for the delays which are unavoidable in the appellate process<sup>1/</sup>, nor should he be denied the opportunity to invoke the aid of the courts of his State--and the abducted child's home State--under circumstances where the courts of the refuge state moved with greater dispatch than the courts of this State.

Finally, we note that the abducted minor remains a ward of the English court, and that the appellee has merely been granted "care and control of . . . [the minor] until further order [of

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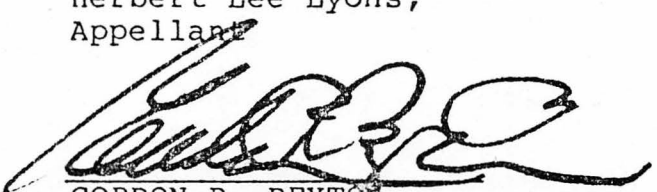
<sup>1/</sup> Appellant sought to have this matter brought to this Court's attention immediately after the adverse jurisdictional ruling was handed down below, but his petition for an injunction failed on October 6, 1982.

the English court]" (Order of December 20, 1982, p.1, appended to appellee's motion to dismiss). The English courts may well take cognizance in the future of any jurisdictional ruling by this Court acknowledging jurisdiction--albeit concurrent jurisdiction under the tragic circumstances of this case--in the courts of this Commonwealth. As matters presently stand, the English courts are justified in relying on the Circuit Court's order of September 23, 1982, and in believing that the courts of this Commonwealth are incompetent to consider custody matters if a child is taken by stealth from this State, taken to England, and made a ward of the courts there.

For the foregoing reasons, we submit that there is no basis for a dismissal of this appeal on grounds of mootness, and appellee's motion must be denied.

Respectfully submitted,

Herbert Lee Lyons,  
Appellant

  
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Counsel for Appellant.


Of Counsel:

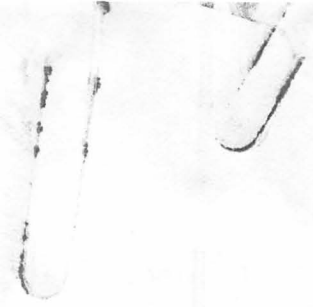
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CERTIFICATE

I hereby certify that true copies of the foregoing Opposition to Appellee's Motions to Dismiss were mailed this 12th day of January 1984, by first class mail, postage prepaid, to Betty A. Thompson, Esq., 1800 North Kent Street, Suite 1001, Arlington, Virginia 22209, counsel for the appellee.

  
Gordon P. Peyton  
Counsel for the Appellant.



MEMORANDUM

TO : Mr. Tolson  
FROM : Mr. E. A. Tamm  
SUBJECT: [Illegible]

[Illegible text follows]

[Illegible signature and text]