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Record No. 6003

In the
Supreme Court of Appeals of Virginia
at Richmond

ELLOUISE BLOXOM MEARS

v.

BROOKS T. MEARS

FROM THE CIRCUIT COURT OF ACCOMACK COUNTY

RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

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

HOWARD G. TURNER, Clerk.

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

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6003

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 13th day of October, 1964.

ELLOUISE BLOXOM MEARS, Appellant,

against

BROOKS T. MEARS, Appellee.

From the Circuit Court of Accomack County
Jefferson F. Walter, Judge

Upon the petition of Ellouise Bloxom Mears an appeal is awarded her from a decree entered by the Circuit Court of Accomack County on the 7th day of February, 1964, in a certain chancery cause then therein depending wherein Brooks T. Mears was plaintiff and the petitioner was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

This case
to be held
You will
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DECREE.

THIS CAUSE came on this day to be heard upon the bill of complaint, the answer and cross bill, the amended answer and cross bill, the answer to the amended answer and cross bill, the evidence heard *ore tenus* with both parties present in person, and was argued by counsel.

UPON CONSIDERATION WHEREOF, and it appearing to the Court independently of the admissions of either of the parties in the pleadings or otherwise that the parties were married on the 10th day of May, 1941, at Pocomoke City, Maryland, and both parties are of the white race; that the complainant wilfully deserted and abandoned the respondent on the 24th day of May, 1963, which desertion has been continuous since that time; that the parties last cohabited in the County of Accomack, Virginia; that the complainant and respondent were domiciled in and were actual *bona fide* residents of the State of Virginia at the time of the commencement of this suit, and had been domiciled in and had been actual *bona fide* residents of the State of Virginia for more than one year next preceding the commencement of this suit.

It is therefore ADJUDGED, ORDERED and DECREED that the relief prayed for in the bill of complaint of the complainant is denied, and that the respondent, Ellouise Bloxom Mears, be and she is awarded a divorce *a mensa et* page 26 } *thoro* on her amended answer and cross bill.

It is further ADJUDGED, ORDERED and DECREED that the custody of their child, Willie Anna Mears, be and is awarded to the respondent, with the privilege unto the complainant to see the said child and to have the child visit at such times as may be mutually agreeable.

It is further ADJUDGED, ORDERED and DECREED that alimony is not awarded to the respondent.

It is further ADJUDGED, ORDERED and DECREED that the complainant pay to the respondent the sum of Ten Dollars (\$10.00) per week as support money for the support, education and maintenance of their child, Willie Anna Mears,

as heretofore ordered and twelve and 50/100 dollars per week effective as of this date.

It is further ADJUDGED, ORDERED and DECREED that the complainant shall pay, in addition to support, upon medical proof the cost of glasses as well as the cost of examination for such glasses for the child, Willie Anna Mears.

It is further ADJUDGED, ORDERED and DECREED that the complainant pay to Louis B. Fine, as attorney for the respondent, Two Hundred (\$200.00) Dollars as attorney's fees, subject to a credit of One Hundred Fifty (\$150.00) Dollars heretofore paid, and also the costs of these proceedings, including the costs of the Court Stenographer for the taking of the testimony which is in the amount of Two Hundred Eleven and 50/100 (\$211.50) Dollars.

To all of which action of the Court, the respondent by counsel duly excepted, and to the refusal of the entry of the decree attached hereto.

And this cause is retained on the docket.

Enter this decree 2/7/64.

J. F. W.

Seen and excepted to :

MELVIN JAY RADIN, p.d.
LOUIS B. FINE
Of Counsel.

WESCOTT B. NORTHAM, p.q.

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ASSIGNMENTS OF ERROR.

For her assignments of error, the said defendant says that the Trial Court erred as follows:

1. The Court erred in failing to award the defendant alimony.
2. The Court erred in failing to reserve the right to award the defendant alimony should a change in the conditions and circumstances necessitate.

John R. Hamilton.

3. The Court erred in failing to order the complainant to pay adequate support money to the defendant for the support, education and maintenance of their child, Willie Anna Mears.

4. The Court erred in failing to order the complainant to pay adequate attorney's fees to defendant's attorney.

ELLOUISE BLOXOM MEARS
By MELVIN J. RADIN
Of Counsel.

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Filed April Term, 1964 (Apr. 13).

Teste :

J. FULTON AYRES, Clerk
By BEULAH LOWE MASON, Dy.

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JOHN R. HAMILTON,
called as a witness on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine :

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Brooks T. Mears.

Q. And would you tell, please, his Honor, what you have treated her for and her general health and conditions with regard to her present health?

A. If your Honor please, that is very easy. She has colitis, inflammation of the big bowel and she was in the hospital recently. I can give you that date here, if you want it.

page 5 } Q. Could you give us that date, approximately?

I want to get it in there, if your Honor please.

A. She was admitted on the 4/21/63.

Q. April 21, 1963?

A. Yes, and she was discharged 5/6/63.

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BROOKS T. MEARS,

the complainant, having been first duly sworn, was examined and testified as follows:

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CROSS EXAMINATION.

By Mr. Fine:

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Q. When was the last time in ten years that you gave her any money?

A. I have never given her money since she has been working.

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By Mr. Fine:

Q. How much did you draw out?

A. I don't know.

Brooks T. Mears.

Q. You want me to tell you?

A. Yes.

Q. Was it \$1400?

A. \$1400?

Q. How much did you leave in there after you withdrew the \$1400?

A. You have my statement, my bank statement.

Q. How much was it, I am asking you.

A. It was \$2296.16. Is that what you got on yours?

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Q. And you own your property where you are, don't you?

A. Yes, sir.

Q. You own your place of business?

A. Yes, sir.

Q. And you have been in business for how long?

A. My father and I were in business. He died in 1944.

Q. And you have operated it continuously since that time; is that right?

A. Yes, sir.

Q. And that is almost twenty years?

A. Yes, sir.

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Q. How much do you make in that store?

A. Summertime, \$150 to \$200 a week. In winter \$50.00 or \$75.00.

Q. You have no expenses other than yourself?

A. I have my mother and I have been supporting her.

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Peggy Mears Ward.

By Mr. Fine:

- Q. Do you have a memorandum?
- A. No, sir, I didn't have time to go home and get it.
- Q. How long would it take you to get to Hallwood?
- A. A half hour.
- Q. And you didn't have time to get it?
- A. No, sir.
- Q. The Judge adjourned—let the record show, for an hour; is that right?
- A. Yes, sir.
- Q. So you could have gone down there physically and picked up this so-called paper, couldn't you?
- A. I had to eat my dinner.

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PEGGY MEARS WARD,
called as a witness on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

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- page 79 } Q. Did he ever buy any furniture or was it inherited from his folks?
- A. I can't remember him buying any furniture.
- Q. Can you remember him buying anything for the household?
- A. Not unless it was in the store.

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The Court: Don't the laws hold you down for reputation, truth and veracity in the community in which she lives? I am going to hold for that. There is a reason for it. I made

Ellouise Bloxom Mears.

some kind of a reputation in my community but I may not have any in Norfolk. I just work there. I can't uphold it here where I live.

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ELLOUISE BLOXOM MEARS,
the respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

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Q. What did you do with your earnings?

A. I bought myself clothes, my children clothes, and my daughter went to camp.

Q. Did you contribute to the house?

A. I contributed to the house.

Q. After 1959 at Chincoteague, what happened there—tell the Court.

A. Well, I got the riff notice, I went to Norfolk that same week-end.

Q. Why did you go to Norfolk?

A. There wasn't anything else on the shore. I couldn't get in N.A.S.A. My husband consented for me to go.

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Ellouise Bloxom Mears.

A. Last fall he started in saying he would like for me to get a divorce?

Q. When did he tell you that? When did that start?

A. Last fall.

Q. What did you tell him?

A. I told him I didn't want a divorce.

Q. And I ask you how often did he mention it to you that he wanted a divorce?

A. Once or twice a month, ever since last fall. And the following day I came out of the hospital he talked so much about it that it just got the best of me.

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Q. Do you recollect that your husband ever gave either one of these children any allowance of any kind?

A. No, sir.

Q. He didn't during their adolescence?

A. Before I started to work he gave them money once in a while. But after I started to work, I never saw any except maybe Christmas or a birthday.

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CROSS EXAMINATION.

By Mr. Northan:

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Ellowise Bloxom Mears.

Q. What would you say, you allege or state that he asked you or told you that he wanted a divorce. What was your reaction to that?

A. I told him I didn't want a divorce. He asked me several times to get one in Norfolk. He said I could get witnesses and have no trouble. I told him I didn't want a divorce and wasn't going to get one.

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The Court:

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He brought suit after she, through counsel, said, "Let's get together and talk this thing out, since I left there the last time you have decided to get a divorce. I don't want a divorce.

Let's talk it over." He didn't have to go to see Mr. Fine, he didn't have to meet him. But the evidence indicates that he rushed right to counsel and to the Clerk's Office and filed a suit for divorce.

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A Copy—Teste:

H. G. TURNER, Clerk.

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