

3452

SUMMONS

Form 1531-3

McQuiddy Printing Co., Nashville, Tenn.

The State of Alabama, \_\_\_\_\_ County

IN CIRCUIT COURT, IN EQUITY

To any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon \_\_\_\_\_

*Henry W. Byrd*

to appear and answer, plead, or demur, within thirty days from the service hereof, to a Bill of Complaint filed in said Circuit Court, in equity, for said County of said State.

*Etzel Marie Byrd*

against \_\_\_\_\_

*Henry W. Byrd*

Herein fail not. Due return make of this writ as the law directs.

Witness this 21 day of Jan, 1922

*Marie Byrd*, Register.

Register.

(Defendant is entitled to a copy of the bill on application to the Register.)

ETHEL MARIE BYRD,  
Complainant,  
VS.  
HENRY D. BYRD,  
Respondent.

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IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. NO. \_\_\_\_\_

BOOK 017 PAGE 335

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA, IN EQUITY SITTING:

Comes your complainant, ETHEL MARIE BYRD, humbly complaining  
against the respondent, HENRY D. BYRD, and shows unto your Honor  
and this Honorable Court as follows:

1. That your complainant is over the age of twenty-one years  
and is a bona fide resident citizen of Baldwin County, Alabama,  
and has been for more than two years next preceding the filing of  
this bill of complaint; that HENRY D. BYRD is over the age of  
twenty-one years and is a resident citizen of Baldwin County,  
Alabama;

2. That your complainant and the respondent were lawfully  
married in Greensboro, Alabama, on or about, to-wit: the 11th day  
of March, 1943;

3. Your complainant further avers and alleges that the said  
respondent has, since her marriage to him, become addicted to the  
habitual use of opium, and that said habit has continued to the  
filing of this bill of complaint. That while under the influence  
of drugs, or when he feels the need of drugs, the respondent has  
on many occasions assaulted, struck and beat your complainant; and  
from his manner and conduct toward her your complainant is reason-  
ably convinced that, should she return to live with him as his  
wife, he will do further violence to her person which will be  
dangerous to her life or health.

4. That there born to this marriage four children: SHELBY  
JEAN, age 11; ALLEN RAY, age 9; SHIRLEY ANN, age 7; MICHAEL LAMAR,  
age 2; that your complainant is a fit and proper person to have  
the care, custody and control of these minor children; and that  
the respondent is not a fit and proper person to have the care,  
custody and control of said minor children.

5. That your complainant is without funds with which to pay  
for the maintenance and support of their minor children; that she  
is without funds to pay her solicitor in the premises, Telfair J.

Mashburn, Jr.; and that the respondent is an able-bodied man, able to work and support their children and provide funds for the support of your complainant.

PRAYER FOR PROCESS.

THE PREMISES CONSIDERED, your complainant make the said HENRY D. BYRD a party respondent to this bill of complaint, and in order that complainant may have the relief herein prayed for, may it please your Honor to cause the State's writ of subpoena to be issued, directed to the said HENRY D. BYRD, commanding him to answer, plead or demur to this bill of complaint, within the time required by law;

PRAYER FOR RELIEF

Your complainant further prays that, on a final hearing of this cause, your Honor will make and enter a decree divorcing your complainant from the respondent, giving to your complainant the care, custody and control of their minor children heretofore named, and ordering the respondent to pay to your complainant for her support and for the support and maintenance of their said minor children such sum as to this Honorable Court may appear to be just and reasonable; that your Honor will fix a reasonable sum to be paid to complainant's solicitor for his services in the premises and order the respondent to pay such sum; and that your Honor will grant unto your complainant such other, further, different and general relief as unto your Honor may seem just and proper, and, as in duty bound, your complainant will ever pray, etc.

FILED

Jan. 21 1955

ALICE J. DUCK, Clerk

Telfair H. Mashburn, Jr.  
Solicitor for Complainant.

11 2 58

ETHEL MARIE BYRD,  
Complainant,  
VS.  
HENRY D. BYRD,  
Respondent.

IN THE  
CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA. IN EQUITY.

NO. 3452

ETHEL MARIE BYRD. BEING FIRST DULY SWORN, TESTIFIED:

Q. What is your name, please?

A. Marie Byrd.

Q. Are you the complainant in this cause?

A. Yes.

Q. Where do you live, Mrs. Byrd?

A. Bay Minette, Alabama, Route 2.

Q. How long have you lived in Baldwin County?

A. All of my life.

Q. How old is Henry D. Byrd?

A. 40.

Q. He is over 21 years of age?

A. Yes.

Q. Where does he live?

A. Perdido.

Q. Baldwin County, Alabama?

A. Yes, sir.

Q. Was he living there at the time this bill of complaint was filed?

A. Yes sir.

Q. Are you married to Henry D. Byrd?

A. Yes sir.

Q. Where and when were you married?

A. Greensboro, on March 11, 1943.

Q. Did you have any children?

A. Yes sir. Four.

Q. What are their names?

A. Shelby Jean, Allen Ray, Shirley Ann and Michael Lamar.

Q. Are you a fit and proper person to have the care, custody and control of those children, Marie?

A. I try to be.

Q. Have they been living with you since your separation?

A. Yes sir.

Q. Did you all separate one time before?

A. Yes sir.

Q. Did you keep the children then?

A. Yes sir.

Q. Tell the Judge what you do for them? -- Do you send them to Sunday School?

A. Yes sir, most of the time; Most every Sunday.

Q. Do you keep your children in school?

A. Yes sir, three of them are in school.

Q. How did they do in school?

A. They all passed.

Q. Shortly after your marriage did you begin to have trouble with Henry?

A. Yes, I would say about six months afterwards

Q. Now on various occasions has he assaulted you?

A. Yes sir.

Q. When I say assaulted, has he actually struck you?

A. Yes sir. I would say that there would not be any signs left like you would usually want for Court evidence, but there was licks passed.

Q. Has he threatened you on other occasions?

A. He has made it pretty rough.

Q. As a result of his treatment of you, have you become convinced that it would endanger your life or health to continue to live with him?

A. Yes - I'm too nervous; I can't take it any more.

Q. Have you had to go to the Doctor Regularly in the last two years?

A. Yes.

Q. Suffering from nervousness?

A. Yes sir; the day I left we would have had serious trouble if I had not left; I would say I felt worse that day than I

I have ever felt.

Q. Do you know whether Henry is working?

A. Yes sir.

Q. Where is he working?

A. At the Ice Plant in Bay Minette.

Q. Is he manager of the Ice Plant?

A. I don't know; he is there working.

Q. Do you know how much he makes a week?

A. I would not say, but I was told \$35.00 a week, but that's hear-say.

Q. Did you and your husband agree that \$25.00 a month would be the support that he would be able to pay you for the support of his children?

A. Yes sir.

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I hereby certify that the foregoing is a true and correct transcript of the testimony taken by me, in open Court, in the above styled case.

This 7th day of July, 1955

*Kearse D. Dusselberry*  
Official Court Reporter

Ethel Marie Byrd	¶	In the Circuit Court of
Complainant	¶	Baldwin County, Alabama
Vs	¶	In Equity
Henry D. Byrd	¶	
Respondent	¶	

To Hon. H. M. Hall, Judge of the Circuit Court of Baldwin County, Alabama.

Now comes the Respondent in the above styled cause by his Attorney and for answer to the Bill of Complaint says:

1.

He admits the allegations as to the ages marriage, residence and number and names of the children, but denies each and every other allegation contained in said bill and demands strict proof thereof.

2.

The allegations as <sup>to</sup> the habitual use of Opium and cruelty are untrue.

3.

The allegation that the Complainant is a fit and proper person to have the care, custody and control of said minor children is untrue, in that on to-wit November 1, 1954, the Complainant did commit adultery with one, O.C. Powell and has continued to commit adultery with said O. C. Powell to this day.

4.

On to-wit November 1, 1954 and on several occasions prior thereto, the Complainant did strike, beat and bruise the Respondent creating a reasonable apprehension of more dire violence and a danger to his life and health.

5.

Wherefore, the premises considered, your Respondent prays that on a final hearing hereof, Your Honor will grant to him an absolute divorce from the Respondent, and grant him the care, custody and control of the four minor children named in the original Bill of Complaint filed by the Complainant, Shelby Jean, Allen Ray, Shirley Ann and Michael Lamar, for he is a fit and proper person to have such care, custody and control; that your Honor will grant any further relief as Equity may allow and Your Respondent offers to do such Equity in the Premises as may be required of him.

FILED

May 24 1955

ALICE I. DUCK, Clerk

  
Solicitor for Respondent



RECORDED 3452

Ethel Marie Bryd

Complainant

Vs.

Henry D. Byrd

Respondent

Answer and Cross Bill

FILED

MAY 24 1955

ALICE J. DUCK, Clerk

Ethel Marie Byrd  
Complainant  
Vs  
Henry D. Byrd  
Respondent

In the Circuit Court of  
Baldwin County, Alabama.  
In Equity.

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017  
PAGE 338

Now comes the Respondent in the above styled cause and demurs to the Bill of Complaint and to each count thereof both seperately and severally and for grounds of demurrer assigns the following:

1.  
The allegations in count 2 that the Complainant and Respondent were lawfully married is but a conclusion of the pleader.

2.  
No facts are averred in count 3 which would lead the court to believe that the Respondent is a habitual user of opium.

3.  
Count 3 does not set out how often the Respondent uses opium.

4.  
The fact alleged in Count 3 that the Respondent feels the need of drugs is not within the knowledge of Complainant and is but a conclusion of the pleader.

5.  
No facts are alleged to show that Complainant did not condone said alleged offenses.

6.  
No facts are alleged in said bill to show that the Respondent was not acting in self defense if he struck and beat the Complainant.

7.  
It is not alleged that the Complainant has reasonable apprehension to believe and does actually believe that the Complainant will harm her, but instead alleges that she is reasonably convinced, not totally convinced.

8.  
The Complainant does not allege that the Respondent abused her through no fault of her own.

9.  
The allegation that the Respondent is not a fit and proper person to have the custody of said children is but a conclusion of the pleader.

10.  
The allegation that the Complainant is a fit and proper person to have the custody of said children is but a conclusion of the pleader.

11.  
No facts are alleged to show that this suit is not barred by the statute of limitations.

12.  
The allegation that that the Respondent is an able bodied man, able to work, is but a conclusion of the pleader and does not correspond with facts.

13.  
It is not alleged that the allegations in the bill occurred in Baldwin County, Alabama.

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14.

No facts are alleged to show that the Respondent has not provided a fit and proper domicile for his wife and said children or failed or refused to provide for their support.

15.

No facts are alleged to show that this court has jurisdiction of the subject matter of this suit.

16.

No time is alleged to fix the date the occurrences described happened.

17.

When the parties separated is not alleged.

18.

From aught that appears, the described occurrences could have happened in New York State in 1943.

19.

The bill does not offer to do Equity.

20.

The allegation that the Respondent beat complainant is too general, as the Ala. code provides that a man may spank his wife.

21.

It is not alleged in what way the complainant expects the conduct of the Respondent to be dangerous to her.

22.

It is not alleged that or whether the Complainant has refused to live at the domicile provided by the Plaintiff, thus relieving him of liability for her support.

and further

without waiving his demurrers, but expressly insisting thereon, the Respondent moves this Honorable court to dismiss this suit and for grounds for said motion assigns;

1.

There are no allegations in the bill on which a lawful decree could be legally rendered.

FILED

2-18 1955

ALICE J. DUCK, Clerk

*Robert A. McKeever*  
Solicitor for Respondent

RECORDED 245-2

Ethel Marie Byrd  
Complainant  
Vs  
Henry D. Byrd  
Respondent

Demurrers

FILED

2-18-53

ALICE J. DUCK, Register

ETHEL MARIE BYRD,  
Complainant,  
VS.  
HENRY D. BYRD,  
Respondent.

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IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY.

D E C R E E

This cause coming on to be heard was submitted for final decree upon the pleadings and the testimony heard ore tenus by the Court. Upon consideration thereof, the Court is of the opinion that the complainant is entitled to the relief prayed for in her bill of complaint. IT IS, THEREFORE,

ORDERED, ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:

1. That the bonds of matrimony heretofore existing between the complainant and respondent are dissolved, and the said ETHEL MARIE BYRD is forever divorced from the said HENRY D. BYRD.
2. That the care, custody and control of the minor children of this marriage, namely, SHELBY JEAN BYRD, ALLEN RAY BYRD, SHIRLEY ANN BYRD AND MICHAEL LAMAR BYRD is awarded to ETHEL MARIE BYRD, the complainant, with the right on the part of HENRY D. BYRD, the father of said children, the respondent, to visit the children at reasonable times and places, and to have them visit him on not more than one week end per month.
3. That the respondent, HENRY D. BYRD, pay to the complainant, ETHEL MARIE BYRD, the sum of TWENTY FIVE (\$25.00) DOLLARS per month for the support and maintenance of said minor children.
4. That both parties are hereby permitted again to contract marriage, but that neither party shall remarry, except to each other, until sixty (60) days after this date, and if an appeal from this decree is taken within sixty (60) days from the date hereof, neither party shall remarry except to the other party during the pendency of said appeal.
5. That HENRY D. BYRD, the respondent, pay the costs herein to be taxed, for which execution may issue.

Done and Ordered this 8<sup>th</sup> day of July, 1955.

Hubert M. Hall  
CIRCUIT JUDGE.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. \_\_\_\_\_

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ETHEL MARIE BYRD,

Complainant,

VS.

HENRY D. BYRD,

Respondent.

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DECREE.

FILED  
JUL 8 1955

JAMES A. BELL, CLERK

3452