3685

BOOK 019 PAGE 231

STATE OF ALABAMA,)
)
COUNTY OF BALDWIN.)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon JAMES B. HOLLY to appear and plead, answer or demur, within thirty days from the service of this writ, to the Bill of Complaint filed in the Circuit Court of Baldwin County, Alabama, in Equity, by Evelyn G. Holly, as complainant, against James B. Holly, as Respondent.

Witness my hand this 13 day of December, 1955.

REGISTER

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EVELYN G. HOLLY,	)	
Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA.
	)	IN EQUITY. NO. _____
JAMES B. HOLLY,	)	
Respondent.	)	

Comes your complainant, EVELYN G. HOLLY, and files this her bill of complaint against JAMES B. HOLLY, and respectfully represents and shows unto your Honor and this Honorable Court as follows:

1. That your complainant and the respondent are both over the age of twenty-one years, and are both resident citizens of Baldwin County, Alabama, residing at Bay Minette, and that they have been such resident citizens for more than five years next preceding the filing of the bill of complaint in this cause.

2. That your complainant and the respondent were married at Gulfport, Mississippi, on, heretofore, to-wit: the 13th day of July, 1942, and lived together as man and wife until, on account of the matters and things hereinafter complained of, your complainant was compelled to leave the respondent and live separate and apart from him; that on, to-wit, March 12 and March 25, 1955, the respondent struck, hit, kicked and beat your complainant, blacking her eye and causing her nose; that on several occassions since that time he has struck and beat your complainant; that his treatment of her is such as to give her reasonable apprehension to believe, and she does

actually believe, that, should she continue to live with him as his wife, he will do further violence to her person which will be dangerous to her life or health;

3. That there were born to your complainant and the respondent four children, all girls, namely, Glenda Holly, eleven years of age, Vance Holly, ten years of age, Gwendolyn Holly, five years of age, and Nona Holly, two years of age; that your complainant is a fit and proper person to have the care, custody and control of said minor children, and that the respondent is not a fit and proper person to have the care, custody and control of such minor children.

4. That your complainant does not own any property except that she owns an interest in a diner which she and the respondent have been operating on U. S. Highway Number 31, near Douglasville; that your complainant has no money or other property with which to support herself and the minor children hereinabove named, and, because of the physical condition of her youngest child, she is unable to work and earn money; that she has worked in the diner when her husband was away from it and the property that has been accumulated by your complainant and the respondent is partially due to her efforts; that the respondent is an able-bodied man and that, if he would attend to the business of operating the diner, he could easily earn between Five Hundred ($500.00) Dollars and Six Hundred ($600.00) Dollars per month; and that your complainant does not have a sufficient amount of money out of which to pay her Solicitor for prosecuting this suit and that she has employed Telfair J. Mashburn, Jr., Attorney at Law, Bay Minette, Alabama, as her Solicitor to prosecute this suit.

PRAYER FOR PROCESS

THE PREMISES CONSIDERED, your complainant makes the said JAMES B. HOLLY a party respondent to this bill of complaint, and in order that complainant may have the relief hereinafter prayed for, may it please your Honor to cause the State's Writ of Subpoena to be issued, directed to the said JAMES B. HOLLY, commanding him to plead, answer or demur to this bill of complaint within the time, and under the pains and penalties, prescribed by law and the practice of this Honorable Court.

PRAYER FOR RELIEF

Your Complainant further prays that, upon a final hearing of this cause, your Honor will make and enter a decree granting to your complainant the following separate and several relief:

1. Divorcing complainant from the bed and board of the respondent;

2. Giving complainant the full custody and control of her minor children hereinbefore mentioned, with reasonable rights of visitation in the respondent;

3. Ordering the respondent to refrain from molesting complainant in any way in the future;

4. Ascertaining and fixing a reasonable amount of alimony to be paid to your complainant by the respondent, or, in lieu of alimony, ordering and decreeing that the respondent shall convey to your complainant his interest in the diner which they have been operating together together with the land upon which the same stands and all stocks of goods and fixtures located in said diner;

5. Ascertaining and fixing a reasonable amount of support for the minor children to be paid by the respondent to your complainant;

6. And ascertaining and fixing a reasonable Solicitor's fee to be paid by the respondent to Telfair J. Mashburn, Jr., as Solicitor for your complainant;

And your complainant prays for such other, further, different or general relief as in equity and good conscience she may be entitled to receive, and, as in duty bound, she will ever pray, etc.

Telfair J. Mashburn Jr.
SOLICITOR FOR COMPLAINANT.

8600 Motion for Decree Pro Confesso on Personal Service. 3107 Code MPCD.

THE STATE OF ALABAMA,
Baldwin County } No._____Circuit Court, In Equity.

EVELYN G. HOLLY Complainant

Vs.

JAMES B. HOLLY Defendant

Motion is hereby made for a Decree Pro Confesso against JAMES B. HOLLY

Defendant

in the above stated cause, on the ground that more than thirty days have elapsed since service of summons upon said Defendant ; and that said summons was duly served according to law, and that said Defendant ha failed to demur, plead to or answer the Bill of Complaint in this cause to this date.

This 4th day of February 19 56

Solicitor.

RECORDED

No. _____ Page _____

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court, In Equity

EVELYN G. HOLLY

Vs.

JAMES B. HOLLY

Motion for Decree Pro Confesso on Personal Service

Filed February 6 19 56

Register.

Recorded in _____ Record

Vol. _____ Page _____

Register.

CIRCUIT COURT COMPLAINT

Printed by the Baldwin Times, Bay Minette, Alabama.

EVELYN G. HOLLY, Complainant,
Vs.
JAMES B. HOLLY, Respondent.

In the Circuit Court.
In Equity No._____.

DECREE PRO CONFESSO ON PERSONAL SERVICE.

In this cause, it appears to the Register, that service was had on the Respondent JAMES B. HOLLY

by the Sheriff of BALDWIN County, on the 27th day of DECEMBER, 19~~4~~55.

And it further appears to the Register, that that the said JAMES B. HOLLY

_____ the Respondent, having to the date hereof, failed to plead, demur to or answer the Bill of Complaint filed in this cause, it is now, therefore, on motion of Telfair J. Mashburn, Jr. Solicitors for Complainant, ordered, and decreed by the Register that the Bill of Complaint in this cause be, and it hereby is, in all things taken as confessed against the said JAMES B. HOLLY

This 6th day of February, 19~~4~~56.

Register.

RECORDED

No. _____

CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY

EVELYN G. HOLLY

Complainant,

Vs.

JAMES B. HOLLY

Respondent.

DECREE PRO CONFESSO ON PERSONAL SERVICE.

Issued this 6th day of February 1956.

Register.

THE BALDWIN TIMES

EVELYN G. HOLLY,	)	
Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA.
JAMES B. HOLLY,	)	IN EQUITY. NO. _____
Respondent.	)	

D E C R E E

This cause, coming on to be heard, was submitted upon the bill of complaint, decree pro confesso on personal service against the respondent, and the testimony of the witnesses heard ore tenus by the Court, and, upon consideration thereof, the Court is of the opinion that the complainant is entitled to the relief prayed for in said bill;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:

1. That EVELYN G. HOLLY, the complainant, be and she is hereby divorced from the bed and board of the respondent, JAMES B. HOLLY, and the said parties are hereby directed to live separate and apart from the date hereof;

2. That EVELYN G. HOLLY, the complainant, be and she is hereby awarded the care, custody and control of the minor children of this marriage, namely Glenda, Vance, Gwendolyn and Nona Holly; but that the respondent shall have the right to visit said children at reasonable times and intervals; that respondent shall have the right to have said children spend at least one week-end per month with him and that he shall have the right to have said children spend one month during the Summer, when it will not interfere with their schooling, with him;

3. That the respondent be and he is directed to pay to the complainant the sum of $ 30.00 per week as support and maintenance for said minor children.

4. That the complainant be and she is hereby awarded the furniture in their house near Bay Minette, Alabama, to be used by her in preparing a home for said minor children;

5. That the respondent be and he is hereby ordered and

and directed to pay to Telfair J. Mashburn, Jr., the Solicitor for Complainant, the sum of ONE HUNDRED AND FIFTY ($150.00) DOLLARS as solicitor's fees; for which let execution issue;

6. That both the respondent and the complainant be and they are hereby ordered and directed to refrain from annoying or molesting each other in any way in the future;

7. That the respondent, JAMES B. HOLLY, be and he is hereby taxed with the costs herein, for which let execution issue.

DONE AND ORDERED This 7th day of March, 1956.

Hubert M. Hall
JUDGE.

RECORDED

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

****

EVELYN G. HOLLY,
Complainant,
VS.
JAMES B. HOLLY,
Respondent.

****

DECREE.

FILED
MAR 7 1956
ALICE J. BOCK, Register

HOLLEY,	)	IN THE CIRCUIT COURT
Complainant,	)	OF BALDWIN COUNTY, ALABAMA
VS.	)	IN EQUITY
J. B. HOLLEY,	)	
Respondent	)	

TESTIMONY TAKEN IN OPEN COURT, BEFORE HON. HUBERT M. HALL, JUDGE OF SAID COURT.

JAMES HENDRIX, A WITNESS FOR THE COMPLAINANT, BEING FIRST DULY SWORN, TESTIFIED:

Examination by Mr. Mashburn.

Q. Is this James Hendrix?

A. Yes sir.

Q. You are a practicing attorney at the Baldwin Cou nty Bar?

A. Yes sir.

Q. How long have you practiced?

A. Approximately five years.

Q. Are you familiar with the fees charged by the Attorneys and Solicitors at this bar?

A. Yes.

Q. What would be a reasonable fee for representing the Complainant in a suit for divorce against the respondent, involving the custody of four minor children, and asking for support and alimony, where the testimony showed, uncontested, that the Respondent makes approximately $500.00 a month, and where there was a decree pro confesso against the complainant?

A. I would say $150.00.

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 cause.

This 20th day of February, 1956.

Bonnie Duckworth

$5.00

EVELYN G. HOLLEY, Complainant,	)	IN THE
VS.	)	CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.
J. B. HOLLEY, Respondent.	)	

TESTIMONY TAKEN IN CHAMBERS, BEFORE HON. HUBERT M. HALL, JUDGE OF THE 28th JUDICIAL CIRCUIT OF ALABAMA.

MR. MASHBURN, REPRESENTING THE COMPLAINANT

MESSRS. WILTERS & BRANTLEY, REPRESENTING THE RESPONDENT.

MRS. EVELYN G. HOLLEY, THE COMPLAINANT, BEING FIRST DULY SWORN, TESTIFIED:

Direct Examination by Mr. Mashburn.

Q. Is your name Evelyn G. Holley?

A. Yes sir.

Q. Are you the complainant in this case?

A. Yes sir.

Q. Where do you live, Mrs. Holley?

A. I'm staying in Robertsdale now.

Q. How long have you lived in Baldwin County?

A Between eight and nine years.

Q. How old are you?

A. 32.

Q. Is James B. Holley your husband?

A. Yes sir.

Q. Where does he live?

A. Bay Minette

Q. Was he living in Bay Minette at the time you filed this suit for divorce, or separation?

A. Yes sir.

Q. When and where did you marry James B. Holley?

A. I married him in 1942 in Gulf Port, Mississippi.

Q. Do you remember the date?

A. July 13th.

Q. Now in the past several years have you had some trouble with your husband?

A. Yes sir.

Q. Shortly, without making it too long, tell the Judge what he has done to you?

A. The worst thing is beating me - he has just beat on me - Well he would beat me for what I didn't do and then he would beat me for what I did do, and just before I left two weeks ago he choked me and if he had held me two more minutes I would have blacked out; he seems to think he had the right to whip me just any time.

Q. Did you, or one occasion -- Have you quit him on another occasion before this?

A. Yes sir, I have left him twice.

Q. Did he tell you he was going to do better if you would come

A. Yes sir.

Q. Did he ever do better?

A. While I was gone, like he is doing now - he would do better until I came back and time I got home he would start beating and drinking again; This ear right here, indicating right ear, that is where he bit me; I can show it to you now and that was four weeks ago.

Q. Since you separated from him this time - when was this divorce suit commenced?

A. You mean the first divorce?

Q. No, this one today?

A. I came to you -- Well he met that woman in Montgomery on December 13th. and stayed with her that night --

MR. WILTERS, (Interrupting) We object to that.

Q. Tell me when this suit was filed, if you remember. I will show you this to refresh your recollection?

A. December 23rd.

Q. Is that about the time the suit was filed?

A. Yes sir, it was just a day or twobefore Christmas.

Q. Has he jumped on you on several occasions since that time?

A. Almost every day.

Q. Do you have any children as a result of this marriage?

A. Yes sir.

Q. How many and what are their names and ages?

A. We have four children - Glenda 14, Nance 10, Gwin 5, and Nona 2

Q. Are those children with you now?

A. Yes.

Q. In your opinion, is your husband a fit and proper person to have the care and custody of your children?

A. Not at all times, no.

Q. Have you kept them and reared them and attended to them since they were born?

A. Yes sir.

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

A. Yes sir.

Q. Do you have any income, Mrs.Holley?

A. No.

Q. You say your youngest child is 2?

A. Yes sir.

Q. Do you have any money or separate estate put up?

A. No sir.

Q. What does your husband do?

A. He runs a Cafe.

Q. Do you know about what his income is per month in the operation of that Cafe?

A. Well it would be around $500.00 a month.

Q Did you have money with which to hire a lawyer?

A. No sif.

Q. And you hired me to represent you in this suit?

A. Yes sir, I asked you if you would do it until I could pay you.

ON CROSS EXAMINATION OF THIS WITNESS, SHE TESTIFIED:

Examination by Mr. Wilters.

Q. Mrs. Holley, you stated on direct examination that you filed this suit on December 23rd, or prior to Christmas?

A. Yes sir.

Q. And then later you stated that the last time he beat you and when you left was two weeks ago?

A. That's right.

Q. Have you lived with him subsequent to the time you filed this divorce suit?

A. You want me to explain that?

Q. Just answer the question yes or no?

A. It was forfced on me, if you want to know--

Q. But you have lived with him since you filed this suit?

A. I had to.

Q. How long did you live with him after you filed that suit?

A. Well we stayed in the same house together from then on until I left two weeks ago.

Q. How many days after you filed the suit did you stay with him?

A. I don't know exactly how many days -- not as man and wife - He had his room and I had mine; that is the way he moved out there.

Q. Does he have a home for you now to live in?

A. Where, here in Bay Minette?

Q. Yes?

A. Is he renting a place, is that what you mean?

Q. Yes.

A. He has not paid no rent on it.

Q. Is he living in the house now?

A. I don't know where he is staying ?

Q. When you filed this suit against him you went right on back out there and lived in the house?

A. At the time I filed this suit - when I came to the Lawyer he was out there then, but when he moved in that house he told me, "I'm not coming out here to live with you" He said he wasn't able to pay hotel hoom and he was moving out there to cut down paying hotel room.

Q. Now several weeks ago you stated that he had beat you?

A. Yes.

Q. Now do you know why he beat you?

A. He was drunk and mad.

Q. Did'nt you, on that day, go down to Robertsdale -- Loxley and on the highway down there meet a man?

A. The day he beat me two weeks ago?

Q. Yes?

A. No.

q. You didn't go to Malbis or some place and drink beer with this man?

A. No sir.

Q. He was a truck driver?

A. No, sir. You mean on the day I left him?

Q. On December 30th did you go down to Lozley and on the way down meet a truck driver?

A. No.

Q Now you stated he madw between $500.00 and $600.00 a month. How did you gain knowledge of those figures?

A. Haven't I worked there and I have stayed around there enough?

Q. I don't know mam, I asked you. Is that the way you obtained your knowledge?

A. I have stayed there and worked and if that place is watched and looked after you can make money; you can't do it going in and out.

Q. Do you know how much he has been making in the last three or four months?

A. Not then; I have not checked the books, because I have not worked there in a long time.

Q. W hen was the last time you worked there and checked the books?

A. It was last year - Well I worked around in there all of last year; I worked and was helping him; we both worked on up even through December.

Q. During December did you check the books?

A. Not the books --Nothing but the register, like totalling it off and checking what we had taken in every day.

Q. How much was that during that time?

A. Average of $80.00 to $100.00 a day.

ON RE-DIRECT EXAMINATION OF COMPLAINANT:

Q. Have you ever fooled with another man since you have been

married?

A. No sir.

Q. Isn't it a fact that one of the beating you got was because he was trying to make you say that you were fooling with a man?

A. Yes. He confessed to me all he had done and how many times he had had intercourse with different women and he wanted me to tell what I had done while we were separated and I told him I had not done anything like having intercourse with a man; on Sunday evening he took me out to the house and he told me that he had seen this man on Saturday and this man told him that I had met him in Mobile and this and that and the other and so I told him: "Monday morning we are going to see this man and I want him to tell you that in front of me" and so he he kept on getting madder and madder and that is when he beat me and I said: "You can kill me if you want to, but I'll never tell you that I have been with another man like I've been with you".

Q. What all did he do to you?

A. He knocked me on the floor and got on me with his knees in my chest and was choking me and when I got to Mamma's Sunday night my neck was swelled even here, indicating.

Q. He told you he was going to kill you if you didn't admit it?

A. Yes, sir, he told me that he was going to kill me; he had already called me a half-made bitch and right in my sister's house that Sunday night he called me a half-made bitch -

He knew I was half made before he married me.

ON RE-CROSS EXAMINATION COMPLAINANT TESTIFIED:

Examination by Mr. Wilters.

Q. D ring the separation did you ever associate with any other men?

A. I have talked to them, but as far as going out with them and being intimate, I never have done that.

Q. I don't mean having intercourse or anything like that, but have you ever been out with men?

A. No, not out on a date - I have not.

Q. Have you met any one out - any men?

A. You mean like having an appointment to meet one in some certain place, no, sir.

Q. Have you ever been in a certain place and met one there?

A. No, I have not.

LAVONIA BROWN, A WITNESS FOR THE COMPLAINANT, BEING FIRST DULY SWORN, TESTIFIED:

Direct Examination by Mr. Mashburn

Q. What is your name,please?

A. Lavonia Brown.

Q. Are you a sister of the complainant?

A. Sister-in-law.

Q. Where do you live?

A. White House Fork.

Q. Close to where they live?

A. Yes sir.

Q. Have you been around them quite a bit during the last few years?

A. I have been right close to them for eight years.

Q. Have you observed Mrs. Holley after some of these beatings?

A. Yes sir.

Q. Could you see marks on her?

A. Yes sir.

Q. Two or three weeks ago did you see her?

A. Yes sir.

Q. Describe to the Judge the marks?

A. There was one on one of her eyes; we went to the house to see about the kid - and it was one of her eyes and the side of her head and her arm or any where you would look--

Q. Now have you observed the care and treatment they - she gives her children?

A. Yes sir.

Q. What kind of mother is she?

A. As fine as you could find.

Q. Do you think she is a proper person to have the care and custody of the children?

A. Yes sir.

Q. Do you think Mr. Holley is a proper person to have their care and control?

A. No sir.

Q. Do you think the children would be happy and adjusted with him?

A. I don't believe so. (page 10)

QA. Have you ever observed your sister-in-law do anything to cause her husband to be jealous and make him beat her up?

A. Not only that, but he has told us this time that she would never run out on him.

Q. He admitted that he was wrong?

A. Yes sir.

ON CROSS EXAMINATION OF THIS WITNESS BY MR. WILTERS. SHE TESTIFIED:

Q. You said he told her--

A. I said he told me and my husband.

Q. Where was that?

A. In our car parked by the diner.

Q. Now did you know that Mrs. Holley has been out a number of nights and left the children with a maid?

A. I know that it has been told that she did.

Q. Do you know that of your own knowledge?

A. No I don't.

Q. Have you ever seen J. B. Holley strike his wife?

A. Yes I have.

Q. When was that?

a. Well this was back before this came up - before they moved out of the store, but we also went in the house while this was going on and he got a pistol and run us off.

Q. Did you see him hit her this time?

A. I seen him push her down.

Q. This was the last time?

A That is this Saturday that I am speaking of.

Q. You never saw him actually strike her?

A. Yes sir, I have, but not this last time.

C E R T I F I C A T E:

I hereby certify that the foregoing, consisting of pages 1 to 12, both inclusive, correctly sets forth a true and correct transcript of the testimony as taken by me in open Court on ~~January~~ February 1956.

This 10th day of February, 1956.

Louise J. Dunlap
Court Reporter