$7.50 which includes Testimony of Complainant

3812

JAMES K. HOWARD, Complainant, VS. LOIS WILSON, Respondent.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

TESTIMONY TAKEN IN OPEN COURT, BEFORE HON. HUBERT M. HALL, JUDGE OF SAID COURT, ON OCTOBER 24, 1956.

MR. BLACKBURN: We offer in evidence the original notice given by the Complainant to the Resp ondent, dated June 21, 1956, which notified her that this testimony would be taken at 10 o'clock A. M. on Friday, June 23, pursuant to the provisions of Act 375, enacted by the Legislature of Alabama, September 8, 1955 and ask that the same be identified as Complainant's Exhibit A.-

Next we offer the testimony of the Complainant taken pursuant to this notice before Mrs. Dusenbury at the time stated in the notice.

MR. THOMPSON: Let me object to that --

MR. BLACKBURN: We ask that the testimony be identified as Complainant's Exhibit B.

MR. THOMPSON: We object to the t estimony of the Petitioner in which he points out what his contribution would be and what the child would get, on the ground that he did not state the source of his information, that being his opinion and we submit that opinion evidence would not be proper evidence in this matter.

MR. BLACKBURN: We Rest.

MRS. LOIS WILSON, THE RESPONDENT, BEING FIRST DULY SWORN, TESTIFIED:

Examination by Mr. Thompson.

Q. You are Lois Wilson?

A. Yes sir.

Q. Formerly the wife of James K. Howard,

A. Yes sir.

Q. You are the mother of Caroline I. Howard?

A. Yes sir.

Q. Now Lois, at the time the agreement for the support of $77.10 was entered into between you and James K. Howard, did you have occasion to know what his income was, based on the rating he had?

A. Around $122.30 a month.

Q. Now in order to establish the breakdown of the allottment to which the Plaintiff testified while you were married to the Plaintiff, James K. Howard, did you receive an allotment?

A. Yes sir.

Q. What was the amount of that allotment?

A. $137.10 for me and the child.

Q. At the time the agreement was entered into did ~~xxxx~~ you go to Brookley Field to a Legal Officer and Examine the provisions for allotments?

A. Yes I did.

Q. What did you say would be the provisions for a child of that age?

MR. BLACKBURN: This being an equity case, and since you only consider competent testimony, I am not going to make any objections at this time.

THE COURT: That is right.

Q. From your examination of the Air Force Register at the time you visited Brookley field and saw the Legal officer, what did you find for the support of an enlisted man of that rating would be?

A. For the child you mean?

Q. Yes?

A. That the Government would furnish?

Q. That would be provided for the child?

A. $45.70 is what the Government would put in.

Q. At the present time the Complainant testified that his pay as an enlisted man, first Class was $169.00 and something on the basis of his present pay, did you go back to Brookley because of this action and examine the Air Force Regulations?

A. Yes sir.

Q. As a result of your examination of the Air Force Regulations will you state your findings? What does the enlisted man of his grade get for foreign service?

A. $13.00 a month extra.

Q. And Longevity pay added -- Did you find anything concerning longevity pay?

A. Yes I did.

Q. Under your examination of Air Force Regulations his present wife wou get about what sum?

A. $91.40 a month.

Q. And the child would get what?

A. $45.70.

Q. The enlisted man testified that he was willing to add the sum of $40.00 a month out of his pocket for the contribution of the child on the basis of what he testified that would make the child receive for support how much?

A. His amount plus the Government's?

Q. Yes?

A. $85.70.

Q. During the period in which the enlisted man was pahing $77.10 for support of the child -- withdraw that -- Now did you find whether or not from the Air Force Regulations the marriage of the enlisted man, did that change the amount of support for the child?

A. No.

THE COURT $77.10 for a child-- Did you find out how much of that the airman was to contribute?

A. None of that.

Q. You are saying from your examination that the entire $77.10 to be allotted by the Government? (Page 3)

Q. Have you examined the regulations which were furnished to my office-- the Air Force Regulations?

A. Yes I have.

Q. Are these regulations similar to, or the Regulations = examined by you while you were in the Air Force's Legal office?

A. Similar to it.

MR. THOMPSON: We offer these regulations with their substantiating letters of transmittal, as Respondent's Exhibit 1.

Q. Did you find from your examination of the records that had the enlisted man not contributed the $77.10 whether he would get th that money?

A. No.

Q. You didn't find that, or he would not get it, which?

A. I just don't remember.

Q. Do you know, from reading the regulations which we introduced, whether or not the regulations determine the amount of money that is provided for the support of the child?

A. Repeat that.

Q. Do you knowqwhether or not from reading the regulations that they would determine the amount of money provided for the support of a child?

A. I believe so.

Q. Do you know whether or not, from reading the regulations, they will determine the contributions of the enlisted man?

A. Yes.

ON CROSS EXAMINATION OF RESPONDENT, SHE TESTIFIED:

Examination by Mr. Blackburn.

Q. Mrs. Wilson, at the time the agreement that you have referred to a moment ago was made and your ex-husband, Mr. James Howard - both of you were divorced and neither of you had then remarried?

A. No.

Q. Since that time both of you have remarried?

A. Yes sir.

Q. Now I will ask you whether or not you now have another child?

A. Yes I do.

Q. Now what does it cost you a month to maintain Caroline Howard?

A. Well I don't keep account of everything I spend on her, but I spend quite a bit.

Q. Could you give us your best judgment, please?

A. Well I could use more than I'm getting.

Q. I didn't ask you that, lady.

A. Well I just can't make an estimate of it.

Q. You're not prepared to tell the Court what it costs you to maintain Caroline Howard?

A. Not right of f hand.

Q. I will ask you this: Does it cost you $75.10 a month to maintain her?

A. More.

Q. Will you break it down for us, please mam. What do you spend for food?

A. At the price food is now and what she wants, it costs a lot.

Q. My quedstion was: How much, please mam?

A. That I could not tell you.

Q. How much do you spend for clothes?

A. I don't spend the same.

Q. Can you give us a ~~mkk~~ three month average?

A. No I could not.

Q. Now I take it that the whole family -- Do you own your home or rent?

A. No sir, I rent.

Q. You and your present husband and your other child and Caroline all occupy this home?

A. Yes sir.

Q. Does Caroline go to Kindegarten?

A. No, but I am going to put her in.

Q. Up to now she has not gone to any kikndegarten?

A. No.

q. And you can not tell us what it cost you a month to maintain Caroline?

A. No sir, because we are all there together and I can't give an account of it right now.

ON RE-DIRECT EXAMINATION OF RESPONDENT, SHE TESTIFIED:

Examination by Mr. Thompson.

Q. Tell me this, based on your knowledge of what it costs you at the time the $77.10 was originally provided by agreement have your costs be reduced any in taking care of Caroline?

A. No sir, they have went higher.

Q. The $77.10 was an agreement?

A. Yes sir, at the time the decree was signed.

Q. James K. Howard is making more money now than he was then?

A. Yes sir.

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

I hereby certify that the foregoing is a true and correct transcript of the testimony as taken by me on this day, in open Court in the foregoing cause.

This 24th day of October, 1956.

Court Reporter

JAMES K. HOWARD,	)	
Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
LOIS WILSON,	)	IN EQUITY
Respondent.	)	

NOTICE

TO LOIS WILSON, RESPONDENT, AND TO C. LeNOIR THOMPSON, SOLICITOR FOR RESPONDENT:

You are hereby notified that the complainant desires to take and will take the testimony of the complainant, James K. Howard, before Louise Dusenbury, Court Reporter, in the courthouse at Bay Minette, Alabama, at 10 o'clock A. M. on Friday, June 22, 1956, as provided in and for the purposes provided by Act No. 375 enacted by the Legislature of Alabama on September 8, 1955.

Dated this 21 day of June, 1956.

J. B. Blackburn

Solicitor for ~~Respondent~~ Complainant.

I, J. B. Blackburn, solicitor for the complainant in the foregoing cause, hereby certify that I delivered a copy of the foregoing notice to C. LeNoir Thompson, Esquire, solicitor for the respondent, on the 21 day of June, 1956.

Dated this 21 day of June, 1956.

J. B. Blackburn

Solicitor for complainant.

Com Exp A

NOTICE

JAMES K. HOWARD,

Complainant,

VS.

LOIS WILSON,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 3812.

Com Ent B

JAMES K. HOWARD, Complainant, VS. LOIS WILSON, Respondent.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

A P P E A R A N C E:

Hon. J. B. Blackburn, representing Complainant,

Hon. C. L. Thompson, representing Respondent.

TESTIMONY TAKEN BEFORE LOUISE DUSENBURY-

JAMES K. HOWARD, THE COMPLAINANT, BEING FIRST DULY SWORN, TESTIFIED:

Examination by Mr. Blackburn.

Q. Are you Mr. James K. Howard?

A. Right.

Q. Mr. Howard, are you over 21 years of age?

A. Yes sir.

Q. A resident of Baldwin County, Alabama?

A. Yes sir.

Q. The Respondent in this case, Lois Wilson, is over the age of 21 years?

A. Yes sir.

Q. Is she a resident of Baldwin County, Alabama?

A. Yes sir.

Q. Were you formerly married to Mrs. Wilson?

A. Yes sir.

Q. You all were divorced - that is, the two of you were divorced in this Court; that is, the Circuit Court of Baldwin County, Alabama, on August 2, 1954?

A. Yes sir.

Q. Since that time your former wife, who is now Mrs. Wilson, has remarried?

A. Yes sir.

Q. I will ask you whether or not you have remarried?

A. Right.

Q. Are you the father, and is Mrs. Wilson the mother of a girl child now four years of age, named Carolyn Howard?

A. Right.

Q. When you were divorced what maintenance and support did you agree to pay to this child?

A. $77.10 per month.

Q. That is the amount written in your divorce decree?

A. Yes sir.

Q. Mr. Howard, were you in the Military Service when you were divorced from your former wife?

A. Yes sir.

Q. Are you still in the military service?

A. Yes sir.

Q. What do you get as compensation while you are in the Military Service?

A. $169.70.

Q. In addition to that, for over-seas duty do you get anything else?

A. $13.00 a month.

Q. Am I correct in assuming that the $13.00 a month is only paid to you while you are over-seas?

A. Yes sir.

Q. Even while you are home on leave it is deducted from you pay?

A. Yes sir.

Q. What is your monthly income tax?

A. $14.00 per month.

Q. What is your monthly quarter allowance?

A. $77.10 per month.

Q. As long as you were a divorced man, all of that quarter-allowance was paid to your child, was it not?

A. Right.

Q. I believe you stated that you have since remarried?

A. Right.

Q. Since you have remarried, will there be any additional quarter-allowance provided for you?

A. No sir.

Q. If that $77.10 per month is continued to be paid to your child, how much of it will be taken out of your pay?

A. The whole $77.10.

Q. I don't think you follow me. The whole $77.10 won't be deducted from your $169.70 per month?

A. No sir.

Q. What part of the $77.10 will be deducted?

A. None of the $77.10 would come out.

Q. Yet you don't get any additional quarter allowance because of the fact that you are remarried?

A. No.

Q. So you would have to support your present wife out of the $169.70 that you get if the $77.10 is continued to be paid to the child?

A. Right.

Q. In the event the $77.10 per month is reduced, what additional benefits would that give to you to support your wife?

A. It would be only how much the $77.10 was reduced.

Q. If the figure of $77.10 were reduced to $40.00 per month, how would it figure out?

A. It would figure that I got $37.10 more per month.

Q. That $37.10 could be used for the support of your wife?

A. Yes sir.

Q. If it were reduced to $35.00 per month, then would you get $42.10 extra per month?

A. Yes sir.

Q. Let me ask you this question: Do you have any other income except what you get from the military service?

A. No sir.

Q. I believe you say your former wife has remarried?

A. Yes sir.

Q. Now in the army don't you have finance officers who are thoroughly familiar with this?

A. Yes.

Q. When you get back to your quarters will you get your finance officer to work up a statement showing how this thing works from beginning to end and send it to me and I'll get it in the record for you.

ON CROSS EXAMINATION, COMPLAINANT TESTIFIED:

Examination by Mr. Thompson.

Q. And you're testifying here that it if is reduced to $40.00 a month you would get $37.10 more ?

A. Per month, yes.

Q. How much are you contributing of this $77.10?

A. Nothing at the present time.

Q. The Government is contributing that?

A. That is my quarter-allowance that they are paying the child.

ON RE-DIRECT EXAMINATION, COMPLAINANT TESTIFIED:

Examination by Mr. Blackburn.

HART

Q. You do want to make provisions and want to support your child in keeping with your means, do you not?

A. Sure, according to my income.

ON RE-CROSS EXAMINATION, COMPLAINANT TESTIFIED:

Examination by Mr. Thompson.

Q. What is the expense of keeping a child?

Z. Well, I wouldn't know. I can tell you my personal opinion.

Q. I want to know what you know?

A. A child four years old, I don't believes needs $77.10 a month.

Q. You don't have any specific cost you can testify as to?

A. No sir.

ON RE-RE-DIRECT EXAMINATION OF THE COMPLAINANT, HE TESTIFIED:

Examination by Mr. Blackburn.

Q. Your former wife was given custody of the child?

A. Yes.

Q. You have no desire to interfere with that arrangement?

A. No.

Q. In keeping with your means, you do think $77.10 per month is too much?

A. Sure.

Q. What, in your opinion would be a reasonable amount monthly to be paid for the support and maintenance of this child?

A. $35.00 to $40.00 a month.

ON RE-RE-CROSS EXAMINATION, BY MR. THOMPSON:

Q. Would you be able to pay $35.00 out of your own pocket?

A. Sure.

Q. Of your own money?

A. Sure.

ON RE-RE-RE-DIRECT EXAMINATION OF COMPLAINANT, HE TESTIFIED:

Examination by Mr. Blackburn.

Q. Do you understand the implication of his question, that you would be willing to pay $35.00 or $40.00 a month out of your own money irrespective of what the government might do?

A. I do.

Q. You do?

A. I do.

Q. If you pay $35.00 or $40.00 out of your own pocket out of your own money, would the child get any other benefits from the Government?

A. No.

Q. What is your rating, Mr. Howard?

A. Airman First Class.

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

I hereby certify that the foregoing, consisting of pages 1 to 6, both inclusive, correctly sets forth a true and correct transcript of the testimony as taken by me on this 22nd day of June, 1956, in the above styled cause.

This 22nd day of June, 1956.

Lenore Dunlap

COURT REPORTER

United States Senate

COMMITTEE ON
LABOR AND PUBLIC WELFARE

Res Eng

Washington, D. C.
July 12, 1956

Honorable C. LeNoir Thompson
Attorney at Law
Bay Minette, Alabama

My dear LeNoir:

Enclosed is a self-explanatory letter and enclosure which I have just received from General Kelly of the Air Force in response to my efforts to be of assistance to you.

It was a pleasure for me to contact the officials for you, and I hope you will be able to find the information you wish in Chapter 5, Air Force Manual 173-20, copy of which is enclosed.

Please never hesitate to write me at any time and call on me in any way.

With kindest regards and all good wishes, I am

Very sincerely,

LH:mr

DEPARTMENT OF THE AIR FORCE
WASHINGTON

OFFICE OF THE SECRETARY

11 JUL 1956

Dear Mr. Chairman:

I refer to your inquiry in behalf of Mr. C. LeNoir Thompson, who has requested a copy of the Air Force directive dealing with Class Q allotments.

A copy of Chapter 5, Air Force Manual 173-20, concerning this subject is inclosed.

It is a pleasure to be of service.

Sincerely yours,

Joe W. Kelly

JOE W. KELLY
Major General, USAF
Director, Legislative Liaison

2 Inclosures

Honorable Lister Hill
Chairman, Committee on Labor and
Public Welfare
United States Senate

JAMES K. HOWARD,	)	IN THE CIRCUIT COURT OF
Complainant,	)	BALDWIN COUNTY, ALABAMA
vs.	)	IN EQUITY. NO. 3812.
LOIS WILSON,	)	
Respondent.	)	

FINAL DECREE

This cause coming o n to be heard is submitted for a final decree on the original Bill of Complaint, Amended Answer and Testimony as noted by the Register, from all of which the court finds that the allegations of the Bill of Complaint are true, that the Complainant is entitled to the relief prayed for by him therein and that the sum of $45.70 is a reasonable amount to be paid each month to the Respondent for the maintenance and support of Carolyn Howard, the minor child of the said parties, upon consideration of all of which it is therefore, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That the amount of $77.10 per month heretofore paid by the Complainant to the Respondent for the maintenance and support of Carolyn Howard, who is also known as Carolyn Irene Howard, shall be, and the said sum is hereby reduced to the sum of $45.70, effective on December 1, 1956, which said amount shall include any and all amounts contributed or paid by the United States as an allotment for the said child.

2. The said Complainant shall pay or cause to be paid the said sum of $45.70 per month to the said Respondent for the use and benefit of the said child until such payments are changed by a further order or decree of this court.

3. The costs of this proceeding are hereby taxed against the Respondent, for which execution may issue.

ORDERED, ADJUDGED AND DECREED by the Court on this the 30th day of November, 1956.

Hubert M Hall
Judge.

7

FINAL DECREE

JAMES K. HOWARD,

Complainant,

vs.

LOIS WILSON,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 3812.

Filed 11-30-56
Alice J. Heck

RECORDED

_____Div. No._____ CERTIFICATE OF APPEAL. (Equity Cases.)

No. ~~JAMES K. HOWARD~~ 3812

_____
Complainant.

vs.

~~LOIS WILSON~~ _____
Respondent.

I, ~~Alice J. Duck~~ Register of the Circuit Court In Equity, ~~Baldwin~~ County, Alabama, hereby certify that in the cause of ~~JAMES K. HOWARD~~ Complainant,

vs.

~~LOIS WILSON~~ Respondent,

which was tried and determined in this Court on the 30th day of ~~November~~ 1956, in which there was a decree in favor of the ~~Complainant~~.

On the 29th day of ~~December~~ 1956, the ~~Respondent~~ took an appeal to the ~~Supreme~~ of Alabama, to be holden of and for said State.

I further certify that ~~No Security for cost filed (Titlt 7, Sec.~~ 799) filed security for cost of appeal, to the _____ Court, on the _____ day of _____ 19__, and that _____, _____ are sureties on the appeal bond.

I further certify that notice of said appeal was on the _____ day of ~~January~~, 1957, served on ~~J. B. Blackburn~~ as attorney of record for said appellee.

Witness my hand and the seal of this Court, this the 29th day of ~~December~~, 1956.

Alice J. Duck

Register of the Circuit Court In Equity of

~~Baldwin~~ County, Alabama.

1 Div. 711 - Lois Wilson v. James K. Howard.

OPINION DATED May 9, 1957

REHEARING DENIED. Page 7 written on rehearing.

[ON REHEARING]

STAKELY, JUSTICE.

In support of his application for rehearing appellee contends that we were in error in reversing the decree below for the reason that appellant's evidence was not certified by the reporter as required by Equity Rule 56, and was not, therefore, properly before us. The evidence in the case was in part ore tenus before the court and in other part by deposition. The testimony of the respondent (appellant here) was given orally before the court, and at the end of it the record shows a purported certificate of correctness with a blank line under the words "Court Reporter," and with no name signed or typewritten. At the end of the testimony for complainant (appellee here) there appears the Reporter's Certificate which we reproduced and treated in the original opinion above. We overlooked this unsigned certificate on original consideration.

If it be conceded that the absence of a proper certificate by the court reporter would prevent consideration of appellant's testimony (as to this see Bentley v. County Commission, 264 Ala. 106, 108, 84 So.2d 490), that is a matter immaterial to the ultimate question here involved, which is, did the husband show such a change in the condition of the parties as to warrant modification of the original support decree? Eliminating entirely the evidence offered by the wife, the result must be the same. The evidence on behalf of the husband wholly fails to show any such changed conditions as may be made the basis for a modification of the former decree. We adhere to the conclusion reached and stated in the original opinion.

Rehearing denied.

Livingston, C. J., Lawson and Merrill, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1957-58

1st *Div., No.* 711,

LOIS WILSON, *Appellant*

vs.

JAMES K. HOWARD, *Appellee,*

From BALDWIN IN EQUITY NO. 3812 *Circuit Court.*

The State of Alabama,
City and County of Montgomery,

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to seven *inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause* as announced on application for rehearing Nov. 21, 1957, and *as the same appears and remains of record and on file in this office.*

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 21st *day of* NOVEMBER, 19 57.

J. Render Thomas, Jr.
Clerk of the Supreme Court of Alabama

3810

THE SUPREME COURT OF ALABAMA

October Term, 19 57-58

1st *Div., No.* 711

LOIS WILSON

Appellant,

vs.

JAMES K. HOWARD

Appellee.

From BALDWIN CIRCUIT Court.
IN EQUITY
~~NO. 3812~~

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1957

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

J. RENDER THOMAS
CLERK

NOVEMBER 21, 1957

Mrs. Alice J. Duck
Register Baldwin Circuit Court
Bay Minette, Alabama

In re: 1 Div. 711
Lois Wilson v. James K. Howard

Dear Mrs. Duck:

The Supreme Court today overruled the application for rehearing filed by the appellee in the above cause on May 24, 1957. Page 7 enclosed was written "On Rehearing." I will thank you to attach this page to the copy of opinion sent you when the case was originally Reversed and Rendered on May 9, 1957, in order to complete your copy.

Yours very truly,

J. Render Thomas
Clerk, Supreme Court

JRT/ld
Encl. 1.

JAMES K. HOWARD	IN THE CIRCUIT COURT OF
COMPLAINANT	BALDWIN COUNTY, ALABAMA
VS	IN EQUITY.
LOIS WILSON	CASE NO. 3812.
RESPONDENT	

Now comes Lois Wilson, and gives notice of appeal from the decree of the Circuit Court of Baldwin County, Alabama, in Equity, rendered in said cause on the 30th day of November, 1956.

Dated this 29th day of December, 1956.

C. Leon Thompson
Solicitor for Respondent.

JAMES K. HOWARD COMPLAINANT VS LOIS WILSON RESPONDENT	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA IN EQUITY. CASE NO. 3812

Comes Lois Wilson, Respondent in the above styled cause and hereby appeals to the Supreme Court of Alabama from the final decree and judgment of the Circuit Court of Baldwin County, in Equity rendered in the above styled cause on the 30th day of November, 1956.

Lois Wilson

I the said Lois Wilson being duly sworn do depose and say that I have no property in my own name and that I am married and I am unable to make a proper appeal bond, wherefore I file this appeal under the provisions of Title 7 Section 799 of the 1940 Code of Alabama as amended.

Lois Wilson

Sworn to and subscribed before me this the 29th day of December, 1956.

C. Earl Thompson
Notary Public Baldwin County, Alabama.

Amended Answer

JAMES K. HOWARD COMPLAINANT VS LOIS WILSON RESPONDENT	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA IN EQUITY. CASE NO. _____

Comes Respondent Lois Wilson and amends her answer heretofore filed in the above styled cause to read as follows:

1.

As to paragraph no. 1, she admits the allegations thereof.

2.

As to paragraph no. 2, she admits the allegations thereof.

3.

As to paragraph no. 3, she admits the allegations thereof.

4.

As to paragraph no. 4, she admits the allegations thereof.

5.

As to paragraph no. 5, she denies the allegations thereof and for further answer thereto shows unto this Honorable Court as follows: That at the time support was established for the infant child, Carolyn I. Howard the said petitioner in this cause earned $122.30 per month; and now the said petitioner, due to pay increase and longevity increase draws $167.70 per month with an additional pay of $13.00 per month for foreign service aggregating $180.70, besides quarters and rations allowance.

6.

That the said Complainant had previously agreed to pay the sum of $77.10 as maintenance and support for said child. That the station in life which the said Complainant enjoys, the sum of $77.10 is a fit, suitable and proper sum to be used in maintaining a child of the Complainant and Cross-Respondent, and that your Petitioner sets out and makes a part hereof of Chapter 5, Class Q, Allotment Air Force Regulation establishing and setting out a reasonable and proper support for dependants: 20502. Court Order or Written Agreement. (a) Support of Child Limited by Court Decree. Where divorce decree specifies the amount the airman is to pay for support of a child in the custody of his divorced wife, the amount required to be allotted must equal the sum specified in the decree or the applicable amount of basic allowance for quarters, whichever is greater. However, should the parties enter into a valid written

agreement as to the actual amount required for support of the child, the allotment may be modified to the applicable amount of basic allowance for quarters or the amount fixed by such agreement, whichever is greater. The airman will not be required to allot more than the basic allowance for quarters plus the airman's required contribution for his grade.

7.

That the said James K. Howard having testified under oath of his knowledge of Air Force regulations, to-wit, that he was presently not contributing one penny to the childs support but that the said support was being paid wholly from the Governments contribution; and that the said James K. Howard was familiar with the requirements for contribution and for allotment of his grade insofar as it pertained to dependents of an enlisted man.

8.

And further that the said James K. Howard testified under oath that he was willing to contribute the sum of Forty ($40.00) Dollars per month from his own pay for the maintenance of the said dependent child subject of this suit.

9.

And that section 20501 of Air Force regulations 173-20 revised March 30, 1955 provided that an Airman in the grade of the said Petitioner herein shall as follows: "a. Before an airman is entitled to credit for basic allowance for quarters for dependents he must have in effect an allotment of pay to his dependents in an amount equal to the applicable rate for basic allowance for quarters plus: (1) $40, if the airman is in grade E-1, E-2, or E-3; (2) $60, if the airman is in grade E-4, or E-5; or (3) $80, if the airman is in grade E-6 or E-7. Such allotment will be known as a class Q allotment, which allotment is based on the recognized grade of the airman.

10.

That said testimony of the petitioner in this cause shows the willingness of the petitioner in this cause to contribute the sum of Forty($40.00) Dollars per month from his own funds to the maintenance and support of the dependent child which contribution of Forty ($40.00) Dollars when added to the contribution provided under section 20501 which reads as follows:"Where determination is made that the support provided by the agreement is inadequate, a class Q allotment will be established in an amount not less than the basic allowance for quarters, but not to exceed an amount equal to $40.00, $60.00, or $80.00, as appropriate, plus the applicable rate of basic allowance for quarters." That the said monies provided for by Air Force regulations would amount to

$45.70 plus the $40.00 offered by the petitioner thereby aggregating a total of $85.70, an increase over the present amount being paid without any cost whatever to the said petitioner.

Now having answered said petition filed in said cause your Respondent prays that this Honorable Court will make and enter a decree that she is entitled to a contribution of $40.00 from the personal monies of the Complainant herein and that said money be paid in a class Q allotment under the provisions of section 20501 AFM 173-20 copy of which has been attached hereto and made a part hereof; the application of which regulation and the contribution from the Government in accordance thereto will aggregate the sum of $85.70 for which your Respondent prays an order of this Court adjudicating said sum as a reasonable sum for the maintenance and support of the infant child, Carolyn I. Howard.

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

C. L. Flori Thompson
Solicitor For Respondent.

CITATION OF APPEAL

Printed by The Baldwin Times

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN THE CHANCERY COURT OF BALDWIN COUNTY

To James K. Howard

Or To Hon. J. B. Blackburn, Solicitors of record.

Whereas, on the 29th day of December, 19 56, Lois Wilson

took an appeal from the decree rendered on the 30th day of November

19 56, by the Circuit Court of said county, in the cause of

JAMES K. HOWARD

versus

LOIS WILSON

Now, therefore, you are cited to appear as required by law, before the Supreme Court of Alabama, to defend on said appeal, if you think proper so to do.

Witness my hand this 29TH day of December, 19 56.

Register in Chancery.

Received 2 day of Jan 1957
and on 3 day of Jan 1957
I served a copy of the within Citation
on Hon. J. B. Blackburn

By service on J B Blackburn

TAYLOR WILKINS, Sheriff
By W A Talbert D. S
O Mc

No. 3812

JAMES K. HOWARD Complainant

vs.

LOIS WILSON Respondent

CITATION OF APPEAL

IN EQUITY

Issued _____ day of _____, 19____

To the Honorable
Wm. J. B. Blackburn

JAMES K. HOWARD,	)	IN THE CIRCUIT COURT OF
Complainant,	)	BALDWIN COUNTY, ALABAMA
vs.	)	IN EQUITY. NO. 3812.
LOIS WILSON,	)	
Respondent.	)	

NOTE OF TESTIMONY

This cause is submitted for a final decree on behalf of the Complainant upon the following:

1. Original Bill of Complaint.

2. Testimony of the Complainant taken pursuant to Act No. 357, enacted by the Legislature of Alabama and approved on September 8, 1955.

This cause is submitted for a final decree on behalf of the Respondent upon the following:

1. Amended Answer;

2. Testimony of the Respondent taken in open court as provided by Equity Rule #56, as amended.

DATED this _____day of November, 1956.

_____
Register of the Circuit Court of
Baldwin County, Alabama, in Equity.

JAMES K. HOWARD,	)	IN THE CIRCUIT COURT OF
Complainant,	)	BALDWIN COUNTY, ALABAMA
vs.	)	IN EQUITY. NO. 3812.
LOIS WILSON,	)	
Respondent.	)	

NOTE OF TESTIMONY

This cause is submitted for a final decree on behalf of the Complainant upon the following:

1. Original Bill of Complaint.

2. Testimony of the Complainant taken pursuant to Act No. 357, enacted by the Legislature of Alabama and approved on September 8, 1955.

This cause is submitted for a final decree on behalf of the Respondent upon the following:

1. Amended Answer;

2. Testimony of the Respondent taken in open court as provided by Equity Rule #56, as amended.

DATED this 30 day of November, 1956.

Register of the Circuit Court of Baldwin County, Alabama, in Equity.

6

RECORDED

NOTE OF TESTIMONY

JAMES K. HOWARD,

Complainant,

vs.

LOIS WILSON,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY. NO. 3812.

Filed 11-30-56

Register

STATE OF ALABAMA)
*
BALDWIN COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon LOIS WILSON to appear within thirty days from the service of this writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Bill of Complaint filed against her by JAMES K. HOWARD.

WITNESS my hand this 18 day of June, 1956.

Register

Service accepted as attorney for Respondent - This 18 day of June 1956

C. Leslie Thompson

PETITION TO REDUCE AMOUNT PAID FOR MAINTENANCE AND SUPPORT OF MINOR CHILD.

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

Your petitioner, James K. Howard, presents this Bill of Complaint against Lois Wilson and complains and shows unto the court and your Honor as follows:

1. Complainant is over twenty-one years of age and a resident of Baldwin County, Alabama, but is now in the military service of the United States. The respondent is over twenty-one years of age and a resident of Baldwin County, Alabama.

2. Complainant and the respondent were formerly man and wife and were divorced by a decree of the Circuit Court of Baldwin County, Alabama, Sitting in Equity, a copy of which is hereto attached, marked "Exhibit A", and by reference made a part hereof as though fully incorporated herein.

3. Complainant is the father and the respondent is the mother of Carolyn Howard, a girl child four years of age, who is in the custody and control of the respondent.

4. Since the complainant has been divorced from the respondent, he has been in the military service of the United States and a monthly allotment of $77.10 per month has been made in favor of the said child, which said amount has been payable to her monthly.

5. Complainant has now remarried and since his said remarriage the United States will deduct a part of his salary or other compensation because of the said allotment of $77.10 per month. Complainant further alleges that the said amount of $77.10 per month is more than is necessary for the reasonable maintenance of the said child and desires that it be reduced.

PRAYER FOR PROCESS

Complainant prays that a copy of this Bill of Complaint be served on the respondent requiring her to appear within the time fixed by this court to plead, answer or demur hereto.

PRAYER FOR RELIEF

Upon a final hearing of this cause complainant prays that the said sum of $77.10 per month, which he is now required by the former orders of this court to pay to the respondent for the maintenance and support of the said child, Carolyn Howard, be reduced to some reasonable amount which petitioner alleges to be $35.00 per month.

Petitioner further prays that such other orders be made and decrees rendered as may be requisite and proper in the premises.

J. B. Blackburn

Solicitor for complainant.

STATE OF ALABAMA)
*
BALDWIN COUNTY)

Before me, the undersigned authority, within and for said County in said State, personally appeared James K. Howard, who, after being by me first duly and legally sworn, deposes and says: That he has read over the foregoing Bill of Complaint, and that the facts stated therein are true.

James K. Howard

Sworn to and subscribed before me on this the 15 day of June, 1956.

J. B. Blackburn

Notary Public, ~~Baldwin County~~ State of, Alabama at Large.

LOIS PAUL HOWARD, Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
JAMES K. HOWARD, Respondent.	)	IN EQUITY

DIVORCE DECREE

This cause coming on to be heard was submitted upon Bill of Complaint, Answer and Waiver and Testimony as noted by the Register, 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 that the bonds of matrimony heretofore existing between the Complainant and Defendant be, and the same are hereby, dissolved, and that the said Lois Paul Howard is forever divorced from the said James K. Howard for and on account of abandonment.

And it is hereby further ordered, adjudged and decreed that the said Complainant, Lois Paul Howard, shall have the care, custody and control of the one minor child, Carolyn Irene Howard.

And it is further ordered, adjudged and decreed that the said Respondent, James K. Howard, shall pay to the said Complainant the sum of $77.10 per month as maintenance and support for said minor child.

And it is further ordered, adjudged and decreed that the Respondent shall have reasonable rights of visitation with the said minor child.

It is further ordered, adjudged and decreed that neither party to this suit shall again marry except to each other until sixty days after the rendition of this decree, and that if appeal is taken within sixty days, neither party shall againsmarry except to each other until sixty days after the rendition of this decree, and that if appeal is taken within sixty days, neither party shall again marry except to each other during the pendency of said appeal.

It is further ordered that the Complainant and Respondent be, and they are hereby permitted to again contract marriage upon

the payment of the cost of this suit.

It is further ordered that James K. Howard the Respondent pay the cost herein to be taxed, for which execution may issue.

This 2 day of August, 1954.

(S) HUBERT M. HALL
Judge Circuit Court, in Equity.

JAMES K. HOWARD	)	IN THE CIRCUIT COURT OF
COMPLAINANT	)	BALDWIN COUNTY, ALABAMA
VS	)	IN EQUITY
LOIS WILSON	)	CASE NO. 3812
RESPONDENT	)	

Comes Lois Howard Wilson, Respondent in the cause filed aganist her on June 15th, 1956, by the Compainant therein and for answer to said petition shows unto this Honorable Court as follows:

1.

As to Paragraph No. 1. she admitts the allegations thereof.

2.

As to Paragraph No. 2. she admitts the allegations thereof.

3.

As to Paragraph No. 3. she admitts the allegations thereof.

4.

As to Paragraph No. 4. she admitts the allegations thereof.

5.

As to Paragraph No. 5. she denies the allegation and for further answer thereto shows unto this Honorable Court as follows: That the said Complainant in addition to the sum paid him when the dirvorce was granted. Nows draws an additional Thirteen ($13.00) Dollars per month in pay, besides quarters and rations allowance.

6.

That the said Complainant had previously agreed to pay the sum of $77.10, as maintenance and support for said child. That the stationin life which the said Complainant enjoys the sum of $77.10 is a fit, suitable and proper sum to be used in maintaining a child of the Complainant and Cross-Respondent, and that your Petitioner sets out and makes a part hereof of Chapter 5, ClassQ, Allotment Air Force Regulation establishing and setting out a reasonable and proper support for dependants: 20502. Court Order or Written Agreement (a)Support of Child Limited by Court Decree. Where divorce decree specifies the amount the airman is to pay for support of a child in the custody of his divorced wife, the amount required to be allotted must equal the sum specified in the decree or the applicable amount of basic allowance for quarters, whichever is greater. However, should the parties enter into a valid written agreement as to the actual amount required for support of the child, the allotment may be modified to the applicable amount of basic allowance for quarters

or the amount fixed by such agreement, whichever is greater. The airman will not be required to allot more than the basic allowance for quarters plus the airman's required contribution for his grade.

Attorney for Respondent

FILED
SEP 19 1956
ALICE J. DUCK, Register

JAMES K. HOWARD COMPLAINANT VS LOIS WILSON RESPONDENT	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA IN EQUITY. CASE NO. 3812

Comes the Respondent and for demurrer to said complaint and to each and every phase thereof shows unto this Honorable Court as follows:

1.

There is no equity in the bill.

2.

That said complaint contains the conclusions of the pleader.

3.

That count five of said complaint fails to state the date of remarriage.

4.

That count five of said complaint fails to allege the amount which will be deducted.

5.

That count five of said complaint fails to state what the petitioner believes to be a reasonable amount for the support of said child.

6.

That complainant fails to offer to do equity.

FILED
JUL 3 1956
ALICE J. DUCK, Register

Lois Thompson
Attorney for Respondent.

MAY 9, 1957

THE STATE OF ALABAMA - - - - - - - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1956-57

1 DIV. 711

LOIS WILSON

vs.

JAMES K. HOWARD,

BALDWIN CIRCUIT COURT,
IN EQUITY.
NO. 3812

Come the parties by Attorneys, and appellee's Motion to Affirm on Certificate, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the Court,

IT IS CONSIDERED, ORDERED, ADJUDGED, AND DECREED that appellee's Motion to Affirm the decree of the Circuit Court, In Equity, be and the same is hereby denied.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the decree of the Circuit Court, In Equity, modifying the original support decree be and the same is hereby reversed and annulled, and this Court proceeding to render the decree that

the Circuit Court, In Equity, should have rendered, DOTH CONSIDER, ORDER, ADJUDGE, AND DECREE that James K. Howard's Petition or Bill of Complaint seeking a modification of the original support decree be and the same is hereby denied.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the original support decree allowing appellant $77.10 per month as support for Carolyn Howard, be restored to the docket of the Circuit Court, In Equity.

IT IS ALSO CONSIDERED, ORDERED, AND ADJUDGED that the costs of appeal of this Court and all of the costs of the Circuit Court, In Equity, be and the same are hereby taxed against the appellee, James K. Howard, for all of which let execution issue accordingly.

STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1956-57

1st *Div., No.* 711

LOIS WILSON, *Appellant*,

v.

JAMES K. HOWARD, *Appellee*,

From BALDWIN CIRCUIT IN EQUITY NO. 3812 *Court.*

The State of Alabama,
City and County of Montgomery.

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from one to t w o *inclusive, contain a full, true, and correct copy of the* DECREE OF REVERSAL AND RENDITION, MADE AND ENTERED MAY 9, 1957, BY * * * * * * * * * * * * ** * * * * * * * * * * * *

said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 9th *day of* MAY *19* 57

J. Render Thomas,
Clerk of the Supreme Court of Alabama.

OCTOBER TERM 1956-57

THE SUPREME COURT OF ALABAMA

1st *Div., No.* 711

LOIS WILSON

Appellant,

v.

JAMES K. HOWARD

Appellee.

From BALDWIN CIRCUIT *Court.*

IN EQUITY

NO. 3812

Certified Copy of

DECREE OF REVERSAL AND RENDITION, MADE AND ENTERED MAY 9, 1957.

BROWN PRINTING CO., MONTGOMERY, ALA. 1948

MAY 9, 1957

MAY 9 1957

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPRING TERM, 1957

1 Div. 711

Lois Wilson,

v.

James K. Howard,

Appeal from Baldwin Circuit Court,
in Equity.

STAKELY, JUSTICE.

This is an appeal from a decree of the equity court reducing the monthly payments which were required to be made by James K. Howard (appellee) to Lois Wilson (appellant) for the maintenance and support of their minor child, who was four years of age at the time this suit was filed, from $77.10 per month to $45.70 per month. The obligation to make these payments for the support of this minor child is the result of a provision incorporated in a decree which granted a divorce to Lois Wilson from James K. Howard. Both the former husband and wife have since remarried.

The case is submitted here on a motion to affirm the decree of the lower court on certificate and on the merits. We first shall discuss the motion.

I. It is argued by the appellee that the motion to affirm on certificate should be granted because the appellant has not complied with Rule 1 of this Court and Equity Rule 56, as amended. Rule 1 of this court provides among other things that, "Such assignments shall be written or typed on transcript paper and bound with the transcript and shall bear the certificate of the appellant or his counsel that a copy of same has been served upon the appellee or his counsel." The assignments referred to are the assignments of error on appeal to this court. The record shows that the assignments of error are written and typed upon the record in this case. The case was submitted here on March 21, 1957. In connection with the assignments of error, the appellant, after setting forth the assignments of error, makes the following statement:

"March 20, 1957
State of Alabama
Baldwin County

"I hereby certify that I delivered a copy of the foregoing Assignment of Errors to the Honorable J. B. Blackburn, Solicitor for the Appellee, on the 4th day of March, 1957.

C. LeNoir Thompson
Solicitor for Appellant"

Appellant's brief was served on counsel for the appellee on March 1, 1957. The result is that under Rule 12 of this Court, the appellee was deprived of three days for the preparation of his brief to answer the assignments of error.

In Edge v. Bice, 263 Ala. 273, 82 So.2d 252, this Court said:

> "Appellee in briefs calls attention to the failure of appellant to certify that a copy of the assignments of error had been served on appellee as required by amended Supreme Court Rule 1. The record is silent as to that, and no attention was directed to it on the submission of the case in this Court. That was a waiver by appellee of the requirement. It is not jurisdictional.
>
> "It is also insisted that we should not consider the merits of the appeal because appellant's brief did not comply with Rule 1, supra. But we have held that when appellant's brief does not comply with the rule, if it fairly and helpfully makes the points upon which appelland relies the Court may in its discretion consider those points on their merits. * * *."

Since we have held that the requirement of Supreme Court Rule 1 is not jurisdictional and it does not appear that the appellee has been prejudiced by the failure of the appellant to comply strictly with Supreme Court Rule 1, it necessarily follows, as

pointed out in the foregoing authority, that this Court has a discretion as to whether it will consider the case on the merits. We resolve that question in favor of the appellant and are, accordingly, not willing to grant the motion on the ground here considered. —Simmons v. Cochran, 252 Ala. 461, 41 So.2d 579.

As to compliance with Equity Rule 56, as amended, we find the following certificate in the record after the evidence set forth in the record:

"Certificate

"I hereby certify that the foregoing, consisting of pages 12 to 16, both inclusive, correctly sets forth a true and correct transcript of the testimony as taken by me on this 22nd day of June, 1956, in the above styled cause. This 22nd day of June, 1956.

LOUISE DUSENBURY
COURT REPORTER

Filed July 10, 1956
Alice J. Duck, Clerk."

It is true that the signature of the court reporter in the record of this appeal is not in her own handwriting but is typed, but this does not justify us in saying that Equity Rule 56, as amended, has not been complied with.

II. The appellee testified that he was divorced from the appellant on August 2, 1954 and that both the appellee and the appellant have remarried. The appellant and the appellee are the parents of Carolyn Howard, a girl then four years of age. When they were divorced appellee agreed to pay $77.10 per month for the maintenance and support of the child. He is in the military service. He is paid $169.70 per month and $13.00 per month in addition when overseas. His monthly income tax is $14.00 per month. He has a monthly quarters allowance of $77.10. As long as he was divorced all of the quarters allowance was paid to the child. Since he has remarried no additional quarters allowance will be paid and he will be required to support his present wife and the child by his second marriage out of $169.70 per month in the event the $77.10 per month is paid to the child. He further testified that any reduction in the payment of $77.10 per month to the child could be used to support his new family. He has no other income. He further testified that $77.10 is too much for the maintenance and support of the child and that a reasonable monthly amount for the maintenance and support of the child would be $35.00 or $40.00 per month.

The appellant testified that she was the former wife of appellee and is the mother of Carolyn Howard and that she previously received an allotment of $137.10 for herself and the child. On cross examination she testified that at the time the agreement was made for the appellee to pay $77.10 per month, both she and the appellee were divorced and neither had remarried, and that she does not know what it costs each month to maintain Carolyn Howard and that she could not tell what she spends for food or clothes or rent.

She further testified, however, that while she cannot tell what it costs a month to maintain Carolyn Howard, she does know that it costs more than $77.10 as provided in the original agreement.

This Court has held that the fact that a divorced husband has remarried is a circumstance which may be considered in weighing the equities of the situation when he requests the court to reduce support and maintenance payments to minor children. —Stewart v. Stewart, 261 Ala. 374, 74 So.2d 423 and cases cited therein. Our Alabama cases, however, hold that although remarriage may properly be considered, the fact that the husband has remarried, thereby increasing his expenses, is not such a change in condition of the parties as to justify a modification of the original support decree. —Stewart v. Stewart, supra and cases cited therein.

Under the evidence we find no proof of a change in conditions existing at the time of the decree of divorce and the time the present application for modification of the allowance made thereunder and that being true, we are unable to see any basis for a reduction in the amount of the allowance for the support of the child.

The decree of the lower court is, therefore, reversed and one is here rendered restoring the allowance to the appellant of $77.10 as support for Carolyn Howard.

Reversed and rendered.

Livingston, C. J., Lawson and Merrill, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st *Div., No.* 711,

LOIS WILSON, *Appellant*

vs.

JAMES K. HOWARD, *Appellee,*

From BALDWIN IN EQUITY NO. 3812 *Circuit Court.*

The State of Alabama,
City and County of Montgomery,

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to six *inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.*

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 9th *day of* May, 19 57

J. Render Thomas
Clerk of the Supreme Court of Alabama

THE SUPREME COURT OF ALABAMA

October Term, 19 56-57

1st *Div.*, *No.* 711

LOIS HALL

Appellant,

vs.

JAMES K. HOWARD

Appellee.

From BALDWIN CIRCUIT Court.
IN EQUITY No. 3812

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1955

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