IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

ELIZABETH ANDERSON FLANSBURG,

Plaintiff, Wife

vs.

THOMAS J. FLANSBURG,

Defendant, Husband

and CURTIS FLANSBURG and LOIS B. FLANSBURG, Paternal Grandparents,

Intervening Petitioners.

BOOK 8003 PAGE 411

NO.: 87D-1452

IDENTIF. REFERENCE 88721

DEC 12 | 51 PM '89

JUDGEMENT

This cause came on to be heard August 21 and 22, 1989 upon Plaintiff, Wife's Complaint for Absolute Divorce, answer and counter-complaint having been heretofore filed by Defendant, Husband. The counter-complaint filed by Husband was duly answered by the original Plaintiff, Elizabeth Anderson Flansburg. Subsequently, Curtis Flansburg and Lois B. Flansburg filed an intervening petition for custody of the parties' minor children, and for a judgment of interest in the marital home place located at 1104 Blythe Court East in Davidson County, Tennessee. The Court finds that Mr. Thomas J. Flansburg has been duly represented by counsel in this matter in both the Probate and Fourth Circuit Court, and that during the course of this litigation, both of Mr. Flansburg's attorneys have asked leave of the Court to withdraw as attorney of record from representation of this Defendant. The Court finds that the Defendant, Thomas J. Flansburg, was duly noticed for trial and that he failed to appear at the hearing. Therefore, the Court ORDERS any and all counter-complaints that may have been pending before the Court be dismissed for the Defendant, Thomas J. Flansburg's failure to prosecute.

Based upon all the proof and evidence adduced at trial, the Court finds that the Complainant, Elizabeth Anderson Flansburg, is entitled to a divorce on the grounds of cruel and inhuman treatment, and accordingly so ORDERS the bonds of matrimony be

dissolved and the granting of a divorce to Elizabeth Anderson Flansburg on the grounds of cruel and inhuman treatment. The Court ORDERS an award of all personal property in the possession of Complainant, Elizabeth Anderson Flansburg. The Court finds that the marital estate at the time of trial consisted of a home place located at 1104 Blythe Court East, Nashville, Tennessee. Even though record title appears to be jointly held with Mr. and Mrs. Thomas Flansburg and Mr. and Mrs. Curtis Flansburg, this Court finds and so ORDERS that Mr. and Mrs. Curtis Flansburg have no interest in this real estate other than the $3,500 which they voluntarily loaned to the younger Flansburgs as an accommodation to their purchase of the property.

The Court finds that the property at this time is being leased, and that the elder Flansburgs, Curtis and Lois, are collecting rents and paying the mortgage payment. The Court ORDERS Mr. and Mrs. Curtis Flansburg to make an accounting of the rents collected and payments made on the mortgage, and to deliver to Elizabeth Anderson Flansburg any escrow balance accumulated, along with an accounting of such records and documents as are necessary to effectuate the transfer of responsibility for this property from the Intervening Petitioners to the Complainant, Elizabeth Anderson Flansburg.

The Court finds that the Wife, at this time, is not financially able to maintain the home place as a residence for herself and the children, and, accordingly, the Court ORDERS that the property be sold. The Court further ORDERS that if the property is not sold within sixty days, the Court will then name a real estate agent to list the property for sale.

The Court finds that Intervening Petitioners have made a claim for reimbursement of repairs and/or improvements made to this property since the parties separated. The Court finds that these repairs and improvements were taken on voluntarily by the Intervening Petitioners and that there actions were self-serving. The Court finds the property was maintained by them in an effort

to solidify their asserted interest in the property; however, the Court finds that they had no interest in the property other than the down payment.

The Court finds that the Intervening Petitioners voluntarily loaned the younger Flansburgs the $3,500 down payment required to purchase the property, and further, that they voluntarily signed a mortgage to effectuate the loan. Finding that the Intervening Petitioners created their own liability on the mortgage note, the Court will accordingly ORDER Curtis and Lois Flansburg reimbursed $3,500 with no interest, and the Court affirmatively finds that the Intervening Petitioners are entitled to no further proceeds from the sale of this home.

As relates to the Defendant, Thomas J. Flansburg's interest in the home place, the Court is mindful of the fact that the Defendant is obviously evading his responsibility in this lawsuit by continuing to be in contempt of support orders in this Court and in the Probate Court. He, therefore, has forfeited any interest he has in the real estate, and any interest he has is hereby ORDERED divested from the Defendant, Thomas J. Flansburg, and awarded to Ms. Elizabeth Anderson Flansburg as alimony in solido after taking into consideration the following facts:

1. The Defendant, Thomas J. Flansburg, owes a great deal of child support;

2. At this point in time, it is doubtful until the Defendant, Thomas J. Flansburg, is located and taken into custody that there will be any money coming in which might be utilized by Elizabeth Flansburg to support the Defendant's children.

As the Court has hereinabove found and so ORDERED that the Intervening Petitioners have no equitable interest in the home place, and as the Court has now divested the Defendant, Thomas J. Flansburg, from any interest in the home place, the Court ORDERS that the following described property be deeded to and held entirely by Elizabeth Anderson Flansburg as undivided fee simple interest:

> BEING Lot No. 11 on the Plan of Southampton, Phase I, as of record in Book 5200, page 464, Register's Office for

Davidson County, Tennessee, to which plan reference is hereby made for a more complete description.

THIS conveyance is subject to Restrictive Covenants of record in Book 5971, page 839, Register's Office for said County.

THIS conveyance is subject to any and all existing restrictions and easements of record.

THIS conveyance is subject to any and all zoning regulations, building restrictions and set back lines, if any, easements and rights-of-way for public utilities.

THIS conveyance is subject to right-of-way easement for South Central Bell of record in Book 6009, page 51, Register's Office for said County.

BEING the same property conveyed by Fox Ridge Company, a limited partnership, to Thomas J. Flansburg and wife, Elizabeth A. Flansburg, and Curtis Flansburg, et ux, Lois B. Flansburg, by deed and recorded in Book 6159, page 905, Register's Office for Davidson County, Tennessee.

As relates to custody of the three children who are the offspring of Elizabeth and Thomas Flansburg, the Court finds that before the Court is only one parent and two grandparents, all appear to love these children very much, but the Court finds that the grandparents, Curtis and Lois Flansburg, have overstepped their bounds in their role as grandparents, and the Court further finds that the time of the hearing of the proof, that the best interest and welfare of these children would be that their custody remain with their mother, and, accordingly, the Court will so ORDER custody remain with the mother, Elizabeth Flansburg. The Court further ORDERS that visitation with the father, Thomas J. Flansburg, be suspended pending his making application with the Court, and the Court ORDERS Mr. and Mrs. Curtis Flansburg be ENJOINED and RESTRAINED from allowing Mr. Thomas J. Flansburg to make contact, either in person or by phone, with the minor children while in their custody until further ORDERS of this Court.

As relates to the request of the Intervening Petitioners, Curtis and Lois Flansburg, for visitation privileges, the Court recognizes the statute which authorizes the Court to entertain visitation for grandparents, and the Court historically has been in favor of grandparents' access to grandchildren as long as it is in the best interest and welfare of those minors. The Court is very well aware under the case law that visitation rights for

grandparents are not as paramount as the rights reserved to natural parents. Because of the history of this case, the Court cannot find as a matter of fact that those visitations as they have been in the past are to the best interest and welfare of these children. The Court must find, based upon the animosity which has arisen between the paternal grandparents, Curtis and Lois Flansburg, and their daughter-in-law, Elizabeth Flansburg, that the visitations that have occurred are not in the best interest and welfare of the parties' children. The Court does find that the Intervening Petitioners love the minor children; however, they have overstepped their role as grandparents and the Court finds that the grandparents' actions have created problems in the aftermath of the parties' separation.

In considering the Intervening Petitioners' application for visitation, the Court finds that the Intervening Petitioners, Curtis and Lois Flansburg, have not been exactly honest with the Court in helping to establish the whereabouts of their son. In some instances, the Court finds their testimony not particularly credible in that regard. Recognizing that the Intervening Petitioners are not their son's keeper at this point, the Court will deal with them very sternly if every sufficiently proven that they have aided and abetted Thomas J. Flansburg in his usurping the jurisdiction of this Court and the Probate Court regarding the support obligation. The Court finds that visitation privileges for either a natural parent or grandparent are not for the benefit or wishes of those who seek the visitation, but rather the visitation must be entirely to the best interest and welfare of the children. The Court finds that both Erica and Daniel Flansburg have been caught up in a power struggle between the mother and the paternal grandparents that has manifested itself in problems developmentally for both these children. The fact that the father deserted the children and is in contempt for failing to pay child support as ORDERED has caused the situation to be more difficult, and certainly has created a hardship on the mother who is not financially able at this point to provide what she needs to do.

The Court finds that Elizabeth Flansburg has done a remarkable job of what she had to work with and she's basically had no help from the father or the paternal grandparents other than what would promote their interest in certain real estate. The Court makes the finding that after the separation, the actions of the grandparents were self-serving. The Court finds that the Intervening Petitioners, Curtis and Lois Flansburg, and the Defendant, Thomas J. Flansburg, have worked together to impoverish the mother and the children. The Court, therefore, concludes that the petition of Curtis and Lois Flansburg for custody is without merit, and the Court so ORDERS that it be dismissed. The Court finds that the mother presents circumstances at this time of having improved her circumstances in spite of no backup, no financial stability, and there is no substantial evidence before the Court to cause this Court to remove these children from the mother. The Court finds there is no proof before this Court that the children are neglected by the mother. The Court further finds that the proof is that she is financially disadvantaged; however, poor and impoverished people have a right to have their children. In this instance, the Court finds that the best interest lies with these children being left with their mother. It appears that she has rehabilitated herself.

The Court is very mindful of her prior drug use in the past. The Court does not condone it. If there are illegal drugs in Elizabeth Anderson Flansburg's home or about these children, either being used by her or other parties in the presence of these children, the Court would not hesitate to remove these children from the mother if she goes back to that type of a life style. The Court, therefore, ORDERS, ENJOINS and RESTRAINS Elizabeth Anderson Flansburg from having any illegal drugs in her home or about the parties' minor children being used by anyone in the presence of the children. The Court further ORDERS that Elizabeth Flansburg's roommates' live-in boyfriend be removed immediately.

The Court ORDERS, ENJOINS and RESTRAINS both paternal grandparents from discussing this case with these children any further, from discussing any facts they think they know with these

children about the character of the mother or the father. If such conversations and comments persist with and in the presence of the parties' minor children, then this Court will probably terminate any visitation rights that may then exist.

Under the circumstances, the Court finds that the children need a period of rest in order to become stabilized and to get settled down. The Court finds that they are going to new schools and they need to get into a routine that they are comfortable with without the threat of a custody case hanging over their heads. Therefore, the Court ORDERS that the visitation rights of the grandparents, Intervening Petitioners, be terminated for a period of ninety (90) days. After that ninety (90) day period, the grandparents, so long as they adhere to the restraining orders that are placed in this decree, will be permitted to have the children from Friday at 6:00 p.m. to Sunday at 6:00 p.m. the third weekend of each month, the paternal grandparents being responsible for pickup and delivery of the minor children. The Court admonishes and so ORDERS that the children are not to be placed in a situation where they have to hear any opinion at all about their mother. The Court finds that they have a right to love and respect all these parties. The Court ORDERS and so awards to the Intervening Petitioners a two-day Christmas holiday visitation, those two days being the two days prior to Christmas Eve, December 22 and 23. The Court ORDERS that Christmas Eve and Christmas, the children be with their mother, this right not to be alternated as the parents' rights are paramount for Christmas Eve and Christmas Day holidays, but the grandparents shall be entitled to the two days before Christmas Eve. The Court further ORDERS and awards to the grandparents an extended summer visit of two (2) weeks during the summer at a time to be worked out among the parties.

Pending before the Court is a petition for contempt for failure of Elizabeth Anderson Flansburg to make the parties' minor daughter, Erica, available for Court ORDERED visitation with the Intervening Petitioners. The Court will make a finding that Ms. Elizabeth Flansburg is in contempt of the ORDER of this Court for

failure to have Erica in the jurisdiction of the Court for the visitation; however, after hearing the proof, the Court deems the contempt is not willful and there will be no punishment set at this time. The Court finds that Mr. and Mrs. Curtis Flansburg have violated the restraining orders regarding negative or derogatory comments about the mother of these children in the presence of the children; however, as there is no petition for contempt pending before the Court, the Court will not make a finding of contempt on this point.

The Court ORDERS and so awards an additional judgment in favor of the Plaintiff, Elizabeth Anderson Flansburg, against Thomas J. Flansburg for child support arrears since last reduced to judgment totalling $4,700 through the last day of August, 1989. Effective and beginning September 1, 1989, the Court ORDERS that Mr. Thomas J. Flansburg pay child support in the amount of $700 per month paid through the Clerk of the Davidson County Circuit Court, plus the Clerk's commission, with the first payment being due under this order September 1, 1989. The Court further ORDERS that the Defendant, Thomas J. Flansburg, be assessed and a judgment be awarded Elizabeth Anderson Flansburg of an attorney's fee in the amount of $3,500 to be a judgment against Thomas J. Flansburg for which execution may issue, if necessary.

The Court finds that Mr. and Mrs. Curtis Flansburg, because they have filed this intervening petition, and because there is a prayer for attorney's fees in the Plaintiff's proof, that Complainant, Elizabeth Anderson Flansburg, is entitled to an award of $2,000 towards her counsel expenses in defense of the intervening petition. The Court accordingly ORDERS a judgment against Curtis and Lois Flansburg and in favor of Elizabeth Flansburg in the amount of $2,000 for which execution may issue, if necessary.

The Court finds that the debts of the parties as enumerated and identified in Exhibit "___", the Wife's proposed division of property, shall be the responsibility of the husband, the wife being held harmless thereon. Those debts as set out are Visa

$4,700, child care, Grace Presbyterian Church $700, GMAC $700, J.C. Penney $68, taxes 1986 and 1987 due and payable to the Internal Revenue Service.

The cost of this cause is taxed to Thomas J. Flansburg, for which let execution issue, if necessary.

ENTERED this 12th day of Sept., 1989.

JUDGE MURIEL ROBINSON

APPROVED FOR ENTRY:

GRISSIM & HODGES

J. MITCHELL GRISSIM, JR.
BPR #:9473
Attorney for Elizabeth A. Flansburg
323 Union St.
Nashville, TN 37201
(615) 255-7496

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing judgment was mailed to Phillip Robinson, Attorney for Intervening Petitioners, Curtis and Lois B. Flansburg, 213 Third Avenue North, Nashville, TN 37201, and Thomas J. Flansburg, 1141 Granny White Court, Nashville, TN 37204, this the 3 day of Oct., 1989.

J. MITCHELL GRISSIM, JR.

STATE OF TENNESSEE

I, **GEORGE L. ROOKER,** *Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Order heretofore entered in the* Fourth *Circuit Court for Davidson County, Tennessee, on the* 12th *day of* September, *19* 89, *in Case Number* 87D-1452 *between* Elizabeth Anderson Flansburg *Plaintiff, and* Thomas J. Flansburg *Defendant, as same remains of record in Book* 181, *Page* 432 *of the Minutes of said Court.*

IN TESTIMONY WHEREOF, *I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the* 11th *day of* December *in the year one thousand nine hundred and* eighty-nine *and in the* 214th *year of American Independence.*

GEORGE L. ROOKER, *Clerk,*

By _____ *D.C.*

Form #GR-117