

1 VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

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IN RE:)	
CARL B. YOUNG)	CJ89002002-89
ERIN J. YOUNG)	CJ89002004-89
DARA K. YOUNG)	CJ89002003-89

Before Hon. Robert W. Curran, judge
 Newport News, Virginia
 April 24, 1989

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APPEARANCES: Jones, Blechman, Woltz and Kelly
(Ms. Robyn Hylton Hansen), attorneys
for Kathy Jeanne Young, the petitioner.

Mr. James S. Ellenson, attorney for
Mark Young, the respondent.

I N D E X

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Young, K. J.	16	33		
Settle, C. A.	40			
Young, M.	43	51	62	63

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1 MS. HANSEN: Your Honor, before we proceed on
2 this matter I have a preliminary motion to compel.

3 THE COURT: All right.

4 MS. HANSEN: May it please the court, I
5 represent Kathy Young, and this matter is on appeal
6 from juvenile and domestic relations court. Mr. Young
7 had originally brought out the petition in J and D
8 court. Mr. Young represented by Mr. Ellenson noted
9 his appeal and it was set at docket call for hearing
10 on custody and support today. On March 29th
11 propounded interrogatories pursuant to Rule 48 of the
12 Rules of the Supreme Court of Virginia on Mr. Ellenson
13 as attorney for Mark Young. Mr. Ellenson
14 telephonically advised me on Friday -- I had called on
15 Thursday inquiring as to their whereabouts.
16 Mr. Ellenson returned my phone call on Friday and
17 advised me that he was not going to answer the
18 interrogatories due to the fact that it was his
19 opinion that Rule 48 was inapplicable to this matter.

20 Therefore, the issue before this court is
21 whether discovery pursuant to Rule 48 is appropriate
22 in an appeal from J and D court on custody and
23 support. It's our position, Your Honor, that we're in
24 a court of record now where we're -- and we're in a
25 civil case which is either in law or in equity, and in

1 this matter custody and support matters are generally
2 held by this court to be equity matters, and therefore
3 under Rule 48 under the Rules of Court, discovery
4 would be allowed. Additionally, Your Honor, the rule
5 itself makes reference to actions for separate
6 maintenance, divorce or annulment of marriage, and
7 clearly a question of child support and custody is in
8 the nature of a separate maintenance matter, and we
9 would ask that your honor compel the defendant --
10 well, the appellant to answer the interrogatories
11 propounded and continue this matter for a sufficient
12 time in order for him to answer those interrogatories.

13 THE COURT: All right, Mr. Ellenson.

14 MR. ELLENSON: Yes, sir, Your Honor, I think if
15 you look at Rule 40 and --

16 THE COURT: Okay.

17 MR. ELLENSON: If you look at it, it applies to
18 a civil case and both actions of law and suits of
19 equity. While this isn't an action of law, it's not a
20 suit in equity. The whole petition for custody is a
21 statutory creature. That's how it got started, and
22 this certainly isn't a separate maintenance. That's a
23 separate action that can be filed in circuit court.
24 Divorce or annulment of marriage -- it's none of
25 those; and interrogatories were propounded pursuant to

1 Rule 48, and Rule 40 says what Rule 48 applies to and
2 just doesn't come here -- just can't do it.

3 THE COURT: Do you have any case law on that,
4 Mr. Ellenson?

5 MR. ELLENSON: No, sir. I don't think there's
6 any cases either way.

7 THE COURT: Let me take a brief recess and get
8 the Code section.

9 (The hearing recessed at 10:40 a.m. At
10 10:45 a.m. the hearing continued as follows:)

11 MR. ELLENSON: Your Honor, excuse me. Do you
12 have -- I've been discussing with counsel -- opposing
13 counsel -- if you have a pendente lite hearing date
14 within about two weeks, what we might do -- because it
15 looks like a divorce suit might be filed within the
16 next --

17 MS. HANSEN: I'll file it now, Your Honor.

18 MR. ELLENSON: A few minutes maybe we'll just
19 make this area -- this over to the pendente lite
20 hearing because I certainly have to answer the
21 interrogatories if they're part of a divorce case, and
22 if you have some quick -- then we don't have to get
23 into -- of course, my client wants to address
24 temporary visitation and child support, but if you
25 have something within the next couple of weeks, then

1 maybe my client -- we could hold our heels for another
2 two weeks or so. If you don't have -- if you have
3 something further down the road. Then I think we'd
4 have a hearing today.

5 THE COURT: I think you have to check with the
6 secretary real fast. Check with her.

7 MR. ELLENSON: Okay.

8 (Pause)

9 THE COURT: What did you find out?

10 MR. ELLENSON: No dates.

11 THE COURT: Okay. Mr. Ellenson, what provision
12 do you think governs the appeal of this particular
13 action?

14 MR. ELLENSON: Well, the appeal by way of
15 statute as well.

16 THE COURT: What I'm saying --

17 MR. ELLENSON: 16.1132 I believe -- 138-16.1132.
18 I guess you're entitled to a trial of -- no -- to
19 anything that goes on in district court.

20 THE COURT: In other words, the jurisdiction of
21 appeals procedure under the appeal of 16.1296 refers
22 you back. It's the final word for the juvenile court
23 affecting the right or action of any person coming
24 within the jurisdiction. Is that what it is?

25 MS. HANSEN: Yes, sir.

1 MR. ELLENSON: I would say that this court --
2 this court is sitting simply as a superior juvenile
3 and domestic relations court for this hearing. I
4 don't think it changes the -- it would be the same way
5 that you'd not be entitled to provide particulars in a
6 misdemeanor case just because it's set up for the
7 civil court circuit, and the discovery rules only
8 apply to felonies in circuit court. I think that's an
9 analogous situation.

10 THE COURT: The difficulty is that the
11 difference between the two is that misdemeanors are
12 generally not matters that would be heard in the
13 circuit court. There's not any concurrent
14 jurisdiction. Generally the only time you have
15 misdemeanors is on appeal, right?

16 MR. ELLENSON: Yes,

17 THE COURT: Isn't custody a matter that can
18 come before this court?

19 MR. ELLENSON: I don't know. I think the
20 original petition for custody would have had to have
21 started out in J and DR court.

22 THE COURT: The matter for custody could have
23 been heard by this court.

24 MR. ELLENSON: That would be as part of a
25 divorce case. I don't know how you could start off a

1 custody case in the circuit court.

2 THE COURT: Uh-huh. What's the purpose of
3 discovery in the first instance?

4 MS. HANSEN: Your Honor, the purpose is to find
5 out --

6 THE COURT: I don't mean your specific interest
7 theoretically. What's the purpose? In other words,
8 one of you has a case. We've got to go back to the
9 theory of discovery.

10 MS. HANSEN: The theory of discovery is to find
11 out what you're dealing with. Custody -- whether or
12 not -- who is fit to be the proper custodian. You
13 need to have certain background information as well as
14 current employment or past employment and employment
15 history. Those matters are clearly relative to child
16 support payments as to both parties and how you are
17 going to be able to care for the children and how much
18 child support is to be ordered by the court if it's
19 ordered, and those questions I think are -- I need to
20 know. I need as the attorney for my client to have
21 some information, and it's to my benefit or her
22 benefit as well as his client's benefit to have
23 information, knowledge of a person, certain background
24 information as well as financial information which we
25 frankly don't have in this case, and that's the

purpose for propounding the interrogatories.

1
2 THE COURT: Isn't the purpose of discovery
3 initially so that all these parties won't have to be
4 heard by the trial court?

5 MS. HANSEN: Absolutely.

6 THE COURT: Isn't that what discovery is really
7 supposed to be about, and I don't think it was
8 intended in the general assembly to say that when one
9 of these cases came to the circuit court that the
10 circuit court would have to listen -- you know -- not
11 give people the opportunity before trial to get this
12 information, and the first time to be able to have it
13 would be at trial. Isn't that what it would be,
14 Mr. Ellenson, if we followed the theory?

15 MR. ELLENSON: That's where you're at in
16 district court. That's exactly where you're at
17 in district court. Just because you move up to the
18 circuit court doesn't magically transform things, and
19 I guess that's the reason why I think in so many of
20 these cases down in J and DR court -- over in J and DR
21 court they order these home studies by Social Services
22 and you get this background information. If you come
23 into this thing cold and don't do the home studies by
24 Social Services, generally what -- exactly what
25 happens is you present everything to the trier of fact

1 and the trier of fact makes a decision.

2 In addition, Your Honor, they could know
3 everything about us, we could know everything about
4 them and there's not any way on the custody matter --
5 the visitation matter that we're going to come to an
6 agreement. It absolutely -- it doesn't matter. We
7 want custody of those children. That's what we want;
8 and I don't care how much I know about them or how
9 they know about me, we're not going to agree on that.

10 MS. HANSEN: If it please the court, Your
11 Honor, I would -- in one response to one thing
12 Mr. Ellenson has to say in particular is that we are
13 in a court of record now, and the discovery rules were
14 tendered and they were made for courts of record and
15 not for courts not of record, and so we are in a court
16 of record and the discovery rule would apply in this
17 case. Your Honor, I think it was well pointed out by
18 the court that not only is discovery for both
19 settlement -- but beyond settlement there are certain
20 questions I wouldn't ask at all if I had the answer in
21 discovery matters and I wouldn't bother the court with
22 going through the questioning to find out what the
23 answer is because we would already know it beforehand
24 and we would determine whether it was absolutely
25 relative to the matter of child support and/or custody

and visitation.

1
2 MR. ELLENSON: I guess, Your Honor --

3 THE COURT: Yes, sir.

4 MR. ELLENSON: -- also looking at the
5 interrogatories, some of them are --

6 THE COURT: Let's address the original thing
7 and then we'll go on to interrogatories. All right.
8 In trying to look at your analogy between the fact
9 about a misdemeanor and the fact that that's the same,
10 I think the distinction would be that 3A:11 says this
11 rule applies only to prosecutions for a felony in
12 circuit court, and that's where we get the situation
13 that you can't get discovery in a misdemeanor, but
14 they specifically have said it applies only for a
15 felony. The civil provisions under Rule 40 -- it said
16 this should apply to civil cases in both actions of
17 law and suits of equity in the circuit court, and
18 isn't this one of those two?

19 MR. ELLENSON: It's not an action of law, Your
20 Honor, and it's not a suit in equity. There certainly
21 was never in the common law any sort of action for
22 petition for custody. You can have a divorce case and
23 you can have a custody matter that is going to be
24 pending to that divorce case, but you don't have
25 any -- it's a statutory creature is what I'm saying.

1 It's a petition for custody.

2 THE COURT: You don't think it's either one?

3 MR. ELLENSON: No, sir, it's not, but the
4 petition for custody is originally filed under 16.1 --
5 one of those J and DR sections. That's how it gets
6 started, so it's statutory. So therefore that's my
7 argument, that it's not an equitable -- it's not a
8 suit in equity. It starts at 16.1241 if you see this
9 petition for custody. You get started at 16.1241.

10 THE COURT: Uh-huh. That's the jurisdictional
11 statute.

12 MR. ELLENSON: Right.

13 THE COURT: Mr. Ellenson, looking at -- look at
14 16.1296.

15 MR. ELLENSON: I don't have a copy of that in
16 front of me.

17 THE COURT: It says here jurisdiction of
18 appeals and procedure from any final order or judgment
19 in juvenile court affecting the right or interest of
20 any person coming within its jurisdiction, the appeal
21 is taken in accordance with the provisions of Chapter
22 716.123.1. All right.

23 MR. ELLENSON: Okay.

24 THE COURT: Isn't that what this is?

25 MR. ELLENSON: But I think it buttresses my

1 argument that as a result of a statute --

2 THE COURT: I think what they had to do -- they
3 had to slide it somewhere and they slid it in here,
4 and then it says jurisdiction and procedure in
5 criminal matters and what it comes under.

6 MR. ELLENSON: That's exactly why you have to
7 call Mr. Olson get the thing at docket. That's why
8 this is not an action at law or suit in equity.

9 THE COURT: It's a criminal action.

10 MR. ELLENSON: It's different. It's a
11 different kind of case, and that's why it's not -- the
12 rules of discovery are inapplicable. Again, just to
13 set the thing at docket call, I had -- I went all
14 around the mulberry bush trying to figure out how to
15 get the thing set. Finally I had to call Mr. Olson to
16 do it.

17 THE COURT: I think -- is there any other
18 provision that you can think of that comes from the
19 other -- the order of 6.1296?

20 MS. HANSEN: No, Your Honor.

21 THE COURT: That appears to be in that first
22 sentence. That first sentence then refers you to -- I
23 guess they had to find a slot and they stuck it in the
24 criminal slot. You know -- that appears to be what
25 they did. I mean I -- any question that anybody

1 considers it to be a criminal matter said criminal
2 docket, et cetera, and then you get into the
3 situation what would apply, and then at the --
4 specifically I mean it isn't separate maintenance.
5 It isn't divorce or annulment. Apparently they
6 stuck it in the criminal slot. Well, I think the
7 net result is going to be the same, so I guess
8 we'll just have to figure it out. I think today
9 that I'm going to have to rule that Mr. Ellenson --
10 without any law to the contrary, I think that I'm
11 going to rule in his favor, but where do we go from
12 here?

13 MR. ELLENSON: Hear the case.

14 THE COURT: All right. Are you ready to
15 proceed today?

16 MS. HANSEN: Yes. Your Honor, before we get
17 started, we have another question for the court that's
18 interesting. On the appeal from J and D court we were
19 the petitioner below and as a trial de novo. However,
20 we're satisfied with the court order below and do not
21 feel we're the moving party. However, we will proceed
22 to move forward as the moving party, or does
23 Mr. Ellenson proceed as the appellant?

24 THE COURT: I think it's a trial de novo. We
25 have to start it just like we would any case. I'm not

1 sitting as an appellant judge because I think I
2 just -- that all we -- maybe some of these juvenile
3 cases remand, but I think generally I just have to
4 announce based on what we have now. Why don't you
5 give us a little opening statement so we can get a
6 little idea of what the case is.

7 MS. HANSEN: Your Honor, I represent Kathy
8 Jeanne Young. She's the petitioner below and the
9 petitioner within. This matter originally arose in
10 the juvenile and domestic relations court. An order
11 was entered, and now it's on appeal before your honor.
12 The facts as we are going to present them, Your Honor,
13 is that on or about January 20, 1989, Kathy Young left
14 the marital abode as a result of physical -- physical
15 abuse. She had called the police. They came, and I
16 think the police helped escort Mr. Young out of the
17 home.

18 There has been an assault and battery hearing
19 before the J and D court as well, and that's --

20 MR. ELLENSON: Your Honor, we'd object. I
21 don't know if that's even admissible in this matter --
22 in this case.

23 MS. HANSEN: Your Honor, I would have to
24 disagree with Mr. Ellenson. It clearly goes -- it's
25 part of our case in chief, so it's part of our case in

1 chief in J and D court below as --

2 MR. ELLENSON: I don't have any problem if we
3 want to rehash the facts, but as far as the result or
4 anything --

5 MS. HANSEN: Result? I'm not talking about --

6 THE COURT: I think the facts can be put on as
7 evidence.

8 MS. HANSEN: And the facts will go as evidence.
9 There are three children. There's Dara Katherine
10 Young and Carl Benjamin and Erin Jeffrey. Carl and
11 Erin are twins and they are approximately two years
12 old, and Dara is three years old. They are currently
13 living with my client and she resides with her parents
14 due to financial difficulties -- and we will present
15 her financial evidence -- as they are helping provide
16 food, shelter and to defray those expenses for my
17 client.

18 My client believes and she will testify that
19 she's the most fit and proper custodian for the
20 children due to -- her testimony would go to the
21 violent nature that her husband, Mr. Young, has
22 developed over time. It seems to have gotten worse
23 recently, and it would be -- that would be our case,
24 Your Honor, that she is a fit and proper custodian.
25 She knows -- we've talked before that Mr. Young has a

1 right to visit with the children. She's willing to
2 work with him on the visitation. There will I think
3 come before the court as a question of whether
4 supervised visitation is proper under this case. That
5 would be our case, Your Honor.

6 THE COURT: All right, Mr. Ellenson.

7 MR. ELLENSON: We waive opening statement. I
8 think she's presented it if we can get the evidence
9 in.

10 THE COURT: Fine.

11 MS. HANSEN: I call Kathy Jeanne Young, Your
12 Honor.

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15
16 KATHY JEANNE YOUNG, the petitioner, called as a
17 witness on her own behalf, having been first duly sworn, was
18 examined and testified as follows:

19
20 DIRECT EXAMINATION

21
22 BY MS. HANSEN:

23 Q Mrs. Young, would you state your name and
24 address for the record.

25 A Kathy Jeanne Young, 124 Culotta Drive, Hampton,

1 Virginia.

2 Q Mrs. Young, were you formerly -- are you
3 currently married to Mark Young?

4 A Yes, I am.

5 Q Okay. Are you currently residing in the same
6 abode with Mark Young?

7 A No, I'm not.

8 Q Where are you currently -- with whom are you
9 currently residing?

10 A With my mother and father.

11 Q And can you describe to the court -- when did
12 you first move in with your mother and father?

13 A I left the marital abode January 20 because I
14 was assaulted by my husband.

15 MR. ELLENSON: We'd object to that -- that
16 characterization of it.

17 THE COURT: Just tell us what --

18 A He hit me.

19 THE COURT: Okay.

20
21 BY MS. HANSEN:

22 Q Would you describe to the court what happened
23 that night.

24 A I'm a full-time student at Christopher Newport
25 College. I was downstairs in the kitchen of the town home

1 where we resided. At that time I was working on a math
2 project. My husband objected to my being in school. He came
3 downstairs and fixed a sandwich and started an argument. We
4 argued frequently over money or I should say the lack of it
5 and how it was to be spent, and we argued about the money and
6 whether or not I should be working full-time which he thought
7 I should instead of going to school. He was not employed at
8 the time.

9 He -- we argued and we argued, and he decided
10 he was going to take the children to the zoo and I said that
11 I would go with him. He said, no, I wouldn't, and he said he
12 would go with me when I went to visit my parents to watch
13 over the kids. I said that's fine, you're just making life
14 difficult. He said that just wait and see, he hadn't yet
15 begun.

16 We argued a little more. Then he went upstairs
17 and I went upstairs to tell him I heard a weather forecast.
18 The weather would be bad. It would be a bad idea to go to
19 the zoo. The door to his room was open about two-thirds. I
20 stepped toward the door and he rushed at me. Get out of
21 here. Get out of here, and he -- when he rushed toward me, I
22 held my hand up. He ran into my right hand and pushed me
23 back into the hallway. I was scared. I didn't know what to
24 do.

25 I tried to get downstairs to call somebody for

1 help, and my son started crying. My twins were nursing. I
2 went back to get him. Before I got across the gate at the
3 top of the stairs, my husband went in and got Carl, and when
4 I went in he said, Just get away from us. I said, Give me
5 Carl, he needs to nurse; and he turned around and he struck
6 me across the face and neck. Then he struck me in the chest
7 repeatedly to push me out of the room, to push me into the
8 hallway. I fell into the bathroom door. I went downstairs.
9 He went into his room and closed the door and locked it, and
10 I went downstairs to call the police, the crisis line,
11 somebody.

12 I just didn't know what to do. He'd hit me. I
13 was afraid of what he'd do to Carl. I just didn't know; and
14 before I could find the phone number, he came downstairs with
15 both of the twins. Both the twins nursed. He talked on the
16 phone. Then I called the crisis line and they called the
17 police for me. The police came and I left the marital abode.

18 Q Now, Mrs. Young, prior to this incident, had
19 difficulties arisen between you and Mark?

20 A Yes.

21 Q Had you engaged in verbal arguments?

22 A Yes.

23 Q Had he struck you before that time?

24 A He had thrown a notebook at me about a year
25 prior to that and it hit my hand.

1 Q Had Mark ever verbally abused you?

2 A Yes.

3 Q What did he do, for example?

4 A For example, he was supposed to take Dara to a
5 horse show and he said he wouldn't take her because I was too
6 disgusting to be seen on a horse. He would say that dinner
7 wasn't cooked right. It wasn't good enough. He didn't need
8 to do the dishes while I was out working. Mommy was ugly.
9 Mommy -- look at mommy. She's a battered woman. She's a
10 moron.

11 Q Did Mark say these things about you in front of
12 the children?

13 A Yes, he did.

14 Q And how -- now you have three children.
15 Dara -- how old is she?

16 A She's three.

17 Q And did Dara see any signs? Did she have any
18 reaction when these things were said in front of her?

19 A Yes, yes.

20 Q Could you describe to the court what would
21 happen.

22 A In one particular incident, she had asked her
23 daddy to sing Christmas carols with her. He said, I can't
24 sing Christmas carols with you. Your mommy makes me sick.
25 He went on that mommy was a liar. Mommy wanted to take the

1 children away from him. Mommy wouldn't go to California with
2 him. I asked him to stop. She ran over to me and put her
3 head on my lap. She put her head down with her hands over
4 her ears. I said, Mark, please stop this. He said, No, I'm
5 not going to stop. He kept on. I took her up and put her to
6 bed. I came back down and said, Mark, this is really not
7 something you should do in front of your three-year-old. He
8 said nobody's going to tell him what to say in front of his
9 children.

10 Q Kathy, was there any other incident before you
11 left the marital home when Mark showed any violent behavior
12 in front of the children?

13 A Yes. I didn't leave the vacuum cleaner where
14 he wanted it. I brought it downstairs and put it into the
15 closet, and he came downstairs and picked the kitchen chairs
16 up. He turned them over. He turned the highchairs over.
17 Dara was going, Daddy, stop, don't. He said if he had to
18 do unnecessary work, then mommy was going to have to do
19 unnecessary work. She needed to be taught a lesson.

20 Q Now, Kathy, during the period of time just
21 before you left, were you employed?

22 A Yes, I was.

23 Q And where were you employed?

24 A I worked for ECPI.

25 Q Was that a full-time or part-time job?

1 A It's a part-time job, twelve to fifteen hours a
2 week teaching night classes.

3 Q And you were also attending school; is that
4 correct?

5 A Yes, full-time.

6 Q And where are you attending school full-time?

7 A I attend Christopher Newport College. I
8 receive veterans' benefits.

9 Q What's your -- what are you seeking your degree
10 in?

11 A Elementary education.

12 Q When do you anticipate that you will receive
13 your degree?

14 A December of 1990.

15 Q Okay. When did you start working at
16 Christopher -- I mean when did you start attending school at
17 Christopher Newport?

18 A This past fall I started attending full-time,
19 and I receive financial aid to cover the entire cost plus
20 living expenses.

21 Q Kathy, when did you and Mark move to Virginia?

22 A In late May of 1987.

23 Q And why did you move to Virginia?

24 A I was discharged from the Marine Corps after
25 the birth of my twins.

1 Q And you have family living in Virginia; is that
2 correct?

3 A Yes, we moved in with my parents.

4 Q It was for financial help and support? Was
5 that one of the reasons you came here?

6 A Yes, it was.

7 Q Now was -- at the time just before you left,
8 was Mark working?

9 A No, he was not.

10 Q How long had Mark been unemployed?

11 A He had been unemployed since July.

12 Q July of 1988?

13 A Of '88, yes.

14 Q Okay. What led to Mark being unemployed? Had
15 he suffered any injuries?

16 A He had been injured in August of 1987 on a
17 construction site. His left hand was injured. He had
18 returned to work with his company in May of '88, and until --
19 in July he was fired by his company.

20 Q Do you have any knowledge of the particulars of
21 that termination of employment?

22 A I was present in a workmen's compensation
23 hearing concerning the particulars of it. The workmen's --
24 excuse me -- Unemployment Commission --

25 MR. ELLENSON: We object to that as hearsay.

1 MS. HANSEN: Your Honor, I would say it's not
2 hearsay. She was present at the workmen's comp
3 hearing. She actually heard what transpired and there
4 was --

5 THE COURT: I will sustain the objection.

6
7 BY MS. HANSEN:

8 Q When did -- so Mark was unemployed since July
9 of 1988?

10 A Yes.

11 Q Okay. Was he seeking unemployment?

12 A He would on occasion, but he would not
13 consistently go to the unemployment office. I would bring
14 home numbers of job openings from the college I was
15 attending. He would apply to those and he would look through
16 the newspaper. Initially he would go out and fill out
17 applications, but as time went by he didn't.

18 Q Do you have any knowledge of Mark turning down
19 any offers of employment?

20 A Yes, I do.

21 Q Can you tell the court what offers of
22 employment he turned down?

23 A Workmen's compensation or an agency thereof
24 had --

25 MR. ELLENSON: Again, Your Honor, prior to her

1 testifying unless she knows of it first hand, I
2 think -- I mean if she heard the boss say to him, Hey,
3 fellow, you can have a job, then that's --

4 MS. HANSEN: Has Mark -- Your Honor, I would
5 ask --

6 THE COURT: Maybe you can do it that way.
7

8 BY MS. HANSEN:

9 Q Has Mark -- not someone else -- has Mark told
10 you he was offered a job that he turned down?

11 A Yes.

12 Q All right. Would you please tell the court
13 what Mark told you.

14 A Mark told me the agency -- the workmen's comp
15 had offered him a position in a BP station as a cashier
16 attendant or whatever. He turned it down on grounds that
17 they sold meat and tobacco products. He was offered another
18 position as a security guard, and in a preliminary talk with
19 the company they told him he would have to shave his beard,
20 and he wouldn't work there either. Also the hours of the
21 security guard would conflict with mine, so he didn't want
22 those either.

23 Q So during the time period that Mark was
24 unemployed, you were working part-time and attending school;
25 is that correct?

1 A That's correct.

2 Q Okay. Did -- who cared for the children during
3 the day?

4 A He would look after them during the hours I was
5 at school.

6 Q What hours were those?

7 A Monday, Wednesday and Friday I attended school
8 from 8:00 a.m. to 1:00 p.m., and on Thursday I had a class
9 from 8:00 a.m. to 11:00 a.m.

10 Q So Mark cared for the children during those
11 times?

12 A Yeah.

13 Q You are coming to court today and is it your
14 testimony that you do not believe that Mark is a fit and
15 proper custodian for the children?

16 A Not in his present state of mind, no.

17 Q How is that different from when you let him
18 keep the children while you were at school?

19 A Progressively since October his verbal abuse
20 towards me increased. His whole attitude was very angry at
21 all times. You never knew when he would be angry about
22 something. It increased much more after I finished finals
23 for the first term. He decided that I had to quit school and
24 go to work, and his barrages -- verbal attacks at me would be
25 to the effect that either I would sign an agreement that I

1 would return to California with him and would go to work to
2 put money in the bank or that my life would become miserable
3 in his words, and I refused to sign the paper; and he would
4 do even less than he had before as far as housework would go.
5 I would go to work at night. He would usually do the dishes.
6 I wouldn't do that. I only worked a quarter of a job. He's
7 been very angry since I left. When he visits he's very
8 angry.

9 Q Do you have fear of Mark now?

10 A I definitely have fear of Mark, yes. I don't
11 know what he'll do.

12 Q Do you have fear for your children?

13 A Yes. If he gets in his rage when they do
14 something, I don't know what he'll do.

15 Q Now, Mrs. Young, Kathy, let's go back to the
16 time just before you left. Who bought the groceries?

17 A I would go out and buy the groceries.

18 Q Who prepared the dinners?

19 A I did.

20 Q Who took care of paying the bills?

21 A I did.

22 Q Who filed the taxes?

23 A I did.

24 Q So in addition to working part-time and also
25 going to school, you were basically in charge of the

1 household. Would that be a correct statement?

2 A Yes.

3 Q Now since you left and have moved in with your
4 parents, you have been operating under another court order;
5 is that correct?

6 A That's correct.

7 Q And has Mark been visiting with the children in
8 your parents' home?

9 A Yes, he has.

10 Q Okay. Now do you have any -- let me ask you --
11 strike that question. With regard to his actions and
12 attitude toward the children under this supervised
13 visitation, do you have any fear of him having nonsupervised
14 visitation, if you understand that question?

15 A Yes.

16 Q Can you explain that to the court?

17 A He is very angry when he comes around. He is
18 inattentive as to what they're doing. He may have two
19 children with him and the other child is off in another
20 direction or he has no idea where they are or he'll take two
21 of them and that seems to be okay, but the other -- there's
22 always an odd man out. He set the children down and told
23 them that their mommy is a liar. Their mommy made bad things
24 up about their daddy.

25 Q Have you ever heard these statements to the

1 children?

2 A Yes, I have. I told him to stop. He told me,
3 no, he would not.

4 Q Okay.

5 A His children -- his children would know the
6 truth.

7 Q Do you know whether Mark is currently employed?

8 A I have no idea.

9 Q Has he another -- the Juvenile and Domestic
10 Relations Court ordered child support payments. Is he
11 current on his child support?

12 A He is current.

13 Q Does he pay them on a regular basis or --

14 A He doesn't pay them weekly. He may pay weekly
15 one time and bi-weekly the next, whenever he gets around to
16 handing me the check.

17 MS. HANSEN: Your Honor, I'd like to
18 approach the witness and hand her an income and
19 expense statement.

20 THE COURT: Show it to Mr. Ellenson.

21 MS. HANSEN: Do you have any objection, Your
22 Honor?

23 THE COURT: No. Do you have a copy of that
24 that I can look at. It would be easier for me to
25 follow.

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MS. HANSEN: Yes, Your Honor.

THE COURT: Thank you.

MS. HANSEN: Your Honor, I had an extra copy.

THE COURT: I've got one. I've got one.

MS. HANSEN: Yes, I've got one now.

BY MS. HANSEN:

Q Mrs. Young, does this accurately reflect your income for the year 1989, income and expenses?

A Yes, with the exception that I -- around June the 30th they'll determine what my financial aid would be for the next school year from Christopher Newport College.

Q Now this income and expense statement, it does not contain the 135 per week which Mark had been paying since our first court date?

A Yes.

Q That's been left out as an --

MS. HANSEN: Your Honor, I did that on the basis that this was a trial de novo.

BY MS. HANSEN:

Q With regard to the Blue Cross/Blue Shield payment, that is based on the continuing obligation of the employer to pay on Mark's previous employment; is that correct?

1 A That's correct.

2 Q And you have called Blue Cross/Blue Shield and
3 that expenditure after the eighteen months has expired. That
4 will increase to \$374?

5 A Yes, it will.

6 Q Now with regard to Blue Cross/Blue Shield and
7 the condition of the children, are there any special
8 conditions or diseases that any of your children have?

9 A Yes. Our son has ren tubular acidosis.

10 Q Can you explain what that means?

11 A His kidneys don't function properly. They
12 don't extract the sodium bicarbonate and dump it back into
13 his bloodstream. He has to take medication every day, three
14 times a day to correct the condition. It may continue a few
15 years. It may continue until he's an adult depending on how
16 he progresses. He has to return to the doctor every two or
17 three months for a checkup for his height and weight to see
18 how he's growing. He has to have blood tests done to confirm
19 that the medication is keeping his blood acidity within a
20 specified level, and I have no idea when it will end.

21 Q Your current Blue Cross/Blue Shield coverage,
22 does it cover the deductible under it?

23 A The deductible under it is 200 for the family.
24 It will increase under the single plan to be 200 per person
25 and 600 for the family.

1 Q Okay. Does Dara have any special medical
2 needs?

3 A She has a dental problem. The enamel of her
4 teeth is very soft. It's been called a Mulberry Molly which
5 is a congenital defect which could have been caused by the --
6 by my having chicken pox during pregnancy.

7 Q Are you making any dental expenditures as a
8 result of that?

9 A Yes, I am. She's had her teeth filled. On
10 May 5th she's due to have one of her molars capped because it
11 is so deteriorated that it can't withstand --

12 Q And you've been advised by the doctor that your
13 portion of the payment will be \$94; is that correct?

14 A Yes, that's correct.

15 Q And we prorated that over three months on your
16 income and expense statement. Now you are also currently
17 receiving income from Women, Infants and Children?

18 A Yes.

19 Q And that's \$120?

20 A Approximately depending on the price of the
21 food but that's an approximation.

22 Q Are you currently paying your parents any rent?

23 A No.

24 Q Who cares for the children when you're working
25 and you're at school now?

1 A Currently my parents are taking care of them
2 during the fall. I plan to put them into a day care
3 preschool situation so they will be interacting with more
4 children.

5 Q Do you have an estimated cost that has been
6 provided to you for the day care?

7 A The estimated cost that I have called around
8 just to many of the day cares in the area range from \$84 a
9 week to \$200 to \$180 a week for three children.

10 MS. HANSEN: Okay. I have no further questions
11 at this point.

12 THE COURT: Answer Mr. Ellenson's questions.

13
14 CROSS-EXAMINATION

15
16 BY MR. ELLENSON:

17 Q You went back to school in September to
18 Christopher Newport? August or September of last year?

19 A Yes.

20 Q And how many credit hours are you taking --
21 were you taking per semester?

22 A The first semester I took sixteen credit hours.

23 Q Excuse me?

24 A Sixteen credit hours.

25 Q Sixteen credit hours, and you were during this

1 time also working --

2 A That is correct.

3 Q -- at ECPI twelve to fifteen hours a week?

4 A That's correct.

5 Q And I would imagine for the sixteen hours of
6 course work you had homework also?

7 A I did it after the children were in bed or
8 after I came home from work.

9 Q I see. Okay. So during this time, your
10 testimony is that during that period from August, September
11 until January when you left, Mark was actually a baby sitter
12 just for the hours that you weren't there; otherwise you were
13 there all the time for the kids and you were really the
14 primary caretaker. Would that be correct?

15 A Yes.

16 Q Right. Mark really didn't do hardly anything
17 for the kids. Just he was there as a body. Would that be
18 about correct to characterize Mark?

19 A When I would come home he would go do things on
20 his own.

21 Q Did you -- you said since October -- did he hit
22 you in October?

23 A Did he strike me in October of this past year,
24 no.

25 Q Yes. Well, you said that's when he started --

1 his behavior really started getting out of hand -- that's
2 this aggressive behavior -- on him.

3 A I said his verbal behavior became worse and
4 worse culminating in him hitting me.

5 Q In January?

6 A That is correct.

7 Q All right. And so from October to January the
8 verbal abuse just became more and more and more?

9 A That is correct.

10 Q At that time did he -- during that period did
11 he exhibit besides the verbal abuse towards you, he was
12 exhibiting also aggressive behavior in general?

13 A I don't understand your question.

14 Q Well, what other sorts -- was he exhibiting any
15 other aggressive behavior?

16 A Such as?

17 Q I don't know. Was he kicking the cat? Was he
18 punching the walls?

19 A He turned chairs over to teach me a lesson. He
20 told me if I moved his pile of newspapers off the kitchen
21 table he would trash my garden. He would rip everything out
22 of it.

23 Q This was back in October?

24 A This was during October, November, December
25 somewhere in there. He had to recycle papers, but I'm the

1 one that had to keep it going and count the things.

2 Q Okay. So all this was happening during
3 October, November, December? This type of --

4 A Yes.

5 Q -- behavior on his part, and then it just
6 culminated in the January episode where he struck you?

7 A Yes. It got worse right after the school year
8 ended.

9 Q Okay. Besides the time that he had hit you in
10 January, has he struck you other times?

11 A He pushed me out of his room the night before
12 he hit me.

13 Q Okay. Are you still working today?

14 A Yes, I am.

15 Q Okay. And you're still going to school today?

16 A Yes, I am.

17 Q So during the time that you're not in school
18 or during the time that you are in school and -- or the
19 time you're at work, your parents are taking care of the
20 children?

21 A Yes, they are.

22 Q Now their care of the children is not mere baby
23 sitting the way that Mark was doing. I mean they're really
24 taking care of the children?

25 A They're providing the food for them mostly.

1 They look after them during the day. They're providing a
2 house for them.

3 Q How often do you take the children to the park?

4 A There's a backyard in my parents' house. They
5 go outside and play.

6 Q Okay. How about during the five months
7 previous when you were together with Mark and he was the baby
8 sitter for those couple of hours each -- every so often,
9 every few days of the week, did you used to take the children
10 to the park?

11 A I would take them to my parents and they would
12 play there. I would take them to the park. I had taken them
13 to the playground.

14 Q Which park would you take them to?

15 A Newport News Park.

16 Q How often was that?

17 A Depended on the weather.

18 Q So during October, November and December,
19 January, you were taking these children outside to the park?

20 A If the weather permitted they were.

21 Q And if not you would take them over to your
22 parents' house so they could play outside there?

23 A They could play inside or outside depending on
24 the weather and their state of health. I took them to the
25 doctor also if they needed doctor's attention. I took them

1 to the doctor with my parents' help sometimes.

2 Q Did Mark ever take them to the doctor?

3 A He went on one occasion.

4 Q One time only?

5 A That I can recall. One or two times at the
6 most.

7 Q On your financial statement here, is this --
8 for example, the car payment -- \$125.

9 A Uh-huh.

10 Q This is monthly, correct?

11 A Yes, it is.

12 Q So for the period of January '89 till April
13 '89, not counting any money that Mark might be paying you,
14 according to this statement you have a \$250 surplus each
15 month?

16 A I'd have to have a calculator to figure out the
17 exact funds.

18 Q Your income monthly is \$1,214 according to this
19 piece of paper.

20 A Gross. I have to have taxes taken out of my
21 pay check.

22 Q That's the pay check from ECPI? That's the
23 366.17?

24 A That's correct.

25 Q Do you have taxes taken out from your Veterans'

1 Administration?

2 A That's not taxable income.

3 Q So the 366 is taxable?

4 A Yes, it is.

5 Q Do you know how much taxes they withhold from
6 that?

7 A Not offhand.

8 Q So the 1,214 figure should be reduced by the
9 amount of taxes they withhold?

10 A Yes.

11 MR. ELLENSON: I have no further questions.

12 THE COURT: Anything else?

13 MS. HANSEN: I have no further questions of
14 Mrs. Young.

15 THE COURT: Okay, fine.

16 MS. HANSEN: My next witness would be Carl
17 Settle.

18 Your Honor, if the court has no objection,
19 I'd like to approach the witness. He has -- he's
20 a little hearing impaired.

21 THE COURT: Mr. Ellenson, do you have a
22 problem with that?

23 MR. ELLENSON: No, sir.

24 THE COURT: All right.
25

1 has been visiting with the children at your home; is that
2 correct?

3 A That's correct.

4 Q Have you had any problems with Mark and the
5 children?

6 A Yes, some. The instances where he has been
7 talking with the children and that I have overheard where he
8 was -- Dara, the older one, in particular, telling her that
9 mommy's been saying bad things about him and that he couldn't
10 come visit when he wanted to because her mommy was mean to
11 him. I can't keep all these little phrases straight; and I
12 had asked him the same as Kathy, Don't say that to her
13 because it gets her all upset. He says, That's the truth, I
14 want my children to know the truth and nobody is going to
15 tell me what to tell my children; and the other one instance
16 there where he was in the room and all at once without any
17 word to anyone he gets up and goes out the door and slams the
18 door behind him without any regard to where any of the
19 children were. He could have knocked one of them down
20 because they get right -- following you around as toddlers
21 have a habit to do, and he went out to his truck to get
22 something from out of the truck, and he came back in and --
23 you know -- no word to us what he did or why he did it. Just
24 something came across his mind at this moment.

25 Initially when he came there -- he has a truck

1 with a cab on the back of it and he wanted to take the
2 children out and put them in the back of the truck. We
3 objected to it. Kathy told me that it shouldn't happen at
4 all. He was perturbed about that. He doesn't feel that the
5 environment in our home is proper for the children. However,
6 he feels the cab of -- the back of a pick-up truck that he
7 keeps a dog in is proper environment for the children.

8 Q Mr. Settle, where's your house located?

9 A It's in the Tide Mill Farms section of Hampton
10 off Armistead Avenue.

11 Q How long have you lived there?

12 A It's been twenty-one years this June.

13 Q And how many rooms does your house have?

14 A It's a four-bedroom house with two baths,
15 living room, dining room. I don't know the exact number
16 offhand. It's right at 2,000 square feet.

17 Q And are you retired now?

18 A Yes, I am.

19 Q So you're home all day long; is that correct?

20 A Yes, ma'am.

21 Q Is your wife employed outside the home?

22 A No. She stays and takes care of the home.

23 Q Has your wife ever been employed?

24 A Yes. She worked from the early forties through
25 1960 right after our second child was born, and then she

1 resigned her job to raise the children and stayed home since.

2 Q And how many children did your wife raise?

3 A Two. Two girls.

4 MS. HANSEN: I have no further questions of
5 Mr. Settle.

6 THE COURT: All right, Mr. Ellenson.

7 MR. ELLENSON: I have no questions, Judge.

8 THE COURT: Thank you. You may step down.

9 MS. HANSEN: Your Honor, we have no further
10 evidence. That would be our case. We would ask --
11 I'll wait until closing argument as to what we'll
12 ask for.

13 MR. ELLENSON: Mark Young.

14 -----oOo-----
15

16
17 MARK YOUNG, the respondent, called as a witness on his
18 own behalf, having been first duly sworn, was examined and
19 testified as follows:

20
21 DIRECT EXAMINATION

22
23 BY MR. ELLENSON:

24 Q Okay, Mark, what kind of work are you trained
25 for?

1 A I trained as an electrician.

2 Q And did something happen that you couldn't work
3 as an electrician?

4 A Yes.

5 Q What was that?

6 A I was injured in August of 1987.

7 Q Okay. And as a result of that accident or that
8 injury, did you ever have occasion to file any workmen's
9 compensation or anything like that?

10 A Yes. I received workmen's compensation.

11 Q How long did you get workmen's comp?

12 A For the whole year -- a little over a year,
13 excuse me. I got it for nine months originally until May
14 of '88. I went back to a light-duty job with my former
15 employer and I worked there until I was terminated from
16 employment in July last year and payments began again on a
17 personal basis.

18 Q In June?

19 A In July.

20 Q In July. Now was it a -- the decision -- your
21 wife decided to go back to school, right, in July or in
22 August or September?

23 A Yes.

24 Q She went back to school in August or September?

25 A Yes.

1 Q Now --

2 MS. HANSEN: I'd object to him leading the
3 witness.

4 THE COURT: Rephrase the question,
5 Mr. Ellenson. Get over the obstacle.

6
7 BY MR. ELLENSON:

8 Q Did you have any interaction with your children
9 from August or September of last year until January of this
10 year?

11 A Yes. I was their primary caretaker.

12 Q Please describe the interaction, not in all the
13 details, but elaborate on it. Explain to the judge what sort
14 of care, what you were doing with the kids.

15 A I did basically everything for the kids from
16 the time they got up. I got them dressed in the morning. I
17 prepared all their meals for them except dinner because --
18 well, occasionally I would cook dinner because Kathy has --
19 who used to cook dinner meals a lot doesn't much any more or
20 hadn't the last we were together. The kids were my life.
21 You know -- they were my primary duty and I basically spent
22 the day with them from playing with them -- I like to take
23 them outside a lot when the weather's nice. I do everything
24 for them. Change their diapers, read stories to them, play
25 music for them. I comfort them. We have -- I've -- when you

1 have three small children in a house like that, it's
2 almost -- you have to be one hundred percent involved with
3 them just in order to function as I've always been since
4 birth. I've shared responsibility equally for the kids
5 except for the times when I was working full-time.

6 Q Do you have any more -- do you have any
7 observations concerning the differences -- or why do you
8 think that you're a better -- the children would be better
9 off with you if the judge would allow you to have the
10 children today?

11 A I have found in noticing differences between
12 the way I deal with the kids and Kathy that I am much more
13 effective in controlling them because I take the time to
14 explain things to them when possible. Kathy's very short
15 tempered and will respond to misbehavior -- not misbehavior
16 but incorrect behavior by the kids with just flying off the
17 handle and immediately snap at them as opposed to just
18 patiently correcting their action, and I've found that they
19 respond -- even small kids -- to reasons, explanation, most
20 of the time. That's my method with them.

21 Q Do you -- what's your side of the story briefly
22 of the January 20th incident which your wife described?

23 A As far as --

24 Q What happened?

25 A Well --

1 Q What happened?

2 A When she actually came up to my room?

3 Q What's your version?

4 A She was wanting to study downstairs. I was
5 studying upstairs. I went back upstairs and we had settled
6 the issue downstairs as far as she was worried about the kids
7 might be taken to the zoo the next day because the weather
8 was bad and that was -- you know -- I expressed an idea is
9 all it was that I thought I would take them to the zoo, but
10 she told me it was going to be cold. I said, Okay, it's no
11 problem. I don't have to take them tomorrow; and then I went
12 back upstairs which she followed me back upstairs.

13 I asked her not to come in the room, just to
14 leave because she had got into a habit recently of coming in
15 and just arguing incessantly. After asking her to leave my
16 room, she would not do so. She would just stay in there
17 badgering and trying to provoke me into something. I think
18 that's been her intent for many months. As far as the night
19 of the 20th when she came in, I did not want that situation
20 to repeat. I asked her not to come in at all. When she
21 entered the doorway I moved toward the door and reached
22 across the -- to close the door, and I was just going to
23 nudge her out gently. At that time she straight-armed me in
24 the chest and forced me back across my bedroom almost to fall
25 down, and I naturally reacted. I just reciprocated and I

1 shoved her out of the room. There was no assault involved.

2 At that time our boy, Carl, was crying because
3 of the commotion. I immediately went in and picked him up.
4 She came in and I was holding him tight in my arms trying to
5 comfort him, and she came in and tried to physically grab him
6 out of my arms. She had never done anything like that. She
7 said, Give me my son, and I again just pushed her back.

8 There were two pushes the whole evening. There
9 was never any assault.

10 Q Are you presently residing -- where do you
11 presently reside?

12 A At 163A Jenness Lane, Newport News.

13 Q Is that where you and Kathy were living prior
14 to this separation?

15 A Yes.

16 Q How long did you all live there?

17 A It would be two years in this June.

18 Q Okay.

19 A Close to two years.

20 Q What's your -- did you end up getting a
21 settlement from workmen's comp?

22 A Yes, I did.

23 Q A lump settlement?

24 A Yes.

25 Q Okay. How much of that do you have left

1 today?

2 A Approximately \$6,500.

3 Q And is that money -- was that money earmarked?
4 Does it have any sort of special use?

5 A Yes, indeed. I hoped to use most of the
6 remainder of it for my legal training. Well, as soon as
7 possible to train as a paralegal. I've completed one course
8 already but I need further education.

9 Q Have you sought any employment?

10 A Yes, I have.

11 Q Have you sought employment -- you've got -- how
12 many jobs have you sought since the separation? Since
13 January?

14 A I've put in at least -- submitted my resumé to
15 approximately forty law firms for a legal assistant's
16 position, and I've also applied to many ads in the paper
17 offering legal secretary or there's been a couple I believe
18 for assistants and maybe ten in this period for jobs other
19 than specifically legal assistant.

20 Q Do you -- right now you're not working?

21 A No.

22 Q And you're not getting any money coming in?

23 A Right.

24 Q So you're living off that money you got in the
25 bank?

1 A Right.

2 Q If you would be awarded custody today, can you
3 describe your plan for seeing to the physical and emotional
4 well being of the kids on a day-to-day basis?

5 A Yes. As I have said as far as my relationship
6 with them, I will fall back into the same routine that I had
7 while I was their primary caretaker until Kathy left and
8 which was a very good working relationship. I have good
9 rapport with my kids, and I've always, like I say, been more
10 able to control them in a peaceable fashion as opposed to
11 treating them like a drill sergeant is the way Kathy treats
12 them in my view.

13 I am interested in immediately if I get custody
14 to reestablish that relationship because it has in the very
15 strict visitation -- strictly limited visitation I've had the
16 last couple of months, you cannot help but to deteriorate
17 somewhat although I've done my best, and I think I've held on
18 to them pretty well and kept our bond workable and strong.
19 So I'm interested primarily in that first of all.

20 I'm going to continue my job search and
21 hopefully I can get -- I completed the one course for
22 paralegal work. I'm hoping I can get hired in this area. If
23 I can't, this fall I will be beginning a legal assistant's
24 course at Christopher Newport College.

25 MR. ELLENSON: Answer Ms. Hansen.

CROSS-EXAMINATION

1
2
3 BY MS. HANSEN:

4 Q Mr. Young, now you testified that you were
5 trained as an electrician. You are now currently trying to
6 get training as a legal assistant. You do have an
7 associate's degree; is that correct?

8 A Bachelor's degree.

9 Q Where did you receive your bachelor's degree?

10 A California.

11 Q When did you receive your bachelor's degree?

12 A The course work was completed the first of
13 1985.

14 Q 1985?

15 A Yes.

16 Q So you do have a college degree now?

17 A Yes, I do.

18 Q And presumably with the college degree you
19 could do more than be an electrician; is that correct?

20 A That's always been my hope.

21 Q Now you heard Kathy testify that she had
22 understood you turned down a job -- a couple of jobs. Did
23 you turn down offers of employment?

24 A Yes, and the ones that I turned down she at the
25 time agreed with my reasons for doing so.

1 Q Tell me what your reasons for -- tell me what
2 the jobs were and why you turned them down.

3 A First of all, my insurer -- their agent for --
4 the occupational agent for me was well aware of my
5 educational background and what type of work I was looking
6 for. Yet they continued to send me to what I considered jobs
7 that I was well over-qualified for; and also the first job
8 they offered me was a BP gas station in Norfolk, and there
9 happened to be the same type of job opening two miles away
10 from my house. If I was going to take such a job I should be
11 able to take one closer.

12 Q But you turned the job down; is that right?

13 A That's right.

14 Q You turned another job down too; is that right?
15 How many jobs did you turn down? Two or three?

16 A Three.

17 Q You turned down three jobs?

18 A Uh-huh.

19 Q Now --

20 A I was studying to be a legal assistant.

21 Q But you weren't bringing any income into the
22 marriage; is that right?

23 A I was wrestling with my insurance company to
24 get the money they owed me.

25 Q You testified today that you have \$6,500 left.

1 Now in January you had not received any money yet from the
2 workmen's comp settlement; is that right? When did you
3 receive the settlement?

4 A The check came I believe -- I don't recall the
5 exact date. I believe it was early February.

6 Q Can you -- and how much did you receive?

7 A \$15,000.

8 Q And so you only have 6,500 left?

9 A Correct.

10 Q Do you have any other sources of income except
11 for this \$15,000 settlement that you received?

12 A No, I do not.

13 Q Are you currently seeking employment?

14 A Yes.

15 Q But you are not qualified as a paralegal; is
16 that correct?

17 A There are no specific requirements for
18 paralegal work.

19 Q You have not graduated from your paralegal
20 program?

21 A Yes, I have from one --

22 Q Oh, you have?

23 A -- course.

24 Q Now you talked about you were the primary care
25 for the children when you and Kathy were living together

1 before you separated in January. Now correct me if I'm
2 wrong. Isn't it true -- and I think you testified to this
3 before -- Kathy cooked all the meals; is that right?

4 A That's not true.

5 Q You did testify to that before though, didn't
6 you?

7 A No.

8 Q In juvenile and domestic relations court you
9 didn't testify that Kathy did all the cooking?

10 A I testified to the effect that she did most of
11 the evening meals, but she has slackened in that.

12 Q Kathy did the grocery shopping too. You
13 testified to that before too.

14 A I have offered on many occasions to. She
15 insists on controlling all the finances.

16 Q At that time she took care of all the bills; is
17 that right?

18 A She also insisted upon them. Now excuse me.
19 We did them together. We began last fall because she had
20 objections. She thought I wasn't putting an input into it.

21 Q All right. But by the fall Kathy was handling
22 all the bills; is that right?

23 A No.

24 Q Oh, it's not?

25 A No. She wrote the checks but we went over them

1 together.

2 Q Now I believe you talked that you're -- you
3 think you're a better disciplinarian than Kathy because
4 you're freer with the children. She's too harsh on the
5 children. Is that what you said?

6 A I didn't say I was freer with them. I am more
7 patient.

8 Q You are more patient?

9 A Yes.

10 Q Wouldn't that be a better way to say you let
11 the children do what they want to do; is that right?

12 A No.

13 Q You don't?

14 A That's not true. Within the parameters -- you
15 know -- within reasonable parameters I'm always aware --
16 excuse me -- and conscious of what they're doing and always
17 aware of any dangers.

18 Q Now are you telling Dara that her mother is
19 mean, that her mother is a liar? Are you telling her those
20 things?

21 A No. I've told her that -- that Kathy has said
22 things about me that were not true. I had to tell her the
23 truth because she's trying to understand what's going on.
24 I've always told her that she has to forgive her mother and
25 that she has to love her.

1 Q You're telling her that everything is Kathy's
2 fault; is that correct? You're telling your children that?

3 A Yes, I am.

4 Q And you're telling the children that in front
5 of other people who have come into to court today to testify
6 now; is that right?

7 A Yeah.

8 Q And you think that's in the best interest of
9 your children to tell them that their mother is mean and
10 their mother is a liar and that you would go to California
11 except that your mother's too mean and won't let you go? You
12 think that's in the child's best interest?

13 A I don't follow your question completely.

14 Q Do you think that it's in your child's best
15 interest to tell your children these things?

16 MR. ELLENSON: Your Honor, I think it -- what
17 things is she talking about? Not California. I
18 haven't heard any testimony about California. It
19 would help if she limits the question to California
20 and just break it down as opposed to lumping it
21 all together.

22 THE COURT: Get your information together.

23

24 BY MS. HANSEN:

25 Q Do you think it's in the best interest of your

1 child to tell your child that her mother is mean?

2 A I haven't told them that their mother is mean.

3 Q Have you told them their mother is a liar?

4 A I've told them that, yes. She said -- what
5 else can I say. I have to explain this somehow. She's the
6 cause of all this by her lies, yes.

7 Q So you think that's in the best interest of the
8 children to tell them their mother is a liar?

9 A I think the truth is always in the best
10 interest, yes. I also tell them to forgive their mother and
11 to -- for them to love her. She made a mistake.

12 Q You don't deny that there was a physical combat
13 between -- combat or scuffle between you and your wife on
14 January 20th? You don't deny that, do you?

15 A No.

16 Q You don't deny that you pushed her out of the
17 room the night before, do you?

18 A No, I do not.

19 Q You don't deny --

20 A Excuse me. The term "pushed" is not really
21 appropriate for that night. It was -- I put my arms on her
22 and put her out. I did not as in push. I didn't really push
23 her. She would not leave the room. I wanted to study in my
24 room. I put her out outside the door with my hand on her
25 shoulder and put her out and shut the door.

1 Q You don't deny either, do you, and I believe
2 that you turned chairs over in the living room in front of
3 Dara because you said mommy had been bad. You don't deny
4 that, do you?

5 A It was not in the living room where Dara was.
6 It was the kitchen.

7 Q Did Dara tell you to stop doing that to mommy;
8 is that right?

9 A No.

10 Q You do remember turning the chairs upside down
11 because she didn't leave the vacuum cleaner where you wanted
12 it, do you?

13 A Yes, indeed. And Dara was nowhere around. She
14 was in the other room, the living room.

15 Q Dara overheard it; is that right? Did she come
16 running into the room?

17 A She came in and I believe just expressed
18 puzzlement that the chairs were turned over.

19 Q Puzzlement?

20 A Yes.

21 THE WITNESS: May I continue with that?

22 THE COURT: Why don't you just respond to the
23 questions. If it has to be clarified, I think
24 Mr. Ellenson could ask you a question. You may say
25 something that might not be helpful to your case.

1 BY MS. HANSEN:

2 Q How -- you're currently not employed, so if the
3 court were to grant you custody today, I presume you are
4 going to live on the \$6,500; is that right?

5 A Well, obviously until I'm employed.

6 Q Once you've become employed, what do you plan
7 to do for child care?

8 A I plan not to reciprocate the manner of
9 treatment I've received from Kathy and her parents.

10 Q That's not my question, Mr. Young. What do you
11 plan to do with the children if you become employed? What do
12 you plan to do with the children during the hours that you
13 are working?

14 A I was trying to answer it. To let them stay
15 with Kathy's parents as much as her parents are willing to
16 have them. I would continue to utilize and continue that
17 relationship with them. I don't want to break them off from
18 their grandparents.

19 Q So you would continue to use Kathy's parents as
20 the child care if you became employed?

21 A Unless they objected or I would seek out child
22 care for them.

23 Q So I presume you have no objection to the way
24 Kathy's parents take care of the children in that you would
25 be willing to use them yourself?

1 A I do have specific objections to their -- some
2 of their treatment with the children which I would address.

3 Q Well, I would presume that if you are willing
4 to continue to use them, those objections can't be too
5 strenuous. Wouldn't that be correct?

6 A That's true. That's considered just day care.

7 Q Do you have any other children besides the
8 children that were born of this marriage?

9 A Oh, no.

10 Q Have you ever been married before?

11 MR. ELLENSON: Your Honor, I object. I don't
12 know what the relevance is to this.

13 MS. HANSEN: It could be, Your Honor. These
14 were the questions I had asked before. I think it
15 could lead to relevant information.

16 MR. ELLENSON: We're not here for discovery.
17 We're here on the hearing.

18 THE COURT: For the purposes of this hearing
19 I don't believe so. She may have wanted to bring
20 out any other expenses. I don't know that it's an
21 appropriate question to be asked by counsel. I will
22 sustain the objection.

23

24 BY MS. HANSEN:

25 Q Are you currently seeking counseling,

1 Mr. Young? Are you currently engaging -- are you currently
2 seeking counseling? Are you seeing a counselor?

3 A Psychological counseling?

4 Q Yes.

5 A I'm on a court order to.

6 Q Did Kathy voluntarily seek counseling before
7 you two separated?

8 A She alleged that she did.

9 Q Did you refuse to seek counseling at that time?

10 A No, I did not. In fact, I saw the counselor.
11 I went back to the same counselor we used to have. She
12 didn't want to go. She didn't want to go back to see that
13 counselor.

14 Q You had quit seeing that counselor before
15 though? Hadn't you terminated that counseling, Mr. Young?

16 A We terminated it by mutual agreement, but we
17 got to -- the purpose of counseling at that time was to
18 reconcile after Kathy's first desertion and after we had come
19 to a written contract of our living conditions. When we got
20 back together over a year ago, we found no further need for
21 the counseling at that time.

22 MS. HANSEN: I have no further questions,

23 Your Honor.
24
25

REDIRECT EXAMINATION

1

2

3 BY MR. ELLENSON:

4

5

6

7

Q So you were recently in the past few months I guess the relative time period from July or August of last year till the present, did you and Kathy go to counseling together?

8

A Not together, no.

9

Q Was she going to counseling?

10

11

A She started shortly before we separated with the new counselor and I saw our old counselor one time.

12

Q And have you been going to counseling now?

13

14

A Yes. I then -- after I decided it was a good idea, I went to see her counselor once.

15

Q But you are going to counseling now?

16

A Yes, I am.

17

Q Thank you.

18

A In hope of reconciliation.

19

20

21

22

Q If you get custody of these children today, how much child support does Kathy need to pay you each week? How much do you feel you're going to need from her to help you support those children?

23

24

25

A I would want whatever the amount is that I find we need per month. I would ask for half of that. I think it's equitable to ask for half of whatever the expenses are.

1 Equally share.

2 Q Do you have a dollar figure in mind that you
3 are asking the judge to award today?

4 A No.

5 Q Okay. Let's suppose you get custody of the
6 children, Kathy's paying you child support and you can't find
7 a job and you've exhausted your \$6,500, do you have any
8 thoughts about ADC, aid for dependent children, or anything
9 like that that you might avail yourself of?

10 A I would do what I had to. Hopefully I can make
11 what I have last until after I complete legal assistant's --
12 further legal assistant work which I think I've gotten many
13 letters that have indicated that I may well be employable
14 now. I'm hoping for that.

15 MR. ELLENSON: Okay. Answer Ms. Hansen.

16 MS. HANSEN: I have a couple more questions
17 that were not brought up.

18
19 **RECROSS-EXAMINATION**

20
21 **BY MS. HANSEN:**

22 Q Kathy is currently -- you are aware from the
23 income and expense statement and when you were living
24 together that you will receive \$120 in food supplement from
25 Women, Infants and Children? You're aware of that, aren't

1 you?

2 A WIC, yes.

3 Q Yeah, WIC. Would you be eligible for WIC?

4 A I really don't know. That's a good question.

5 Q All right. Are the two youngest children, the
6 twins, still nursing?

7 A Yes, as far as I know.

8 MS. HANSEN: Okay. I have no further
9 questions.

10 THE COURT: All right. I haven't any
11 questions. Thank you, sir. You may step down.

12 MR. ELLENSON: That's our evidence, Your
13 Honor.

14 THE COURT: Is that your only witness?

15 MR. ELLENSON: Yes, sir.

16 THE COURT: All right.

17 MS. HANSEN: Your Honor, I would ask that this
18 court grant custody to Kathy Young. I think there is
19 sufficient evidence before the court to show that a
20 joint custody arrangement would be practically
21 impossible to be worked out between the parties
22 because they certainly don't get along with each other
23 at all, and I think a joint custody arrangement could
24 only work in a situation where the parties are going
25 to cooperate with each other, and they're going to

1 have to learn to cooperate somewhat; but at this
2 juncture I don't think that any type of joint custody
3 arrangement is possible.

4 I think from the testimony that was presented,
5 Your Honor, that Kathy is nursing the two youngest
6 children. She's got the three children with her.
7 She's got a good home environment for them. They're
8 in a nice home. From the grace and wonderful kindness
9 of her parents, and Mr. Settle testified today,
10 they're being provided free room and board. They've
11 got free food coming there and it's a wonderful thing
12 that the parents are doing for the children.

13 Mr. Young is unemployed. Kathy would certainly
14 have to bear the expense for the children. I think
15 that Kathy's testimony today shows that she has been
16 the responsible party in this marriage for -- ever
17 since -- at least for the relative time period. She's
18 taken care of the bills. She's taken care of the
19 cooking. She's taken care of the groceries. She has
20 taken care of the children. Mr. Young did take care
21 of the children during the day when Kathy was at
22 school -- until the time she was at school. I think,
23 however, even his admission and her testimony to his
24 flares of temper, the things he's said in front of the
25 children are certainly not in the best interest of the

1 children, and I believe that all in all the testimony
2 indicates that Kathy's the fit and proper custodian.

3 We would agree that Mr. Young is entitled to
4 visitation rights with the children, and we would
5 submit that to the court's discretion as to how the
6 court would work with that visitation; and Mrs. Young
7 has some fear of giving up -- the supervised
8 visitation not being ordered. Due to her testimony
9 today she's indicated problems with Mark and -- but
10 would eventually want to work to a point where Mark
11 could get the children on his own and would not have
12 to have the supervised visitation, because it does not
13 add to the benefit of either of the parents. However,
14 at this point she feels she has a certain fear and,
15 therefore, we ask that that continue and Mark be
16 ordered to continue to pay child support payments.

17 THE COURT: Mr. Ellenson

18 MR. ELLENSON: Your Honor, I believe what we
19 have here is something at first brush is one thing but
20 when you really start looking at it it's something
21 else. Let's look at the real -- the relative time
22 period here, and my relative time period comes from, I
23 guess, July and August -- from August, September when
24 you have the father who's the primary caretaker, and I
25 think if we go by Mrs. Young's assertion that

1 Mr. Young was not the primary caretaker and along with
2 that he was exhibiting these aggressive behavior
3 patterns as early as October -- October, November,
4 December she testified -- if we're going to go along
5 with that theory, then what is she doing leaving the
6 children with Mr. Young for those hours during the
7 day. I think it casts some cloud on those assertions.
8 I think we have to go with the notion that Mark was
9 the primary caretaker during that time period.

10 Now what you have or even if you are going to
11 go the other way, let's look at the evidence in the
12 light most favorable to Mrs. Young. He's certainly
13 there a good part of the day taking care of them if he
14 is only a baby sitter. Now what you have is a husband
15 who's not working. According to his testimony there's
16 concurrence in the refusal of jobs. You have a
17 husband and wife who are trying to work things out,
18 reconcile, because there had been a previous
19 separation. The wife goes back to school full-time
20 and is working somewhat. The husband's taking care of
21 the children at least during the hours when mom's not
22 there, and mom's not there a lot. Things got --
23 things occur, and whenever something happens on
24 January 20th and the wife says, This is it, I just
25 can't take it any more, and leaves and takes the

1 children with her.

2 I think what's happening here, Your Honor, is
3 that to a certain extent Mr. Young's being punished
4 for being a man, that we have certain prejudices in
5 our society, and I think one of them which is
6 Mrs. Young is continuing to foster is through her
7 continued nursing when the children are over two years
8 old. They're still nursing. That's certainly a
9 convenient argument and it certainly makes sense to
10 say, Hey, these children are still nursing, and we
11 can't do anything about that. The children have to be
12 with the mother. Well, she certainly was able to -- I
13 think that goes towards the prejudices that we as a
14 society have towards males being fathers, being the
15 primary caretaker.

16 I think what you have here now at present, and
17 thinking in terms of the best interest of the
18 children, you have Mark who was the primary caretaker,
19 you have grandma and grandpa who are really now taking
20 care of the children. I think the one or two remarks
21 which have been testified to concerning Mark saying
22 something to the kids has been to be seen in the
23 context of the child asking the father, Well, dad, how
24 come we don't see you more often, and dad has to
25 reply. I think that's the proper context to put those

1 remarks within.

2 I think at this point in time, Mr. Young, who's
3 not working, who did have the time available, who's
4 still in the same abode where the couple lived as
5 husband and wife, where the children lived for the
6 majority of their lives, is certainly more suited,
7 more capable, more in a position to better rear those
8 children. He should have custody now of those
9 children; and in this case Mrs. Young, who did have
10 some income, should be ordered to pay child support to
11 Mr. Young, and I would ask the court to order that.

12 In the alternative if that's not the way the
13 court sees it, I don't know why joint custody -- there
14 is going to have to be -- they have these children.
15 They're babies. These children are going to be around
16 for another fifteen or sixteen years where these two
17 people are going to have to work it out and they might
18 as well start working it out now as opposed to working
19 it out six months from now or a year from now, two
20 years from now. They're going to have to come to all
21 sorts of decisions. They're going to have to get
22 along, and if your honor is not disposed to award my
23 client custody with the wife paying child support to
24 the father, then I would ask for joint custody, and
25 we're going to have to work something out here. I

1 would ask the court to do it today.

2 Concerning that, it's ridiculous. The father
3 here who had the children, who was taking care of the
4 children for all these months is suddenly in a
5 position where he can't even see the children alone.
6 He can't even taken them home for the weekend. It's
7 an absolutely absurd situation. Your Honor, I ask you
8 to correct it. Thank you.

9 THE COURT: Referring back to the original
10 situation about the discovery, et cetera, I notice
11 that in looking through the entire process the notice
12 of appeal, et cetera, all of it's done in criminal
13 warrants. This seems to be the way that it's handled,
14 and I guess that comes from the standpoint that one of
15 the things stated in the order is the obligation of
16 support, and if obligation of support is not met, then
17 there would be sanctions such as jail, et cetera, and
18 I guess that's the way they carried it over. We're
19 primarily -- I think earlier we were thinking in terms
20 of custody, but I think primarily it comes up also on
21 matters of support, so that may very well be why it's
22 been categorized in the criminal portion of the court
23 docket.

24 Now what I have to deal with today, regardless
25 of anything else, we're talking about the situation at

1 the present time. There's been a break-up in the
2 marriage, and the children have been moved from one
3 location to another and they are now in the custody of
4 their mother as well as custody of the grandparents.
5 What the defendant -- we were talking about -- I guess
6 what we're talking about is the father is asking the
7 court to remove the children from where they are now
8 and place them in his custody, and in addition to that
9 order, a reversal of what has been asked in support.
10 On the other hand the mother wants a certain amount of
11 support, et cetera, for the child -- the children.

12 My decision is not based on any preconceived
13 notions about the case or any real preconceived
14 notions. What this case is decided on are the facts
15 that have been brought to me this morning. Now one
16 thing that comes up throughout this, and I think it's
17 very important and it's been pointed out by both
18 attorneys, and that is that regardless of what this
19 court does, regardless of what any attorney might do,
20 we're talking about children, and the children, as we
21 say, don't ask to be born and they are not a vacuum
22 cleaner or television set that we can have a tug of
23 war about and not be affected by it. The children
24 will end up being affected by it.

25 Now two things that I would say. About the

1 objections that the father has about the mother's
2 parenting, et cetera, they seem to be criticisms of
3 how you discipline the child, et cetera, and I think
4 those are subject to a number of theories about who's
5 right and who's wrong; but two things that have been
6 brought out in the evidence as far as the court is
7 concerned are not really subject to much debate.
8 Number one is the violence. The father's response to
9 what happened, et cetera, sort of gave us what I would
10 call the usual answer. She put up her hand and he
11 reacted, et cetera. I don't believe that. I believe
12 the mother's version of what happened in terms of the
13 original incident involving violence.

14 Secondly, the father admits that he advised the
15 children that the mother is a liar. It seems that the
16 father's evidence indicates he's much more interested
17 in his own image with the children than he is in the
18 children themselves. I think that one mistake parents
19 make in these situations is again thinking that the
20 child is some sort of possession that they want to
21 have control over and manipulate rather than thinking
22 about what is the most important thing for the child.
23 Historically I think we will find that parents who
24 attempt to be concerned about their image and turn the
25 child against the other parent makes a very serious

1 mistake. It's a temporary victory which often results
2 in the child later on resenting the parent who caused
3 the breach in the relationship. Children naturally
4 need a mother and a father and they want both, and
5 regardless of what the parent is like, they're going
6 to end up wanting to have a relationship with both of
7 them; and one parent who tried to interfere with that
8 relationship wins a temporary victory but inevitably
9 suffers because of that.

10 So it's a serious, serious mistake to be
11 concerned about your image at the present time because
12 the main thing that you've got to deal with is the
13 children, what is the best thing for them, and it
14 doesn't make any difference if you're correct and the
15 lady is not telling the truth to the children.
16 They'll find that out without all this brainwashing
17 that you attempt to do. They're going to find it out;
18 and if she's not, then I think it would be a mistake
19 because they're going to resent the fact that you
20 accused her of something that was not very true.

21 Let's get down to the real world about this
22 thing. No matter how you look at these things, you've
23 got to look at the real world, and the real world is
24 the best financial deal for everybody, for them to
25 stay with mother because her parents are picking up a

1 lot of expenses that would be present here.

2 Now Mr. Ellenson raised some question about
3 prejudice about a man has to do this and do that. One
4 of the things that we still have in our society is
5 that a man has got to support his children. Now I
6 don't know how -- what kind of advice Mr. Young got
7 about his profession, et cetera, but I think he should
8 get out of this paralegal fantasy and get himself some
9 place where he can find some way to support these
10 children, because I don't know what they pay
11 paralegals but it just doesn't seem -- I don't think
12 they pay them that much money. I think that everybody
13 would like to have a particular type of job I'm sure,
14 but I think when you come into this world and you
15 bring three children into this world, you have to look
16 at the real world and realize that maybe your
17 professional desires are going to have to take second
18 place to the real -- the reality; and the realities
19 are that if he doesn't find some sort of income,
20 eventually that \$6,500 is going to be gone and he's
21 going to be faced with somebody putting pressure on
22 him to make child support payments.

23 You can shake your head and do whatever you
24 want, Mr. Young, but this is Anglo-Saxon law. It came
25 from the time of Prince Valiant. You can take it up

1 with him, but the fact of the matter is that this is
2 it. You've got responsibilities and many people in
3 this community would like to have a certain type of
4 profession, job, et cetera, but because of their
5 obligations they have to go out and find something to
6 make child support payments. Something to feed and
7 clothe themselves and their children. It's a shame
8 but I think you really have to look at this a little
9 closer; and it doesn't make any difference to me right
10 now because he's apparently got some money. He just
11 better look at it because he's going to be facing
12 somebody in what we now know as a criminal situation
13 and he's going to have to face it. He can shake his
14 head all day long and say it's unfair, and there are
15 people in the city farm right now that are saying the
16 same thing but they're there and that's just the way
17 it is.

18 You just cannot go through your life looking
19 for something -- the rainbow that may not be there
20 when you have three children. If you don't have any
21 children you can do all sorts of things like this.
22 When you're faced with the responsibility of three
23 children, you may have to make some adjustments in
24 your wishes about what you want to do. All this is to
25 try to help you somewhere down the line so you don't

1 have to come back down here.

2 As far as this court's concerned, I think that
3 the custody of the children should be with the mother.
4 I think that the amount of support that was awarded by
5 the Juvenile and Domestic Relations Court is not
6 excessive and I'm not inclined to do anything higher
7 than that right now in light of these circumstances.
8 I don't know where the money is going to come from.

9 You may be having to deal with the rest of the
10 time on the other hand. I have seen nothing here
11 about -- you know -- there's some problems here. I
12 think Mr. Young made the mistake about trying to bad
13 mouth the mother in front of the children. That to me
14 is not the type of thing that will deprive him of
15 visitation. I really think that the suggestions made
16 by Mr. Ellenson are appropriate. I think that the
17 custody should be with the mother but with some
18 reasonable rights of visitation with the father, and I
19 do not see anything from his conduct that would be
20 enough that he would have to have supervision. That's
21 generally desired for something else. I just don't
22 think that his conduct is such that he should not be
23 allowed to have some sort of visitation with the
24 children.

25 On the other hand, if the reports keep coming

1 back that he continues this conduct about worrying
2 about his image and not worrying about the children,
3 that's clearly not in the best interest of the
4 children and that he would not be entitled to have
5 that, but it just seems to me that something ought to
6 be worked out in terms of visitation between the
7 parties so that the father could have visitation with
8 the children at reasonable times and places; but I
9 just can't see that anything this gentleman has done
10 has deprived him of a right to have unsupervised
11 visitation with those children.

12 It looks like he was taking care of them for a
13 long time. He hadn't done anything -- there's no
14 evidence that he's done anything except have
15 difficulties with the mother -- you know -- in terms
16 of everything seems to be involving a problem between
17 them; but I don't think -- the only thing I saw was
18 this bit about his image to the children which is a
19 mistake that you'll suffer from sometime in the
20 future. That's not recognized by any law as being
21 something that would deprive the father of visitation
22 because we don't have perfect parents; and it just
23 seems to me that the custody should be with the mother
24 and that there should be reasonable visitation with
25 the father and that the support should be as ordered

1 by the Juvenile and Domestic Relations Court.

2 MS. HANSEN: We would offer every other
3 weekend, 5:00 p.m. Friday to 5:00 p.m. Sunday.

4 THE COURT: Why don't you all just come up --

5 MR. ELLENSON: I would ask the court to be on
6 standby if we can't -- if you can just wait a second.

7 THE COURT: Let me take a brief recess. You
8 can try and discuss it.

9 (The hearing recessed at 12:40 p.m. At
10 12:45 p.m. the hearing continued as follows:)

11 MS. HANSEN: Your Honor, I believe we've
12 reached an agreement as to visitation. It will be
13 every other weekend from 5:00 p.m. on Friday until
14 5:00 p.m. on Sunday. The weekend that he did not have
15 visitation with the children, he would have the
16 children from twelve to four on that Monday. However,
17 we'd also like to specify that due to the fact
18 Mrs. Young is still nursing two of the children that
19 they will be brought back for nursing if they were
20 still nursing at five o'clock on Saturday, and then
21 she would leave again and he would have them for that
22 evening.

23 THE COURT: What happens in the ordinary
24 lifetime if she has some obligations or something --
25 you know -- that in terms of the nursing, what does

1 she ordinarily do about that?

2 MRS. YOUNG: When I have to work in the
3 evenings they usually nurse earlier in the afternoon.
4 I work at night and they usually nurse in the
5 afternoon at 4:00 or 4:30 and then they wake up early
6 in the morning and they come in and crawl in bed and
7 that's how they've usually been handling it.
8 Sometimes they don't. They may be in the room
9 themselves. I'm not going to guarantee a date when
10 they will stop because I believe fully they should be
11 babies.

12 THE COURT: Based on your experience, do you
13 have any idea how long this would continue?

14 MRS. YOUNG: Based on experience with other
15 mothers, they can be three years old or older.
16 They've just turned two and it's not an abnormal
17 thing.

18 THE COURT: All right. Mr. Ellenson, do you
19 understand what they're --

20 MR. ELLENSON: I understand, Your Honor. I
21 guess -- yes, sir.

22 THE COURT: Are you going to prepare an order
23 for them?

24 MS. HANSEN: I'll be glad to prepare an order.

25 THE COURT: Why don't you do that. Prepare an

1 order and have Mr. Ellenson endorse it and we can go
2 from there. That would probably be easiest.

3 MS. HANSEN: Thank you, Your Honor.

4 (The hearing adjourned at 12:47 p.m.)
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8 REPORTER'S CERTIFICATE
9

10 STATE OF VIRGINIA,

11 CITY OF NEWPORT NEWS, to-wit:
12

13 I, Sherry VanPelt, certify that the foregoing is
14 a correct transcript of the testimony introduced and
15 proceedings had before the said court on the date
16 aforementioned.

17 Given under my hand this 1st day of September
18 1992.
19

20
21 Sherry VanPelt
22 Court Reporter
23
24

25 -----oOo-----