

MARY G. DAVIS, Appellant, v. WILLIE R. DAVIS,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued November 5, 1968. Decided February 6, 1969.

1. When a wife is compelled to leave her husband for good and sufficient reason, she shall be entitled to support in the form of alimony pending determination of a suit for divorce brought by her husband.
2. Where a party offers not a scintilla of evidence at a trial in denial of testimony against him, it shall be considered a concession by him of the truth of the testimony offered, though his answer contains denials.

In a suit for alimony support, the petition alleged the wife was driven from home by the abuse and threats of her husband, who thereafter instituted an action for divorce. At the trial he offered no testimony in denial of the testimony of his wife and her witnesses. The wife was allowed support pending the outcome of the divorce suit, and it is from the judgment of the trial court that the respondent appeals. The *decree* was *affirmed*.

J. Dossen Richards for appellant. *C. P. Conger-Thompson* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the court.

We have closely inspected the record in this case and find that this is a matter in which Mary G. Davis, of Monrovia, filed a petition for alimony in the Circuit Court, Sixth Judicial Circuit, Montserrado County, sitting in its Equity Division, June 1967 Term, against her husband, Willie R. Davis, of Monrovia.

The petition for alimony states that petitioner and her husband were married on December 8, 1962, and thereafter lived together in peace and happiness until the

month of June 1965, when her husband began to harass her, asking her to leave his home, which continued until June 10, 1966, on which date she was obliged to leave, having exhausted all of her human resistance against this unhappy and unpleasant condition.

She further averred that she had been ousted from the home by her husband, and he refused to provide her with support and subsistence regardless of the several appeals she made to him on several occasions. Instead, he instituted an action of divorce against her, which obliged her to procure the legal services of a lawyer to represent her interests in the divorce case, as well as in the case of alimony sought, whose charges for legal service aggregated \$500.00, which she is without means to pay. Hence, she prayed that the court below award her a divorce allowing alimony and suit money.

The respondent filed his answer, in which he alleged, *inter alia*, that petitioner was by no means entitled to alimony, because she had voluntarily and without just cause deserted him and abandoned her bed and board and had stubbornly and insistently refused to return to him regardless of his repeated requests. Further, he said that petitioner was not legally entitled to enjoy a share of his income and profits because she had failed to demean herself as a faithful and devoted wife, therefore, she had deserted him for purposes that were questionable.

Pleadings in the case rested at the reply, and after disposition of the issue of law, the matter went to trial. Strangely, notwithstanding that respondent had in his answer challenged the grounds of the petition, the records before us verify that he did not take the witness stand nor did he introduce any witness to testify on his behalf. However, we will revert to this later.

Having heard the facts, the court below entered its decree, reading,

“We are of the candid opinion, sitting in Equity, that respondent should have been supporting his wife,

and is compelled to support her under the law, from August, 1966, until now, even thereafter, until the divorce proceedings are determined. In this respect, the court hereby awards \$70.00 per month from August, 1966, to August, 1967, which is \$840.00, plus \$350.00 counsellor fee, making a total of \$1,190.00 to be paid by respondent forthwith, and thereafter he is to pay to his wife this \$70.00 per month until the termination of the divorce suit. Costs in these proceedings are against the respondent. And it is hereby so ordered."

It is from this decree that respondent excepted and brought his appeal for a review by this Court on a bill of exceptions composed of one count:

"Because respondent says that the evidence on both sides having rested and arguments pro et con having been heard, the court on the 25th day of August, 1967, same being the third day's session, entered a final decree awarding the petitioner the amount of \$70.00 per month from August, 1966, to August, 1967, aggregating \$840.00, plus \$350.00 counsel fees, making a grand total of \$1,190.00, and thereafter respondent is to pay petitioner \$70.00 a month until the termination of the divorce suit with costs against respondent, to which final decree respondent promptly recorded his exceptions and announced his intention to appeal said decree to the Supreme Court, at its ensuing October Term, 1967."

When this case was called and argued before us, appellant maintained the view that the appellee had not shown sufficient legal grounds, or in other words, was not entitled to alimony under the law because it was she who of her own will abandoned the bed and board of her husband and had deliberately refused to return when asked by him so to do. This leads us to take a look at the testimony given at the trial, which we will make a part of this opinion.

When the appellee was on the witness stand, in answer to a question she said the following:

"Last year, June, I have forgotten the date, I brought a complaint to the County Attorney, stating that my husband put me out and said that he did not want me again and, in case I stayed in the home and anything happened, it is not his business. He went so far that he authorized Mr. E. Harding Smythe one morning in the home to abuse me and beat me and said he would stand by him. He also told this to Mr. Gabriel Duncan. He said that I had no right to say anything in the house. Then I came to the County Attorney and he sent for my husband and he confirmed what I had told the County Attorney, and then the County Attorney told me to leave the home since it was the will of my husband, and it was agreed that I leave my husband's home and that he would be responsible to support and maintain me."

There were other questions put to the witness which she answered.

"Q. Please refresh your memory and say since you have been apart from your husband whether he has afforded you any support?"

"A. Only two months, June and July, 1966, \$49.00 in June and \$50.00 in July, making the amount of \$99.00.

"Q. If you can recall, please say whether you have since approached your husband to support you and if so, what was his reaction?"

"A. Yes, in August, 1966, I sent my little girl there, because he told me to send her there on Monday and when she went he told the little girl that he did not have any money for me and she must get out of his house. The next day I sent her back and he damned at the girl and drove her out of the house and said if she went there again, he would break her neck. The following day I

went there myself and when he saw me, he said, what is it you want, then I told him I came for my support. He told me that he did not have any money for me and that I should carry him to any court, but I should not go there again.

“Q. By court: So then in the final analysis, you and your husband separated upon an agreement to the effect made in the County Attorney’s office, is that correct?

“A. Yes.

“Q. By that agreement before the County Attorney, how much money was your husband to give you monthly?

“A. The amount was not specified. My husband only said that I should get an apartment and he would pay for it and support me.

“Q. Did he get the apartment and at what amount?

“A. Yes. At \$45.00 per month.”

Alfred J. Raynes came to the witness stand on behalf of the petitioner, now appellee, and among other things said:

“Q. Mary Davis has instituted an action of alimony and suit money against her husband, stating substantially that for reasons of incompatibility in their home her husband coerced her into leaving his abode. In this connection you are called to testify concerning any facts which might be within your certain knowledge for the benefit of the court.

“A. I do vividly recall that some time ago Mrs. Mary Davis complained to us, stating that her husband refused supporting her. Predicated upon this complaint, we cited Mr. Davis for an investigation, to which citation he responded, and among the many things discussed in our office, Mr. Davis made us to understand that because of certain unbecoming attitudes of his wife

toward him, he did not see the possibility of them living together as husband and wife, and that he had asked her to leave the home. Mrs. Davis said that she was not willing to leave but that her husband had said if she should remain in the home, he would not be responsible for what would happen to her. Ascertaining the truthfulness of this, I then advised Mrs. Davis to leave the home for her own safety, and Mr. Davis promised that should his wife leave the home, he would do for her whatever was possible for him to do, that is, by means of support. This, therefore, concluded the matter in my office. Subsequent to this Mrs. Davis, as well as Mr. Davis, brought in complaints and counter-complaints."

In answering another question put to him inquiring if Mr. Davis had told him in the conference in his office the unbecoming conduct he complained of in his wife, the reason for which he claimed they could not live together further, he said,

"Mr. Davis said he suspected his wife of being unfair to him. This aspect of the matter not being within my purview, we did not probe into it."

In another answer he said further:

"To be frank, your Honor, I do remember that Mrs. Davis made mention of a certain amount, which Mr. Davis refused to explain, but said that he had already made some provision for her to receive rent from some house."

Examining the record before us in all of its phases and aspects, we have seen no place where the respondent, now appellant, endeavored by the least scintilla of evidence to disprove the testimony of petitioner and her witnesses in the court below. This makes convincingly clear that he conceded the evidence against him to be true and correct.

Now, we will examine our Domestic Relations Law to ascertain if it supports the decree of the court below.

In § 47 thereof, 1956 Code, tit. 10, it is provided (in part) :

“A married woman who leaves her husband for just cause is entitled to alimony not exceeding one-third of her husband’s income. Such alimony shall be continued until discontinuance is ordered by a court of competent jurisdiction.

“For the purpose of this section, any of the following shall constitute just cause:

“(a) Habitual and continuous drunkenness of the husband; or

“(b) Incompatibility of temper between husband and wife sufficient to be annoying to the community and dangerous to the life of the wife.”

In *Anderson v. Anderson*, 9 L.L.R. 301 (1947), the Court stated that a wife abandoning her husband shall not be entitled to alimony except for good cause as set out in the statute. And at p. 308 thereof it is stated:

“Whilst it is true that our statute . . . seeks to discourage the common law procedure in the hearing and determination of suits for alimony, yet we find ourselves compelled to resort to the common law for the definition of alimony: ‘Alimony (is) the allowance required by law to be made to a wife out of her husband’s estate for her support or maintenance, either during a matrimonial suit or at its termination, where the fact of marriage is established and she proves herself entitled to a separate maintenance. . . .’” 27A CJS, *Divorce*, § 202, at 868.

Under all the circumstances involved, the facts presented in the lower court, and the decree of the court, the subject of this review, we cannot understand what appellant seeks to have this Court do except to affirm the said decree, because although he contradicted petitioner’s

complaint in his answer, yet he made no effort to prove that which he had alleged in his answer.

To us, therefore, the decree in the alimony case is sound and should not be disturbed, and is, therefore, hereby affirmed, with costs against the appellant. And the clerk of this Court is hereby ordered to send a mandate to the lower court ordering it to proceed into the enforcement of this decree. And it is hereby so ordered.

Affirmed.