

THOMAS v. THOMAS was a 1956 Missouri appellate decision. Famous WatchTower Society attorney, and former WatchTower Vice-President, Hayden C. Covington represented Lillian June Thomas in this appeal.

Willard B. Thomas and Lillian June Thomas were married in October, 1945, after Willard Thomas was discharged from the United States Navy at the end of World War II. Willard received a small disability pension due to injuries received in the war. Lillian June Thomas had been married before, and she had a 3 year old son. Lillian's ex-husband paid no child support, and Lillian did not work outside the home. In 1946, Willard bought and paid for a home in St. Joseph, Missouri with savings bonds he had purchased during the war. Two sons were born to the couple.

The couple lived together amicably until July 1950, when Lillian June Thomas joined the Jehovah's Witnesses. After joining the Jehovah's Witnesses, her religion became Lillian's priority. She went from house to house distributing pamphlets and preaching the doctrines of the WatchTower Society; sometimes taking the couple's children with her. She, sometimes accompanied by one or more children, distributed pamphlets on the streets of St. Joseph. She attended meetings of Jehovah's Witnesses at Kingdom Hall in St. Joseph. She had attended four WatchTower Conventions held in other cities. Additionally, Lillian took the couple's children to the meetings of the Jehovah's Witnesses, and she was training them to believe and act as Jehovah's Witnesses.

Around the same time Lillian joined the Jehovah's Witnesses, Willard began to work as a police officer in St. Joseph. Willard did not believe in the doctrines of Jehovah's Witnesses. He also was opposed to having his children taught WatchTower doctrines. He objected to the influence exercised by Lillian over his children in getting them to accept WatchTower interpretations, particularly as such pertained to saluting the American flag. Willard requested Lillian not to teach WatchTower doctrines to their children, but she continued to do so. There was quarreling in the family as the result of this difference of opinion.

In September 1954, Willard had had enough, and he moved

out of the marital residence. He moved in with his parents in St. Joseph, where he later also brought his youngest son. The older son evidently refused to live with him. Willard filed for divorce that same month, and the case was tried in late October, 1954. The trial court granted Willard a divorce, and awarded him the general custody of both of his natural children. Lillian received visitations every Saturday-Sunday, and the right to visit the children at all reasonable times. Her motion for a new trial was overruled, and she appealed.

At trial, Willard testified:

"Q. How many hours during the day or week would she be absent from your home in connection with this religious matter?

A. Three or four times a week from half a day to a full day. She stated that sometimes she had been over in Kansas recruiting members, other times here in town getting in her hours. Usually she went on Sunday evening, Tuesday evening and Friday evening. That was meeting night. She stated she went down there. Where she went I don't know but she was gone mostly every Sunday, Tuesday and Friday evening from 7:00 until almost midnight.

"Q. What about the children?

A. When I was there I would keep them. ... I would take care of them when I was working the midnight to morning shift. When I was working 4:00 to 12:00 she took them with her

"Q. And that continued for a number of years?

A. That is right When I was working 4:00 to 12:00 I didn't know where she went. She said she went to the hall I drove past there several times and I saw her in the hall several times. ... Sometimes she missed and didn't go out but may be once or twice during the week, but she was pretty determined and she made it most of the time."

Lillian testified that she only averaged about two hours per week doing literature distribution. She also testified that she attended one-hour and two-hour meetings at the Kingdom Hall on Tuesday night, Friday night and Sunday

evenings. Willard had testified that: "Three or four times a week she wasn't there to prepare my meals. I never knew when I went home whether she would be there or not. Lillian countered: "When I knew that he was coming home ... I was always there" to prepare his meals".

Willard testified that he performed his duties as a husband and father to the best of his ability; that he supported his stepson, Gary, for nine years; that he paid all of the household and family expenses; that he paid all of the bills because defendant "never had time, she said, to pay them"; that he paid for "her makeup and everything else"; and that he gave defendant \$6 every two weeks "to spend on whatever she wanted"; that after they moved into the house on South 11th Street, he bought all of the groceries and carried them home. Willard testified that Lillian had a charge account at a local dry goods store, for which he paid the bill.

Lillian testified that her Jehovah's Witnesses friends had to give her used clothing. She testified that Willard gave her only \$3 every two weeks until she threatened to stop washing and ironing his clothes. She demanded the \$6 every two weeks to do so. She further testified that Willard forbade her to draw any money out of the bank without his permission: "If I had I would have gotten a beating." [Uh, then why didn't he beat you for not washing and ironing his clothes?]

Willard testified that on many occasions Lillian cursed him and called him vile names. She called him "an unbelieving son of a bitch atheist", even though Willard was not an atheist. Willard testified: "She kept telling [the children] that I was no good, because I carried a gun. ... My boy ... eight years old told me many times, 'You are no good, you carry a gun.'" Lillian denied everything.

Both parties testified "he said - she said" to an incident over Willard's alleged taking of money Lillian had earned selling berries, which she planned to use to travel to a WatchTower Convention.

Willard testified to an incident when his dad, mother and sister were visiting on one of Lillian's meeting nights. Lillian

started to her meeting, but then returned to the living room, and said, "I am tired of your damned relations here. ... I don't want any unbelievers here that don't believe in Jehovah's Witnesses." Lillian told Willard's sister: "You, I hate more than any." Lillian then lunged at the sister, and Willard grabbed her to prevent a fight. Willard said his family never visited in his home again. Willard's family all testified to the incident, and Lillian didn't even bother to deny it.

Willard testified that when the Star Spangled Banner was played on the television, "She started beating on pans and booing, and most of the time jerked the plug out of the wall. ... She would grab [the children] and take them in the other room." She said that the television set was the work of Satan. Every time a preacher or a Catholic priest came on, or the flag was shown, she would turn it off or yank the plug out.

In July 1953, Willard took the family on a road trip to Yellowstone National Park. Lillian was a pain on the trip because she had wanted to attend a WatchTower Convention in New York City, instead. She also complained about the trip to Colorado Springs the next summer.

The night Willard moved out in September 1954, the couple had a physical altercation after Lillian came home from a meeting at around 10:00PM. Both parties gave widely different versions of the incident. Lillian also testified to numerous other occasions in which she alleged that Willard struck her. She also testified to numerous times of being cursed at and called bad names. The oldest son testified in support of Lillian. Willard denied most of such. There were many other charges and counter-charges, and denials by each as accused. Several of Lillian's Jehovah's Witnesses friends testified on her behalf, while Willard's police chief and neighbor testified on his behalf.

On appeal, prepared by Hayden Covington, Lillian contended that "upon a review of the whole record this court should reach the conclusion that defendant was entitled to the divorce and the plaintiff was not entitled thereto"; that "the court abused its discretion when custody of the minor children was awarded to the plaintiff";

and that "the judgment of the court below denied defendant her right of freedom of worship and of religion, contrary to Article 1, Section 5 of the Constitution of Missouri and the First and Fourteenth Amendments to the United States Constitution." They further contended that the "sole basis of the decree of divorce was that defendant left the house 'whenever she felt like it and over the protest of her husband' to worship Almighty God Jehovah"; and that "the record in this case shows that the only reason the children were taken away from defendant was that of her religion"; and consequently that the judgment appealed from denied defendant her constitutional "rights of freedom of worship and of religion".

The appellate court first nixed Covington's constitutional violation claims pointing out that no such type claim had been made at trial for their review. The court went on to affirm the trial court's ruling, stating in part:

"While each divorce action based on alleged general indignities must be determined on its own facts, the courts have said repeatedly that indignities, such as to warrant the granting of a divorce, ordinarily must amount to a continuous course of conduct. A single act, or occasional acts, will not suffice. The acts relied upon must amount to a species of mental cruelty, and must evidence a course of conduct by one of the parties toward the other whereby the other's condition is rendered intolerable through acts of such character and frequency as to be subversive of the family relation. ...

"In the case at bar there was a direct conflict in the testimony on almost every charge and countercharge. If plaintiff's evidence be accepted as true, he was entitled to a decree of divorce. Plaintiff's evidence, as a whole, was substantial. It disclosed a course of conduct on defendant's part extending over a period of about four years, the cumulative effect of which may well have rendered plaintiff's condition intolerable. It is our duty, of course, to review the whole record and reach our own conclusions in divorce cases, but where, as here, the decision depends largely upon the credibility of the witness, we must give due deference to the conclusions of the trial judge who saw and heard all of the witnesses, and we are not authorized to set aside the judgment unless clearly erroneous. ...

Applying this rule, we defer to the conclusion of the trial court that plaintiff was the innocent and injured party and therefore entitled to a decree of divorce.

"We turn to defendant's contention that the court erred in awarding the custody of the parties' children to plaintiff. As stated, after the separation plaintiff took the younger boy, Stephen, to the home of plaintiff's parents and Stephen has been living there since that time. Plaintiff's mother testified that she was employed 'in the daytime' at 'Montgomery-Ward'; that her husband did not work and was at home 'all the time'; and that plaintiff always stayed at home with Stephen when he was not on duty. Plaintiff testified that he was living with his parents; that their home was a modern six-room house with three bedrooms, located a block and a half from Webster School; that if he were awarded the custody of the children they would be 'properly supervised and have all their care and affection, and one of us will be with them at all times'; that his mother had been taking Stephen to Sunday School at the Second Presbyterian Church; that his mother was a member of a church at Halleck, Missouri, and about ten miles from St. Joseph; that when he was a boy he attended services at a Presbyterian Church; that when he was in the Navy he attended church services every Sunday, and continued: 'I study the Bible but I haven't been attending church.' As we have seen, at the time of the trial, defendant, Gary and the parties' older son, Dennis Michael, were living in the home at 3738 South 11th Street. Defendant testified that if she were awarded the custody of the parties' children she would need money for their support, and that she 'could get a job very easy'. She did not say who would care for the children when she was working.

"Defendant insists that the best interests of a child of tender years requires that it be placed in the custody of its mother. Ordinarily, as between the father and mother, the mother will be awarded the custody of such a child unless it be shown that she is unfit to take charge of the child or that she cannot provide it with a suitable home. It is well settled, however, that 'the findings of the trial court in matters involving the custody of a minor child of divorced parents, while not binding upon the appellate court which must review the record for itself, are nevertheless not to be

lightly disturbed, and will be deferred to unless the appellate court is firmly convinced that the welfare of the child requires some other disposition.' ... Under the record in this case, we cannot say that the trial court abused its discretion in awarding the custody of the children to plaintiff."