NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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July 1, 2018

**LETTER OPINION**

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Re: *Rocio Peggy Fernandez v. Melvin Erick Fernandez*
Case No. CL-2017-14055

Dear Counsel:

This case presents a question of apparent first impression of whether, absent an express agreement, a payor husband may be given credit extinguishing support arrearages, having resumed full financial support for his spouse and child in reunification

OPINION LETTER

of the family unit, while an order of temporary spousal and child support nevertheless remained in effect. The payee wife disputes the existence of any express understanding respecting crediting of obligations under the support order. Even if there was no agreement, the undisputed evidence remains that the wife had access to funds of the husband through use of his debit card. This circumstance supplies a course independent of any agreement for husband to be credited in satisfaction of his arrearages with all funds wife accessed, even those moneys she in turn paid to third parties in exercise of her dominion over such card. This Court, however, finds there was in fact an agreement inferable from the payee wife's admission, to wit, that both parties "forgot" about the existing support order, coupled with her acceptance of her payor husband's *permanent* resumption of his custodial role over the child covered by the order, and his full financial support of the family, including of wife. This created an implied-in-fact *unequivocal agreement* to reconstitute the marital status quo with husband's *complete assumption* of the financial obligations pre-existing the prior separation. The agreement escapes any potential bar from the Statute of Frauds because of husband's absolute performance of its contemplated terms as accepted by the wife. An overly technical reading of the applicable statutory legal rules without due deference to their intended legislative purpose, would cast a pervading chill of apparent injustice over this cause, an outcome unnecessary to sheltering the corresponding need for certainty in the law. The governing principle of precedence that a party not be unjustly enriched by application of a support order which purpose is otherwise *completely satisfied*, compels this Court decline to find the husband owes wife an arrearage under such order. To hold otherwise would constitute an absurd, inequitable result under the facts of this case unintended by the

General Assembly, for the payor spouse has fully fulfilled his obligation under the support decree.

## BACKGROUND

Rocio Peggy Fernandez ("Plaintiff" or "wife") and Melvyn Erick Fernandez ("Defendant" or "husband") were married in Lima, Peru, in October 2001. In October 2002, their first child was born. The parties separated in early 2004, and the wife filed for custody and support relief. On October 29, 2004, the Fairfax County Juvenile and Domestic Relations District Court ("District Court") granted the parties joint legal custody of the minor child, with physical custody awarded to the wife. The District Court also entered an order awarding the wife $583.00 in child support and $737.00 in spousal support per month.

The parties reconciled in 2005 and resumed living together in the same home. The husband continued making the required support payments for some time, until approximately the time of the birth of the couple's second child in May 2006. The parties thereafter had one more child in 2008, and they took no formal action to terminate the child and spousal support order. The parties remained living together as husband and wife until August 31, 2016. At that time the parties separated, residing in the same home but conducting separate lives. On April 26, 2017, the husband filed a Motion to Vacate and Terminate Support in the District Court. On October 4, 2017, the wife filed for divorce in this Court, and the District Court subsequently determined such action divested it of jurisdiction, leading to determination of the arrearage issue eventually landing before this Court. The wife moved out of the marital home during May 2018.

From the time the parties reconciled to the moment the husband filed his Motion to Vacate and Terminate Support, the husband was substantially the sole financial supporter of the family. He provided complete support for the wife and the parties' three children. The wife did not work outside the home, and husband was the sole breadwinner. The wife contends the husband has not paid child or spousal support as required by the District Court's order since May 2006. The wife seeks enforcement of such claimed arrearage ancillary to a divorce and equitable distribution proceeding pending before this Court.

**ANALYSIS**

In this cause, after a period of separation, the parties chose to resume their marital cohabitation as it existed before the entry of the order of support. Initially, the husband continued to pay the contemplated support despite the reunification of the family, but payments ceased during May 2006. In 2017, the wife indicated she would be seeking a divorce, and the husband sought to terminate the previously-entered temporary child and spousal support order. The wife responded in turn by praying this Court award her the sum of arrearages due her during the period the parties resumed cohabitation and jointly reared their children without having extinguished the order of the Juvenile and Domestic Relations District Court. For the entirety of such time, the husband was the sole earner for the family, responsible for all expenses, while the wife had the primary role of raising the children and maintaining the household, thus enabling the husband to pursue his career. The husband argues preliminarily that imposing the arrearage on him would be unfair and that the wife has "unclean hands". The husband further argues he should be

credited with the support he provided his spouse and covered child during the applicable period, under an extension of the holding in *Acree v. Acree*, 2 Va. App. 151, 342 S.E.2d 68 (1986), wherein an express agreement was found by the Court of Appeals of Virginia to permit such a credit in the context of a child support order.

Normally, support payments made by an obligor spouse directly to children or to third parties, even if indirectly thereby benefiting the obligee spouse, are deemed to be gifts and may not be credited against the support obligation. *Fearon v. Fearon*, 207 Va. 927, 154 S.E.2d 165 (1967). This is because "in the absence of statute, payments exacted by the original decree of divorce become vested as they accrue and the court is without authority to make any change as to past due installments." *Cofer* v. *Cofer,* 205 Va. 834, 838, 140 S.E.2d 663, 666 (1965). The Supreme Court of Virginia further detailed the obligations of payors under orders of support:

> [I]t is the obligation of the divorced husband to pay the specified amounts according to the terms of the decree and that he should not be permitted to vary these terms to suit his convenience. In such a decree the required payments are fixed according to the needs of the child or children and the ability of the husband to pay. Should these vary, from time to time, and warrant a change in the terms of the decree favorable to the husband, his remedy is to apply to the court for such relief.

*Newton v. Newton*, 202 Va. 515, 519, 118 S.E.2d 656, 659 (1961).

Preliminarily, this Court notes the facts in this case are significantly different to those noted in the cited precedent. During the period of reunification, the wife had use of the husband's debit card and access to funds solely held in the husband's name, which arguably satisfied the husband's obligation of support to the extent of the funds she accessed. "A rule giving the trial court discretion to grant credit, in whole or in part, or to deny credit against an arrearage, depending upon the circumstances, allows the judge to

consider the equities of a given situation." *Commonwealth v. Skeens*, 18 Va. App. 154, 160, 442 S.E.2d 432, 436 (1994).

> When a trial court grants credit to a payor . . . the court does not alter the amount of child support that the parent has been ordered or is required to pay. The court simply allows a source of funds, indirectly attributable to a parent, to be used to satisfy the parent's court-ordered support obligation. Thus, a circuit court does not retroactively modify a child support award or forgive an accumulated arrearage by crediting a . . . support obligation.

*Id.* at 159, 442 S.E.2d at 435.

Irrespective, the cases already cited "do not address the status of the husband's obligation where there is an unequivocal agreement between the parties that: permanently alters the custody of the child; provides that support for the child no longer be paid to the wife; and where that agreement has been fully performed at the time the wife petitioned the court for the arrearage." *Acree*, 2 Va. App. at 155, 342 S.E.2d at 70. The *Acree* Court explained:

> We find no case that has denied the relief he requests under facts similar to those that he has presented. The cases that apply a seemingly inflexible rule denying credit for nonconforming support payments involve expenditures made during short visits or vacations, gifts, clothing, or direct payments in cash to the child, payments to an educational institution for the child's benefit, and overpayments made to the wife. The rationale for denying relief under those circumstances has been the avoidance of continuous trouble and turmoil. In each of the instances cited, to grant relief would result in some detriment to the custodial parent and child for whose benefit the support was to be paid. *Fearon*, 207 Va. at 931-32, 154 S.E.2d at 168; *Newton*, 202 Va. at 519, 118 S.E.2d at 659.
>
> (2) Where, however, the custodial parent has by his or her own volition entered into an agreement to relinquish custody on a *permanent* basis and has further agreed to the elimination of support payments and *such agreement has been fully performed*, we hold that the purpose to be served by application of an inflexible rule denying credit for nonconforming payments is outweighed by the equities involved. Under the court's reasoning in *Carper*, the purpose of the support decree in this case has been fulfilled.

> Under the circumstances of this case, we do not view the relaxation of the general rule denying credit for nonconforming support payments to be in conflict with the holdings of the Virginia Supreme Court. We simply refuse to reward an individual who seeks to take advantage of an agreement entered into freely and voluntarily, after it had been fully performed to her benefit. By assuming physical custody and total responsibility for the support of the child, the husband fulfilled his obligation under the decree. He did not stop support payments unilaterally to suit his convenience. To enforce the letter of the decree after its purpose has been served and the parties' agreement fully performed would unjustly enrich the wife and shock the conscience of the average person. Most important, failure to enforce the letter of this decree under these circumstances will not work to the detriment of the child, for whose benefit the support was to be paid. The agreement of the parties as carried out worked to the benefit of the child to the same degree that absolute conformity with the terms of the decree would have. No beneficial purpose would now be served by awarding arrearages for the support of Theresa.

*Acree*, 2 Va. App. at 157-58, 342 S.E.2d at 71-72 (emphasis in original).

In *Acree,* the facts were as follows:

> Paul F. Acree (husband) and Brenda E. Acree (wife) were divorced by a final decree entered on December 5, 1978. A property settlement agreement executed by the parties was incorporated and confirmed in the final decree. As part of that agreement, the husband was awarded custody of the couple's son, and the wife was awarded custody of their three daughters. The agreement required the husband to pay to the wife $ 33.33 per week for each of the three girls. The wife was not required to make payments to the husband for the support of her son.
>
> Subsequently, by agreement of the parties, one daughter, Theresa Gail Acree, went to live permanently with her father. It is undisputed that this change of Theresa's custody *was by agreement* between the husband and the wife. Their agreement further provided that the husband would suspend the payment to the wife of $ 33.33 per week child support for Theresa. Neither party, however, moved to modify the divorce decree to reflect their agreement. The husband assumed physical custody and total responsibility for the support and care of Theresa until she became emancipated.
>
> In 1984, Mr. Acree had a heart attack. During his illness, he fell behind in the child support payments for his daughter Brenda Michelle Acree, who was still a minor and living with the wife. At that time, the wife filed a motion for enforcement of the child support provisions of the 1978 decree, claiming the

> arrearages due for Brenda and for Theresa for the years she lived with her father pursuant to the parties' agreement. After an *ore tenus* hearing and submission of legal memoranda, the trial court found in favor of the wife and entered judgment against the husband for the arrearages for the support of Brenda and Theresa. The court denied the husband's request that he be given credit for a portion of the arrearage during the time he had assumed custody of Theresa and provided for her total support.

*Id.* at 152-53, 342 S.E.2d at 71-72 (emphasis in original).

In the case at bar, the circumstances are more expansive and unusual than those in *Acree.* Here there was resumption of *de facto* custody over the child by the husband, albeit jointly with his wife, and a reconstitution of marital cohabitation. The reasons underlying the need for the support order vanished. At the same time, there was apparent absence of the type of express agreement found in *Acree* pursuant to which the husband could argue he is entitled to credit for support payments under the decree. The wife posits that *Acree* is inapplicable in the absence of such an express agreement. The wife, however, acknowledged the husband provided the funds which paid all the children's and her expenses, and that she had access, though not always consistent, to husband's debit card to expend funds as she deemed fit.

The purpose for the rule of exacting enforcement of support orders to their letter "is to promote consistency in enforcement of orders and to avoid continuous trouble and turmoil. . . . [A] relaxation of this inflexible rule might be warranted under certain circumstances to prevent unjust enrichment." *Id.* at 156, 342 S.E.2d at 71. Here, failing to credit the husband with fulfillment of his obligations under the temporary support order would unjustly enrich the wife. In payment of the family living expenses, the husband provided the wife with resources more ample than the support called for by the District Court order. In light of the husband's payment of most, if not all of the wife's expenses

and those of the covered child (and of the other two children), payment to the wife anew of what already has been satisfied would result in a doubling of the husband's support obligation.

The question, however, is not merely one of what is equitable, but also one of what is proper for this Court to determine in light of precedent. *Acree* factually applied only to child support, and required "a complete assumption of physical custody" of the child by the payor spouse. *Gallagher v. Gallagher*, 35 Va. App. 470, 479, 546 S.E.2d 222, 226 (2001). By application, *Gallagher* is silent whether such "assumption" could be joint. Contemplated, however, is a resumption of the parental custodial right, which obviates the requirement for full or partial support of the child's needs. Thus, in the case at bar, this Court holds that the husband's resumption of his parental obligations in the context of reconstituting the family unit under the same roof was a complete assumption of his financial support obligation for the covered child. However, a complete resumption of the husband's custodial and support obligation referencing the child is not dispositive of satisfaction of the terms of the order in the absence of an agreement. *See Jones v. Davis*, 43 Va. App. 9, 16, 595 S.E.2d 501, 504 (2004).

This Court, thus, next turns to the question of whether the holding in *Acree* could apply in the context of spousal support and whether the parties had an agreement, which in its performance satisfied the existing support order. *Acree* and *Gallagher* logically suggest there is a limited exception crediting the payor spouse with having satisfied his support obligations under an existing court order. The payor must, *by agreement,* assume or resume *complete and permanent* financial obligation for his child and spouse so that support payments for a claimed arrearage would constitute a duplication of the terms of

the order and an unjust enrichment. Here, the marital partnership between the parties involved the wife sacrificing her career prospects and undertaking work in the home of child rearing and maintenance of the household, in return for the husband resuming the role of sole breadwinner. In this context, there is no question the husband resumed *complete* financial support for the wife and child when the family recommenced residence in the same abode. Under the logic of *Acree,* this change in circumstances allows his support obligations to be credited and deemed fully satisfied.

As the wife points out, however, unlike in *Acree* there was no express agreement for the arrangement that ensued in order to credit the support provided under the prior order. The Court in *Acree* emphasized at various points throughout its opinion that there was an agreement between the parties and the important role that agreement played in the Court's ultimate decision. The Court, however, did not specify whether the express agreement was oral or written. As such, the Court did not establish a clear rule that the agreement between two parties to change the custody and support arrangement specified in an order *must* be in writing. This position is reinforced in *Buxbaum v. Buxbaum*, 20 Va. App. 181, 185, 455 S.E.2d 752, 755 (1995), in which the Court of Appeals of Virginia identified the agreement in *Acree* as an oral agreement, thereby negating any argument that the agreement between the parties in this case pertaining to the support at issue must be written.

In *Buxbaum*, the father's support obligation for three of the parties' minor children ended. The mother requested he continue paying her the full child support in addition to the spousal support payments he was obligated to provide her, because she needed the money. The father voluntarily did so. Eight years later, he informed the mother he would

no longer pay her spousal support because his financial situation had changed and his income had drastically decreased. He further informed her the child support he voluntarily paid was an advance on future spousal support payments. The Court held the parties did not have an agreement allowing the husband to credit the voluntary child support payments as advancements against his future spousal support obligations. The Court noted the parties did not have an oral or written agreement. The Court held that an "unequivocal agreement" between the parties was required. *Id.*

Tellingly, the Court in *Buxbaum* nevertheless additionally analyzed whether the evidence adduced inferred such an agreement existed:

> Unlike *Acree*, the parties in this case had no unequivocal agreement. The parties never agreed that the additional payments under the terms of the child support agreement were to be applied to future spousal support payments. *Furthermore, the evidence* does not support a conclusion that the wife accepted the additional payments as an advance on future spousal support payments.

*Id.* (emphasis added). The Court in *Buxbaum,* thus, did not place a limitation on the form such an agreement was to take, except to note its required certainty and comprehensive nature. The Court suggested in its analysis further reference to whether *the evidence* supported a finding of agreement was appropriate.

As there was no express agreement between the parties in the instant case, oral or written, this Court must therefore determine whether there was nevertheless an implied unequivocal agreement inferred by the evidence. Such agreement may allow the crediting of support arrearages if it required the husband to resume full financial support of the wife and child in a manner that satisfies the support decree. The Court notes in preface husband cites authority that in the context of a prior separation agreement, a

reconciliation of the marriage leads to a presumption of the abrogation of the agreement's executory terms when such contract is not incorporated into a court order. *Yeich v. Yeich*, 11 Va. App. 509, 513-514, 399 S.E.2d 170, 173 (1990). Ostensibly, the husband cites the case to persuade the Court apply a presumptive intent to the parties to abandon compliance with the terms of the District Court order. *Yeitch*, however, no longer appears to be of precedential value.

> The Court of Appeals in *Smith v. Smith*, [19 Va. App. 155, 449 S.E.2d 506 (1994)], intimated that a fairly well established line of prior cases holding that a reconciliation of the parties after the signing of a separation or property settlement agreement abrogated or canceled all of the executory portions of the agreement was *no longer good law*. *See Hurt v. Hurt*, 16 Va. App. 792, 433 S.E.2d 493 (1993); *Crenshaw v. Crenshaw*, 12 Va. App. 1129, 408 S.E.2d 556 (1991); *Yeich v. Yeich*, 11 Va. App. 509, 399 S.E.2d 170 (1990). The Court of Appeals indicated that these three cases had marital agreements which were entered into before July 1, 1986, and thus were not governed by the Premarital Agreement Act which mandates that an agreement can be revoked only by a written document signed by the parties.

*McCall v. McCall*, 43 Va. Cir. 296, 300-01 (1997) (emphasis added). The reasoning in *Yeich,* in any event, is unhelpful because it involved alleged abandonment of the executory terms of an agreement, as opposed to the implication that marital reconciliation infers the intention of the parties to arrive at an agreement as to the manner of satisfaction of a court-ordered obligation.

The threshold question follows whether an agreement giving rise to the relief contemplated in *Acree*, may be implied in the context of the subject matter of this suit.

> In the absence of an express contract between the parties governing a particular subject matter, an implied contract may exist. *County of Campbell v. Howard*, 133 Va. 19, 54-55, 112 S.E. 876, 886 (1922); *Ellis & Myers Lumber Co. v. Hubbard*, 123 Va. 481, 502, 96 S.E. 754, 760 (1918). Like an express contract, an implied-in-fact contract is created only when the

> typical requirements to form a contract are present, such as consideration and mutuality of assent. *City of Norfolk*, 120 Va. at 361-62, 91 S.E. at 821-22. However, *an implied-in-fact contract "is arrived at by a consideration of [the parties'] acts and conduct.*" Id. at 362, 91 S.E. at 821.

*Spectra-4, LLP v. Uniwest Commercial Realty*, 290 Va. 36, 45, 772 S.E.2d 290, 295 (2015) (emphasis added). An implied agreement arises from the parties' "words and conduct in the light of the surrounding circumstances." *Perry v. Sindermann*, 408 U.S. 593, 601-602 (1972). An implied agreement is "a matter of inference or deduction . . . [and] it will be implied that the party did make such an agreement as, under the circumstances disclosed, he or she ought in fairness to have made." 4A M.J. CONTRACTS § 8 (2018).

In this case, the facts compel the Court to deduce that the parties did in fact have an implied unequivocal agreement. The husband provided full financial support for his wife and daughter on a permanent basis in their joint home, in lieu of and beyond what the support order required. In return, the wife resumed cohabitation, management of the household, and maintained forbearance of the enforcement of such order. The family returned to the *status quo* that pre-existed the separation that gave rise to the need for the support decree.

> [M]utuality of assent exists by an interaction between the parties, in the form of offer and acceptance, manifesting "by word, act[,] or conduct which evince the intention of the parties to contract." *Green v. Smith*, 146 Va. 442, 452, 131 S.E. 846, 848 (1926). In other words, the parties' belief of what the agreement is must coincide with written or spoken words, if an express contract is to be formed; or *must coincide with the parties' conduct, if an implied-in-fact contract is to be formed. Id.*; *see also* Joseph M. Perillo, 1 Corbin on Contracts § 1.19, at 55-58 (rev. ed. 1993) (making the point that the only difference between an express and implied-in-fact contract is the manner in which mutuality of assent is established).

*Spectra-4, LLP*, 290 Va. at 46, 772 S.E.2d at 295 (emphasis added). Here, the wife admitted at trial, the parties "forgot" about the support order. Coupled with the parties' performance, this statement infers an *unequivocal agreement* to credit the husband's full resumption of his spousal and parental support responsibilities against enforcement of the support order's strict terms. The parties were aware of the support order, and the husband made some payments to the wife in compliance therewith, but then stopped. It is not inferable from their conduct that the parties "forgot" the obligation in the sense they no longer remembered the order existed, but rather, they opted to come to an agreement of their own in satisfaction thereof. This agreement was followed by the husband's full performance of its terms, i.e., to become the sole earner and full supporter for the family's financial needs in the context of resuming life as a family unit in the same abode. Thus, the husband's payment of the financial support needs of the child and of the wife as envisioned by the support order, resulted in any alleged arrearage being fully satisfied by his performance of the implied-in-fact agreement. In addition, since the unwritten agreement is proven by continued performance, Virginia Code § 11-2, the Statute of Frauds, does not bar its enforcement.

> [T]he intent of the legislature in requiring all of these contracts to be in writing was to protect parties in contemplation of divorce from fraud, not to preclude the enforcement of every oral promise made between potential or actual spouses. To do so would afford spouses and potential spouses no remedy from the strict requirements of the Statute of Frauds, for which there are specific exceptions. *One of the exceptions to the requirement for a writing is the partial or full performance by one of the parties. Clark v. Atkins*, 188 Va. 668, 51 S.E.2d 222 (1949).

*Cox v. Mixon*, 51 Va. Cir. 168, 169 (2000) (emphasis added).

During the period of the husband's performance, the wife fully accepted the same by her words and deeds. She continued to live with the husband under such terms in excess of eleven years, and never sought to enforce the order once husband ceased paying upon the birth of their second child. It is clear from wife's actions she was content with the manner in which husband was satisfying his support obligation, which differed in form but not in substance of payment of his obligation.

There is intimation in the record that the wife's direct expenditure of husband's funds was limited by his restrictions on her use of his debit card from time to time. He maintained such limitations were to ensure sufficient funds were available to meet all the financial obligations of the household. It was also clear the husband controlled the finances of the household to a degree, which was not optimal to joint decision-making, and that at times, the parties borrowed money from the wife's mother who husband later repaid. Despite such periodic restrictions and frustrations to the wife, she took no action to remove herself or the children from the marital home, or to attempt husband's exclusion therefrom. Husband continued to pay bills and generally provide the funds used to support the family unit. The wife only sought a divorce and subsequent enforcement of the support decree when the husband temporarily abrogated his financial obligations, leaving the wife without sufficient resources for the household while he was away on a short trip.

The rational basis undergirding the right to seek temporary child and spousal support does not logically include the situation where a payor spouse ceases to live separate and apart from his payee spouse and child, and fully resumes his financial obligation to both under one household with intended permanence. "The facts in this case are important because the statute[s] involved may be invalid as applied to one state of

facts and yet valid as applied to another. *Griffin v. Norfolk County*, 170 Va. 370, 196 S.E. 698 (1938); *Carpel v. City of Richmond*, 162 Va. 833, 175 S.E. 316 (1934). The constitutionality of a statute is not considered in a vacuum or resolved by reference to hypothetical facts." *King v. Commonwealth*, 221 Va. 251, 254, 269 S.E.2d 793, 795 (1980). This Court therefore may not interpret the statutory scheme in a fashion, which calls into question its constitutionality. Rather, the Court must apply the law in a rational manner that carries forth the intent of the General Assembly not to duplicate an already fully satisfied support obligation. The wife's approbation of the husband's complete resumption of his financial obligations to support her and the covered child pursuant to the support order through her acceptance of the husband's performance and restoration of the family unit living in the same home, evinces an implied-in-fact agreement which fully credits husband's legal obligation under the support order as satisfied.[1]

**CONCLUSION**

This Court has considered whether, absent an express agreement, a payor husband may be given credit extinguishing support arrearages, having resumed full financial support for his spouse and child in reunification of the family unit, while an order of temporary spousal and child support nevertheless remained in effect. The payee wife disputes the existence of any express understanding respecting crediting of obligations under the support order. Even if there was no agreement, the undisputed evidence

[1] The ruling of this Court is not to be interpreted as implying license for indiscriminate claims for the crediting of support order obligations based on purported implied agreements that do not satisfy the narrow and strict test of *intended complete and permanent assumption of support and custodial obligations, by agreement unequivocally evident from performance of the parties, which fully satisfies the terms of the support order in question.*

remains that the wife had access to funds of the husband through use of his debit card. This circumstance supplies a course independent of any agreement for husband to be credited in satisfaction of his arrearages with all funds wife accessed, even those moneys she in turn paid to third parties in exercise of her dominion over such card. This Court, however, finds there was in fact an agreement inferable from the payee wife's admission, to wit, that both parties "forgot" about the existing support order, coupled with her acceptance of her payor husband's *permanent* resumption of his custodial role over the child covered by the order, and his full financial support of the family, including of wife. This created an implied-in-fact *unequivocal agreement* to reconstitute the marital status quo with husband's *complete assumption* of the financial obligations pre-existing the prior separation. The agreement escapes any potential bar from the Statute of Frauds because of husband's absolute performance of its contemplated terms as accepted by the wife. An overly technical reading of the applicable statutory legal rules without due deference to their intended legislative purpose, would cast a pervading chill of apparent injustice over this cause, an outcome unnecessary to sheltering the corresponding need for certainty in the law. The governing principle of precedence that a party not be unjustly enriched by application of a support order which purpose is otherwise *completely satisfied*, compels this Court decline to find the husband owes wife an arrearage under such order. To hold otherwise would constitute an absurd, inequitable result under the facts of this case unintended by the General Assembly, for the payor spouse has fully fulfilled his obligation under the support decree.

The Court shall enter an order incorporating its ruling herein, and THIS CAUSE CONTINUES.

Sincerely,

[redacted]

David Bernhard
Judge, Fairfax Circuit Court

OPINION LETTER