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Supreme Court of Appeals
Richmond, Va.

202 VA631

Record No. 5219

In the Supreme Court of Appeals of Virginia at Richmond

MAE L. JUSTIS, ET AL.

v.

MARVIN YOUNG

FROM THE CIRCUIT COURT OF ACCOMACK COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5219

VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Wednesday the 31st day of August, 1960.

MAE L. JUSTIS, ET AL., Plaintiffs in Error,

against

MARVIN YOUNG, Defendant in Error.

From the Circuit Court of Accomack County

Upon the petition of Mae L. Justis and Ralph W. Justis a writ of error and *supersedeas* is awarded them to a judgment rendered by the Circuit Court of Accomack County on the 16th day of March, 1960, in a certain action at law then therein depending wherein Marvin Young was plaintiff and the petitioners were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of one thousand dollars, with condition as the law directs.

RECORD

* * * * *

State of Virginia, County of Accomack, to-wit: Accomack County Court:

To Sheriff

I hereby command you, in the name of the Commonwealth of Virginia, to summon Mae L. Justis and Ralph W. Justis, Parksley, Virginia, if to be found in your district, to appear at Accomack Court-House, in said County at Accomac, Virginia, on the 22nd day of December, 1959, at 10 o'clock A. M., before me Judge of the said court as may then be there to try this warrant, to answer the complaint of Marvin Young upon a claim of money for the sum of Five Hundred Dollars ($500.00), with interest from October 28, 1959, dollars due by your promise to pay in accordance with the attached contract $500.00, Marvin Young not having contested the will, and you refused to pay the same on his demand. And then and there make return of this warrant.

Given under my hand this 15th day of December, 1959.

Marvin Young,

v.

Mae L. and Ralph W. Justis, Parksley, Virginia.

B. T. GUNTER, JR., (L. S.)
Judge
By SALLY K. SMITH
Clerk.

* * * * *

(on back)

REMOVED WARRANT.

#3440.

1959, December 21—$1.00 Tax and $5.00 Clerk's fee paid and docketed.

ACCOMACK COUNTY COURT

Docket No. B 348.

Amount of Claim $500.00 plus interest.

WILLIAM E. FEARS, p. q.

CIVIL WARRANT AND JUDGMENT.

Marvin Young,

v.

Mae L. and Ralph W. Justis, Parksley, Virginia.

At Accomac, Va. on the 22nd day of December, 1959, at ten o'clock A. M.

Dec. 16, 1959.

Executed the within writ by posting a copy thereof at the front door of the usual place of abode of each, the person named therein, neither he or she nor any member of their family above sixteen years of age being found at said place of abode, within my bailiwick.

J. R. DRUMMOND, Sheriff.

Ret'd. December 21, 1959.

1960—Mch. 16—Judgt. p. q.—(In Vacation).

page 2 } CONTRACT.

(COPY).

KNOW ALL MEN BY THESE PRESENTS, that whereas Marvin Young did render certain services to our foster mother, Nona Wessells in her lifetime, on which we the undersigned feel that he should be reimbursed and whereas we the undersigned, having received a substantial devise of property from and by the will of Nona Wessells, and in consideration of the aforesaid and the further consideration of the said Marvin Young agreeing to accept the hereinafter mentioned sum in full payment; and agreeing by his acceptance hereof to not contest the validity of the recorded will of Nona Wessells and

that this obligation shall be void if anyone else contests the validity of the recorded will of Nona Wessells; now therefore this agreement further witnesseth that one year after date, we promise to pay to the order of Marvin Young the sum of Five Hundred Dollars, ($500.00), without interest.

Witness the following signatures and seals this 28th day of October, 1958.

(Signed) MAE L. JUSTIS (Seal)
(Signed) RALPH W. JUSTIS (Seal)

* * * * *

page 5 }

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REPLY AND GROUNDS OF DEFENSE.

Now come the defendants, Mae L. Justis and Ralph W. Justis by Wescott B. Northam, their attorney, and for reply and grounds of defense to the plaintiff's civil warrant herein filed, they say:

1. That they deny that they owe the sum of Five Hundred Dollars ($500.00) to Marvin Young in accordance with the terms of the contract signed by them and dated October 28, 1958;
2. That on August 26, 1959, Marvin Young filed exceptions in the Circuit Court for the County of Accomack to the account of R. Norman Mason and Hazel B. Justis, Executors of the Estate of Nona Wessells, deceased, and that said exceptions contested the validity of the last Will of Nona Wessells; and
3. That the act of Marvin Young in filing said exceptions made the contract signed by the defendants null and void.

COUNTERCLAIM OF MAE L. JUSTIS AND RALPH W. JUSTIS AGAINST THE PLAINTIFF MARVIN YOUNG.

The defendants, Mae L. Justis and Ralph W. Justis file this counterclaim against the plaintiff, Marvin Young, demanding the sum of Five Hundred Dollars ($500.00) with interest from August 26, 1959 against the said plaintiff because of the following:

1. That in accordance with the terms of a bond executed on October 28, 1958, Marvin C. Young is to pay the page 6 } said Mae L. Justis and Ralph W. Justis, Five Hundred Dollars ($500.00), a copy of said bond being attached hereto.

MAE L. JUSTIS
RALPH W. JUSTIS
By Counsel.

WESCOTT B. NORTHAM, p. d.
Attorney at Law
Accomac, Virginia.

* * * * *

page 7 } KNOW ALL MEN BY THESE PRESENTS, that I Marvin Young, am held and firmly bound unto the said Mae L. Justis and Ralph W. Justis, in the sum of Five Hundred Dollars, ($500.00), for which payment well and truly to be made, I bind myself firmly by these presents.

Dated this 28th day of October, 1958.

The condition of this obligation is such, that whereas the said Marvin Young is a brother of one, Nona Wessells, who died intestate, on July 15, 1958, and whereas the said Marvin Young would be an heir had the said Nona Wessells died intestate and whereas the said Marvin Young does not desire to participate in any property devised by the will of Nona Wessells to the said Mae L. Justis and whereas under the law and statutes of the State of Virginia, the said Marvin Young would have a right, within one year, to make a contest of the validity of the recorded last will and testament of the said Nona Wessells and whereas he hereby agrees not to make any such contest of the aforesaid last will and testament and has agreed to same for a valuable consideration, which said consideration was this date given in the form of a note, executed by the aforesaid Mae L. Justis and Ralph W. Justis in the amount of Five Hundred Dollars, ($500.00). Now if any person shall contest any part or portion of the said recorded last will and testament of Nona Wessells in any suit or action, in law or in equity, whether groundless or not, the said Marvin Young shall, as soon as such contest is begun, pay to the aforesaid Mae L. Justis and Ralph W. Justis the Five Hundred Dollars, $500.00) mentioned herein. If no such contest is made within the period of one year from the date of this bond, then this obligation shall be void, otherwise to remain in full force and effect.

Witness my signature and seal this 28th day of October, 1958.

MARVIN C. YOUNG (Seal)

(on back)

1959, Dec. 21.

* * * * *

page 8 }

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PLAINTIFF'S REPLY TO COUNTERCLAIM.

Now comes the plaintiff and answers the defendants counterclaim, as follows:

1. In Paragraph 2 plaintiff denies that he contested the validity of the last will of Nona Wessells, but only filed an exception to the account of the executors.

2. In answer to the counterclaim the plaintiff denies that he contested the validity of the will of Nona Wessells, and therefore the bond executed by the plaintiff is of no force and effect.

MARVIN YOUNG
By WILLIAM E. FEARS
Counsel.

* * * * *

(on back)

Filed Dec. 21, 1959.

page 9 }

* * * * *

This day, in the vacation of court, came the parties by their respective counsel, William E. Fears and Wescott B. Northam, pursuant to an agreement of the parties by their said counsel, after heretofore, to-wit: on February 16, 1960, having fully heard the evidence and arguments of counsel, neither party demanding but both parties waiving a jury, the Court, pursuant to authority contained in Section 8-371 of the Code of Virginia, finds for the plaintiff herein. There-

fore, it is considered by the judge that the plaintiff recover the sum of five hundred dollars ($500.00) against the defendants, with interest thereon from the 28th day of October, 1959, until paid and his costs by him in this behalf expended.

3/16/60.

To J. Fulton Ayres, Clerk:

Enter this vacation order.

JEFF. F. WALTER,
Judge of the 31st Judicial Circuit.

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page 10 }

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court of Accomack County:

Counsel for Mae L. Justis and Ralph W. Justis, defendants in the above styled case, hereby gives notice of appeal from the order entered in the case on the 16th day of March, 1960, and sets forth the following assignments of error:

1. That the Court erred in finding for the plaintiff because such finding is contrary to the law and the evidence; and,
2. That the Court erred in not finding for the defendants on their counterclaim against the plaintiff.

WESCOTT B. NORTHAM
Counsel for Mae L. Justis and Ralph W. Justis.

Filed April Term, 1960. (May 3)

Teste:

J. FULTON AYRES, Clerk
By BEULAH LOWE MASON, Dy.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error and *Supersedeas* Awarded	1
Record	2
Warrant	2
Contract	3
Reply and Grounds of Defense	4
Counterclaim	4
Bond	5
Plaintiff's Reply to Counterclaim	6
Judgment—March 16, 1960	6
Notice of Appeal and Assignments of Error	7