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Clerk, Supreme Court of Appeals
Richmond, Va.

207 VA 556

Record No. 6316

In the Supreme Court of Appeals of Virginia at Richmond

JOHN M. COURT, ET AL.

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 6316

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 10th day of January, 1966.

JOHN M. COURT
and
MILDRED E. COURT, Plaintiffs in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of the City of Williamsburg
and County of James City
Robert T. Armistead, Judge

Upon the petition of John M. Court and Mildred E. Court a writ of error is awarded them to a judgment rendered by the Circuit Court of the City of Williamsburg and County of James City on the 28th day of April, 1965, in a certain proceeding then therein depending wherein the said petitioners were plaintiffs and Commonwealth of Virginia was defendant; 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 three hundred dollars, with condition as the law directs.

RECORD

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page 1] PETITION

To the Honorable Robert T. Armistead, Judge of said Court:

Your petitioners, humbly complaining, come and say that they, John M. Court and Mildred E. Court, husband and wife, are aggrieved by the assessment against them by the Commonwealth of additional income taxes for the taxable years 1961, 1962 and 1963 in the amounts of $312.15, $220.13 and $122.36 respectively and apply to this Court pursuant to Section 58-1130 of the Code of Virginia as amended, for relief therefrom; averring further that the issue in controversy is whether the exemption granted in Section 58-78(b)(6) of the Code of Virginia as amended extends to certain monies paid to your petitioner John M. Court on account of Naval Service in the Armed Forces rendered by the said petitioner.

JOHN M. COURT
MILDRED E. COURT

Filed October 27, 1964
VIRGINIA BLANCHARD, Clerk
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page 2] GROUNDS OF DEFENSE

Comes now the Commonwealth of Virginia, by counsel, and for answer to the petition filed against it by John M. Court and Mildred E. Court says:

1. It is denied that the Commonwealth of Virginia has made any erroneous assessments of additional income taxes against the petitioners in the manner and form alleged in the petition.

COMMONWEALTH OF VIRGINIA
By: W. P. BAGWELL, JR.
Of Counsel

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Filed 12/11/64
VA. BLANCHARD, Clerk

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page 5] ORDER

This day came the plaintiffs by counsel and the defendant by counsel, and tendered certain stipulations as to facts and issues before the Court in this action, namely:

1. That John M. Court, Captain, United States Navy, Retired, plaintiff herein, received from the Department of the Navy, pursuant to 10 U.S.C.A. Section 6323, by reason of his previous naval service in armed forces, the following amounts of money for the calendar years indicated:

1961	$6,279.00
1962	$6,279.00
1963	$6,357.00

2. That the sole issue to be determined by the Court in this action is as follows:

Does the language of Section 58-78(b)(6), of the Code of Virginia, exclude from the gross income of the taxpayer the monies described in the stipulation set forth in paragraph 1 above?

Whereupon counsel for plaintiffs and counsel for the defendant moved that they be permitted to place the said stipulations of record in this action and that the said stipulations be accepted as agreed statements of fact and issue in his action, which motion the Court doth grant and doth order the Clerk to spread this order as a part of the record herein.

Enter 1/21/65
R. T. A., Judge

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page 6] FINAL ORDER

This cause came on to be heard upon the petition of John M. Court and Mildred E. Court to have corrected an alleged erroneous assessment against them by the Commonwealth of Virginia of additional income taxes for the taxable years 1961, 1962 and 1963 in the amounts of $312.15, $220.13 and $122.36, respectively; upon the grounds of defense filed on behalf of the Commonwealth; upon the order of this Court entered on

the 21st day of January, 1965, accepting the stipulations by counsel for all parties as to the facts and issue to be determined in this action; and upon the briefs submitted on behalf of petitioners and on behalf of the Commonwealth.

The Court, having taken time to consider, is of the opinion, and doth so decide, that the amounts described in the stipulation appearing in the said order of January 21, 1965, as having been received by Captain John M. Court, United States Navy, Retired, pursuant to 10 U.S.C.A. § 6323, for the years 1961, 1962 and 1963 do not constitute a "pension" within the meaning of § 58-78(b)(6) of the Code of Virginia (1950), as amended, and were therefore properly assessed for income taxes by the Commonwealth of Virginia. Accordingly, it is ORDERED that the aforesaid assessments be, and they hereby are, confirmed.

page 7] And it is further ORDERED that the petition filed herein is hereby dismissed and that the petitioners do pay the cost of this proceeding.

I ask for this Order:
W. P. BAGWELL, JR.
Of Counsel for Defendant

Seen and Excepted to:
JOHN M. COURT,
Counsel for Petitioners, p.q.

Enter this 28th day of
April, 1965.
R.T.A.
Judge

page 8] NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To the Clerk of the Circuit Court for the County of James City and City of Williamsburg.

John M. Court and Mildred E. Court petitioners herein, by counsel, give notice pursuant to the provisions of Rule 5:1, Section 4, of the Rules of the Supreme Court of Appeals of their appeal from that certain final judgment of this Court entered 27 April, 1965 in the above styled cause in which the assessments protested by the petitioners were confirmed and their petition dismissed.

Further, pursuant to the said Rule the petitioners assign the following error:

1. The Court erred as a matter of law in ruling that the amounts received by Captain John M. Court, United States Navy, Retired, pursuant to 10 U.S.C.A. Section 6323 for the years 1961, 1962 and 1963 do not constitute a "pension" within the meaning of Section 58-78(b)(6) of the Code of Virginia (1950), as amended, and that the same were properly assessed for income taxes by the Commonwealth of Virginia.

JOHN M. COURT &
MILDRED E. COURT
JOHN M. COURT
of Counsel

Filed April 28, 1965
VA. BLANCHARD, Clerk

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A Copy—Teste:

H. G. TURNER, Clerk

INDEX TO RECORD

	page
Writ of Error Awarded	1
Record	2
Petition	2
Grounds of Defense	2
Order — January 21, 1965	3
Judgment — April 28, 1965	3
Notice of Appeal and Assignment of Error	5