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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 7092

In the Supreme Court of Appeals of Virginia at Richmond

EUGENIA A. MOON

v.

WILLIAM FRANKLIN MOON, JR.

FROM THE CORPORATION COURT OF THE CITY OF CHARLOTTESVILLE

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. 7092

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1968.

EUGENIA A. MOON, Appellant,

against

WILLIAM FRANKLIN MOON, JR., Appellee.

From the Corporation Court of the City of Charlottesville
George M. Coles, Judge

Upon the petition of Eugenia A. Moon an appeal is awarded her from a decree entered by the Corporation Court of the City of Charlottesville on the 10th day of January, 1968, in a certain chancery cause then therein depending, wherein William Franklin Moon, Jr., was plaintiff and the petitioner was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said corporation court in the penalty of $300, with condition as the law directs.

RECORD

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In the Corporation Court of the City of Charlottesville

* * * * *

DECREE FOR *SEPERATE* MAINTENANCE

This cause came on this 13th day of April, 1966, to be heard on the Bill of Complaint and exhibit filed therewith, the Answer of the Defendant, the testimony of the Complainant and Defendant, respectively, taken *ore tenus,* both the Complainant and the Defendant being represented by Counsel; and was argued by Counsel.

Upon consideration whereof the Court, being of the opinion from the evidence that the Complainant is entitled to a decree for *seperate* maintenance and support, doth ADJUDGE, ORDER and DECREE that the said William F. Moon, Jr. pay unto the said Eugenia A. Moon the sum of One Hundred Twenty-Five and No/100 Dollars ($125.00) per month beginning on the 4th day of May, 1966, and continuing on the 4th day of each and every month thereafter.

And the Court being of the opinion that Eugenia A. Moon is entitled to support and maintenance at the rate of One Hundred Twenty-Five and No/100 Dollars ($125.00) per month from the 4th day of November, 1965, it is further ADJUDGED, ORDERED and DECREED that William F. Moon, Jr. pay to Eugenia A. Moon the sum of Four Hundred Seventy-Five and No/100 Dollars ($475.00) being support and maintenance at the rate of One Hundred Twenty-Five and No/100 Dollars ($125.00) per month for the period from November 4, 1965 to May 4, 1966, less credit of $275.00 for payments made during that time, by William F. Moon, Jr. to or on behalf of Eugenia A. Moon.

And it is further ADJUDGED, ORDERED and DECREED that William F. Moon, Jr. pay to Eu-
page 6-B } genia A. Moon the sum of $23.75 to reimburse her for costs expended by her in this cause, and to pay to Deets and Martin, Attorneys, the sum of $250.00 for their services as Counsel for Eugenia A. Moon.

It is further ADJUDGED, ORDERED and DECREED that payments of arrearages, costs and attorneys fees shall be made as aforesaid by the Defendant within sixty days from the entry of this decree.

Nothing further remaining to be done in this cause, the same is ordered stricken from the docket of this Court, at the cost of the Defendant, with the right reserved to either party to reinstate the same for the purpose of seeking a readjustment of any of the terms of this Decree.

Enter: George M. Coles

* * * * *

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DECREE OF DIVORCE FROM THE BONDS OF MATRIMONY

This cause came on this day to be heard upon the Complainant's Bill and its exhibits; upon the Defendant's Answer and Cross-Bill; upon evidence taken orally before the Court by and with the consent of both parties, who were present in person and represented by counsel; and upon argument of counsel.

Upon consideration whereof and it appearing to the Court, independently of the admissions of either party in the pleadings or otherwise, that the said William Franklin Moon, Jr. and the said Eugenia A. Moon, *nee* Avyeros, were lawfully married in Albemarle County, Virginia (license issued in City of Charlottesville), on the 10th day of May, 1957; that both of said parties are residents of and domiciled in the State of Virginia, and have been such residents and so domiciled for more than one year next preceding the institution of this suit; that both of said parties are members of the white race and neither of said parties is a member of the Armed Forces of the United States; that said parties last cohabited in the City of Charlottesville, Virginia, wherein both parties now reside; that no children were born of said marriage; and that on the 4th day of November, 1965, the said William Franklin Moon, Jr. was guilty of voluntarily, willfully and without any justification whatever, deserting and abandoning the said Eugenia A. Moon, which desertion and abandonment has con-

tinued uninterruptedly since that date, and for
page 12 } more than two years, it is ADJUDGED, ORDERED and DECREED that a divorce from the bonds of matrimony be, and the same is hereby awarded to the said Eugenia A. Moon on the ground of said desertion occurring on November 4, 1965.

And it further appearing that on the 14th day of April, 1966, in a chancery cause pending in this Court wherein the said Eugenia A. Moon was the Complainant and William Franklin Moon, Jr., the Complainant herein, was the Defendant, a Decree for Separate Maintenance was entered ordering the said William Franklin Moon, Jr. to pay to the said Eugenia A. Moon support money, attorneys fees, costs, etc. and, by the terms of said Decree, the right was reserved to either party to reinstate the same for the purpose of seeking a readjustment of the terms thereof and, for reasons deemed sufficient to this Court, it is ADJUDGED, ORDERED and DECREED that so much of said Order as required the said William Franklin Moon, Jr. to pay support money is hereby vacated and, in lieu *therof,* it is ADJUDGED, ORDERED and DECREED that the said William Franklin Moon, Jr. shall pay unto the said Eugenia A. Moon as alimony the sum of $25.00 per month, commencing on the 4th day of January, 1968, and shall pay the costs of these proceedings, including an attorney's fee of $150.00 to Lewis A. Martin, Jr. for legal services rendered the said Eugenia A. Moon in these proceedings.

And nothing further remaining to be done herein, this cause is dismissed and stricken from the docket.

To which action of the Court, in reducing the amount of alimony and in its allowance of attorney's fees, the Respondent objects on the following grounds:

1. That under the evidence in this case the reduction of alimony from $125.00 per month to $25.00 per
page 13 } month is clearly unfair, unreasonable and unjust and contrary to established principles of law.

2. That in making an award of an uncontested attorney's fee of $150.00, the Court was in error (a) in considering the fee awarded almost two years ago in a previous action between the parties for separate maintenance, and (b) in holding that this case was in the nature of an uncontested matter when the Complainant in this instance was represented by two attorneys at an *ore tenus* hearing which lasted approximately two hours on one day and approximately one-half hour on another day and was hotly argued by counsel on both occasions.

I ask for the entry of this Decree:
Wingfield, Barrick & St. John, p.q.
by E. C. Wingfield

Seen and objected to:
Deets & Martin, p.d.
by Lewis A. Martin, Jr.

Enter: George M. Coles
Date: Jan 10, 1968

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* * * * *

ASSIGNMENTS OF ERROR

1. The Trial Court erred in reducing its previous award of alimony from $125.00 per month to $25.00 per month because, under the evidence in this case, such reduction of alimony is clearly unfair, unreasonable and unjust, and contrary to established principles of law.

2. The Trial Court erred in making an award of an uncontested attorney's fee of $150.00 when, in fixing the amount of the fee, it: (a) took into consideration the fee awarded almost 2 years ago in a previous action between the parties for separate maintenance, and (b) held that this case was in the nature of an uncontested matter despite the fact that the Complainant was represented by two attorneys at an *ore tenus* hearing which lasted approximately two hours on one day and approximately one-half hour on another day and was hotly argued by counsel on both occasions.

Given under my hand this 4th day of March, 1968.

Eugenia A. Moon

By Lewis A. Martin, Jr.
Counsel for Defendant

Deets and Martin, p.d.
Attorneys at Law
415 Fourth Street, N. E.
Charlottesville, Virginia

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* * * * *

Filed March 4, 1968

G. Stuart Hamm, Jr., Clerk

page 16 } Narrative Statement of the Evidence Presented *Ore Tenus* in the Divorce Suit of William Franklin Moon, Jr., Complainant vs. Eugenia A. Moon, Defendant Before the Corporation Court of the City of Charlottesville, Virginia on Friday, December 8, 1967

Mr. A. H. Hawkins, Jr. was called to testify on behalf of the Complainant. Mr. Hawkins stated that he is the president and manager of Hawkins Funeral Chapel, Charlottesville, Virginia. That on or about November 4, 1965 the Complainant, William Franklin Moon, Jr., moved his residence to Hawkins Funeral Chapel on Ivy Road. Mr. Moon worked there part time without compensation and continued to live there for a while until he moved his residence to the basement apartment in Mr. Hawkins' home at 200 Camellia Drive, for which he pays rent of $70.00 per month.

The Complainant, William Franklin Moon, Jr., testified in his own behalf, stating that he is thirty-four years of age; that he resides at 200 Camellia Drive, Charlottesville, Virginia; that he was married to Eugenia Avyeros in Albemarle County, Virginia on May 10, 1957; that shortly thereafter they moved into an apartment at 523 Lexington Avenue where they resided for approximately eight and one-half years until November 4, 1965, when he left, taking all of his personal belongings with him and moving his residence to Hawkins Funeral Chapel. He lived there for a time and then moved his residence to a basement apartment at 200 Camellia Drive where he now lives. He stated that no children were born of the marriage and that he had not, since leaving his wife on November 4, 1965, resumed cohabitation with her or lived with her at anytime since then.

Mr. Moon said that pursuant to a decree for separate maintenance entered in this court on April 13, 1966, he had paid to the Defendant a lump sum of $475.00 for support and maintenance and since the 4th day of May, 1966, had paid to her the sum of $125.00 per month, the last such payment having

been made on December 4, 1967. He said that he
page 17 } also paid costs of $23.75 and a fee of $250.00 to
his wife's attorney for services rendered in her suit for separate maintenance.

Mr. Moon testified that when he moved from the apartment at 523 Lexington Avenue he did not take any of the household furnishings with him, that he does not claim any of the household furnishings and is willing for his wife to have them as her own property.

Mr. Moon stated that he is employed at the downtown A & P store at a net wage of $95.00 per week after deductions.

On cross examination Mr. Moon stated that his income is now approximately the same as it was at the time of the suit for separate maintenance in April, 1966, and agreed that his gross annual income was $6,448.00 at that time when he had testified in the suit for separate maintenance that his gross weekly earnings amounted to $124.00. He said that in April, 1966, deductions were being made from his earnings for U. S. Savings Bonds but that no such deductions were being made now. He stated that he ate his meals at restaurants and that he had not accumulated any savings.

Eleanora M. (Mrs. Lawrence A.) Short testified for the Defendant and stated that she was a housewife, residing at 523 Lexington Avenue where she had lived for many years. She said that she had known the Complainant and Defendant since May, 1957, when they rented an apartment in her house; that they lived there together for approximately eight and one-half years until November 4, 1965, when Mr. Moon moved away. She said that Mrs. Moon is still living there but that Mr. Moon has not been back to live there since he left in November, 1965.

Mrs. Short stated that she had seen Mr. Moon moving some of his things from the apartment on November 4, 1965
and that a few days later he returned to get the
page 18 } remainder of his personal belongings, some of
which he had stored in her basement. At that time he told her that he did not love Mrs. Moon anymore and that he was not going to live with her any longer.

Mrs. Short testified that when Mr. and Mrs. Moon lived together in her apartment the rent was $75.00 per month and that it was usually paid by check signed by Mr. Moon. She said that the rent payment of $75.00 per month is now made by Mrs. Moon.

Eugenia A. Moon testified in her own behalf. She stated that she is thirty-seven years of age; that she was married on May 10, 1957, to the Complainant, William Franklin Moon, Jr., in Albemarle County, Virginia; that she now resides at 523 Lexington Avenue where she has resided ever since a few days after their marriage when they moved into an apartment at that address and lived together there for approximately eight and one-half years until the Complainant left her and moved from there on November 4, 1965, saying that he no longer loved her and that he did not ever intend to live with her again. She further stated that the Complainant moved his personal possessions from the apartment; that he has never returned there to live and that they have never lived together as husband and wife since then although she requested him not to leave her and since he left requested him to come back and live with her. She said that no children were born of their marriage.

Mrs. Moon acknowledged that she had received the payments which Mr. Moon testified he had made to her pursuant to the decree for separate maintenance.

Mrs. Moon testified that she is employed as a cashier at Timberlake's Drug Store where she had been employed for approximately eight years at a gross salary of $40.00 per week of which her net income amounts to $34.02 a week. She works there six days a week from 9:00 a.m. to 6:00 p.m. For the past several months she has been working at the concession stand in the Paramount Theater at
page 19 } nights and on Sundays at a wage of $1.00 per hour.
Her average monthly net income from this employment amounts to approximately $65.00, her weekly income being about $15.00.

Mrs. Moon stated that she had previously submitted to the court at the trial of her suit for separate maintenance an itemized list of her estimated monthly expenses as follows:

Food	65.00
Clothing	50.00
Insurance	10.00
Laundry and cleaners	15.00
Rent	75.00
Doctor and Dentist	10.00
Medicine	10.00
Church	3.50
Entertainment and recreation	40.00
Vacation	10.00

Beauty Shop	10.00
Telephone	5.00
Incidentals and charity	15.00
Taxi and bus	10.00

She further testified that since the trial for separate maintenance in April, 1966 she estimates that the foregoing expenses had increased an aggregate of $46.00 in the following categories:

Transportation up $15.00 from $10.00 to $25.00
Food up $10.00 from $65.00 to $75.00
Insurance up $1.00 from $10.00 to $11.00
Laundry and cleaners up $5.00 from $15.00 to $20.00
Beauty Shop up $5.00 from $10.00 to $15.00
Telephone up $5.00 from $5.00 to $10.00
Incidentals and charity up $5.00 from $15.00 to $20.00

Mrs. Moon stated that she does not own an automobile, television set, or phonograph; she has no telephone in her apartment; and the only radio she owns is a small pocket transistor.

Mrs. Moon stated that in April, 1966 she had $414.19 in a savings account at Virginia National Bank and that the present balance in that account is $1,395.28. She said that deposits of portions of the support payments received from her husband accounted for the increased balance. She also said that she had a present checking account balance of approximately $240.00.

page 20 } Mrs. Moon also testified that several times during the year she sends small sums of $5.00 or $10.00 to relatives overseas.

In awarding counsel for the Defendant an attorney's fee of $150.00 the court stated that it was making an award of an uncontested attorney's fee because it considered this case to be in the nature of an uncontested matter and because it had previously awarded to counsel for the Defendant an attorney's fee of $250.00 in the earlier suit for separate maintenance.

Counsel for all parties agree to the inclusion in the record of the attached portions of the 1960 Fee Schedule of the Charlottesville-Albemarle Bar Association marked "Exhibit A".

The foregoing narrative statement of the evidence and other incidents of the case in the above captioned suit are hereby tendered pursuant to Rule 5:1, § 3 (e) of the Supreme Court of Appeals of Virginia.

Lewis A. Martin, Jr.
Counsel for Appellant

John M. Hamlet, Jr., Atty.
Counsel for Appellee

E. C. Wingfield
Counsel for Appellee

Tendered to me this 8th day of March, 1968

George M. Coles, Judge

Signed this 18th day of March, 1968

George M. Coles, Judge

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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