

3086  
195-102

2/16/

# Record No. 4102

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**RHEA D. FOSTER**

v.

**GERTRUDE D. FOSTER, EXECUTRIX &C.**

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FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

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## 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.

H. G. TURNER, Clerk.

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

195VA102

## RULE 5:12—BRIEFS

**§1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**§2. Form and Contents of Appellee's Brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

**§3. Reply Brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

**§4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

**§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.

**§7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.



IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND.

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**Record No. 4102**

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VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Wednesday the 21st day of January, 1953.

RHEA D. FOSTER,

Plaintiff in Error,

*against*

GERTRUDE D. FOSTER, EXECUTRIX &C.,

Defendant in Error.

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From the Circuit Court of the City of Norfolk.

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Upon the petition of Rhea D. Foster a writ of error is awarded her to a judgment rendered by the Circuit Court of the City of Norfolk on the 1st day of November, 1952, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Gertrude D. Foster, Executrix of Hugh Foster, deceased, was defendant, upon the petitioner, or some one for her, entering into bond with sufficient surety 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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## MOTION FOR JUDGMENT.

Plaintiff, Rhea D. Foster, moves the Circuit Court of the City of Norfolk, Virginia, for judgment in her favor against the defendant, Gertrude D. Foster, Executrix of Hugh Foster, deceased, for \$1125.00 with interest as hereinafter stated, for this, to-wit:

(1) Plaintiff was formerly the wife of Hugh Foster and she obtained an absolute divorce from him for desertion in this Court by decree entered on the 12th day of February, 1930, and in addition to the divorce there was also decreed in her favor by that decree as follows, to-wit:

“The Court doth further adjudge, order and decree that the defendant pay to the plaintiff \$125.00 each month for alimony until her death or re-marriage, in either of which events, said payments shall cease and no longer be a charge against defendant”.

(2) Said Hugh Foster died in January, 1952, leaving a considerable estate and said defendant has qualified as his executrix and is in possession of estate as such executrix.

(3) Said Hugh Foster paid plaintiff what was due her through December, 1951, but nothing has been paid her since and there is due her \$125.00 each month for January through September, 1952, to-wit nine months, making \$1125.00 and interest is due on each installment of the \$125.00 from the end of each month.

(4) By said decree it was fully intended that plaintiff should continue to receive \$125.00 each month until her death or her re-marriage even if said Hugh Foster should die before her death or her re-marriage.

(5) Plaintiff has demanded payment from defendant who has failed and refused to make payment.

JAS. G. MARTIN,  
Western Union Building,  
Norfolk, Virginia,  
Counsel for Rhea D. Foster.

Filed in the Clerk's Office the 1st day of October, 1952.

Teste:

W. R. HANCKEL, Clerk.  
T. A. W. Gray, D. C.

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Filed. 10/13/52.

W. R. HANCKEL, Clerk.

DEMURRER.

The Defendant, Gertrude D. Foster, Executrix of Hugh Foster, deceased, by Samuel Goldblatt, her counsel, says that the Motion for Judgment in this action is not sufficient in law, and states the grounds of demurrer relied on as follows:

1. That the Motion for Judgment shows on its face no grounds by the Plaintiff against the Defendant that will lie in either law or in equity.

2. That the said Motion for Judgment shows that the deceased, Hugh Foster, had paid Plaintiff what was due her through December, 1951 and died in January, 1952, which death caused further alimony to cease.

GERTRUDE D. FOSTER, EXECUTRIX  
OF HUGH FOSTER, DECEASED.

By SAMUEL GOLDBLATT,  
Counsel.

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This cause came on this day to be heard upon the motion for judgment, demurrer thereto, and joinder in demurrer and was argued by counsel on consideration thereof the Court doth sustain the demurrer and render judgment for the defendant

with costs. To which rulings of the Court plaintiff duly excepted.

Enter. Nov. 1, 1952.

C. H. J.  
Judge.

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Filed. Nov. 7, 1952.

T. A. W. GRAY, D. C.

NOTICE OF APPEAL AND  
ASSIGNMENTS OF ERROR.

Notice of appeal is hereby given and plaintiff will appeal to the Supreme Court of Appeals of Virginia.

ASSIGNMENTS OF ERROR.

Plaintiff assigns the following errors, to-wit:

(1) The Circuit Court erred in sustaining the demurrer of the defendant to the motion for judgment, as the motion set forth a good cause of action.

(2) The Circuit Court erred in deciding that the alimony ceased with the death of Hugh Foster.

(3) The Circuit Court erred in entering judgment for the defendant.

(Copy hereof was mailed to counsel for defendant on the 6 day of November, 1952)

JAS. G. MARTIN,  
Western Union Building,  
Norfolk, Virginia,  
Counsel for Rhea D. Foster.

\* \* \* \* \*

A Copy—Teste:

H. G. TURNER, Clerk.

SEARCHED  
SERIALIZED  
INDEXED  
FILED

NOV 10 1952  
FBI - NORFOLK