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Record No. 5755

In the
Supreme Court of Appeals of Virginia
at Richmond

WILLIAM HOSEA MARTIN
v.
IRIS LOUISE (MOORE) MARTIN

FROM THE CORPORATION COURT OF THE CITY OF NEWPORT NEWS

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. 5755

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 15th day of October, 1963.

WILLIAM HOSEA MARTIN,

Appellant,

against

IRIS LOUISE (MOORE) MARTIN,

Appellee.

From the Corporation Court of the City of Newport News
Douglas M. Smith, Judge

Upon the petition of William Hosea Martin an appeal and *supersedeas* is awarded him from decrees entered by the Corporation Court of the City of Newport News on the 25th day of January, 1963, in a certain chancery cause then therein depending wherein the said petitioner was plaintiff and Iris Louise (Moore) Martin was defendant.

And it appearing that a suspending and *supersedeas* bond in the penalty of twenty thousand dollars, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

decree, and the parties hereto shall hereafter have no property rights or interest in the property of each other, real or personal, now held or hereafter acquired, or any rights or duties of support and maintenance, except as provided in the said property settlement agreement.

Nothing further remaining to be done in this cause, it is hereby ordered that same be removed from the docket of this Court.

Enter 1/21/59

H. G. S., Judge

* * * * *

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ORDER

This cause came on for hearing pursuant to notice duly served upon the Complainant, William Hosea Martin, to show cause why he should not be held in contempt of Court for failure to comply with the Court's decree in this cause, entered January 21, 1959, evidence was heard and the matter was argued by counsel for the parties, and it appearing to the Court that the said complainant has failed to obey the terms of the Court's said prior decree in that he is in arrears to the extent of six house payments of \$83.68 each, a total of \$502.08, and is in arrears in the total amount of \$417.38 in the weekly payments due the respondent, which total sums in arrears is \$919.46; and the Court further finding that it has jurisdiction of this matter by virtue of the said property settlement agreement having been confirmed by this Court and made part of said decree of January 21, 1959.

It is, therefore, ORDERED, ADJUDGED and DECREED that the said complainant pay at least one payment on the first deed of trust note to the First National Bank of Newport News, Virginia, on or before November 5, 1962, and that all sums now in arrears be paid to the respondent in full on or before January 1, 1963, and that in addition, the said complainant shall pay to the respondent the interest paid or payable by her on her loan executed to derive funds to avoid a foreclosure under the said deed of trust, and that in addition, the said complainant shall hereafter well and truly pay each payment on the said deed of trusts on or before its due date thereof, and the weekly payments of \$47.91 due the

December 20, 1962

Mr. William A. Hunt
Bateman and White
Attorneys at Law
321 Main Street
Newport News, Virginia

Mr. Herbert Bateman
Jones, Blechman, Woltz and Kelly
Attorneys at Law
227 27th Street
Newport News, Virginia

In re: Martin Vs. Martin

Gentlemen:

Please be advised that I have examined the authorities in connection with the contention of the complainant that the court could not enforce under contempt proceedings its decree of January 21, 1959 which incorporated the property settlement agreement.

The court finds no merit in the complainant's contention. Further the complainant by counsel admits that he has not complied with the decree of January 21, 1959 in that he has not made the payments called for by the said decree.

I previously found Mr. Martin in contempt on a hearing a short time ago but due to the fact that I never received an order, said order was not entered. This order is now before me but as I recall Mr. Hunt objected to some of its terminology and desired to add his objections to the decree. I wish to state that I find nothing wrong with the order as far as contents is concerned. I am, therefore, asking Mr. Bateman to contact Mr. Hunt to work out an order which I will *nunc pro tunc*, back to the date of the hearing.

I then desire a second order to be drawn in which I again find Mr. Martin in contempt of court wherein I am sentencing him to six (6) months on the State Road Force
page 18] suspended on the condition that the complainant pay sufficient payments on the first deed of trust note at the First National Bank to prevent any danger of foreclosure, that all sums now in arrearage be paid to the respondent in full on or before January 1, 1963 and that in addition the complainant pay to the respondent the interest paid by her on or before February 28, 1963, and in addition

would be made effective as of the date of hearing on October 31, 1962, the said order being made effective as of the later date so as to allow time within which complainant page 20] might perfect an appeal, that his failure to pay said sum constitutes contempt of Court and his failure to comply with the Court's decree of January 21, 1959 and order pursuant to hearing on October 31, 1962 are willful and without lawful excuse, and that for and as the sentence for his said contempt William Hosea Martin is hereby sentenced to six months on the State Road Force which sentence is suspended upon the condition that he pay such sums on the first deed of trust note at the First National Bank to prevent any danger of foreclosure against the respondent's residence, that all sums in arrearage be paid to the respondent in full on or before January 1, 1963, and that in addition the complainant pay to the said respondent on or before February 28, 1963 any interest charges incurred by her on loans for the purpose of avoiding foreclosure on her said resident, and pay to the respondent the deed of trust payments and weekly payments hereafter falling due pursuant to the terms of the Court's decree of January 21, 1959.

It is further ORDERED, ADJUDGED and DECREED that if the aforesaid conditions herein expressed are not satisfied, the suspension of the said sentence herein granted shall be revoked.

Entered 12-28-62 *nunc pro tunc*

D. M. SMITH
Judge

I ask for this:

Herbert H. Bateman

Herbert H. Bateman, Counsel for

Iris Louise (Moore) Martin

page 21] Seen, objected to and exception taken for the following reasons:

(a) That this Court has no jurisdiction to enforce by contempt proceedings the said property settlement agreement being dated June 16, 1958, the said agreement between the parties enforceable only as any other civil agreement;

(b) That the Court has no jurisdiction to enforce by contempt proceedings that portion of its decree entered January

to comply with the said conditions upon which his sentence was suspended, and with the Court's decree and orders being willful, unexcused and wrongful, it is hereby ORDERED, ADJUDGED and DECREED, that the suspension of sentence heretofore granted be and is hereby revoked and that the said William Hosea Martin be and is hereby sentenced to six months on the State Road Force, and that he be forthwith remanded to the City jail pending the posting of a bond in an amount and upon condition to be approved by the Court, on or before February 15, 1963 and it is further ordered that there be paid out the State Treasury for the support of the said Iris Louise (Moore) Martin the sum of \$15.00 per week through the Juvenile & Domestic Relations Court of this City for each week during any part of which any work is performed by the said William Hosea Martin.

I ask for this:

Herbert H. Bateman

Herbert H. Bateman, Counsel for

Iris Louise (Moore) Martin

Enter this: 25 day of Jan., 1963.

D. M. SMITH
Judge

Seen, objected to and exception taken for the following reasons:

(a) That this Court has no jurisdiction to enforce by contempt proceedings the said property settlement agreement dated June 16, 1958, the said agreement between the parties being enforceable only as any other civil agreement.

(b) That the Court has no jurisdiction to enforce by contempt proceedings that portion of its decree entered January 21, 1959, which incorporated by reference the provisions of the said property settlement agreement.

(c) That the Court decree of January 21, 1959, did not order the Complainant to perform any act, but merely approved an agreement whereby he agreed to pay to the Respondent sums of money in lieu of alimony.

(d) That the Complainant cannot be held in contempt of this Court for failing to abide by the provisions of the decree entered November 20, 1962, for the reason that the Court had no jurisdiction in this matter and had no power to enter the decree of November 20, 1962.

on January 21, 1959, in the above suit in which respondent was granted an absolute divorce from complainant, and which decree ratified and confirmed, and made a part of said decree the property settlement agreement entered into between complainant and respondent on June 16, 1958. In view of said agreement, the Court had no jurisdiction to
page 35] enforce by contempt proceedings any alleged failure on the part of complainant to comply with the terms of said property settlement agreement incorporated in said divorce decree; hence the aforementioned decrees or orders entered by the Court holding complainant in contempt were erroneous.

2. The Court erred in holding complainant in contempt of Court for his alleged failure to comply with the terms of said property settlement agreement which was entered into between complainant and respondent, wherein complainant agreed to make certain support payments to the respondent in lieu of alimony, because the failure of complainant to make such payments in violation of said agreement did not constitute contempt and he could not have been punished for such contempt.

3. The Court had no jurisdiction in this cause after the expiration of 21 days from the entry of the final decree of divorce on January 21, 1959, and, therefore, the aforementioned decrees or orders entered by the Court holding complainant in contempt were erroneous and void.

4. There is no evidence of any wilful contempt and the Court erred in holding that complainant was guilty of any contempt, and that complainant did not violate any terms of the divorce decree.

5. The Court erred in reciting in the aforementioned decrees or orders of January 24, 1963 and January 25, 1963, wherein it undertakes to enter such orders *nunc pro tunc* as of prior dates, because in doing so the Court improperly curtailed the time within which complainant could perfect his appeal to the Supreme Court of Appeals of Virginia, as permitted by law.

WILLIAM HOSEA MARTIN
By WILLIAM A. HUNT
Of Counsel

* * * * *

Whereas, it is the desire of both parties to finally and for all time settle and determine their property rights, all dower and curtesy rights, and any and all other rights existing between them, therefore, the parties hereto, for and in consideration of the mutual promises herein made and the acts to be performed by the respective parties hereto, do each covenant and agree as follows:

1. Neither Husband nor Wife shall interfere with the other in his or her respective liberties, conduct or actions, and each shall be free from interference, authority and control by the other in like manner as if the parties hereto were not married to each other.

2. The party of the first part shall purchase for the use and enjoyment of the party of the second part that certain house and lot commonly known as 316 Hammond Street, Warwick, Virginia, the party of the second part to be grantee of a deed of conveyance in fee simple of said premises. In the event the party of the first part places a mortgage or deed of trust on this said property to secure any unpaid portion of the purchase price, it is understood and agreed that the said party of the first part, his heirs and assigns, shall be liable for the full amount of any unpaid purchase price. It is expressly understood and agreed that the estate of the party of the first part shall be liable for the payment of any unpaid portion of the purchase price of the said property. It is further understood and agreed that the said party of the first part is to pay the cost of a title search of the said property, the cost of recordation and any
page 3] other expenses necessarily incurred in the purchase of said property. In addition, the party of the first part is to pay the real property taxes, any and all assessments now or hereafter levied against the said property, and all other taxes now or hereafter imposed or levied against the said property, until his death or the remarriage of the party of the second part, at which time the obligation of the party of the first part to pay such taxes and assessments shall cease.

3. The party of the second part is to have all right, title and interest in all the furniture, household furnishings, air conditioners and all other appliances now located at 408 Warwick Road, Warwick, Virginia, said furniture and appliances to be moved and properly installed in the premises at 316 Hammond Street, Warwick, Virginia, by or at the expense of the party of the first, the party of the first part further understands and agrees that the electrical wiring system of

part shall move or have moved, at his expense, that certain television aerial connected to the roof of the premises at 408 Warwick Road, Warwick, Virginia, and install or bear the expense of installing said aerial in position on the roof of the premises at 316 Hammond Street, Warwick, Virginia.

6. The said party of the first part agrees and binds himself to pay, up to the total amount of SEVEN HUNDRED FIFTY DOLLARS (\$750.00), all debts of the party of the second part and in particular debts owed by her to Leggett's Department Store, Goldstein Furniture Company, Grace Spencer's Dress Shop and the LaVogue Shop, the total of these said debts being approximately SEVEN HUNDRED FIFTY DOLLARS (\$750.00). It is understood and agreed that any debts presently contracted by the said party of the second part in excess of SEVEN HUNDRED FIFTY DOLLARS (\$750.00) shall be paid by her. In addition, the said party of the first part is to pay the party of the second part TWO HUNDRED DOLLARS (\$200.00) in cash within forty-eight (48) hours of execution of this agreement.

7. The party of the first part agrees and binds himself to pay in advance one year's premium on a certain hospitalization and medical insurance policy covering the party of the second part, which policy is with the Washington National Insurance Company. Thereafter premiums on this said policy shall be paid by the party of the second part.

8. The said party of the first part agrees and binds himself to pay unto the attorney of the party of the
page 6] second part the sum of TWO HUNDRED DOLLARS (\$200.00) in compensation for his services to the party of the second part in this matter. In the event the party of the first part should at some future time bring an action against the party of the second part seeking a divorce, and in said action should fail or decline to ask the Court to ratify and affirm this agreement in a decree in said action, the said party of the first part shall pay the attorney's fees and costs of the party of the second part in defending such action. The party of the first part shall not be liable for any attorney's fee of the party of the second part in addition to or except for those provided herein.

9. The party of the second part does hereby release any interest and waive any claim or claims she may now have or hereafter acquire, by way of dower or otherwise, in and to any property, real or personal, now owned or hereafter acquired by the party of the first part, and does hereby agree to execute any and all documents which may be necessary or required to effectually release or convey such interest or

STATE OF VIRGINIA

City of Newport News, to-wit:

I, Virginia S. Tear, a Notary Public in and for the City and State aforesaid, whose commission expires on the 21

day of March, 1961, do hereby certify that W. H. Martin and Louise M. Martin, whose names are signed to the foregoing writing bearing date on the 16th day of June, 1958, have severally acknowledged the same before me in my City and State aforesaid.

Given under my hand this 16 day of June, 1958.

(signed) VIRGINIA S. TEAR
Notary Public

That on October 19, 1959, William Hosea Martin, caused a notice to be served on Iris Louise Moore Martin, stating that on October 21, 1959, he would move the Corporation Court to issue a rule against Iris Louise Moore Martin to show cause why she should not be held in contempt of Court for her failure to comply with the terms of a Decree heretofore entered, restraining her from interfering with the said William Hosea Martin. No objection to the form of this proceeding was made by counsel for respondent, and no Order was ever entered with reference to said notice. On October 20, 1959, a supplemental agreement was entered into by the parties, containing the following provisions:

"This Supplement Agreement, made this 20th day of October, 1959, by and between William Hosea Martin, party of the first part, and Louise M. Martin, party of the second part.

Whereas, the parties to this agreement were
page 9] divorced by Decree heretofore entered in the
Corporation Court for the City of Newport News,
Virginia, on the 21st day of January, 1959; and

Whereas, a certain agreement heretofore entered into between the parties hereto on the 16th day of June, 1958, was incorporatd by reference in the terms of the said Decree; and

Whereas, the parties hereto are mutually desirous of enlarging the terms of the agreement aforesaid.

Now, therefore, witnesseth: That the parties hereto do mutually covenant and agree each with the other that the agreement heretofore entered into as aforesaid be amended as follows:

filed a petition with the Court asking that the said William Hosea Martin be held in contempt of Court for his failure to comply with the decree of divorce entered on January 21, 1959, which confirmed and ratified and made a part of the decree the said Property Settlement Agreement.

On August 2, 1962, when the matter was originally set for hearing, the parties entered into a verbal interim agreement whereby William Hosea Martin agreed to pay to Iris Louise Moore Martin the sum of Two Hundred (\$200.00) Dollars during the following week, an additional sum of Forty-Five (\$45.00) Dollars before the end of the month of August, agreed to pay the premium on the Fifteen Thousand Dollar life insurance policy referred to in the said Prop-
page 11] erty Settlement Agreement, and agreed to pay to Iris Louise Moore Martin at least the sum of Two Hundred (\$200.00) Dollars during the month of September. The matter was then continued for a period of sixty (60) days by agreement between the parties.

That on October 31, 1962, a hearing was held on the aforementioned petition filed by said Iris Louise Moore Martin, at which time the said William Hosea Martin was in arrears in the payments to the said Iris Louise Moore Martin and in his payments on the said deeds of trust in the aggregate sum of Nine Hundred Nineteen and 46/100 (\$919.46) Dollars, at which hearing said William Hosea Martin testified that he was financially unable to fully comply with the said decree; that after hearing all of the evidence, the Court ordered him to make the house payment due on November 1, 1962, to pay the balance on any arrearages due to the Respondent by January 1, 1963, and to pay to the Respondent any interest on any loans which she might procure to permit her to make delinquent payments on the deed of trust so as to avoid foreclosure on the said obligation. No formal order was entered in the matter on that date, and the formal order with reference to this hearing was entered by the Court on January 24, 1963, *nunc pro tunc* as of November 20, 1962.

That at a hearing held on December 7, 1962, Iris Louise Moore Martin testified that no money had been paid to her since the last hearing held on October 31, 1962, and that the amount due her at that time was Nineteen Hundred Ninety-two (\$1,992.00) Dollars. That at the conclusion of this hearing, the court took under advisement the question of the Court's jurisdiction in this cause, and no formal order was entered on that date. By letter dated December 20, 1962, the Judge advised counsel that he was ruling that the Court had jurisdiction to enforce under contempt proceedings its

JUDGE'S CERTIFICATION

I, Douglas A. Smith, Judge of the Corporation Court for the City of Newport News, Virginia, who presided in the trial of the contempt proceeding brought by Iris Louise Moore Martin against William Hosea Martin, do hereby certify that the foregoing is a true statement of facts, together with all other incidents of the trial of said cause.

I further certify that this Statement of Facts and Certificate were tendered to me on March 22, 1963, and signed by me on April 6th, 1963, within the time prescribed by Rule 5:1, Sec. 3 (f) of the Rules of Supreme Court of Appeals of Virginia for tendering and signing Statements of Facts, and that reasonable notice in writing was given to the attorneys for the Respondent of the time and place at which said Statement of Facts and Certificate were tendered.

Given under my hand this 1st day of April, 1963.

DOUGLAS M. SMITH
Judge, Corporation Court for
the City of Newport News

page 14 } Virginia:

In the Clerk's Office of the Corporation Court for the City of Newport News.

WILLIAM HOSEA MARTIN

Complainant

vs

IRIS LOUISE MOORE MARTIN

Defendant

I, F. B. Barham, Clerk of the Corporation Court of aforesaid hereby certify that the foregoing is the original statement of facts in the above styled case which was presented to the Honorable Douglas M. Smith, Judge of said Court on March 22, 1963; signed by him on April 1st, 1963 and delivered to me by him on April 1st, 1963.

Given under my hand this 3rd day of April, 1963.

F. B. BARHAM
F. B. BARHAM, Clerk
Corporation Court for the
City of Newport News, Virginia

A Copy—Teste:

H. G. TURNER, Clerk.

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