IN THE

Supreme Court of Virginia

RECORD NO. 131283

ROBERT BARTEE,
Administrator of the Estate of
TONIA BEGLEY, deceased,

Appellant,

v.

MARISSA G. VITOCRUZ, M.D.,

Appellee.

BRIEF OF APPELLEE

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Appellee Marissa G. Vitocruz, M.D. ("Dr. Vitocruz"), submits this Brief of Appellee pursuant to Rule 5:28.

I. STATEMENT OF THE CASE

This is an action for the alleged wrongful death of Tonia Michelle Begley. Robert Bartee ("Bartee") commenced this action in his purported capacity as "administrator" of the estate of Tonia Michelle Begley. In fact, both Bartee and Wiley Begley qualified as co-administrators of Tonia Michelle Begley's estate. The trial court correctly held that Bartee, as only one of the two co-administrators appointed, lacked standing to maintain this action without a co-administrator joining as a necessary co-plaintiff.

In the court below Bartee failed to avail himself of numerous opportunities to add a co-administrator as co-plaintiff and thereby cure his lack of standing. Instead, he stubbornly insisted in his Motion to Reconsider and in his Amended Complaint, as he does in his Brief of Appellant, that, because Wiley Begley died prior to the institution of this action, Bartee had standing to maintain this action without adding a co-administrator pursuant to the "doctrine of survivorship."

However, because the "doctrine of survivorship" does not apply to co-administrators in Virginia who qualify jointly for the purpose of

prosecuting a wrongful death action, the trial court properly granted Dr. Vitocruz's Motion to Dismiss the Amended Complaint.

II. STATEMENT OF THE FACTS

On January 29, 2010, Robert Bartee and Wiley Begley qualified as co-administrators of the Estate of Tonia Michelle Begley, deceased, in the Clerk's Office of the Wise County Circuit Court. J.A. 37. On or about August 31, 2011, Wiley Begley died. J.A. 9-12, 37.

On December 22, 2011, almost four months after Wiley Begley died, Robert Bartee filed a Complaint in the Circuit Court of Wise County against Marissa G. Vitocuz, M.D. J.A. 1-6, 37. In response, Dr. Vitocruz filed a Motion to Dismiss on the grounds that Bartee, as only one of the two co-administrators of a decedent's estate, lacked standing to maintain this action without the other co-administrator joining in the case.[1] J.A. 7-8, 37.

Dr. Vitocruz submitted a memorandum in support of her Motion to Dismiss, and the trial court held a hearing on the motion on March 15, 2012. J.A. 37-38. After the initial hearing, Bartee and Dr. Vitocruz each submitted a memorandum on the issue of Bartee's standing. J.A. 38. The

[1] On April 19, 2012, Dr. Vitocruz filed a Motion to Abate on the same grounds as her Motion to Dismiss. J.A. 13-14, 38. *See* Virginia Code § 8.01-276 (abolishing pleas in abatement but allowing any defense heretofore permitted to be made by such plea to be made by written motion).

trial court held a second hearing on Dr. Vitocruz's Motion to Abate and Motion to Dismiss on May 9, 2012. J.A. 38.

On June 22, 2012, after considering the arguments and authorities presented by the parties in their briefs and oral arguments, the trial court held that Bartee lacked standing to maintain the action alone. J.A. 17-18, 38. However, the trial court granted Bartee leave to amend. J.A. 18, 38. The trial court took Dr. Vitocruz's Motion to Abate and Motion to Dismiss under advisement until Bartee had an opportunity to submit an amended complaint. J.A. 18, 38.

On July 24, 2012, rather than filing an amended complaint, Bartee filed a Motion to Reconsider in which he persisted in arguing that a co-administrator may act alone when his fellow co-administrator dies. J.A. 25, 38. Bartee submitted two memoranda in support of his Motion to Reconsider, and Dr. Vitocruz submitted a memorandum opposing Bartee's motion. J.A. 38-39. On February 21, 2013, the trial court held a hearing on Bartee's Motion to Reconsider. J.A. 25, 39. The trial court denied the Motion to Reconsider, but again granted Bartee leave to file an amended complaint. J.A. 25-26, 39.

On March 18, 2013, Bartee filed an Amended Complaint in which he asked the trial court to deem the initial qualification on January

29, 2010 (when Bartee and Begley qualified as co-administrators) to be a proper qualification or to permit a present qualification to relate back, *nunc pro tunc*, to the initial qualification. J.A. 19-24, 39. Because Bartee failed to add a co-administrator to cure his lack of standing in his Amended Complaint, Dr. Vitocruz filed a Motion to Dismiss the Amended Complaint and submitted a memorandum in support of her motion. J.A. 27-30, 39.

The trial court held a hearing on Dr. Vitocruz's Motion to Dismiss the Amended Complaint on May 16, 2013, over one year and four months after Bartee filed his initial Complaint in this action. J.A. 33, 39. The trial court granted Dr. Vitocruz's Motion to Dismiss for the reasons stated in its opinion letter dated June 22, 2012. J.A. 33-34, 39. The trial court denied Bartee's Motion for Leave to file still an additional Amended Complaint because of Bartee's failure to avail himself of previous opportunities to add a co-administrator as co-plaintiff. J.A. 33-34, 39. The trial court dismissed Bartee's Amended Complaint and struck it from the docket. J.A. 33-34, 39.

III. AUTHORITIES AND ARGUMENT

A. STANDARD OF REVIEW

While Bartee has listed two assignments of error, both essentially challenge the trial court's decision to dismiss Bartee's Amended

Complaint for lack of standing. Therefore, for the sake of eliminating redundancy, this brief will treat them as a single assignment of error. The arguments and authorities herein apply with equal force to both assignments of error.

A trial court's decision to dismiss a complaint for lack of standing presents a question of law. *Antisdel v. Ashby*, 279 Va. 42, 48, 688 S.E.2d 163, 166 (2010). This Court reviews questions of law de novo. *Id.* (applying the de novo standard of review to a circuit court's decision to dismiss a complaint for lack of standing); *see also Johnston Mem. Hosp. v. Bazemore*, 277 Va. 308, 311, 672 S.E.2d 858, 859-60 (2009) ("Because the assigned error presents only a question of law, we will review the circuit court's ruling de novo.") Thus, this Court should review de novo the trial court's decision to dismiss Bartee's complaint for lack of standing to maintain an action without joining a co-administrator as a necessary party.

B. THE TRIAL COURT PROPERLY HELD THAT BARTEE, AS ONLY ONE OF TWO CO-ADMINISTRATORS, LACKED STANDING TO MAINTAIN A WRONGFUL DEATH ACTION.

In *Addison v. Jurgelsky*, 281 Va. 205, 704 S.E.2d 402 (2011), this Court interpreted the plain language of Virginia Code § 8.01-50(B), and held that <u>all</u> co-administrators must join as plaintiffs and a single co-

administrator may not maintain a wrongful death action. *Id.* at 208, 704 S.E.2d at 404. This Court explained:

> "If the General Assembly had intended for any one of two or more administrators to pursue a wrongful death action, it could have used the indefinite articles 'a' or 'any' rather than the definite article 'the' prior to the term 'personal representative.' By using the term 'the personal representative,' while knowing that more than one individual may qualify as administrator or executor, <u>the General Assembly intended a unity of action</u> whether there is one personal representative or more than one."

Id. (emphasis added). Thus, it is settled law in Virginia that <u>all</u> co-administrators must join as plaintiffs in order to have standing to prosecute a wrongful death action.

C. THE "DOCTRINE OF SURVIVORSHIP" DOES NOT APPLY TO CO-ADMINISTRATORS.

Bartee attempts to distinguish *Addison* because here, unlike in *Addison*, one of the two qualifying co-administrators died prior to the other's filing of the action. That is a distinction without a difference. Bartee's assertion that one co-administrator has standing to prosecute a wrongful death action on his own when his fellow co-administrator dies pursuant to the "doctrine of survivorship" is contradicted by both Virginia case law and statutory authority.

1. Executors and administrators are treated differently under Virginia law.

Bartee has not cited a single Virginia case which supports his assertion that under the common law of Virginia the authority of co-administrators may be exercised by the surviving co-administrator if the other co-administrator dies. Instead, the Virginia cases he has cited refer only to survivorship among executors. *See Davis v. Christian*, 56 Va. (15 Gratt.) 11, 37-38 (1859) ("The executors...were fully empowered by his will to sell and convey his real estate.... This power did not cease at the death of [one executor], but then devolved on the surviving executor...."); *Shepherd v. Darling*, 120 Va. 586, 592, 91 S.E. 737, 739 (1917) (stating that a "surviving executor" had the power to sell property without an order of court "under the plain provisions of the will"); and *Hofheimer v. Seaboard Citizens' Nat'l Bank*, 154 Va. 896, 898, 156 S.E. 581, 582 (1931) ("[T]he doctrine of survivorship in the case of executors obtains in Virginia....").

Bartee has included several quotations from secondary sources in his brief to support his assertion that the doctrine of survivorship applies to co-administrators in Virginia. (Appellant's Br. 10-12). The secondary sources he relies upon include Corpus Juris Secundum ("C.J.S."), American Jurisprudence, and Bouvier's Law Dictionary. (Appellant's Br. 10-12). However, the statements in these sources upon which Bartee

relies are not based upon Virginia law and do not cite to Virginia law.[2] Moreover, the section of C.J.S. quoted by Bartee refers only to the doctrine of survivorship "in the case of executors," while the section of American Jurisprudence quoted by Bartee specifically limits the doctrine of survivorship by preceding the statement of the general rule with the phrase "[i]n the absence of a statute." (Appellant's Br. 10-12). As discussed in detail below, Virginia has a statute that expressly limits the doctrine of survivorship to executors and administrators with the will attached. *See* Virginia Code § 64.2-517. Likewise, Bartee's reliance upon case law from Kentucky, Georgia, Maryland, and Ohio is misplaced because these cases

[2] Even statements found in secondary sources which purport to be based upon Virginia law are unsupported by either Virginia case law or statutory authority. While not cited by Bartee, Bryson on Virginia Civil Procedure states: "Co-executors and co-administrators must all join or be joined as co-plaintiffs or co-defendants, but, if one should die, the action survives in or against the remaining representatives." William H. Bryson, Bryson on Virginia Civil Procedure § 5.02[3] (4th Ed. 2005 & Supp. 2013). In support of this statement, Bryson cites *Addison* and an older secondary source, Burks Pleading and Practice. Burks contains the same statement as Bryson and cites *Lawson v. Lawson*, 57 Va. (16 Gratt.) 230 (1861). Martin P. Burks, Pleading and Practice §61 (4th ed., Boyd, 1952). However, this Court did not address or even mention survivorship among co-executors or co-administrators in *Lawson*. Rather, in *Lawson*, an executor sued his testator's wife for bank notes which belonged to the testator. *Lawson*, 57 Va. at 231-32. The court determined that the executor could sue for the money in either his own name or as executor because the cause of action arose after the death of the testator. *Id.* at 234.

are not informed by and do not reflect Virginia law regarding survivorship among administrators. (Appellant's Br. 12-13).

Contrary to Bartee's assertions, the terms "executor" and "administrator" are not interchangeable and Virginia courts have not "blurred the distinction between executors and administrators." (Appellant's Br. 12-13). On the contrary, Virginia law has long recognized differences between an "executor" and an "administrator." For example, in *Hofheimer,* this Court referenced the "doctrine of survivorship <u>in the case of executors</u>," and distinguished an executor from an administrator. *Hofheimer*, 154 Va. at 898, 156 S.E. at 582 (emphasis added). This Court noted that "an executor is one to whom another man commits by his last will the execution of that will and testament," while "an administrator is a person authorized to manage and distribute the estate of an intestate, or of a testator who has no executor." *Id.*

Chapter Five of Virginia Code section 65.2 further illustrates that executors and administrators are treated distinctly under Virginia law. For example, the oath of an executor or administrator with the will annexed is contained in Virginia Code § 64.2-501, while the oath of an administrator is separately described in Virginia Code § 64.2-503.

Thus, as demonstrated by the Virginia cases cited by Bartee in his brief, the "doctrine of survivorship" is limited under Virginia law solely to cases where a decedent, through his or her will, bestows powers upon multiple executors, without expressly requiring a joint exercise of those powers. Otherwise, the Court in *Hofheimer* would not have distinguished between executors and administrators and, more importantly, would not have limited the "doctrine of survivorship" to "the case of executors," whose powers are typically set out in a written document.

2. The plain language of Virginia Code § 64.2-517 manifests the legislature's intent that the "doctrine of survivorship" be limited to executors.

In his brief, Bartee relies upon notes following section 3-718 of the Uniform Probate Code to support his argument that the doctrine of survivorship applies to co-administrators. (Appellant's Br. 14). Notably, this section of the Uniform Probate Code has not been adopted in Virginia. Instead, survivorship among personal representatives is addressed by Virginia Code § 64.2-517, a statute Bartee completely failed to mention or address in his brief. This statute codified the doctrine of survivorship among executors that was recognized in *Hofheimer* and is titled "Exercise of discretionary powers by surviving executors or administrators with the will annexed." It provides:

> A. When discretionary powers are conferred upon the executors under any will and some, but not all, of the executors die, resign, or become incapable of acting, the executors or executor remaining shall continue to exercise the discretionary powers conferred by the will, unless the will expressly provides that the discretionary powers cannot be exercised by fewer than all of the original executors named in the will.
>
> B. When discretionary powers are conferred upon the executors under any will and all of the executors or the sole executor if only one is named in the will dies, resigns, or becomes incapable of acting, the administrator with the will annexed appointed by the court shall exercise the discretionary powers conferred by the will upon the original executors or executor, unless the will expressly provides that the discretionary powers can only be exercised by the executors or executor named in the will.

Virginia Code § 64.2-517 (emphasis added).

When interpreting a statute, the Court looks "to the plain meaning of the statutory language…and presume[s] that the legislature chose, with care, the words it used when it enacted the relevant statute." *Addison*, 281 Va. at 208, 704 S.E.2d at 404 (internal citations and quotations omitted). The plain, unambiguous language of § 64.2-517 reflects the legislature's intention that the doctrine of survivorship apply among executors and, where all executors have been removed from office, among administrators with the will annexed.

The use of the terms "executors under any will" and "administrator with the will annexed" in § 64.2-517 stands in contrast to the

terminology used in statutes in Virginia Code § 64.2 which apply to both executors and administrators. When the legislature intends a statute to apply with equal force to executors and administrators, it uses the term "personal representative." *See, e.g.*, Virginia Code § 64.2-514 "Duty of every personal representative"; § 64.2-518 "When personal representative may renew obligation of decedent"; and § 64.2-522 "Personal representatives to pay over sale proceeds and rents to persons entitled." Thus, if the legislature had intended the doctrine of survivorship to apply to both executors and administrators, it would have used the inclusive term "personal representatives," as it did in other code sections which apply to both executors and administrators. *Goble v. Commonwealth*, 57 Va. App. 137, 147, 698 S.E.2d 931, 936 (Ct. App. 2010) (quoting *Marsh v. Commonwealth*, 32 Va. App. 669, 677, 530 S.E.2d 425, 430 (Ct. App. 2000)) ("When attempting to define terms in one part of the Code, courts should read a statute with a view toward harmonizing it with other statutes. Because the Code of Virginia is one body of law, other Code sections using the same phraseology may be consulted in determining the meaning of a statute."). However, the legislature used the limited terms "executor" and "administrator with the will attached" in Virginia Code § 64.2-517 to reflect its intention to limit the doctrine of survivorship to those offices specifically

named in the statute. Based upon the plain language of the statute, the "doctrine of survivorship" does not apply to administrators, including those appointed under Virginia Code § 64.2-454 solely for the purpose of gaining standing to file a lawsuit.

3. The plain language of the order appointing Bartee and Wiley Begley as co-administrators reflects that no "right of survivorship" was intended or created.

Bartee has argued that the trial court "erred to the extent it held that general law relating to powers of appointment rather than the doctrine of survivorship applicable to administrators applied." (Appellant's Br. 16). First, as established above, the "doctrine of survivorship" does not apply to administrators in Virginia. Second, there is no indication that the trial court relied upon the "general law relating to powers of appointment" in reaching its decision. The trial court did not mention powers of appointment in its June 22, 2012 letter opinion, in its March 19, 2013 Order denying Bartee's Motion to Reconsider, or in its May 16, 2013 Order dismissing Bartee's Amended Complaint.

Further, any reference made by Dr. Vitocruz in memoranda to "the survivorship rules for general powers of appointment" was made to illustrate the rules of construction that courts have used to determine whether a right of survivorship was intended. For example, in *Dillard v.*

Dillard, 97 Va. 434, 34 S.E. 60 (1899), the court held that a power which was conferred upon three individuals by name, without words of survivorship, could only be conjointly exercised by all three individuals and terminated upon the death of one of the individuals. *Id.* at 441, 34 S.E. at 63. *See also Wallace v. Wallace*, 168 Va. 216, 228, 190 S.E. 293, 298 (1937) ("[T]he right of survivorship exists whenever it is manifest that a grantor or testator so desired and makes plain his purpose." (emphasis added)).

Even in the case of executors, to whom the right of survivorship applies by statute, the surviving executors may not exercise a power that "the will expressly provides…cannot be exercised by fewer than all of the original executors named in the will." Va. Code 64.2-517.

Here, Bartee and Wiley Begley petitioned the Clerk of the Circuit Court of Wise County and City of Norton for appointment as co-administrators of the estate of Tonia Michelle Begley, pursuant to Va. Code § 64.2-454. On January 29, 2010, the Clerk of the Circuit Court of Wise County and City of Norton, acting through his Deputy Clerk, qualified Bartee and Wiley Begley co-administrators. The Clerk did not provide for a "right of survivorship." He identified Bartee and Wiley Begley by name and conferred upon them the power to file this action. Standing to file a

wrongful death action was thus given to them jointly, with no provision or manifest intention that one could act alone should the other die. In the absence of such provision, the Court should decline to read a right of survivorship into the appointment. *See Antisdel*, 279 Va. at 50, 688 S.E.2d at 167 (declining to retroactively expand an administrator's authority to include the authority to bring survival actions where the appointment of the administrator was expressly limited to the initiation of a wrongful death action). Since the qualification of Wiley Begley and Bartee by the Clerk assigned standing to them jointly without any provision for a right of survivorship and the law of Virginia does not provide for survivorship among administrators, the trial court properly held that Bartee, as one of two co-administrators, could not maintain and prosecute this action.

D. BARTEE FAILED TO TAKE ADVANTAGE OF NUMEROUS OPPORTUNITIES TO CURE HIS LACK OF STANDING.

In spite of having many opportunities to cure his lack of standing, both before and after filing this action, Bartee, for reasons that are best known only to him, repeatedly refused to take the necessary curative steps.

First, Wiley Begley died before this action was filed. Upon Wiley Begley's death, the office of co-administrator of the estate of Tonia

Begley was vacant and the court or clerk had jurisdiction and authority to appoint a substitute co-administrator to the vacant office. *Bolling v. D'amato*, 259 Va. 299, 304, 526 S.E.2d 257, 259 (2000) (quoting *Beavers v. Beavers*, 185 Va. 418, 423, 39 S.E.2d 288, 290 (1946)) ("[W]hen an administrator [has] been appointed and qualified, 'the power of the court or clerk is exhausted, and no further appointment can be made <u>until a vacancy occurs in the office in some way recognized by law</u>.'" (emphasis added)). Accordingly, Bartee could have had a co-administrator appointed prior to filing the complaint. Bartee and his co-administrator would then have had standing to maintain this action.

Alternatively, prior to filing suit, Bartee could have had the appointment of Bartee and Wiley Begley as co-administrators revoked and the court or clerk could have appointed Bartee as sole administrator. *Bolling*, 259 Va. at 304, 526 S.E.2d at 259 ("To obtain joint administration in this case, Betty Chloe Bolling's appointment should first have been revoked and then the son and widow could have been appointed as joint administrators.") However, Bartee did not take either of these curative measures prior to filing this action.

Even so, Bartee had a second opportunity to cure his lack of standing after the trial court's June 22, 2012 decision. On that date, the

trial court held that Bartee lacked standing to maintain the action alone but granted Bartee leave to amend. However, rather than taking advantage of the opportunity to have a co-administrator appointed and filing an amended complaint in the name of both co-administrators, Bartee filed a Motion to Reconsider in which he insisted that he had standing to maintain the action alone.

On February 21, 2013, the trial court denied Bartee's Motion to Reconsider, but again granted Bartee leave to amend. Thus, Bartee had a third opportunity to amend his complaint and cure his lack of standing. However, Bartee again failed to take the necessary steps to cure his lack of standing. Instead, Bartee filed an Amended Complaint on March 18, 2013, in which he asked that the trial court deem his initial qualification on January 29, 2010 (when Bartee and Begley qualified as co-administrators) to be a proper qualification or to permit a present qualification to relate back, *nunc pro tunc*, to the initial qualification. Because Bartee's Amended Complaint did not add the necessary party, the trial court granted Dr. Vitocruz's Motion to Dismiss on May 16, 2013, over one year and four months after Bartee had filed his initial Complaint in this action.

This is not a case in which the trial court "rushed to judgment." The trial court held four hearings on the issue of Bartee's standing to

maintain this action. In addition, the parties submitted no fewer than seven briefs to the trial court regarding this issue. The trial court twice granted Bartee leave to amend in order to cure his lack of standing. On either of these occasions Bartee could easily have had the court or clerk appoint a substitute co-administrator to the vacant office created upon Wiley Begley's death. Pursuant to Virginia Code § 8.01-5 and the court's ruling in *Addison*, this co-administrator could have been added as a party plaintiff and the case could have proceeded. *Addison*, 281 Va. at 210, 704 S.E.2d at 405 ("The plain language of [Virginia Code § 8.01-5] would permit the joinder of [a co-administrator] as an additional party plaintiff at any time as the ends of justice may require."). Bartee has even acknowledged that the trial court suggested this very procedure. (Appellant's Br. 21). However, Bartee repeatedly refused to take these simple steps. Instead, he relied solely upon the argument that he reiterates here, that the "doctrine of survivorship" applies to administrators, even though this contention is completely unsupported by Virginia law.

Bartee's adamant refusal to correct his lack of standing may be explained by his apparent confusion regarding the applicable Virginia law, as reflected in the arguments made in his brief. For example, Bartee has asserted that the court would have been "forcing a joint administration" by

appointing a substitute co-administrator. (Appellant's Br. 21). However, in his next sentence he acknowledges that a joint administration was created "voluntarily" by Bartee and Wiley Begley when they applied as co-administrators. (Appellant's Br. 21).

Bartee further illustrates his misunderstanding of applicable Virginia law by citing *Johnston Memorial Hospital v. Bazemore*, 277 Va. 308, 672 S.E.2d 858 (2009) for the proposition that "an amendment to add a representative after suit is filed does not relate back and is a nullity." (Appellant's Br. 22). In *Bazemore*, a plaintiff filed a wrongful death action as the personal representative of the decedent's estate, even though she had not qualified as the personal representative of the estate. *Id.* at 310, 672 S.E.2d at 859. She then sought to nonsuit the action, but this Court held that the action was a nullity because the named plaintiff was not a legal entity at the time the action was filed. *Id.* at 313, 672 S.E.2d at 860. Thus, "no valid action was pending that could be nonsuited." *Id.*

Unlike *Bazemore*, there was no need in this case for an amendment to add a representative to "relate back." Bartee filed a wrongful death action that was not a nullity or without legal effect. *See Addison*, 281 Va. at 209, 704 S.E.2d at 404-05 (specifically rejecting the argument that an action by only one of two co-administrators is a nullity).

However, this Court in *Addison* explained that a single co-administrator may not maintain a wrongful death action. *Id.* at 209, 704 S.E.2d at 405. Thus, for an action filed by a single co-administrator to proceed, the absent co-administrator must be joined as a necessary party. *Id.* This Court also explained that the initial filing of a wrongful death claim by one co-administrator without his fellow co-administrator tolls the statute of limitations for that claim. *Id.* at 211, 704 S.E.2d at 406 (citing Code § 8.01-244(B)). Thus, had Bartee simply taken the steps described above, the addition of the new co-administrator to the amended complaint would not have been barred by the statute of limitations because, as explained by this Court in *Addison*, Bartee's initial filing tolled the statute of limitations.

Dr. Vitocruz never took the position that the addition of a substituted co-administrator as a necessary co-plaintiff would have been barred by the statute of limitations and this issue was never considered by the trial court because Bartee refused to have a substitute co-administrator appointed in the first instance. Regardless of Bartee's reasons for failing to add a co-administrator, Bartee repeatedly refused to cure his lack of standing to maintain the wrongful death action and the trial court properly granted Dr. Vitocruz's Motion to Dismiss.

IV. CONCLUSION

The trial court's decision that Bartee lacked standing to maintain this action is supported by Virginia case law and statutory authority. Despite being given multiple opportunities, Bartee refused to add a co-administrator as co-plaintiff and cure his lack of standing. Thus, the trial court properly granted Dr. Vitocruz's Motion to Dismiss and its decision should be affirmed.

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CERTIFICATE OF SERVICE

I hereby certify that I have complied with Rule 5:26 and, pursuant to the Rule, fifteen (15) copies of this Brief have been hand-delivered to the Clerk of the Supreme Court, along with one electronic copy in PDF format to be filed by email to scvbriefs@courts.state.va.us and served on opposing counsel. In addition, three (3) copies of this Brief have been mailed, via regular U.S. Mail, postage pre-paid, to Gary Gilliam, Esq., Gilliam Law Office, P.C., P.O. Box 1129, Wise, Virginia 24293, and Chad Wilson, Esq., The Law Office of Chad Wilson, PLC, P.O. Box 1186, Wise, Virginia 24293, counsel for appellant, this 19th day of February, 2014.

/s/ Wm. W. Eskridge
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