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 APPELLANT

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ASSIGNMENTS OF ERROR

I. THE COURT ERRED IN FINDING THAT THE DOCTRINE OF SURVIVORSHIP DID NOT APPLY TO ADMINISTRATORS AND THAT THE SURVIVING ADMINISTRATOR THEREFORE LACKED STANDING AS "THE PERSONAL REPRESENTATIVE" OF TONIA BEGLEY UNDER SECTIONS 8.01-50 and 8.01-244. (Letter Opinion, *Bartee v. Vitocruz,* No. CL11-1215 (Wise County Circuit Ct. June 22, 2012); Order, *Bartee v. Vitocruz,* No. CL11-1215 (Wise County Circuit Ct. April 15, 2013); Final Order, *Bartee v. Vitocruz,* No. CL11-1215 (Wise County Circuit Ct. May 16, 2013); Statement of Facts at ¶¶ 10, 19, *Bartee v. Vitocruz,* No. CL11-1215 (Wise County Circuit Ct. June 22, 2012)

II. 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 AND THAT THEREFORE ROBERT BARTEE LACKED STANDING UNDER SECTIONS 8.01-50 AND 8.01-244.
(Letter Opinion, *Bartee v. Vitocruz,* No. CL11-1215 (Wise County Circuit Ct. June 22, 2012); Order, *Bartee v. Vitocruz,* No. CL11-1215 (Wise County Circuit Ct. April 15, 2013); Final Order, *Bartee v. Vitocruz,* No. CL11-1215 (Wise County Circuit Ct. May 16, 2013); Statement of Facts at ¶¶ 10, 19, *Bartee v. Vitocruz,* No. CL11-1215 (Wise County Circuit Ct. June 22, 2012)

IN THE

SUPREME COURT OF VIRGINIA

ROBERT BARTEE, Administrator
of the Estate of Tonia Michelle Begley, deceased

Appellant,

v. Record Number: 131283

MARISSA G. VITOCRUZ, M.D., *Appellee.*

BRIEF OF APPELLANT

Statement of the Case

On January 29, 2010, Robert Bartee and Wiley Begley qualified as co-administrators of the estate of Tonia Michelle Begley. Joint Appendix, Page 37. On August 31, 2011, Wiley Begley died. Joint Appendix, Page 37.

On December 22, 2011 Robert Bartee, purportedly as the sole surviving administrator of the estate of Tonia Michelle Begley, filed this action. Joint Appendix, Page 37. On January 25, 2012, Dr. Vitocruz filed a Motion to Dismiss on the grounds that only one of the co-administrators lacks standing to file an action without the other co-administrator joining in the case. Joint Appendix, Page 37. On February 17, 2012 an order was

entered non-suiting the co-defendants, Paige Ellis, R.N. and Wellmont Health System, from the action. Joint Appendix, Page 37.

On March 15, 2012, the Court heard the parties' arguments regarding Dr. Vitocruz's Motion to Dismiss. The Court gave Mr. Bartee until April 15, 2012 to file his brief, and Dr. Vitocruz until April 19, 2012, to file a response. The Court scheduled a further hearing for April 25, 2012. Joint Appendix, Page 38.

A second hearing on the Motion to Dismiss was held on May 9, 2012. It took the Mr. Bartee's standing argument under advisement. Joint Appendix, Page 38.

On June 22, 2012, the Court issued an opinion letter, finding that under Section 8.01-244 Mr. Bartee did not have standing because the phrase "the personal representative" in section 8.01-244 applied only to both appointed administrator's acting together. Since one of the administrators was deceased, and not named in the complaint, there was no standing. The Court granted Mr. Bartee leave to amend and took plaintiff's Motion to Dismiss and Abate under advisement. Joint Appendix, Page 39.

On July 24, 2012, Mr. Bartee filed a Motion to Reconsider. Mr. Bartee submitted his Motion in Support on July 26, 2012, and Dr. Vitocruz submitted her Memorandum in Opposition on September 5, 2012, arguing that the doctrine of survivorship does not apply to co-administrators. Joint Appendix, Page 38. On January 15, 2013, Mr. Bartee filed an Additional Memorandum in Support of Plaintiff's Motion to Reconsider, arguing that the doctrine of survivorship does apply to co-administrators. Joint Appendix, Page 39.

On March 18, 2013, Mr. Bartee, as Administrator, filed an Amended Complaint, asking that his initial qualification be deemed a proper qualification and related back to the initial qualification, due to the allegations in the Amended Complaint. Joint Appendix, Page 39. The Complaint alleged that Dr. Vitocruz was negligent in failing to admit Tonia Begley for observation, in releasing her with inadequate instructions, and in failing to take action upon her elevated blood pressure at discharge. Joint Appendix, Page 21

On March 20, 2013, Dr. Vitocruz filed a Motion to Dismiss the Amended Complaint for lack of standing. Joint Appendix, Page 39. On May 16, 2013, the Court held a hearing on the Motion to Dismiss. The Court granted Dr. Vitocruz' Motion to Dismiss, incorporating by reference its letter opinion of June 22, 2012. Joint Appendix, Page 39.

On June 2, 2013, Mr. Bartee, as Administrator, filed a timely Notice of Appeal. Joint Appendix, Page 35.

Statement of Facts

On or about January 12, 2010, decedent Tonia Michelle Begley presented herself to the Emergency Department at Welmont Lonesome Pine Hospital. Joint Appendix, Page 20. She reported chest pain, anxiety and an elevated blood pressure of 158/115. She had multiple risk factors for underlying heart disease. Joint Appendix, Page 20. She was evaluated by defendant, Doctor Marissa Vitocruz and discharged. Joint Appendix, Page 20. She was treated with the medications Percocet and Atendol. Joint Appendix, Page 21. She was given instructions regarding chest wall pain, but no instructions were

given for cardiac pain. Joint Appendix, Page 21. She departed the Emergency Department at 10:05 pm that night. Amended Complaint at ¶ 17. Returning home, she took a shower. She was found dead in the shower at 4 am the next morning, January 13, 2010, as the result of an adverse cardiac event. Joint Appendix, Page 21.

Argument and Citation of Authority

I. The Court Erred In Finding That The Doctrine Of Survivorship Did Not Apply To Administrators And That The Surviving Administrator Therefore Lacked Standing As "The Personal Representative" Of Tonia Begley Under Sections 8.01-50 and 8.01-244.

"A demurrer admits to the truth of all properly pleaded material facts. 'All reasonable factual inferences fairly and justly drawn from the facts alleged must be considered in aid of the pleading. However, a demurrer does not admit to the correctness of the pleader's conclusions of law." Bell v. Saunders, 278 Va. 49, 53, 677 S.E.2d 39, 41 (2009). A determination of law is reviewed *de novo*. Rusty's Welding Service v. Gibson, 29 Va.App. 119, 127, 510 S.E.2d 255, 259 (1998) (*res judicata* is determination of law reviewed de novo). An appeal presents purely legal questions of statutory construction is also reviewed *de novo*. Addison v. Jurgelsky, 281 Va. 205, 208, 704 S.E.2d 402, 404 (2011).

Section 8.01-50 of the Virginia Code requires a wrongful death action to be brought by "the personal representative" of a decedent, providing, in part:

> B. Every such action under this section shall be brought by and in the name of ***the personal representative*** of such deceased person within the time limits specified in §8.01-244.

Va. Code Ann. § 8.01-50(B) (2011) (emphasis added)

Section 8.01-244 of the Virginia Code contains similar language referring to "the personal representative," providing, in part:

> Every action under §8.01-50 shall be brought by ***the personal representative*** of the decedent within two years after the death of the injured person.... if a plaintiff suffers a voluntary nonsuit pursuant to §8.01-380, the nonsuit shall not be deemed an abatement nor a dismissal pursuant to this subsection, and the provisions of subdivision E 3 of §8.01-229 shall apply to such a nonsuited action.

Va Code Ann. § 8.01-244(B) (2011) (emphasis added).

Statutes in derogation of the common law are strictly construed. Meador v. Virginia Brith Related Neuro-logical Injury Comp. Program, 44 Va. App. 149, 153, 604 S.E.2d 88, 90 (2004). Statutes in derogation of the common law shall "not be enlarged by construction beyond their express terms." Meador, 44 Va. App. at 153, 604 S.E.2d at 90. Courts presume 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 404.

In Addison, for example, one of two living executors filed a wrongful death action. Interpreting section 8.01-244, the court found that the two living executors must file the action together. It noted that if the General Assembly had intended to give each personal representative the power to bring a wrongful death action, it would have used the phrase "a personal representative" rather than "the personal representative" in 8.01-244(B). Id. at 208, 704 S.E.2d at 404.

In ruling, the Court in Addison preserved the common law rule in regards to joint action by living co-executors. See Bouvier's Law Dictionary, 47 (Student ed. 1928) ("Co-administrators, in general, must be joined in suing and being sued.") However, it is also the common law that where one of several co-executors dies, the remaining executors can continue to act as the executor of the estate. The doctrine of survival has long been recognized. In Davis v. Christian, 56 Va. (15 Gratt.) 11 (1859), for example, the Court stated:

> "[the] power of the executor did not cease at the death of Abby Colton, but then devolved on the surviving executor. It is laid down.... as a principle of the common law, that where a power is given to "executors" and the will does not point to a joint exercise of it, ***even a single surviving executor may execute it.*** The power being given to the executors *ratione officii*, as the office survives, so may the power... Hargrave has maintained that where the office survives, so by parity of reason, so should the power....

Id. at 38. See Shepherd v. Darling, 120 Va. 586, 91 S.E.2d 737 (1918) (surviving executor retained power to sell property without appealing to court). See also Hofheimer v. Seaboard Citizens' Nat'l Bank, 154 Va. 896, 156 S.E. 581 (1931); 8A M.J *Executors and Administrators* § 11 (2008).

Survivorship among executors is recognized throughout the country. Section 1174 of C.J.S. on *Executors and Administrators* states:

> The doctrine of survivorship obtains in the case of executors, even though one of several executors is prevented from qualifying. Where the administration of an estate is granted to several and one dies, the entire authority and control reside in the survivors...

34 C.J.S. *Executors and Administrators* § 1174 (2009) (*citing* Ballard v Zachary, 187 S.E. 139 (1936))

The doctrine of survivorship not only applies to executors, it applies to administrators of an estate as well. As stated in section 949 of American Jurisprudence on *Executors and Administrators*:

> In the absence of statute, where the authority of one ***coadministrator or executor*** terminates because of his or her death or for any other reason, all powers of the original group are retained by the one or more remaining, except that a power the will has conferred on a particular executor, by name, may not be exercised by a successor. Where the will confers a power on the executors or their successors, the surviving executors may execute the power.

31 Am.Jur.2d *Executors and Administrators* § 949 (2012)(emphasis added).

Similarly, Bouvier's Law Dictionary provides, under its definition for "Administrator" states, in part:

> Co-administrators, in general, must be joined in suing and being sued; but, like executors, the acts of each, in the delivery, gift, sale, payment, possession or release of the intestate's goods are the acts of all, for they have joint powers. If one is removed by death, or otherwise, ***the whole authority is invested in the survivors....***

Bouvier's Law Dictionary, 47 (Student ed. 1928) (emphasis added). See also Bouvier's Law Dictionary, 1144 (8th Ed. 1914)(using identical language).

Likewise, in Smith v. Smith, 173 S.W.2d 813 (Ky. 1943), a case involving the death of a co-administrator, the Court stated:

> The chancellor adjudged that the bank as the sole remaining administrator had the authority to make distributions, but it was adjudged that the heirs were not entitled to a distribution of the real estate pending the appeal and that the administrator should distribute only one-half of the personal property pending the appeal. The rule is that where there is joint administration of an estate and one of the personal representatives dies, or is removed, ***the entire authority vests in the surviving, or remaining administrator.***

Id. at 816. (emphasis added). The Court held that no disbursements should have been made pending the appeal. Id.

The doctrine of survivorship has been applied for so long to both executors and administrators that courts refer to them interchangeably when discussing the doctrine. In Ballard v. Zachary, 187 S.E. 139 (Ga. Ct. App 1936), for example, the Court stated "it is only an administrator or an executor who stands in relation to the court of ordinary [as] an officer of that

court . . . On the death of a coexecutor, the right to administer the estate automatically becomes vested in the surviving executor." Id. at 140.

Again, in Beall v. Hillary, 1 Md. 186 (1851), the Court, in a case involving a law suit between executors, stated: "executors, however numerous, are considered in law as one representative; and each has full power over the estate of the decedent." Id. at 195. The Court went on to discuss a case out of Ohio, Stiver v Stiver, in which a surviving ***co-administrator*** sought to sue the heirs of the deceased co-administrator. The Court stated: "under such circumstances, the surviving administrator would have the right to claim the assets from the representatives of the deceased administrator, may perhaps be true. ***On the decease of one of two executors or administrators***, the trust is vested in the survivor, who then has a right to the possession and disbursement of the assets." Id. (emphasis added) The Court went on to hold that one executor could not sue another.

While courts may have blurred the distinction between executors and administrators in applying the doctrine of

survivorship, the reason for applying the doctrine to executors and administrators differs. The notes following section 3-718 of the Uniform Probate Code states:

> This section applies where one of two or more co-representatives dies, becomes disabled or is removed. In regard to co-executors, it is based on the assumption that the defendant would not consider the powers of his fiduciaries to be personal, or to be suspended if one or more could not function. In regard to co-administrators in intestacy, it is based on the idea that the reason for appointing more than one ceases on the disability of either of them.

Unif. Probate Code § 3-718 note (1969) (purpose for rule).

In this case, the Trial Court erred in holding that the words "the personal representative" in Virginia Code sections 8.01-50 and 8.01-244(B) required all co-administrators to sue, and that therefore, the remaining surviving co-administrator could not sue. First, the ruling was in derogation of the common law of survivorship. Unlike Addison, which upheld the common law and required all living executors to sue, the Court in this case violated a long-standing principle of common law. This case is nothing like Addison. The phrase "the personal representative" is

quite simply not a clear enough statement of legislative intent to justify the abrogation of a common law rule more than a century old.

Second, the phrase "the personal representative" clearly evinces an intent to include suits by surviving personal representatives. As noted in Beall, "executors, no matter how numerous, are considered in law as one representative; and each has full power over the estate of the decedent." Beall, 1 Md. at 195. When one co-administrator dies, the full power over the estate remains in the surviving administrator. The surviving administrator or administrators remain "the personal representative" of decedent.

The trial court's fundamental mistake in its interpretation of the phrase "the personal representative" lies in the assumption that the office of administrator is ***personal*** to the administrator. This is not the law of Virginia. An executor or administrator is an officer of the court; he is doing more than fulfilling the wishes of the decedent. As stated in Davis, the power is given to executors *ratione*

officii , which means "by reason of the office"– when a co-executor dies, his office survives and his power survives whole and intact in other co-executors. If an executor is an officer of the court, deriving his power *ratione officii*, surely an administrator is even more an officer of the court. As the trial court erred and it should be reversed.

II. The 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 And That Therefore Robert Bartee Lacked Standing Under Section 8.01-244.

In regards to general powers of appointment, "where a naked power is conferred upon two or more individuals jointly, it cannot be executed by the survivor, even though the title of an office is added merely for description purposes, unless the instrument creating the power provides it may be executed by the donees or the survivor." 62 Am.Jur.2d *Powers of Appointment and Alienation* § 88 (2012). The title of *Powers of Alienation* constantly and frequently refer to *Executors and Administrators* for rules specific to Executors and Administrators. See e.g. 62 Am.Jur.2d *Powers of Appointment and Alienation* § 87 n.2, 3

(2012) (Joint donees). The 1990 and 1972 editions of American Jurisprudence contain the identical quote in the corresponding survivorship sections of *Powers of Appointment* and refer to the survivorship section of *Executors and Administrators.* 62 Am.Jur.2d *Powers of Appointment and Alienation* § 102 n. 55 (1990) ("As to whether a surviving executor or administrator can exercise powers given to two or more executors or administrators, see 31 Am.Jur.2d *Executors and Administrators* §§ 455, 628"); 62 Am.Jur.2d *Powers of Appointment and Alienation* § 33 n. 10 (1972) ("As to whether a surviving executor or administrator can exercise powers given to two or more executors or administrators, see 31 Am.Jur.2d *Executors and Administrators* §§ 455, 628"). It is the rule around the country that the doctrine of survivorship is *different* for an administrator or executor than someone exercising a general power of appointment. Respondent's reliance upon the survivorship rules for general powers of appointment is misplaced.

The reason for this difference is obvious. The authority of an executor arises out of the office, whereas with ordinary powers it does not. See Davis 56 Va. (15 Gratt.) at 38. See Unif. Probate Code § 3-718 note (1969)[1] Both administrators and executors are qualified and appointed by the court and are officers of the court, subject to the direct supervision of the court. Under such a situation, the rules of survivorship would necessarily be different.

Furthermore, with an ordinary power of appointment, the grantor of the power is usually still living. It is assumed that if a co-trustee or other person exercising the power dies, the grantor of the power would want the right to name someone else. However, in the case of an executor, the testator is dead. It is assumed that the decedent would want the survivor to be his executor rather than another family member or worse, a complete stranger appointed by the court. In the case of an

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[1] "In regard to co-executors, it is based on the assumption that the defendant would not consider the powers of his fiduciaries to be personal, or to be suspended if one or more could not function. In regard to co-administrators in intestacy, it is based on the idea that the reason for appointing more than one ceases on the disability of either of them." Unif. Probate Code § 3-718 note (1969)

administrator, it is assumed that the original reason for appointing more than one administrator disappears with the death of a co-administrator. Unif. Probate Code § 3-718 note (1969)[2]

In other areas besides survivorship, of course, the Court has borrowed some of the general principles of law relating to general powers of appointment and applied them to executors and administrators. For example, in cases involving the issue of who can use real property during the administration of an estate, the heirs or the administrator, our courts have found that where there is only a "naked" power of sale in an administrator or executor, the heirs retain the right to use the property until its sale. See Yamada v. McLeod, 243 Va. 426, 416 S.E.2d 222 (1992) (upon execution of naked power of sale by executor, title is divested from devisees); Kellow v. Bumgardner, 196 Va. 247, 83 S.E.2d 391 (1954) (heirs could not maintain property because executor had more than a naked interest); Stark v. City of Norfolk, 183 Va. 282, 32 S.E.2d 59 (1944) (property taxes

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[2] See footnote 1.

assessed against estate where executrix given more than naked power over property). The distinction between naked powers and powers coupled with an interest has been applied to trusts created under a will. See Kellow v. Bumgardner, 196 Va. 247, 83 S.E.2d 391 (1954) (discussing Mills v. Mills, 28 Gratt. (69 Va.) 442) There are no cases in Virginia holding that the doctrine of survivorship in regards to general powers of appointment supplants the rule of survivorship applicable specifically to administrators and executors. Such a holding would make no sense in light of the reasons for the doctrine of survivorship in the case of administrators and executors.

Furthermore, even if this Court were to find that the general law of survivorship for powers of appointment did supplant the law specific to administrators and executors, the powers granted an administrator to prosecute a wrongful death action encompass more than mere naked powers. The administrator retains control over the lawsuit and makes decisions concerning the lawsuit. See Floyd v. Miller, 190 Va. 303, 57 S.E.2d 114 (1950) (cause of action is a vested property right). The proceeds of any

settlement or verdict in a wrongful death action come under the control of the administrator or executor until he makes a disbursement, unless the plaintiff is an infant. He has an "interest" in the property and therefore his power is not a "naked" power.

There is no statute directing what should occur should a co-administrator be disqualified or become deceased. The trial court suggested that an amendment appointing or replacing an administrator may cure the problem, but the court does not require a joint administration; it just requires that a person qualifies as an administrator. Beavers v. Beavers, 185 Va. 418; 319 S.E. 2d 288 (1946) states that "the Court never forces a joint administration, and for an obvious reason – because it is necessary for the administrators to join in every act – there might be a complete contrariety of action, and it would be in the power of one of them to defeat the whole administration." The Appellant and Wiley Begley voluntarily applied as co-administrators. Due to the death of Wiley Begley, he was unable

to join in every act of administration; therefore, the powers of administration fell to the Appellant to act on behalf of the estate.

Further, the law is clear that an amendment to add a representative after suit is filed does not relate back and is a nullity. Johnston Memorial Hospital v. Bazemore, 227 Va.308, 672 S.E.2d 858, ____ (2009).

To the extent that the trial court, in any way, relied upon the doctrine of survivorship applicable to general powers of appointment, it erred. This Court should reverse the trial court.

III. This Case Would Cause The Court To Determine Issues of First Impression.

This case presents several novel issues of first impression. First, it would cause the Court to reaffirm and clarify its position on survivorship. This Court has clearly stated that the law of survivorship applies to executors. While the common law in other states is that survivorship applies to administrators as well, this Court has never formally announced its position on this issue.

Second, this case would cause the Court to clarify sections 8.01-50 and 8.01-244(B) of the Virginia Code and its holding in Addison. In Addison the Court reaffirmed the common law rule

regarding joint action by co-representatives, and held that the phrase "the personal representative" as opposed to "a personal representative" required all representatives to sue jointly. Addison did not address the issue of whether the phrase "the personal representative" abrogates the common law of survivorship when one co-representative dies.

If the common law rule is that the sole surviving administrator may act to administer the estate and this court rules instead that, pursuant to the wrongful death statute, any deceased co-administrator must be replaced before the bringing of a wrongful death action, there is no rule or statutory scheme which provides for such replacement. It would appear that **if** the legislature when it amended the wrongful death statute wished to do away with the common law rule of survivorship for administrators, it would have at that time set up a statutory mechanism or scheme for replacing the deceased administrator.

Considering Addison, this Court's interpretation of the word "the" in the wrongful death statute is consistent with the common law rule of survivorship. For instance, if one of

two administrators dies, then the sole surviving administrator is "the" administrator. Of course, if there are three administrators -- for instance, a bank and two brothers -- and one brother dies, then the other brother and the bank must be plaintiffs in a wrongful death action under Addison. Any other interpretation of the word "the" in the context of administrators for wrongful death action would be in abrogation of the common law and make it appear that the legislature did half its job.

It may be presumed that where the common law has not been specifically supplanted, then the common law remains in compliment to statutory law. For instance, in 2010, this Court ruled that the provisions of Code §46.2-1095(C) and Code §46.2-1098 precluding claims of negligence *per se* in failure to comply with child seat restraint laws while transporting a minor in a vehicle, do not abrogate a common law action for negligence. In Evans v. Evans, 280 Va. 76, 695 S.E.2d 173 (2010), the Court stated:

> "However, the question remains whether the General Assembly intended for Code §§46.2-1095 and 46.2-

> 1098 to abrogate a cause of action based upon common law negligence when the facts involve the failure to secure a child in a child restrain devise. Because "[a] statutory change in the common law is limited to that which is expressly stated in the statute or necessarily implied by its language," *(cite omitted),* we hold that the legislature did not intend to eliminate common law causes of action arising from injuries sustained by a child in a motor vehicle accident."

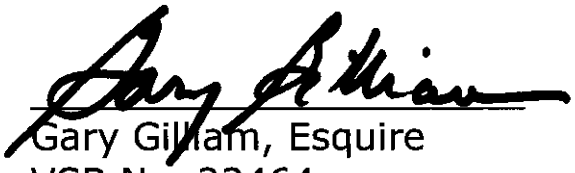
In summary, this case would permit the court to address the issue of whether the general law relating to powers of appointment applies and supersedes any law relating specifically to administrators and executors. Appellant's position is that Executors and Administrators are officers of the Court Appellant requests that consistent with the common laws, this court determine that the relationship between an Administrator, whose power derives from his office, and someone acting under a general power of appointment, whose powers are personal to him, are different.

Conclusion

For the reasons stated above, Petitioner Robert Bartee respectfully requests the Court, reverse the decision of the Circuit Court and remand the case for further consideration.

ROBERT BARTEE

By Counsel



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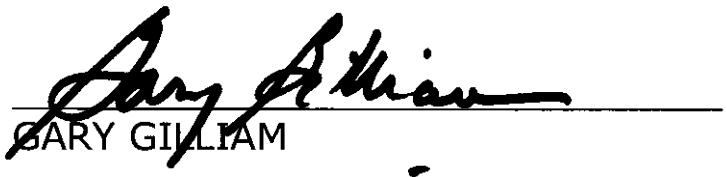
CERTIFICATE

We, Gary Gilliam and Chad Wilson, hereby certify that Rule 5:26(e) of the Supreme Court of Virginia has been complied with and pursuant to the Rule, fifteen (15) copies of this Opening Brief of Appellant, and one electronic copy (via email or CD) have been filed with the Clerk of the Supreme Court of Virginia and three (3) copies, and one electronic copy, have been mailed postage prepaid and/or hand delivered to William W. Eskridge, VSB # 3635, Penn, Stuart & Eskridge, P.O. Box 2288, Abingdon, Va 24212 and Jeffrey A. Sturgill, VSB #16875, Sturgill Law Office, P.C., P.O. Box 3458, Wise, VA 24293, counsel for Respondent/Appellee, on this the 27TH day of January, 2014.



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