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SUPREME COURT OF VIRGINIA (OCTOBER 31, 2003): PARENTS LACK STANDING TO BRING CLAIMS OF THEIR CHILD IN THEIR OWN NAMES

In a decision affecting cases in Virginia brought by minors, the Supreme Court of Virginia recently confirmed the long-standing rule that such actions must be maintained by the minor in his or her own name by his or her "next friend."

In Herndon v. St. Mary's Hosp., Inc., 266 Va. 472, 587 S.E.2d 567 (2003), Debbie Thompson Herndon and Larry McNeil Herndon brought a medical malpractice action against St. Mary's Hospital, Inc. and others to recover for injuries allegedly sustained by their son, Matthew McNeil Herndon, before and during his birth at the Hospital. See id. at 474, 587 S.E.2d at 568. The Motion for Judgment was styled "Debbie Thompson Herndon, as mother and next friend of Matthew McNeil Herndon" and "Larry McNeil Herndon, as father and next friend of Matthew McNeil Herndon." See id.

The Hospital moved to dismiss the action on the ground that it had not been brought by the minor as the "real party in interest" in accordance with Va. Code § 8.01-8. See id. That statute provides as follows: "Any minor entitled to sue may do so by his next friend. Either or both parents may sue on behalf of a minor as his next friend." See id. The second sentence of Va. Code § 8.01-8 is the result of a 1998 amendment. See id. at 474, 587 S.E.2d at 569.

The action was dismissed without prejudice in the Circuit Court of Wise County, and thereafter the plaintiffs appealed to the Supreme Court of Virginia. See id. at 475, 587 S.E.2d at 569.

On appeal, the plaintiffs argued that the 1998 amendment to Va. Code § 8.01-8 permitted either or both of them to bring an action in their own name on behalf of their child. See id.

In an opinion by Justice Keenan, the Court began its analysis by recognizing that, prior to the 1998 amendment, the Court had held in Kirby v. Gilliam, 182 Va. 111, 28 S.E.2d 40 (1943), that parents lack standing to bring claims of their child in their own names. See id. (citing Kirby, 182 Va. at 116-17, 28 S.E.2d at 43).

In rejecting the plaintiffs' argument that the 1998 amendment altered the rule enunciated in Kirby, the Court determined that the language of Va. Code § 8.01-8 is ambiguous, and applied two (2) bedrock rules of statutory construction: (1) that, given an ambiguity, the Court must construe the statutory language in a manner that will ascertain and give effect to the General Assembly's intent; and (2) that a statutory provision will not be held to change the common law unless the legislative intent to do so is plainly manifested. See id. at 475-76, 587 S.E.2d at 569.

Applying those rules of statutory construction, the Court affirmed the trial court's judgment dismissing the action without prejudice and held that the 1998 amendment to Va. Code § 8.01-8 did not plainly manifest the legislature's intent to authorize parents to their child's action in their own names, but merely clarifies that either or both parents may act as next friend on behalf of their minor child. See id. at 477, 587 S.E.2d at 570. In so holding, the Court confirmed the long-standing rule that such actions must be maintained by the minor in his or her own name by his or her "next friend," which rule is founded on the principle that the minor child must be the "real party in interest." See id.