

Lack of Standing: Failure to disclose dooms med-mal claim

9 Nov 2022

[Sarah E. Godfrey](#)

Attorneys Crystal Deese and Sarah Godfrey recently secured a case law setting win on behalf of Northern Virginia Eye Surgery Center in the Circuit Court of Fairfax County when a shocking eve-of-trial discovery resulted in the suspension and ultimate dismissal of the entire case before opening arguments could even be heard.

When defense counsel uncovered a bankruptcy petition, filed by the plaintiff on March 24, 2022, just two and a half months earlier, the trajectory of the case changed dramatically. The plaintiff never disclosed this filing in discovery despite being asked to do so by the defendants. Because civil lawsuits are considered assets in Virginia, they are automatically transferred to the bankruptcy estate when a petition is filed. Thus, on March 24, 2022, plaintiff effectively transferred her own lawsuit to the bankruptcy estate and it became enforceable by only the bankruptcy trustee. When the case went to trial on June 6, 2022, the lawsuit was not her own to bring and, thus, she had no standing to bring the claim.

Defense counsel brought the bankruptcy petition to the court's attention the morning of trial and argued for dismissal. Judge Thomas Mann, now with the Virginia Supreme Court, suspended the proceeding to give plaintiff the opportunity to investigate the petition and controlling case law. On October 17, 2022, after multiple rounds of briefing and oral arguments, Judge Richard Gardiner ruled in favor of the defendants. Essential to Judge Gardiner's ruling was that Plaintiff chose to conceal her pending lawsuit from the bankruptcy court. Had she listed the lawsuit in her petition, the right to bring the claim could have been restored to her prior to the date of trial. Given the lawsuit was unlisted, however, nothing, including restoration, could be done with it. Thus, as of the date of trial, the lawsuit was the property of the bankruptcy estate and Plaintiff had no standing. As Judge Gardiner wrote, "an action filed by a party who lacks standing is a legal nullity...the case must be dismissed."

Read Judge Gardiner's full written opinion [here](#). This win was also featured on the cover of the [Virginia Lawyers Weekly](#)

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