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Undisclosed Bankruptcy can be fatal to Plaintiff's Medical Malpractice case

15 Jun 2022

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On June 6, 2022, Crystal Deese and Sarah Godfrey appeared in the Circuit Court for Fairfax County, Virginia, for Day 1 of what was supposed to be a 5-day jury trial. Plaintiff had filed a suit against our client, a medical practice, claiming $2.3 million in past and future damages after a routine cataract surgery allegedly rendered her partially blind in one eye. The evening before the trial, our law clerk, in the course of updating Plaintiff's background check, located a Chapter 7 bankruptcy petition that Plaintiff had filed in March of this past year. Plaintiff had not disclosed the bankruptcy filing in her sworn interrogatory answers and, more importantly, did not disclose the pending litigation on the bankruptcy petition, robbing her creditors of notice.

Before a jury could be empaneled, we presented the petition to the court and successfully argued that Plaintiff could not proceed to trial because, by filing for bankruptcy, she lost standing to bring her case. Moreover, we argued that Plaintiff could not take a nonsuit (voluntary dismissal without prejudice) because, without standing, the claim became a legal nullity and must be dismissed with prejudice. Plaintiff's counsel, after being given the opportunity to review the controlling case law, challenged only the "authenticity" of the petition – even though it had been pulled from the federal docket and contained Plaintiff's signature. The Judge entered an order cancelling the trial and deferring our motion to dismiss for a hearing on July 8. 2022, to give both parties the opportunity to fully brief the matter.

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TAGGED: bankruptcy, chapter 7, Standing, Medical Malpractice, nonsuit