

Virginia Court of Appeals Rules that Statements Made by Decedent to His Heirs About the Cause of His Fall at a Hospital Were Sufficiently Collaborated by Statements Made to Disinterested Witnesses to be Admissible Under the Dead Man's Statute

7 Dec 2023

[Adam W. Smith](#)

In *Bon Secours-DePaul Med. Ctr., Inc. v. Rogakos-Russell*, No. 1134-22-1, 2023 WL 7134822 (Va. Ct. App. Oct. 31, 2023), Father Constantine Rogakos, a Greek Orthodox priest, died after falling in an ultrasound examination room. His Estate sued and at trial, the evidence established that Father Rogakos was elderly and had difficulty standing and walking independently. There was no dispute that he had fallen after his sonographer left him unattended in the room to remove his clothing. Prior to his death, Father Rogakos told his family members, attending physician, and another priest that he had leaned on a unlocked stretcher which moved, causing him to fall. The hospital moved to set aside an adverse jury verdict based on Virginia's Dead Man Statute, Virginia Code Section 8.01-397, which states that "[i]n an action by . . . the . . . administrator, heir, or other representative of the person . . . incapable of testifying, no judgment or decree shall be rendered in favor of an adverse or interested party founded on his uncorroborated testimony." The Court of Appeals held that Father Rogakos' heirs were interested parties, and their testimony about Father Rogakos' statement required further collaboration. Such collaboration came from two disinterested witnesses--Father Rogakos' attending physician, who also documented the statement in a medical record, and the priest. The judgment against the hospital was affirmed.

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