

FROM THE BENCH

April 1, 2019

Below are some recent cases from the Virginia Supreme Court which you may find interesting or helpful. If you would like the Court's full text opinion of any of these cases, if you would like further analysis of any of the issues raised, or if you would like to discuss the implications of any of the holdings, please give us a call.

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I. The following cases clarify and further define the extent of the duty owed to others: Terry deals with assumed duties, Haynes-Garrett deals with duties of landlords, and Quisenberry deals with duties to all persons who may be foreseeably injured.

Terry v. Irish Fleet, Inc.: In this wrongful death case, Plaintiff alleged that the taxi cab dispatch company *impliedly* assumed a duty to warn the decedent, a taxi cab driver, of the potential criminal assaults by third-party fares. The Court reiterated the rule that there is a duty to warn or protect against the criminal assaults of others in two cases: (1) there is a special relationship between the parties and (2) one of the parties expressly undertakes such a duty. Declining to expand upon this rule, the Court held the duty to warn or protect against the criminal assaults of others cannot be impliedly assumed.

Haynes-Garrett v. Dunn: This appeal from a personal injury case arose out of a trip and fall at a vacation rental house in Virginia Beach. Plaintiff alleged that the property owner owed her a duty similar to the duty an innkeeper owes a guest or, at a minimum, the duty owed to an invitee. The Court held that a vacation rental such as the property in question was not open to the public nor did the owners maintain control of the property during the vacationers' stay; therefore, the relationship created was that of landlord and tenant. The Court also ruled that an occupant of a property cannot also be an invitee. Because the plaintiff in this case occupied the vacation house at the time of the fall, she was not an invitee.

Quisenberry v. Huntington Ingalls Incorporated: The United States District Court for the Eastern District of Virginia certified a question of law to the Virginia Supreme Court, namely: "Does an employer owe a duty of care to an employee's family member who alleges exposure to asbestos from the work clothes of an employee, where the family member alleges the employer's negligence allowed asbestos fibers to be regularly transported away from the place of employment to the employee's home?" In a razor thin majority (4-3) the Court held that an employer does owe such a duty to "persons in the recognizable and foreseeable area of risk."

II. These next cases provide further guidance on trial and appellate practice. Haynes-Garrett addresses assignments of error, Smith addresses jury instructions, Ray addresses the identity of parties, and Shumate addresses the Dead Man Statute.

Haynes-Garrett v. Dunn: Also raised in this case, discussed above, was the issue of preserving an issue for appeal. Plaintiff sued both the property owner and the leasing company for her personal injuries. The trial court articulated two separate bases when it struck Plaintiff's case: one for the property owner and one for the leasing company. In her assignment of error, Plaintiff alleged that the trial court erred in granting her motion to strike her case against both defendants, but she challenged only the bases that the trial court relied upon in striking the case against the property owner. Thus, the Court refused to consider Plaintiff's appeal as to the leasing company.

Smith v. Commonwealth: In this homicide prosecution, the defense agreed to jury instructions that permitted the jury to find the defendant guilty of voluntary manslaughter based upon certain findings, but no instruction was proffered that a verbal altercation alone is not sufficient to constitute provocation. Because the jury instructions become the law of the case, it is not error if the jury returns a verdict permitted by the jury instructions.

Ray v. Ready: This trusts and estates case addresses the issue of the proper party when an individual has died. The decedent's wife filed suit against the Estate of her husband instead of the Administrator of the estate of her husband. After the statute of limitations ran, the case against the estate was dismissed. The Court affirmed its prior holding in Estate of James v. Peyton, that the estate and its administrator are distinct legal entities. Moreover, the saving provisions of §8.01-6.3 were not invoked as Plaintiff's lawsuit failed to properly identify all of the necessary parties in the body of the Complaint.

Shumate v. Mitchell: The defendant in this personal injury case died prior to trial from unrelated causes. The court admitted his post-accident statements to his son about his speed at the time of the accident. On appeal, Plaintiff claims that these statements are hearsay which are not saved by the Dead Man's Statute. After considering the history of the Dead Man's Statute, the Court held that the statute expressly permitted the admission of the decedent's statements despite the fact that it was hearsay.

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