

SUPREME COURT OF VIRGINIA

Estate of Robert Judson James, Administrator, Edwin F. Gentry, Esq.
v. Kenneth C. Peyton; American Casualty Company of Reading, PA
v. Kenneth C. Peyton

674 S.E.2d 864 (Va. 2009) · No. Record Nos. 081310, 081314 · Decided April 17, 2009

SUMMARY

The Supreme Court of Virginia held that an amended pleading naming “the Estate of Robert Judson James, Administrator, Edwin F. Gentry, Esquire” identified the estate, rather than Gentry in his representative capacity, as the defendant. Because the defect was a misjoinder rather than a misnomer, the court held that the proper party could not be substituted by amendment, reversed the circuit court, and entered final judgment for the estate and American Casualty.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice Lawrence L. Koontz, Jr.
JURISDICTION	Virginia
DECIDED	April 17, 2009
DOCKET	Record Nos. 081310, 081314
DISPOSITION	reversed
PROCEDURAL POSTURE	Consolidated interlocutory appeals from orders of the Circuit Court of Culpeper County concerning whether an amended motion for judgment properly named the administrator of a decedent's estate, rather than the estate itself, as the defendant.
STANDARD OF REVIEW	De novo review applies to whether a pleading adequately identified the proper party to be sued because that question is one of law.
PRECEDENTIAL VALUE	published and precedential Virginia Supreme Court opinion
PARTIES	Estate of Robert Judson James, Administrator, Edwin F. Gentry, Esq., American Casualty Company of Reading, PA v. Kenneth C. Peyton

TOPICS

- pleadings
- summary judgment
- civil procedure
- appellate procedure
- estate litigation

PRACTICE AREAS

civil procedure

appellate procedure

probate

personal injury

insurance

QUESTIONS PRESENTED

1. Whether the amended motion for judgment, read as a whole, named Edwin F. Gentry in his capacity as administrator of James's estate or instead named the estate itself as the defendant.
2. Whether any defect in naming the estate rather than the administrator constituted a correctable misnomer under Code § 8.01-6.
3. Whether the circuit court properly vacated its summary-judgment order and permitted the action to continue against Gentry as administrator.

HOLDINGS

1. Read as a whole, the amended motion for judgment named the Estate of Robert Judson James as the defendant, not Edwin F. Gentry in his capacity as administrator.
2. Naming the estate instead of the personal representative was a misjoinder, not a misnomer, and could not be corrected by substituting the administrator under Code § 8.01-6.
3. The action could not be maintained against Gentry as administrator by substituting him for the estate; absent a statute-of-limitations bar, the proper remedy would have been to commence a new action against the proper party.

KEY QUOTATIONS

"The personal representative and the estate are two different entities," (674 S.E.2d at 868)

"Misnomer arises when the right person is incorrectly named, not where the wrong defendant is named."
(674 S.E.2d at 870)

"The only resolution in such a case, in the absence of a statute of limitations bar, is to commence a new action against the proper party." (674 S.E.2d at 870)

FACTUAL BACKGROUND

Kenneth C. Peyton alleged that Robert Judson James negligently operated a vehicle in a February 6, 2003 automobile accident, causing Peyton personal injuries. James died on March 1, 2003, before Peyton filed suit, and Edwin F. Gentry later qualified as administrator of James's estate. Peyton amended his pleading to identify the defendant as "Estate of Robert Judson James, Administrator, Edwin F. Gentry, Esq.," and Gentry received service. The pleading's body referred to James as the defendant and did not clearly identify Gentry, in his representative capacity, as the party defendant.

PROCEDURAL HISTORY

Peyton filed a personal-injury action naming Robert Judson James, who had died before the action was filed. After an administrator qualified, Peyton obtained leave to amend and styled the defendant as "Estate of Robert Judson James, Administrator, Edwin F. Gentry, Esq." The circuit court initially granted summary judgment and

dismissed the action, later vacated that order, and ruled that the pleading properly named Gentry in his representative capacity. The circuit court certified the party-identification issue for interlocutory appeal, and the Supreme Court of Virginia consolidated and awarded the appeals.

DISPOSITION

reversed

CASES CITED

- *Alcoy v. Valley Nursing Homes, Inc.*, 272 Va. 37, 41, 630 S.E.2d 301, 303 (2006)
- *Wilby v. Gostel*, 265 Va. 437, 440, 578 S.E.2d 796, 798 (2003)
- *Transcontinental Ins. Co. v. RBMW, Inc.*, 262 Va. 502, 514, 551 S.E.2d 313, 319 (2001)
- *Ford Motor Co. v. Benitez*, 273 Va. 242, 251-52, 639 S.E.2d 203, 207 (2007)
- *Hensley v. Dreyer*, 247 Va. 25, 30, 439 S.E.2d 372, 375 (1994)
- *Swann v. Marks*, 252 Va. 181, 184, 476 S.E.2d 170, 171-72 (1996)
- *Parker v. Warren*, 273 Va. 20, 24, 639 S.E.2d 179, 181 (2007)
- *Rennolds v. Williams*, 147 Va. 196, 198-200, 136 S.E. 597, 597-98 (1927)
- *Rockwell v. Allman*, 211 Va. 560, 561, 179 S.E.2d 471, 472 (1971)
- *Cook v. Radford Community Hospital, Inc.*, 260 Va. 443, 451, 536 S.E.2d 906, 910 (2000)
- *Chesapeake House on the Bay, Inc. v. Virginia National Bank*, 231 Va. 440, 442-43, 344 S.E.2d 913, 915 (1986)
- *Wells v. Lorcom House Condominiums' Council of Co-Owners*, 237 Va. 247, 253, 377 S.E.2d 381, 384 (1989)
- *Bardach Iron & Steel Co. v. Tenenbaum*, 136 Va. 163, 173, 118 S.E. 502, 505 (1923)
- *Miller v. Highland County*, 274 Va. 355, 368, 650 S.E.2d 532, 537 (2007)
- *Herndon v. St. Mary's Hospital, Inc.*, 266 Va. 472, 476-77, 587 S.E.2d 567, 570 (2003)
- *McCormick v. Romans*, 214 Va. 144, 147, 198 S.E.2d 651, 653 (1973)
- *Ahari v. Morrison*, 275 Va. 92, 95 n.2, 654 S.E.2d 891, 893 n.2 (2008)

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