

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
VIRGINIA, RICHMOND DIVISION

Robert Arner, et al. v. Hanover Washington LLC, et al.

Arner · No. 3:25cv319 (RCY) · Decided May 26, 2026

SUMMARY

The United States District Court for the Eastern District of Virginia grants Defendants’ motions to dismiss claims arising from the partial failure and subsequent removal of the Ashland Mill Dam on the South Anna River. The court holds that Plaintiffs’ private nuisance and negligence claims fail because the alleged injuries resulted from the river’s return to natural conditions, absent a cognizable duty to maintain artificially heightened water levels. The opinion also concludes that the Virginia Dam Safety Act claims and negligence per se claim fail.

CASE DETAILS

COURT	United States District Court for the Eastern District of Virginia, Richmond Division
WRITING FOR THE COURT	Roderick C. Young
JURISDICTION	United States District Court for the Eastern District of Virginia, Richmond Division
DECIDED	May 26, 2026
DOCKET	3:25cv319 (RCY)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants removed a Virginia state-court property dispute to federal court under diversity jurisdiction and moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6).
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court tests the sufficiency of the complaint, accepts well-pleaded factual allegations as true, draws reasonable inferences in the plaintiff's favor, and determines whether the complaint states a facially plausible claim for relief. Legal conclusions, labels, formulaic recitations, and unreasonable inferences are not accepted as true. The court may consider documents attached to the complaint.
PRECEDENTIAL VALUE	unpublished district-court memorandum opinion; persuasive only

TOPICS

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QUESTIONS PRESENTED

1. Whether plaintiffs stated a private-nuisance claim based on the partial failure and subsequent removal of an artificial dam that returned the river to its natural water level.
2. Whether plaintiffs stated a negligence claim based on Hanover's alleged failure to maintain the dam and prevent the river from returning to its natural level.
3. Whether plaintiffs stated a negligence-per-se claim based on an alleged violation of the Virginia Dam Safety Act when no underlying common-law duty existed.
4. Whether the Virginia Dam Safety Act imposes civil liability for damages resulting from dam removal.
5. Whether the injuries alleged by plaintiffs fall within the zone of interests and protected harms contemplated by the Virginia Dam Safety Act.

HOLDINGS

1. Plaintiffs failed to state a private-nuisance claim based on removal of the dam because the alleged injury resulted from the river's return to a natural condition, and Virginia law generally does not impose nuisance liability for harms resulting solely from a natural condition absent a recognized exception.
2. Plaintiffs failed to state a negligence claim because they identified no legal duty requiring defendants to maintain the dam or artificially sustain non-natural water levels for plaintiffs' benefit.
3. The negligence-per-se claim failed because negligence per se does not create a common-law duty or cause of action where none otherwise exists.
4. The Virginia Dam Safety Act does not create a cause of action for damages arising from dam removal because its civil-liability provision covers damages resulting from operation or failure of an impounding structure, while the Act separately classifies removal as an alteration.
5. Plaintiffs failed to state a Virginia Dam Safety Act claim because their alleged injuries—reduced water levels, loss of river access and fishing, diminished views, and reduced property value—fell outside the Act's zone of interests and were not the type of tangible, flood-related harms the Act was designed to prevent.

FACTUAL BACKGROUND

Plaintiffs owned riverfront properties along Virginia's South Anna River, downstream from the Ashland Mill Dam, which historically maintained artificially elevated water levels supporting river access, recreation, fish spawning, waterfront views, and property value. Hanover contracted with Davey to establish a stream-mitigation site involving removal of the dam, and the dam partially failed in May 2024 before being completely removed

between September and October 2024. Plaintiffs alleged that the partial failure resulted from Hanover's failure to maintain the dam and that the failure and removal caused reduced water levels, loss of recreational access and fish spawning beds, diminished views, and reduced property values.

PROCEDURAL HISTORY

Plaintiffs filed suit in the Circuit Court for Hanover County, Virginia, on March 27, 2025. Davey removed the action on April 24, 2025, invoking diversity jurisdiction. Davey and Hanover separately moved to dismiss under Rule 12(b)(6). The court granted both motions by order dated March 25, 2026, and issued this memorandum opinion explaining its reasoning.

DISPOSITION

dismissed

CASES CITED

- Megaro v. McCollum, 66 F.4th 151 (4th Cir. 2023)
- Republican Party of N.C. v. Martin, 980 F.2d 943 (4th Cir. 1992)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Mylan Laboratories, Inc. v. Matkari, 7 F.3d 1130 (4th Cir. 1993)
- Philips v. Pitt County Memorial Hospital, 572 F.3d 176 (4th Cir. 2009)
- E.I. du Pont de Nemours & Co. v. Kolon Industries, Inc., 637 F.3d 435 (4th Cir. 2011)
- Philip Morris, Inc. v. Emerson, 368 S.E.2d 268 (Va. 1988)
- Cline v. Dunlora South, LLC, 726 S.E.2d 14 (Va. 2012)
- Harless v. Williams, 913 S.E.2d 302 (Va. App. 2025)
- Virginian Railway Co. v. London, 76 S.E. 306 (Va. 1912)
- Newport News v. Hertzler, 221 S.E.2d 146 (Va. 1976)
- Bowers v. Westvaco Corp., 419 S.E.2d 661 (Va. 1992)
- Batcheller v. Commonwealth, 10 S.E.2d 529 (Va. 1940)
- Mattaponi Indian Tribe v. Commonwealth, 72 Va. Cir. 444 (Newport News Cir. Ct. 2007)
- Purcellville v. Potts, 19 S.E.2d 700 (Va. 1942)
- Southern Railway Co. v. Watts, 114 S.E. 736 (Va. 1922)
- Claytor v. Anthony, 56 Va. 518 (1860)
- Lynnhaven Dunes Condominium Association v. City of Virginia Beach, 733 S.E.2d 911 (Va. 2012)
- Smith v. Youmans, 70 N.W. 1115 (Wis. 1897)
- Green v. City of Williamstown, 848 F. Supp. 102 (E.D. Ky. 1994)
- McGehee v. Tidewater Railway Co., 62 S.E. 356 (Va. 1908)
- Jordan v. Jordan, 257 S.E.2d 761 (Va. 1979)

- RGR, LLC v. Settle, 764 S.E.2d 8 (Va. 2014)
- Parker v. Carilion Clinic, 819 S.E.2d 809 (Va. 2018)
- Williamson v. Old Brogue, Inc., 350 S.E.2d 621 (Va. 1986)
- Crespo v. Holder, 631 F.3d 130 (4th Cir. 2011)
- Miller & Rhoads Bldg., LLC v. City of Richmond, 790 S.E.2d 484 (Va. 2016)
- City of Lynchburg v. Suttentfield, 13 S.E.2d 323 (Va. 1941)
- Commonwealth v. Hill, 82 S.E.2d 473 (Va. 1954)
- United States v. Chaudhri, 134 F.4th 166 (4th Cir. 2025)
- CVAS 2, LLC v. City of Fredericksburg, 766 S.E.2d 912 (Va. 2015)
- Conyers v. Martial Arts World, 639 S.E.2d 174 (Va. 2007)
- Allen v. Wright, 468 U.S. 737 (1984)

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