

COURT OF APPEALS OF VIRGINIA

Robert Thornhill v. Commonwealth Eye Center, P.C., et al.

Thornhill · No. 0635-23-4 · Decided February 17, 2026

SUMMARY

The en banc Court of Appeals of Virginia reverses the circuit court’s summary judgment for Commonwealth Eye Center and D. Russell Brear in Robert Thornhill’s medical-malpractice action. The court holds that excluding all of Thornhill’s witnesses and exhibits for inadvertently failing to file an otherwise timely exchanged list was an abuse of discretion, particularly where the opposing party suffered no surprise or prejudice. The case is remanded for further proceedings.

CASE DETAILS

COURT	Court of Appeals of Virginia
WRITING FOR THE COURT	Dominique A. Callins; Chief Judge Decker; Judge Beales; Judge AtLee; Judge Malveaux; Judge Athey; Judge Ortiz; Judge Causey; Judge Friedman; Judge Chaney; Judge Raphael; Judge Lorish; Judge Callins; Judge White; Judge Bernhard
JURISDICTION	Court of Appeals of Virginia
DECIDED	February 17, 2026
DOCKET	0635-23-4
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Circuit Court of Culpeper County's entry of summary judgment for the medical-malpractice defendants after the court excluded all of Thornhill's witnesses and exhibits for failure to timely file the witness and exhibit lists required by a Uniform Pretrial Scheduling Order. After a divided panel affirmed, the Court of Appeals granted rehearing en banc.
STANDARD OF REVIEW	The enforcement of the Uniform Pretrial Scheduling Order and imposition of sanctions are reviewed for abuse of discretion. The entry of summary judgment is reviewed de novo.
PRECEDENTIAL VALUE	published precedential en banc opinion
PARTIES	Robert Thornhill v. Commonwealth Eye Center, P.C., D. Russell Brear, M.D.

TOPICS

sanctions

summary judgment

civil procedure

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by excluding all of Thornhill's witnesses and exhibits based on his inadvertent failure to file the lists with the court after timely exchanging them with opposing counsel.
2. Whether the sanction imposed for the scheduling-order violation was disproportionate and inconsistent with the restrictions on docket-control procedures that may abridge substantive rights.
3. Whether summary judgment was proper after the circuit court excluded all of Thornhill's evidence.

HOLDINGS

1. The circuit court abused its discretion by excluding all of Thornhill's witnesses and exhibits. The court's sanction contradicted its findings that the defendants were not surprised or prejudiced and that Thornhill's failure to file was inadvertent, failed to give proper weight to the factors identified in the Uniform Pretrial Scheduling Order, and was disproportionate to the violation.
2. The en banc majority expressly declined to decide whether the circuit court correctly interpreted the filing and safe-harbor provisions of the Uniform Pretrial Scheduling Order.
3. The circuit court erred by entering summary judgment because the exclusion of Thornhill's evidence was erroneous and, absent that exclusion, genuine disputes of material fact remained concerning whether Thornhill could satisfy his burden of proof.
4. Rules and enforcement of docket-control procedures must not deny a litigant the opportunity to establish a case based solely on a procedural violation absent compelling justification.

KEY QUOTATIONS

“Thus, neither the Rules themselves nor any enforcement of the same should have the effect of denying a litigant the opportunity to establish their case based solely on procedural violations in the absence of compelling justification.” (6)

“By ‘short-circuiting’ Thornhill’s case, the circuit court imposed the civil ‘death penalty’ based on a minor violation of the UPSO.” (9)

“Absent the exclusion of Thornhill’s evidence, however, genuine disputes of material fact remain as to the sufficiency of Thornhill’s evidence to meet his burden of proof.” (10)

FACTUAL BACKGROUND

Thornhill sued Commonwealth Eye Center and Dr. D. Russell Brear for medical malpractice arising from Brear's performance of intraocular lens surgery. The circuit court's Uniform Pretrial Scheduling Order required the parties to exchange and file witness and exhibit lists 15 days before trial. Thornhill exchanged his lists with the defendants before the deadline but inadvertently failed to file them with the circuit court until shortly before trial; the defendants therefore had the lists and suffered no surprise or prejudice. The circuit court nevertheless excluded all of Thornhill's witnesses and exhibits and entered summary judgment because he could not prove his claim without evidence.

PROCEDURAL HISTORY

Thornhill filed a medical-malpractice action in October 2021 after nonsuiting an earlier action. The circuit court entered a Uniform Pretrial Scheduling Order requiring exchange and filing of witness and exhibit lists 15 days before trial. Thornhill timely exchanged his lists with the defendants but inadvertently failed to file them with the court. The circuit court excluded all of his evidence and entered summary judgment for the defendants. A divided panel affirmed, but the en banc Court of Appeals reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the Circuit Court of Culpeper County for further proceedings consistent with the opinion, without excluding Thornhill's evidence on the basis of the sanction imposed in the prior proceedings.

CASES CITED

- Fauber v. Town of Cape Charles, 79 Va. App. 660, 673 (2024)
- Stahl v. Stitt, 301 Va. 1, 8 (2022)
- Reaves v. Tucker, 67 Va. App. 719, 736-37 (2017)
- Lawlor v. Commonwealth, 285 Va. 187, 213 (2013)
- Landrum v. Chippenham & Johnston-Willis Hosps., Inc., 282 Va. 346, 352 (2011)
- Kosmann v. Brown, 81 Va. App. 322, 332 (2024)
- Epperly v. County of Montgomery, 46 Va. App. 546, 552 (2005)
- Winters v. Winters, 73 Va. App. 581, 593 (2021)
- Ange v. York/Poquoson Department of Social Services, 37 Va. App. 615, 621, 629 (2002)
- Herbert v. Joubert, 83 Va. App. 592, 614-15 (2025)
- Galloway v. County of Northampton, 299 Va. 558, 564-65 (2021)
- Mikhaylov v. Sales, 291 Va. 349, 358-60 (2016)
- Butcher v. Commonwealth, 298 Va. 392, 396-97 (2020)
- Commonwealth v. Holland, 304 Va. 34, 47 (2025)
- Walsh v. Bennett, 260 Va. 171, 175 (2000)

- Bland Henderson v. Commonwealth, 77 Va. App. 250, 260-61 (2023), aff'd on other grounds, 303 Va. 211 (2024)
- Commonwealth v. Carolino, 303 Va. 399, 409 (2024)
- Rusty's Welding Service, Inc. v. Gibson, 29 Va. App. 119, 129 (1999) (en banc)
- Fredericksburg Construction Co. v. J.W. Wyne Excavating, Inc., 260 Va. 137, 143-44 (2000)
- In re Trans Union Corp. Privacy Litigation, 741 F.3d 811, 816 (7th Cir. 2014)
- Thornhill v. Commonwealth Eye Center, P.C., No. 0635-23-4 (Va. Ct. App. May 13, 2025)

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