



## Lawrence E. Mattison v. The Secretary of Veterans

2023 | Cited 0 times | Court of Appeals of Virginia | January 31, 2023

COURT OF APPEALS OF VIRGINIA

Present: Humphreys, Huff and Lorish

LAWRENCE E. MATTISON MEMORANDUM OPINION \* v. Record No. 0813-22-1 PER CURIAM  
JANUARY 31, 2023 THE SECRETARY OF VETERANS AFFAIRS

FROM THE CIRCUIT COURT OF THE CITY OF HAMPTON Michael A. Gaten, Judge

(Lawrence E. Mattison, on brief), pro se.

(Martin Mooradian, on brief), for appellee.

Lawrence E. Mattison, pro se granting summary judgment

to the Secretary of Veterans Affairs and awarding the Secretary possession of certain real property.

Mattison argues that the circuit court should have continued or dismissed this case pending

against title to the property. After examining the briefs and record in this case, the panel unanimously

Code

§ 17.1- affirmed.

BACKGROUND

most favorable to the

\* Pursuant to Code § 17.1-413, this opinion is not designated for publication. UNPUBLISHED  
Nielsen v. Nielsen, 73 Va. App. 370, 377 (2021) (quoting Congdon v. Congdon, 40 Va. App.

255, 258 (2003)).



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In December 2021, the Secretary filed a complaint in the circuit court alleging that Mattison had executed a deed of trust on his real property to secure a promissory note in March 2013. After Mattison defaulted on payments under the note, the Secretary purchased the property at a foreclosure sale in June 2018. In October 2021, the Secretary served Mattison with a notice to vacate, demanding possession of the property within ten days. Mattison refused to vacate the property and became a tenant by sufferance. The complaint asked the circuit court to award the Secretary immediate possession of the property.

Through a responsive pleading, two motions to dismiss, and motion for a continuance, Mattison asserted that in a prior unlawful detainer action, the Secretary had taken a voluntary nonsuit after Matti  
separate federal litigation. 1 Mattison argued that the circuit court should continue the case or dismiss it without prejudice because the federal litigation was still pending in the United States Court of Appeals for the Fourth Circuit Court (Fourth Circuit)  
Board.

1 The prior action began in the General District Court for the City of Hampton. General Parrish v. Fed. ., 292 Va. 44, 50 (2016) (citing Addison v. Salyer, 185 Va. 644, 648 (1946)). de novo subject matter jurisdiction is derivative of the court not of record from which the appeal is

Id. (citing Addison, 185 Va. at 651-52). Accordingly, when a defendant in an unlawful court in a de novo iss

Id. at 54. The record reflects that after the general district court awarded the Secretary possession of the property, Mattison appealed to the circuit court and raised, for the first time, what he characterized to the property. Accordingly, the Secretary took a voluntary nonsuit and refiled its claim in the circuit court. The Secretary moved for summary judgment, arguing that Mattison had not denied any of



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the allegations in its complaint. The S had been dismissed and were pending appeal in the above motions. The record does not include a transcript of the hearing, or a written statement of facts in lieu of a transcript. The circuit court granted Mattison appeals.

### ANALYSIS

#### I. Rule 5A:20

In his first assignment of error, Mattison a misunderstanding that the bona fide claim . . record, he lists questions that he claims are at issue in federal litigation but for the

Mattison, however, cites no principles of law or legal authority to support his first assignment of error.

principles of law and authorities) relating to each assignment of error ments unsupported by argument, authority, or citations to the record do

not merit appellate consideration. We will not . . . Turner v.

Commonwealth, 2 Va. App. 96, 99 (1986) (quoting Buchanan v. Buchanan, 14 Va. App. 53, 56

Bartley v. Commonwealth, 67 Va. App. 740, 746 (2017)

(quoting Sneed v. Bd. of Pro. Resp. of the Sup. Ct. of Tenn., 301 S.W.3d 603, 615 (Tenn. 2010)).

. . in order to ferret-out for Burke v. Catawba Hosp., 59 Va. App. 828, 838

(2012) (quoting Fitzgerald v. Bass, 6 Va. App. 38, 56 n.7 (1988) (en banc)). Bartley, 67 Va. App. at 744 (quoting Parks v. Parks, 52 Va. App.

663, 664 (2008)).

failure to comply with Rule 5A:20(e) under his first assignment of error is

significant, and he has not corrected the deficiency despite being afforded an opportunity to do



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so. 2 His entire argument consists of a list of questions that he claims, without citations to the judgment

Bartley, 67 Va.

of error is waived. See *id.* o comply with Rule 5A:20

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### II. No Transcript or Written Statement of Facts

In his remaining assignments of error, Mattison argues that the circuit court erred in holding,

2

After Mattison filed his initial opening brief, this Court notified him that, among other things, the brief failed to comply with Rule 5A:20(e). Mattison filed an amended brief that did not correct the deficiency. 3 A pro se bound by the rules of procedure and substantive law than a *Townes v. Commonwealth*, 234 Va. 307, 319 (1987); see also *Francis v. Francis*, 30 Va. pro se litigants must comply with with *Parrish v. Federal National Mortgage Association*, 292 Va. 44 (2016). Moreover, he contends

the property As noted above, the

record does not include a transcript or written statement of facts detailing the above arguments and findings made during the April 29, 2022 hearing.

*Bay v. Commonwealth*,

60 Va. te court]

with a record which substantiates the claim of error. In the absence [of a sufficient record], we will

*Dixon v. Dixon*, 71 Va. App. 709, 716 (2020) (second alteration in original)

(quoting *Robinson v. Robinson*, 50 Va. App. 189, 197 (2007)). A transcript of any proceeding or a written statement of facts becomes part of the record if filed in the trial court



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within sixty days after entry of final judgment. Rule 5A:8(a) and (c) to ensure that the record contains transcripts or a written statement of facts necessary to permit

resolution of appellate issues, any assignments of error affected by such omission shall not be

5A:8(b)(4)(ii); see also *Smith v. Commonwealth*, 32 Va. App. 766, 772 (2000)

(holding that (quoting *Turner*, 2 Va. App. at 99)).

29, 2022 hearing and the argument presented by the parties at that hearing. With no record of the

arguments Mattison made or the positions he took (or possibly abandoned) at the April 29, 2022

hearing, we cannot know whether he presented the specific arguments he advances on appeal to the

circuit court or if his appellate argument repudiates a position that he may have taken in the circuit

court, let alone whether the circuit court erred as he claims. See Rule 5A:18 (stating this Court will only consider arguments that were timely raised in the trial court); *Nelson v. Commonwealth*, 71

Va. App. 397, 403 (2020) (recognizing that a party may not take inconsistent positions during the

course of litigation). Thus, the transcript, or a written statement of facts in lieu of a transcript, from

the April 29, 2022 hearing is indispensable to a determination of on appeal. Accordingly, those arguments are waived. Rule 5A:8(b)(4)(ii). 4

### CONCLUSION

For the foregoing reasons, the circuit court's judgment is affirmed.

Affirmed.

4 The Court does not address that deficiency given the above

