

The first case is *Antisdel v Ashby, et al.* In this case a young man, Peter Antisdel, was being treated for acne and anxiety like symptoms with medication. In 2003, he died from a self-inflicted gun shot wound.

In 2005 his mother, Bea Antisdel, sought appointment as the administrator of Peter's estate for the purpose of pursuing a wrongful death action against the pharmaceutical companies and the treating physicians. Accordingly, the clerk of the circuit court entered an order appointing Bea Antisdel as the administrator of her son's estate under Code of Virginia 8.01-50 et seq.

Ms. Antisdel filed and subsequently withdrew two separate cases. In 2006 she filed a third cause of action which is the subject of this appeal. In the third case Ms. Antisdel asserted survival claims for personal injuries suffered by Peter during his lifetime. Ms. Antisdel alleged that her son suffered severe physical and mental harm because of certain undisclosed side effects and interactions of the several prescription medications he took.

The defendants asserted that Ms. Antisdel lacked standing to bring a personal injury survival claim because the order appointing her as administrator limited her appointment to the initiation of a wrongful death action under Code § 8.01-50.

§ 64.1-75.1 of the Code of Virginia allows a circuit court clerk to appoint an administrator for the purpose of asserting both a wrongful death action and a survival action in the alternative. Although the plaintiff may plead both types of actions in the alternative, the Plaintiff may recover under only one of the two causes of action for the same injury.

Ms. Antisdel did not seek this type of dual appointment and the Virginia Supreme Court refused to amend her appointment to allow her to plead and pursue both types of claims. This decision by the Virginia Supreme Court precluded Ms. Antisdel from pursuing the doctors involved with her son's care on a survival action. A footnote in the court's decision indicates that she was able to reach a settlement with several of the pharmaceutical companies

Although this case involves a procedural issue the resolution of which involves statutory interpretation by the Virginia Supreme Court, the decision stands as a reminder to personal

injury attorneys and attorneys who administer estates that it is wise for an administrator to seek appointment to pursue a wrongful death action and a survival action in appropriate cases.