Overview

Last week, I was so focused on the new opinions from the Supreme Court of Virginia that I neglected to discuss a few important pieces of information. The SCV granted 4 petitions for appeal last week, and 3 include at least 4 assignments of error. Boyette v. Sprouse, Record No. 240135, is a jury instruction case and questions the definition of more than a scintilla of evidence. The other three have many moving parts.

In Lisann v. Lisann, Record No. 230718, the SCV granted 7 assignments of error, including an allegation that the Court of Appeals of Virginia "relied upon misunderstanding of or outright erroneous statements about the trial record." Bon Secours-Depaul v. Rogakos-Russell, Record No. 230879, has 5 assignments of error including jury instructions, demonstrative exhibits, and sufficiency of the evidence in what appears to be either a wrongful death or medical malpractice case (I have not reviewed the facts or Court of Appeals opinion). Finally, in Com. v. Wallace, the SCV granted 4 assignments of error regarding statutory interpretation and whether the CAV failed "to apply the appropriate standard of review."

This week, the SCV has granted 2 more petitions, both criminal in nature. In Com. v. Wilkerson, Record No. 230914, the Commonwealth was granted a petition on 1 assignment of error: sufficiency of the evidence. I am not rendering judgment yet, but the indication here is that the SCV will likely reverse the CAV, given that the sufficiency on a Possession Sch. I/II case is normally a cut and dried decision. It is not a given, as the SCV may be choosing to solidify some new aspect of law in the case, but this type of petition is rare to be granted. In Barlow v. Com., Record No. 240100, we have a more normal appeal. The question here is a Fourth Amendment seizure, pat-down, and strip search based on reasonable articulable suspicion (I have not read the opinion in this case in quite some time and cannot remember the facts).

Irrespective of Barlow's normalcy/routineness, it is more and more apparent that the SCV is becoming a court of error rather than explaining vagueness in the law or extending law to cover a new ground. When the CAV obtained jurisdiction over civil cases in 2022, there were only 8 petitions granted to the SCV. In 2023, that number rose to 11. Only 6 months into 2024, we have 21 petitions granted. If you are interested more in this aspect of appellate law, I am in the process of drafting an article/post about this increase and the assignments of error being granted.

The CAV decisions were a surprise this week, with 5 published opinions and only 6 unpublished opinions. In an odd change of events, the vast majority of the CAV opinions are civil in nature, with only 2 criminal cases decided this week. All of the published opinions are worth a read, and the unpublished opinions cover a variety of cases and issues, with a bit of everything for all attorneys.

CAV Published Decisions

Trent v. OnderLaw, LLC, Record No. 0810-23-4: (Frucci, J., writing for Friedman, J., and Humphreys, SJ.)
Legal malpractice; Demurrer
CAV reversed and reinstated Trent's legal malpractice claim against OnderLaw because Trent alleged sufficient facts to find that OnderLaw failed to timely advise Trent of pertinent facts regarding their representation and the validity of her medical malpractice claims.

> In evaluating a demurrer, the courts "accept as true all factual allegations expressly pleaded in the complaint and interpret them in the light most favorable to the plaintiff." (quoting Taylor v. Aids-Hilfe Koln e.V., 301 Va. 352, 357 (2022) (quotation marks omitted)).
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> Trent had her first knee surgery in 2016, which left her in significant pain because the cement utilized by the surgeon "failed to hold the [DePuy Sigma device] in place." She had two additional surgeries, the last finally decreasing her pain but not abating all the effects of her previous 2. In 2018, Trent entered into an agreement with OnderLaw to represent her in a suit for "damages arising out of the use of a DePuy Attune knee replacement system." (internal alterations omitted).
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> Trent had limited contact with OnderLaw for the next few years. She asked for updates on the case and was advised that an attorney had not yet reviewed the case. In February 2021, OnderLaw informed Trent that they would not represent her because "the Smith & Nephew device used in her third surgery was not a covered device." Trent had previously informed OnderLaw through a paralegal that while the third device was a Smith & Nephew, the first two surgeries involved a DePuy device. By this time, Trent's claims had lapsed due to the statute of limitations. Trent sued for legal malpractice.
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> The circuit court sustained the demurrer, finding that the agreement was limited solely to DePuy Attune knee devices and thus Trent was advised of the scope of representation.
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> The CAV reversed the circuit court. The CAV conducted a thorough review of legal malpractice principles and their application before finding that under Trent's complaint, there was sufficient evidence that Trent was not covered under their engagement letter. The CAV found that the complaint properly pleaded that OnderLaw did not adequately inform Trent regarding the status of their representation or validity of her claims. OnderLaw may have failed to timely disclose pertinent facts about her claim. Remanded for further proceedings.

Rivera v. ManTech Int'l Corp., Record No. 0962-23-4: (Humphreys, SJ., writing for Friedman and Frucci, JJ.)
Submission on briefs; Plea in bar; Whistleblower protection law; Code § 40.1-27.3; Statute of limitations; Statutory interpretation
CAV affirmed dismissal of a Whistleblower protection suit because the injury occurred on the date of written notice and not the date of termination. Therefore, Rivera's claim was not timely filed.

Rivera worked for ManTech as a security technician at the United States Embassy compound in Baghdad. Rivera's colleague reported to the Inspector General that ManTech was ordering employees to forge official documents. Rivera, as part of the investigation, confirmed his colleague's report. Shortly after Rivera's interview, he was informed by ManTech that he was being terminated "due to contract reduction."

Exactly 1 year after his termination, on February 7, 2023, Rivera filed suit under the Virginia Whistleblower Protection Law. ManTech filed a plea in bar asserting that the statute of limitations began running on January 14, 2022, the date of the letter informing Rivera of his termination, and not the date of termination. The circuit court sustained the plea in bar, finding that "Rivera's injury occurred on January 14, 2022," because that was the date his clearance was terminated and his ID badge was revoked.

The CAV noted that the SCV has not answered the question of when a cause of action accrues under the VWPL. EDVA had previously ruled that the injury occurs when the employer provided the employee written notice of termination. (citing Kulshrestha v. Shady Grove Reproductive Sci. Ctr., P.C., 668 F. Supp. 3d 411, 418 (E.D. Va. Apr. 6, 2023)). However, the CAV also noted that the SCV has stated that "a right of action cannot accrue until there is a cause of action and that in the absence of injury or damage to a plaintiff or his property, he has no cause of action and no right of action can accrue to him." (quoting First Virginia Bank-Colonial v. Baker, 225 Va. 72, 82 (1983) (quotation marks omitted)).

The CAV found that the "plain language of the VWLP states that the limitations period begins to run as of the date of the employer's prohibited retaliatory action, not form the date that the employee felt the full impact of the action." (quoting Code § 40.1-27.3(C) (quotation marks omitted)). Therefore, because the written notice informed Rivera of the injury, even if he did not feel the full impact of it yet, the statute of limitations began running on Jan. 14, 2022, and as such the dismissal was appropriate.

Frederick County v. Virginia Dep't of Treasury, Record No. 0981-23-4: (Humphreys, SJ., writing for Friedman and Frucci, JJ.)
Amicus briefs; Tax lien; Code § 58.1-3952; Unclaimed property; Sovereign immunity; Demurrer; Statutory interpretation; Harmonious construction; Absurd result; Meaning of "shall"
CAV found that the Commonwealth has waived sovereign immunity regarding Code § 58.1-3952, including equitable suits/relief. CAV reversed and reinstated the suit.

> The County issued a lien notice and demand for payment from the Department of the Treasury Unclaimed Property Division, alleging that the Department held property belonging to a taxpayer who had an outstanding balance of $992.98 in taxes, penalties, and fees. The County requested that the Department disburse the property to cover the taxpayer's debt under Code § 58.1-3952(A). The Department never responded.
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> The County requested a show cause in GDC, but the GDC dismissed the case. The County appealed, and the Department demurred, asserting sovereign immunity. The circuit court sustained the demurrer and dismissed the case on the basis of sovereign immunity.
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> The CAV reversed. While "sovereign immunity applies to both actions at law for damages and suits in equity to restrain governmental action or to compel such action," the CAV found that "the legislature has expressly waived sovereign immunity" in cases arising out of § 58.1-3952. In doing so, the CAV conducted a lengthy analysis of the structure of § 58.1-3952 and analyzing whether the entire section, when read together, constituted a waiver of sovereign immunity.

Respess, et al. v. VMI Alumni Assoc., Record No. 1290-23-3: (Raphael, J., writing for Fulton, J. Dissenting opinion: Causey, J.)
Virginia nonstock corporation act; Code §§ 13.1-932, 933; Election of remedies; Election of rights; Common law rights; Statutory rights; Inspection rights; Statutory interpretation; Absurd results
CAV found that because petitioners elected to sue purely under their statutory rights as members of a nonstock corporation, they were not entitled to the relief they sought. Code § 13.1-932 and 933 do not allow for email addresses to be delivered upon request. Judge Causey dissented, finding that email addresses are part of the record of members.

> VMI Alumni Association is a nonstock corporation consisting of approximately 20,000 individuals. Four of these individuals requested that the Association provide them with the entire list of members and their email addresses, under § 13.1-845(B) and 933(B). The four cited an upcoming board of directors election and a newly enacted rule change to eliminate voting by proxy and requiring individuals to vote in person. The Association refused to provide the email addresses.
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> Respess, et al., filed a petition for a writ of mandamus, seeking compulsion of the email addresses and an electronic record of the list of members (as opposed to paper, which the Association had suggested). In doing so, Respess, et al., relied solely on the statutory rights

and no right of inspection under the Common law. The circuit court relied upon the plain language of the statutes, which does not require that a nonstock corporation disclose the email addresses of its members.

The Majority Opinion agreed with the circuit court and found that there are 2 sources of members' rights in nonstock or other corporations: common law and statutory law. Had the members asserted their rights under the common law, then the circuit court may have erred (without expressly saying so), but the statutory rights did not allow a member to obtain a member-list of email addresses.

The Majority further stated that "address" does not mean "email address" under the law, an important distinction that allows a member to obtain physical addresses but not email addresses. The Majority also rejected the petitioners' argument that the members have a right to inspect any and all record maintained by the Association, finding that such a broad construction of the plain language would be inappropriate.

The Majority reminds us that the nonstock corporations acts amendments generally lag behind stock corporations act amendments. While the model stock corporations act was amended in 2016, and incorporated into Virginia law in 2019, similar changes/modernizations did not occur in the model nonstock act in 2021. These modernizations would have allowed the petitioners the remedy sought, but Virginia has not seen fit to amend the act, as of yet.

Dissenting Opinion: Judge Causey found that "addresses" includes "email addresses" and would have reversed on that issue. Judge Causey also found that the 2019 amendments prohibiting stock corporation members from obtaining email addresses impliedly allowed nonstock members to obtain email addresses. Judge Causey found that the "record of members" of the Association included email addresses, and the petitioners' statutory rights allowed for inspection of the "record of members."

Commentary: Should you wish to learn about the history of the incorporation of the Common law inspection rights and the development of member inspection rights in corporations, please read Judge Raphael's majority opinion pages 4-13. Judge Raphael's majority opinion is also a good primer on statutory interpretation and the hesitancy with which courts should add language into a statute. (p. 14-22).

L.H. by her next friend Hussainzadah, et al. v. Com. et al., Record No. 1639-22-2: (Beales, J., writing for Callins, J., and Clements, SJ.)
Judicial restraint; Best and narrowest grounds; Amicus briefs; Sovereign immunity; Demurrer; Next friends; Jus publicum; Standing doctrine
CAV found that plaintiffs did not have standing to sue the Commonwealth nor its Agencies for the harms alleged due to the environmental change/climate change.

Plaintiffs are a group of children represented by their parents/next friends. Plaintiffs sued the Commonwealth, the Virginia Department of Energy, Governor Glenn Youngkin, and the Virginia Department of Environmental Quality, as well as the

department directors. Plaintiffs sued regarding the Commonwealth's "policy and practice of approving permits for fossil fuel infrastructure in the Commonwealth . . . [regarding] the production, transport, and burning of fossil fuels." Plaintiffs alleged that this policy/practice has caused grave harm to the plaintiffs by causing "dangerous levels of greenhouse gas pollution."

The injuries alleged include "heat exhaustion and heat rash," being "bitten by a tick and "acquir[ing] alpha-gal syndrome," drought and reduction of soil moisture, ocean acidification, and extreme precipitation events, among others. See p. 4 for more. The defendants demurred and pleaded sovereign immunity, as well as other legal theories. The circuit court dismissed the case with prejudice, granting the Commonwealth's plea of sovereign immunity.

In the appeal, several prominent legal groups filed amicus briefs on behalf of the Appellants. The Appellants alleged that the sovereign immunity doctrine's application in this instance acted as a an end-run around the Appellants' constitutional rights and claims for equitable relief/injunction.

The CAV cited to Ibanez v. Albemarle County School Board, 80 Va. App. 169 (2024), for the proposition that Article I, § 11's procedural due process clause is "self-executing" and waives sovereign immunity for appropriate causes of action. The Commonwealth conceded that, post-Ibanez, the circuit court's conclusion was error (at this stage, preserving its right to argue that Ibanez should be overturned en banc) and thus argued the right-result-for-a-different-reason doctrine.

The CAV then conducted a standing analysis, citing to Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), and Philip Morris USA, Inc. v. Chesapeake Bay Found., Inc., 273 Va. 564 (2007). The CAV affirmed the dismissal, finding no standing to sue on the complaint.

CAV Unpublished Decisions

Com. v. Corcoran, Record No. 0162-24-1: (Callins, J., writing for Causey and Chaney, JJ.)
Commonwealth's Appeal; Fourth Amendment suppression; Exclusionary rule; Search incident to arrest; Inevitable discovery; Good-faith exception; Rule 5A:20
CAV affirmed the suppression of evidence located in a search of Corcoran's wallet because there were significant gaps in the record to determine where the wallet was prior to its search. CAV found that the good-faith exception to the exclusionary rule does not apply.

At 2:30 am, Deputy Simmons was flagged down by Underhill, a private citizen, who had just encountered two girls asking for protection from Corcoran. Simmons called for backup, but before they arrived Corcoran approached and told Simmons that Corcoran was the "girls' father, [and] he could discipline them as he pleased." Corcoran was aggressive, irritated, and angry.

Backup arrived and talked with Corcoran's wife and daughters. Corcoran entered his van and told law enforcement that they did not have permission to talk to his daughters and told his wife and daughters to get into the car. They refused, and Corcoran tried to drive away, but eventually stopped. Officers noted the odor of alcohol and slurred speech. Corcoran's wife told law enforcement that he was having a mental breakdown, acting irrationally.

Officer Mengel ordered Corcoran out of the car, but Corcoran refused. After several orders and refusals, a struggle occurred, and Mengel used both his baton and taser. Corcoran was taken to ground and handcuffed. Corcoran's wife asked for "the condo key" which was apparently located in Corcoran's wallet. An officer searched the wallet and located a bag of "crystal-like substance." The officer could not recall whether the condo key was located in the wallet.

Corcoran moved to suppress the evidence obtained from the wallet due to an illegal arrest and subsequent search. The circuit court found that "the Commonwealth had not introduced testimony related to how precisely the wallet came into police possession when Officer Nash searched it." The circuit court granted the motion to suppress, and the Commonwealth appealed.

The CAV found that the search-incident-to-arrest doctrine did not apply because the "record is silent as to when, precisely, Officer Nash's search of the wallet occurred." "[T]he meaningful gaps in the record before [the CAV] preclude application of the search-incident-to-arrest doctrine."

The CAV likewise found that the inevitable discovery doctrine did not apply because "[t]he lack of information about where Corcoran's wallet was before Officer Nash's search" occurred. The circuit court specifically "found that it did not know where the wallet was when Officer Nash searched it." The CAV reiterated that if the wallet was in Corcoran's possession when he was arrested and brought to jail, the search at the jail would not have included a search of the wallet and thus not inevitably discovered. Because the Commonwealth failed to introduce evidence of whether the wallet was in Corcoran's possession at the time of arrest/intake, the record was silent as to the location of the wallet, and the inevitable-discovery doctrine could not be applied.

Finally, the CAV rejected the Commonwealth's argument that the Exclusionary rule ought not be implicated because of the good-faith exception. The CAV found that while Nash "aspired to render helpful assistance" to Corcoran's wife in finding the condo key, the Commonwealth failed "to show that her warrantless search falls within one of the narrow categories of warrantless-search circumstances to which the good-faith exception to the exclusionary rule applies." The CAV then affirmed the circuit court's suppression of the evidence.

Commentary: I appreciate and agree with much (and perhaps all) of the CAV's opinion. I am slightly apprehensive about the discussion of the Exclusionary rule.

The CAV interprets the exclusionary rule as a set of finite categories, but that is not how I read SCOTUS's precedent on the subject. I think the result is probably the correct one given the facts in the opinion (I don't have the full record, obviously), but I think the statement that the exclusionary rule as a set of categories may not be what SCOTUS intended.

The Exclusionary Rule is meant to be a deterrent and a balancing test between the suppression's deterring effect and the "costs of exclusion." Utah v. Strieff, 579 U.S. 232, 235 (2016); see Davis v. United States, 564 U.S. 229, 246 (2011) ([W]e have said time and again that the sole purpose of the exclusionary rule is to deter misconduct by law enforcement.). The Fourth Amendment "has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons." Stone v. Powell, 428 U.S. 465, 486-87 (1976). The court's analysis is guided by what, if any, conduct of the officers ought to be deterred. See United States v. Calandra, 414 U.S. 338, 348 (1974).

I had written quite a bit more on this case, but it was much too long. All in all, this is a close case, and, honestly, I think it comes down to deference to the circuit court on factual issues. Had the circuit court denied the motion to suppress and subsequently convicted Corcoran, the CAV may have affirmed. Because the circuit court explicitly found the gaps in the record, and the evidence is viewed in the light most favorable to the prevailing party below, the CAV found no evidence to overturn the circuit court's decision. We will see if the Commonwealth petitions this to the Supreme Court of Virginia.

Speller v. Sentara Norfolk General Hospital, et al., Record No. 0606-23-4: (Chaney, J., writing for White, J., and Annunziata, SJ.)
Workers compensation commission; Virginia Birth-Related Neurological Injury Compensation Act; CAV jurisdiction; Best and narrowest grounds; Judicial restraint
Speller failed to timely file for a review of the deputy commissioner's opinion, so the Commission found it had no jurisdiction to modify the deputy commissioner's opinion. The CAV affirmed the Commission's finding of a lack of jurisdiction.

I do not go into the facts here, as they are not pertinent to the decision of the case. In a review by a deputy commissioner, Speller was awarded the maximum compensation permitted by statute, but denied compensation for future grief therapy. The parties were advised that review by the Commission could be requested within 20 days of the deputy commissioner's opinion. Neither party requested review, but both parties filed notices of appeal to the CAV. The CAV directed briefing on whether the CAV had jurisdiction to hear an appeal of an opinion from a deputy commissioner.

Subsequently, and months after the 20-day deadline had passed, Speller requested a final order from the Commission to perfect an appeal to the CAV. The Commission refused to review Speller's case because Speller failed to timely

request the Commission's review. Therefore, the Commission found that "it lacked jurisdiction" over Speller's case.

The CAV found no reason to disturb the Commission's decision because Speller's request for a final order or review of her case was untimely. "[The] conclusion that the Commission properly determined its lack of jurisdiction is dispositive of this appeal. Thus, [the CAV] does not address Speller's other arguments."

5800 HVB, LLC v. Harbour View Commerce Assoc., Inc., Record No. 0625-23-1: (Fulton, J., writing for Huff and O'Brien, JJ.)
Amicus briefs; Protective covenants; Rule 5A:20; Rule 5A:18
CAV affirmed the application of the restrictive covenants' prohibition of certain uses of the commercial lots, even though the zoning permitted the uses.

HVB negotiated to purchase a lot in the Harbour View Commerce Center in 2018. The Commerce Center is governed by the Commerce Association and a set of protective covenants. The covenants also created an Architectural Review Board (ARB) to determine whether the proposed uses of the lots conform to the protective covenants and are appropriate uses of the lots.

HVB proposed to build a 7-Eleven gas station and convenience store on its lot. The ARB rejected the proposal, finding that a gas station did not fit the purpose of the Commerce Center, specifically noting that the Commerce Center had multiple medical treatment centers and a daycare center. In particular, the daycare center "would be roughly 50 feet from where the exhaust from the tanks would be." It is worth noting that 7-Eleven conducted its own analysis of the lot and found that it was not up to 7-Eleven's standards.

HVB sued Harbour View and argued that the ARB did not have the authority to reject the type of use, as the lot was zoned for gas stations, as well as other commercial uses. HVB stated that the ARB was arbitrary and capricious in its denial of the use of the lot. The circuit court disagreed, finding the ARB was within its authority to deny HVB's proposed use of the lot under the protective covenants.

The CAV affirmed, stating, "Virginia courts should 'enforce restrictive covenants where intention of the parties is clear and the restrictions are reasonable." (quoting Shepherd v. Conde, 293 Va. 274, 288 (2017)). The CAV found that the ARB clearly was intended to evaluate the use of the property and determine whether the use would constitute a nuisance or otherwise objectionable use. Several of HVB's arguments were waived due to lack of legal citations and support, as well as for lack of preservation.

Fuller v. Com., Record No. 0796-23-2: (Malveaux, J., writing for Beales and AtLee, JJ.)
Submission on brief; Sufficiency; Mens rea
CAV affirmed Fuller's conviction of failing to re-register as a sex offender, finding sufficient evidence for a rational factfinder to conclude that Fuller acted with the appropriate mens rea.

> Fuller was originally convicted of aggravated sexual battery in 2011. As such, Fuller was required to register on the Sex Offender Registry and re-register with the VSP at regular intervals. Fuller complied without issue, including during the COVID-19 pandemic. However, in November 2021, submitted a deficient form. The VSP accepted it, but Trooper King met with Fuller and explained that all future forms needed to be complete. Fuller "apologized to King and told him he would complete the form correctly next time." Fuller submitted a deficient form again in February 2022. This time, the VSP did not accept the form, and Fuller was arrested for failing to re-register.
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> Fuller testified in his defense and initially stated that he did not remember much about King's meeting with him. Then when confronted about the fingerprints, Fuller testified that King did not mention the fingerprints during the meeting. The circuit court specifically questioned, "I thought a minute ago you didn't remember what King talked to you about because you were so sleepy[?]" Fuller responded that he was sleepy and was "speaking from what I know to be true about the form and how things are conducted and reality and common sense." The circuit court found Fuller's testimony not credible and convicted him of failing to re-register.
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> The CAV affirmed, finding sufficient evidence for a rational factfinder to conclude that Fuller knowingly failed to meet his duty to verify his registration information. (citing Marshall v. Com., 58 Va. App. 210 (2011).

Abal Courthouse, LLC v. 2000 Courthouse, LLC, Record No. 2009-22-4, and 2000 Courthouse, LLC v. Abal Courthouse, LLC, Record No. 1657-22-4 (Combined but not Consolidated Cases): (Causey, J., writing for Huff and Athey, JJ.)
Condition precedent; Breach of contract; Contract interpretation; Attorney fees; Parol evidence rule; Admissibility of evidence; Expert testimony
CAV rejected Abal's 15 assignments of error regarding admissibility of evidence, finding of breach of lease, and contract interpretation. CAV also affirmed the denial of attorney fees because 2000 failed to prove reasonableness and necessity of the fees.

> Abal signed a lease allowing Abal to operate a restaurant on the first floor of a commercial office building. As part of the contract, Abal was to "develop plans and necessary specifications" to prepare the space for a restaurant. The lease included a provision that Abal would create "installation specifications and plans for the scrubber" and once approved by 2000, 2000 would pay the costs associated.
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> There were significant delays in the purchase and installation of the scrubber, so 2000 offered to take the responsibility of purchasing and installing it,

memorializing the amendment in a "Second Amendment" to the lease. The amendment stated that Abal would be responsible for rent starting "sixty (60) days following" substantial completion of the installation of the scrubber. After the scrubber was installed, Abal complained of noise issues, which were never resolved. 60 days passed after the installation, and Abal never paid any rent.

2000 sued for unpaid rent and other damages, as well as attorney fees. The circuit court found in 2000's favor and ordered unpaid rent, late fees, and interest, totaling $443,587.69 plus 18% interest post-judgment. However, the circuit court found that 2000 had not presented sufficient evidence for a finding of reasonableness or necessity for the attorney fees requested, and the circuit court denied attorney fees.

Abal assigned 15 errors to the circuit court, including the admission of email evidence, admission of expert testimony, contract interpretation, definition of "substantially complete," and finding of breach. 2000 appealed on the issue of attorney fees alone. The CAV found none of Abal's assigned errors meritorious and dispensed with each in turn. Most important was that the contract clearly defined the terms Abal claimed were ambiguous and the terms of the contract obligated Abal to select the design of the scrubber as well as pay rent accordingly. No error in the judgment nor the denial of attorney fees. 2000 failed to demonstrate reasonableness of the attorney fees. (citing Chawla v. BurgerBusters, Inc., 255 Va. 616 (1998)).

Chapman v. Henrico County DSS., Record No. 2035-23-2: (Per Curiam Opinion; O'Brien, Malveaux, and Raphael, JJ.)
Termination of parental rights; § 16.1-283; Best interests of the child; Alternative grounds doctrine; Rule 5A:8
CAV affirmed the termination of parental rights where Chapman failed to remedy his substance abuse and other issues.

Chapman is biological father of X.C., born January 2022. DSS had been involved since before X.C.'s birth and had removed an older child from parents' custody because of substance abuse and child abuse. At birth, X.C. tested positive for fentanyl and methadone, receiving care for withdrawal symptoms in the NICU. X.C. was born while mother was incarcerated, and mother told DSS that Chapman would be caring for X.C.

Unbeknownst to mother, Chapman had tested positive for cocaine after X.C.'s birth. DSS scheduled a family meeting to determine a plan for X.C.'s care. Chapman refused a drug screening at the meeting. X.C. was placed into foster care upon release from the hospital. Chapman failed to follow the requirements of DSS, including mental health services, substance abuse services, and other housing requirements to gain custody of X.C.

Given Chapman's continued failure to remedy his substance abuse and behavioral conditions, as well as his housing situation, the circuit court terminated Chapman's

parental rights under § 16.1-283(C)(1) and (C)(2). In his appeal, Chapman failed to present a transcript or written statement of facts required by Rule 5A:8; however, the CAV reviewed the case, finding the transcript/statement of facts "not indispensable."

The CAV affirmed, reminding us that "subsection C termination decisions hing not so much on the magnitude of the problem that created the original danger to the child, but on the demonstrated failure of the parent to make reasonable changes." (quoting Yafi v. Stafford Dep't of Soc. Servs., 69 Va. App. 539, 552 (2018)). The CAV found that the record demonstrated that termination under § 16.1-283(C)(2) was in X.C.'s best interests and thus did not determine the validity of termination under 283(C)(1).