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EDVA Judge Denies Motion to Seal Parties' Settlement

Virginia Rocket Docket Blog

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Much like our recent post regarding an EDVA judge's denial of a joint request to vacate the court's earlier rulings after a settlement, another recent EDVA decision reinforces that EDVA judges are unwilling to simply rubber-stamp actions that parties agree to as part of a settlement.

In *A.P.G. v. Fisher-Price, Inc.*, Case No. 3:22CV112 (DJN), 2023 U.S.Dist. LEXIS 117193 (E.D.Va. July 7, 2023), the parties reached a settlement, which required court approval. A "key non-monetary term" of the settlement was that the settlement amount remain confidential, and so the parties requested that the court seal the details of the settlement.

As litigants in the EDVA know, the court's Local Rule 5 provides detailed procedures for requests to seal judicial documents, and the court will closely scrutinize the grounds for any motion to seal, even if the motion is unopposed. The moving party must satisfy all the procedural requirements of the rule and show that sealing is appropriate under Fourth Circuit precedent relating to both the common law and First Amendment public rights of access to court proceedings. The common law presumption of access may be overcome if the party's privacy interests outweigh the public right of access, while the First Amendment presumption of access may be overcome only by a "compelling government interest … narrowly tailored to serve that interest."

In *A.P.G.*, the plaintiff argued that sealing was justified to protect two interests: the parties' interests in confidentiality and in protecting the minor plaintiff from public disclosure of the settlement that could expose the plaintiff to financial fraudsters.

The court quickly dispensed with the first interest, noting that judicial records could not be sealed merely because parties had agreed to confidentiality. The court's interest in encouraging settlement did not outweigh the public's interest in access to judicial records, particularly where court approval of the settlement is mandated by statute.

Second, while the court recognized that safeguarding the well-being of a minor was a compelling state interest, no such risk was present. The plaintiff was identified only by initials, and so the minor's identity was confidential. Further, the Complaint, which was filed publicly, already laid out the extent of the plaintiff's injuries. There was also little risk of danger from financial fraudsters because the settlement funds were being placed in a special needs trust. Finally, Virginia state law barred courts from sealing or redacting the terms of an infant settlement, which further justified denial of the motion to seal.

Unlike the infant settlement in *A.P.G.*, most settlements do not require court approval, and so the decision will not have wide application. The ruling, however, provides another cautionary instruction that EDVA judges will not automatically approve uncontested requests from settling parties. In addition, the court's analysis emphasizes the close scrutiny that any EDVA judge will give to requests to seal court filings.

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