

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0278

September Term, 2007

BENJAMIN NICHOLS, JR., PERSONAL
REPRESENTATIVE OF THE ESTATE OF
LOIS ———

v.

CHARLES '—————' et al.

Salmon,
Eyler, Deborah S.,
Meredith,

JJ.

Opinion by Meredith, J.

Filed: July 14, 2009

This is an appeal from a judgment of the Circuit Court for Prince George's County dismissing a complaint filed by appellant, Benjamin Nichols, Jr. Mr. Nichols was the personal representative of the estate of Lois —, but he is not an attorney and failed to engage counsel to prosecute the claims he wished to pursue in this case on behalf of the estate and next of kin of Lois —. After giving Mr. Nichols time to seek an attorney, the circuit court granted the appellees' motion to dismiss the case on the ground that a personal representative cannot pursue litigation in a Maryland circuit court unless represented by counsel, because to do so violates Maryland Rule 2-131 (2008) and constitutes the illegal practice of law. We agree, and shall affirm the judgment of the circuit court.

Statement of Facts and Procedural History

Lois —, passed away on May 19, 2005. Her nephew, Mr. Nichols, was appointed personal representative of her estate. In that capacity, he filed a complaint in the Circuit Court for Prince George's County on May 16, 2006, naming as defendants: Charles — (one of Lois's —'s brothers); appellee W — (an attorney who had represented Charles); and appellee F — e (an attorney who had prepared Lois's Last Will and Testament). The complaint sought compensatory and punitive damages from the defendants, asserting tort claims based upon allegations of intentional misrepresentation, negligent misrepresentation, and libel, matters outside the jurisdiction of the orphans' court. See Md. Code (1974, 2001 Repl. Vol.), Estates and Trusts Article ("E&T"), § 2-102(a). Mr. Nichols sought no relief in his individual capacity, and asserted all claims on behalf of the estate and heirs of Lois —.

Mr. V filed a motion to dismiss, alleging that Mr. Nichols filed the complaint in violation of Maryland Rule 2-131(a), in that Mr. Nichols is not a member of the Maryland bar, nor had any member of the Maryland bar signed the complaint. Mr. G filed his own motion to dismiss, incorporating Mr. V's arguments. Mr. G also argued that Mr. Nichols lacked standing because Lois's estate should be discontinued for the reason that a small estate cannot pursue tort claims exceeding \$30,000, such as those asserted in the complaint. Additionally, Mr. G contended that he had not been properly served. Mr. Nichols filed an opposition to these motions, and later filed another "Motion Requesting that the Pro-Se Personal Representative for the Estate of Lois, Deceased, be Granted the Opportunity to Present the Facts of this Complaint and Case to a Jury," addressing similar issues.

On October 24, 2006, Mr. Nichols filed a motion asking the court to appoint a public defender to take over the prosecution of this case in the event the court determined that Mr. Nichols could not represent the estate and heirs. Mr. V filed an opposition, pointing out that there is no provision in Maryland law authorizing the appointment of a public defender in this type of civil case. Mr. Nichols's motion for appointment of a public defender was denied by order dated November 27, 2006.

On December 15, 2006, the circuit court held a hearing on the motions to dismiss. During that hearing, the court and Mr. Nichols engaged in the following discussion about representation of the plaintiffs:

THE COURT: Are you willing to get an attorney if I give you more time? . . .

You're not a lawyer, and I think you are precluded from [representing all the other heirs].

* * *

[Mr. Nichols]: Your Honor, I'd like to say this before – and I would like to have that opportunity –

THE COURT: You'd like to have what opportunity?

[Mr. Nichols]: Well, you know, at least the opportunity to consider that because --

THE COURT: Well, that's what I'm asking you.

[Mr. Nichols]: But at the same token, I want to weigh in on your thoughts in terms of the possibility that maybe not – that I may could proceed with this [without an attorney], and I was just trying to reference to a case similar to this where I did represent the case and it was the same situation and this case went all the way up to the Supreme Court, and I was allowed to do this in the District of Columbia. That's what I'm trying to say.

And in fact, they allow pro se personal representative to go into the silver courts all the way up –

THE COURT: Well, if you're representing just yourself, you can do that. But you're not representing just yourself. You're trying –

[Mr. Nichols]: But I wasn't representing --

THE COURT: You're trying [to] represent all of the potential heirs of the decedent. That's the difference. You're the name[d] personal representative, and that's the difference. You're trying to – you're not suing on behalf of yourself, you're suing on behalf of the estate of Lois Harris. There's a distinction.

* * *

THE COURT: . . . [T]he question I'm asking you now, Mr. Nichols, is are you willing to try to get an attorney to represent you in this matter?

[Mr. Nichols]: Well, Your Honor --

THE COURT: No. I have a decision to make --

[Mr. Nichols]: Okay. Well --

THE COURT: -- so what I'm going to do with this case if you're not going to get an attorney -- if you're telling me you're not going to get an attorney, then I have to --

[Mr. Nichols]: The estate cannot afford an attorney, Your Honor, I already explained that, because the fund that was exhausted behind the complaint -- defendant complaint, what went down. The estate is without any funds, and I explained -- you know, I explained to the Court in my letters to you why the estate didn't have any money and was based on the defendant negligence.

THE COURT: Well, I don't think so. I've -- here's what I'm going to do. I'll -- I'm going to take this under advisement.

* * *

I'm going to take this case under advisement. I would strongly, strongly suggest that you try to get an attorney and maybe respond to the allegations that are made in both Mr. G's and Mr. V's motions to dismiss. But I'm going to give you 30 days to either get an attorney to respond, [or] I'm going to deal with this as I see fit, based on whether or not you can practice law in the circuit court, not in a orphans court.

* * *

You have 30 days from today, Mr. Nichols, to either have an attorney enter their appearance on your behalf or respond to these motions, or I'm going to just go ahead and rule on what I have before me, all right?

[Mr. Nichols]: Okay, Your Honor.

On January 9, 2007, the court noted that Charlesn was deceased, and the court continued the pre-trial conference to allow Mr. Nichols additional time to obtain counsel. In a letter to the judge, Mr. Nichols indicated that the estate could not afford counsel and he would not be retaining an attorney. During a pre-trial conference on March 5, 2007, Mr. G. . acknowledged on the record that he had in fact been served, resolving that aspect of his motion to dismiss.

The circuit court issued a memorandum opinion and order dated March 26, 2007, granting the appellees' motions to dismiss. The court made the following conclusions of law: "(1) Plaintiff must be represented by counsel, as he is not suing on his own behalf. (2) Because Plaintiff is practicing law without a license on behalf of the estate and will not obtain representation, the case must be dismissed."

Mr. Nichols timely filed a notice of appeal on April 18, 2007. Although Mr. Nichols poses a dozen "questions" in his brief, the only issues decided by the circuit court – and therefore, the only issues properly before us in this appeal – are (a) the right of Mr. Nichols to prosecute this case in the circuit court despite not being admitted to practice law in Maryland; and (b) the court's refusal of the request to appoint a public defender to prosecute the case.

Analysis

A. The Right to Represent the Estate and Heirs

The first question preserved for our review is whether the circuit court erred when it held that Mr. Nichols could not proceed in the circuit court without legal counsel even though he was acting as the personal representative of an estate. When reviewing a motion to dismiss, our task is to determine whether the circuit court was legally correct. *See McDaniel v. American Honda Fin. Corp.*, 400 Md. 75, 83 (2007).

Maryland Rule 2-131(a) states: “Except as otherwise provided by rule or statute: (1) an individual may enter an appearance by an attorney or in proper person and (2) *a person other than an individual may enter an appearance only by an attorney.*” (Emphasis added.) The unauthorized practice of law by an individual who is not a member of the Maryland bar is illegal. Md. Code (2000, 2004 Repl. Vol.), §§ 10-206(a), 10-601(a) of the Business Occupations & Professions Article (“BOP”). Filing a complaint on behalf of others in the circuit court constitutes the practice of law. *See* BOP § 10-101(h).

It is illuminating to review this Court’s application of Rule 2-131(a) to suits involving the legal representation of corporations. In *Turkey Point Property Owners’ Ass’n, Inc. v. Anderson*, 106 Md. App. 710 (1995), a corporation filed a petition in the circuit court for judicial review of an administrative zoning decision. The petition was signed only by the corporation’s president, a non-attorney. The president also represented the corporation throughout the judicial review proceedings in the circuit court. On appeal to this Court, we

noted that a corporation is a “person” within the meaning of Rule 2-131(a) (as Rule 1-202(r) defines the term), *id.* at 713, but a corporation is not an “individual,” and therefore, under Rule 2-131(a)(2), must be represented by a licensed attorney. *Id.* at 715. Accordingly, we held that “the petition [filed by the corporation’s president] was a nullity, as were the proceedings before the trial court.” *Id.* at 720.

We recognize that, unlike a corporation, decedents’ estates have not always been recognized as “persons.” *See, e.g., Behnke v. Geib*, 169 F. Supp. 647, 650 (D. Md. 1959) (“[t]he estate of a deceased person is not an entity known to the law, and is not a natural or an artificial person, but is merely a name indicating the sum total of assets and liabilities of a decedent.”) (quoting 33 C.J.S. Executors and Administrators 881 (3d ed.)); *see also Gradman v. Brown*, 183 Md. 634, 640 (1944) (“The word estate means, in the testamentary law, such property that passes, upon death, to the personal representative of the decedent.”). But, like the agent of a corporation who represents his client in litigation, and unlike the typical *pro se* litigant, the personal representative of a decedent’s estate appears in court in a representative capacity, not to pursue his own interests. “A personal representative is a fiduciary,” Md. Code (2001), § 7-101(a) of the Estates and Trusts Article, who is “the legal representative of all persons interested in an estate and acts for them.” *Gradman, supra*, 183 Md. at 640; *see also American Jewish Joint Distribution Committee v. Eisenberg*, 194 Md. 203, 207 (1949) (“It is a basic principle that an executor acts as a trustee for all persons interested in the estate and he should be diligent and faithful in the discharge of his trust.”).

In *Behnke, supra*, the court observed: “An administrator is an instrumentality established by law ‘for performing the acts necessary for the transfer of the effects left by the deceased to those who succeed to their ownership.’” 169 F. Supp. at 650 (quoting 33 C.J.S. Executors and Administrators 880)); *see also Goldsborough v. De Witt*, 171 Md. 225, 252 (1937) (defining administrator as officer of the orphan’s court).

We need not decide whether Rule 2-131(a)(2) precludes all personal representatives from litigating in the circuit court without being represented by a member of the Maryland bar. But in a case such as the one Mr. Nichols filed, in which the personal representative is seeking no personal relief in his individual capacity and is purporting to pursue legal remedies on behalf of other persons, a Maryland licensed attorney is required by Rule 2-131(a)(2).

As in *Turkey Point*, it is appropriate to dismiss a suit that has been entirely prosecuted by an unqualified person. Our holding is in accord with the public policy underlying “the prohibition against unauthorized practice,” namely, the protection of the public from unlicensed persons holding themselves out as attorneys at law. *In re Application of R.G.S.*, 312 Md. 626, 638 (1988). Regardless of any good intentions that motivated Mr. Nichols to file this suit, Mr. Nichols is not properly equipped to adequately protect the interests of the beneficiaries of the estate without the assistance of counsel. And even if he had somehow acquired the knowledge of the law that is required to properly handle such a case, he nevertheless lacks the license required to practice law before the courts of this state.

We agree with the circuit court that Mr. Nichols could not proceed without an attorney, and the correct remedy was dismissal of the action. We therefore affirm the judgment of the circuit court.

B. The Right to Appointed Counsel

Mr. Nichols also questions the circuit court's denial of his motion to appoint a public defender to represent the estate. Maryland Code (1957, 2003 Repl. Vol.), Article 27A § 4(b) limits the range of cases that may be handled by the public defender's office, and states:

Legal representation shall be provided indigent defendants or parties in the following proceedings:

- (1) Any criminal or juvenile proceeding constitutionally requiring the presence of counsel prior to presentment before a commissioner or judge;
- (2) Criminal or juvenile proceedings, where the defendant is charged with a serious crime, before the District Court of Maryland, the various circuit courts within the State of Maryland, and the Court of Special Appeals;
- (3) Postconviction proceedings, when the defendant has a right to counsel pursuant to Title 7 of the Criminal Procedure Article;
- (4) Any other proceeding where possible incarceration pursuant to a judicial commitment of individuals in institutions of a public or private nature may result; and
- (5) As to a parent, a hearing in connection with guardianship or adoption under Title 5, Subtitle 3, Part II or Part III of the Family Law Article.

There is no provision in the statute for the appointment of a public defender to represent an estate in the prosecution of a civil tort action seeking money damages. It was not error for the circuit court to deny the motion.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE
GEORGE'S COUNTY IS AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**