

2019 IL App (2d) 190025-U
No. 2-19-0025
Order filed September 10, 2019

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ESTATE OF HILDEGARD REDSCHLAG, Deceased)	Appeal from the Circuit Court of Winnebago County.
)	
)	No. 12-P-431
)	
(Sylvia Redschlag, Petitioner-Appellant, v. Ingrid Nilsen and Erwin Redschlag Jr., Respondents-Appellees).)	Honorable Donald P. Shriver, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* As petitioner, a nonattorney, could not represent an estate on appeal, we dismissed the appeal.

¶ 2 Petitioner, Sylvia Redschlag, and respondents, Ingrid Nilsen and Erwin Redschlag Jr., are the children and heirs of Hildegard Redschlag, who died in 2012. Petitioner, a nonattorney who is the executor of the estate, has proceeded *pro se* in this case since 2016. She appeals a judgment closing the estate. We dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 In October 2012, Hildegard's estate was admitted to probate and petitioner was appointed executor. Originally, the estate was represented by attorney Timothy K. Whitham. On July 7,

2015, Whitham moved to withdraw. On August 13, 2015, before the motion was heard, petitioner filed a *pro se* appearance as executor. On August 24, 2015, the court allowed Whitham to withdraw, and James M. DiVerde Jr. filed his appearance as petitioner's counsel. On January 4, 2016, the court granted DiVerde's unopposed motion to withdraw as counsel. Thereafter, petitioner proceeded *pro se* on behalf of the estate. No objections to her doing so were raised at any time. On December 5, 2012, the court ordered the estate closed. Petitioner filed a *pro se* appeal on behalf of the estate.

¶ 5

II. ANALYSIS

¶ 6 We initially note that, although respondents have not filed an appellee's brief, this is no impediment to our hearing this appeal. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). This is especially so because we do not reach the merits of the appeal but dismiss it on a ground that we would raise in any event.

¶ 7 An individual not licensed to practice law may not represent another in a court of law. 705 ILCS 205/1 (West 2018); *Kimbrell v. State Bank of Speer*, 2018 IL App (3d) 170498, ¶ 40. Specifically, a nonattorney may not personally represent the legal interests of an estate, at least where its beneficiaries or creditors include people other than her. *Ratcliffe v. Apantaku*, 318 Ill. App. 3d 621, 625-26 (2000); *Pridgen v. Andresen*, 113 F.3d 391, 393 (2d Cir. 1997); *Godwin v. State ex rel. McKnight*, 784 So.2d 1014, 1015 (Ala. 2000).

¶ 8 There is no question that (1) petitioner's representation of the estate in the trial court violated the prohibition on nonattorneys practicing law and (2) petitioner may not represent the estate on appeal (as she now purports to do). The only question is what consequences follow.

¶ 9 In *Blue v. People*, 223 Ill. App. 3d 594 (1992), a nonattorney filed a petition for *habeas corpus* on behalf of his son. The trial court dismissed the action on procedural grounds.

The father appealed. We dismissed the appeal and vacated the judgment. We held that a pleading signed by a nonattorney is a nullity and must be dismissed, and, if the suit has proceeded to a judgment, the judgment is void. *Id.* at 596. In *Ratcliffe*, a nonattorney filed a medical malpractice action in behalf of the estate of her deceased mother. *Ratcliffe*, 318 Ill. App. 3d at 623. The trial court dismissed the suit on procedural grounds. She appealed. The court dismissed the appeal and vacated the judgment. The court relied on *Blue*'s nullity rule. *Id.* at 625-26.

¶ 10 Although it is still established that a nonattorney may not represent the interests of another in any legal action, the nullity rule is no longer good law. In *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, a nonattorney filed complaints for administrative review on behalf of the corporation of which he was president. On the defendant city's motion, the trial court dismissed the complaints, based on the nullity rule. *Id.* ¶¶ 5-7. On the appeal, filed by an attorney, the appellate court reversed and remanded, holding that the nullity rule did not apply automatically and should not apply there. *Downtown Disposal Services, Inc. v. City of Chicago*, 407 Ill. App. 3d 822, 831-37 (2011).

¶ 11 The supreme court affirmed the appellate court. It held that "there is no automatic nullity rule" and that a trial court should enter a dismissal based on unauthorized practice only if doing so is proper based on all the circumstances, such as the nonattorney's knowledge of the impropriety, the level of his or her participation, and the degree of prejudice to the opposing party. *Downtown Disposal*, 2012 IL 112040, ¶ 31; see also *LVNV Funding, LLC, v. Trice*, 2015 IL 116129, ¶¶ 43-44 (under *Downtown Disposal*, filing of complaint by nonattorney does not raise voidness concerns or create incurable defect but might merit dismissal if defect is raised in

trial court); *Kimbrell*, 2018 IL App (3d) 170498, ¶¶ 43-47 (trial court did not abuse discretion in dismissing action filed by nonattorney, as less drastic alternatives were clearly unsatisfactory).

¶ 12 Although *Downtown Disposal* abolished the nullity rule of *Blue* and *Ratcliffe*, the rule was the basis of an opinion postdating *Downtown Disposal* and *LVNV Funding*. In *In re Estate of Mattson*, 2019 IL App (1st) 180805, Houlihan, a nonattorney, petitioned to open the estate of his deceased mother. The trial court refused to grant the petition but continued the case for him to obtain counsel. He then moved to be appointed administrator of the estate. The court denied the petition without prejudice, based on *Ratcliffe*. Houlihan filed a *pro se* appeal. *Id.* ¶¶ 3-4.

¶ 13 The appellate court dismissed the appeal and affirmed the trial court. The *Mattson* majority held that Houlihan could not represent his mother's estate in either the trial court or the appellate court. The majority relied on *Ratcliffe's* and *Blue's* nullity rule. *Id.* ¶¶ 6-7. It made no mention at all of *Downtown Disposal* or *LVNV Funding*.

¶ 14 The dissenting justice contended that Houlihan had never represented the interests of the estate or anyone else but represented solely his own personal interest in becoming the estate's administrator. *Id.* ¶¶ 18-20 (Hyman, J., dissenting). The dissent distinguished *Blue* and *Ratcliffe* on this ground but did not contend that they were no longer good law. Like the majority, the dissent did not mention *Downtown Disposal* or *LVNV Funding* at all.

¶ 15 Although *Mattson* might have reached a proper result, it improperly relied on the nullity rule instead of considering whether the trial court had acted properly under all the circumstances. Of course, the court's erroneous reasons for affirming the trial court in no way invalidated its decision to dismiss the appeal. Even if the dismissal could not be based on a theory of voidness,

forbidding the *pro se* Houlihan from filing a brief and seeking a reversal of the judgment was plainly within the court's prerogative.¹

¶ 16 Here, the action was originally filed by an attorney who represented petitioner, who was the executor of Hildegard's estate. After her second attorney withdrew, she impermissibly acted as counsel for a party other than herself. However, neither respondent nor the court ever raised this problem. Had any of them done so, the court might have alerted petitioner to the need to obtain counsel, given her the opportunity to do so, and thus minimized any potential harm to the estate, respondents, third parties, or petitioner herself from her unauthorized practice of law. As the impropriety did not render any of the court's actions void, and as the cause has proceeded to a final judgment, we shall not disturb the judgment.

¶ 17 These considerations do not apply to the appeal. Petitioner may not legally pursue her *pro se* appeal on behalf of the estate, and she has declined to hire an attorney to do so. Moreover, it is too late to find one to file a timely appeal. Therefore, we dismiss the appeal.

¶ 18 III. CONCLUSION

¶ 19 For the foregoing reasons, the appeal from the circuit court of Winnebago County is dismissed.

¶ 20 Appeal dismissed.

¹ We note that in *Kimbrell* the appellate court did not dismiss the *pro se* plaintiff's appeal. However, although she had filed the complaint on behalf of herself and others, she filed the notice of appeal solely on her own behalf. *Kimbrell*, 2018 IL App (3d) 170498, ¶ 43.