ORIGINAL

IN THE SUPREME COURT OF OHIO

MARY J. HUEBENER RAICHYK, Ph.D. PERSONAL REPRESENTATIVE OF E. MICHAEL RAICKYK, Deceased

Plaintiff-Appellant,

v.

SHABBIR SABIR, M.D., et al.

Defendant-Appellees.

Supreme Court Case No. 2012-0775

On Appeal from the 12th District Court of Appeals, Brown County, Case No. 2011-11-025

MEMORANDUM IN RESPONSE TO PLAINTIFF-APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION AND MOTION TO STRIKE OF DEFENDANT-APPELLEES, SHABBIR SABIR, M.D. AND DAVID C. BECK, M.D.

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MEMORANDUM

Defendant-Appellees, Shabbir Sabir, M.D. and David C. Beck, M.D. ("Defendant-Appellees"), respectfully request this Court decline to exercise jurisdiction in this matter and dismiss the Plaintiff-Appellant's appeal. The Plaintiff-Appellant is engaged in the unauthorized practice of law, and has not demonstrated a sufficient public or great general interest such that this Court should exercise jurisdiction over this appeal.

I. PROCEDURAL BACKGROUND

On April 29, 2011, the Plaintiff-Appellant filed a Complaint in the Brown County Court of Common Pleas asserting a medical claim against the Defendant-Appellees. The Plaintiff-Appellant failed to attach an Affidavit of Merit to her Complaint, as required by Civ.R. 10(D)(2). As a result, Defendant-Appellees moved the trial court for dismissal of the action. The Defendant-Appellees' motions to dismiss were granted by the trial court on October 24, 2011.

Subsequently, the Plaintiff-Appellant appealed the trial court's dismissal of the action to the Twelfth District Court of Appeals. The underlying action and subsequent appeals were filed by the Plaintiff, pro se, on behalf of the Estate of E. Michael Raichyk. It is undisputed that Plaintiff-Appellant, Mary J. Huebener Raichyk, is not a licensed attorney in the State of Ohio, or in any other jurisdiction.

The Defendant-Appellees moved to dismiss the appeal on the basis that the Plaintiff-Appellant was engaged in the unauthorized practice of law. On January 13, 2012, the Court of Appeals issued an Order denying the Defendant's motion to dismiss and instructing the Plaintiff-Appellant to obtain legal representation for the Estate of E. Michael Raichyk. On March 21, 2012, the Court of Appeals dismissed the Plaintiff's appeal for the failure to obtain legal representation for the Estate of E. Michael Raichyk. This appeal followed.

II. LEGAL ARGUMENT

A. The Court should decline to exercise jurisdiction and dismiss the Plaintiff-Appellant's appeal because the Plaintiff-Appellant is engaged in the unauthorized practice of law.

The Defendant-Appellees respectfully request that the Court decline jurisdiction and dismiss this appeal because the Plaintiff-Appellant is clearly engaged in the unauthorized practice of law. Section 2(B)(1)(g), Article IV of the Ohio Constitution grants the Supreme Court of Ohio the power to regulate and control all matters related to the practice of law in this State. Gov. Bar. R. VII 2(A) defines the unauthorized practice of law as "the rendering of legal services for another by any person not admitted to practice in Ohio." *Williams v. Griffith*, 10th Dist. No. 09AP-28, 2009 Ohio 4045. In addition, R.C. 4705.01 provides, in pertinent part:

> No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.

Although the law recognizes that "a person has an inherent right to proceed pro se in any court," that right pertains only to that person. *See Fravel v. Stark Cty. Bd. of Revision*, 88 Ohio St.3d 574, 575, 728 N.E.2d 393 (2000). The right to proceed pro se does not extend to representing others.

The case of *Williams v. Griffith, supra,* is directly on point with this case. In *Williams,* the pro se plaintiff, the designated personal representative of the decedent, filed a claim for wrongful death and medical malpractice. The Tenth District Court of Appeals dismissed the action and determined that while Williams could represent himself, he could not represent his daughter's estate because "to do so would constitute the unauthorized practice of law." *Id.* at ¶ 11. The court further noted that "a personal representative of a decedent's estate stands in the

shoes of the decedent to assert claims on behalf of the estate." As such, "the personal representative represents the interests of the statutory next of kin." *Id.* at ¶ 13. Despite being the personal representative of the decedent's estate, since Williams was not an attorney, he could not "represent others that the statute designates as next of kin, because to represent others would constitute the unauthorized practice of law." *Id.* at ¶ 15. In addition, the *Williams* court further held that the Plaintiff could not proceed pro se by representing himself on behalf of the statutory next of kin in one action. *Id. See also* R.C. 2125.02.

As in *Williams*, the Plaintiff-Appellant in this matter is acting as the personal representative of an estate; thus, she is asserting claims in the interests of the statutory next of kin. Pursuant to clear Ohio law, this representation by the Plaintiff-Appellant, a non-attorney, constitutes the unauthorized practice of law. Further, Plaintiff-Appellant is not permitted to proceed pro se on her own behalf since such an action must necessarily be maintained on behalf of the statutory next of kin in one action.

Ohio Revised Code 4705.01 prohibits a non-attorney from representing another in any action or proceeding in which the person is not a party. It is clear that in the context of a wrongful death action on behalf of an estate and its beneficiaries, the action must be pursued by a licensed attorney. Otherwise, the pleadings, and subsequent appeal, are a nullity. *See Heath v. Teich,* 10th Dist. No. 06 AP 1018, 2007 Ohio 2529. As a result, the Plaintiff-Appellant's appeal in this matter should be dismissed.

B. The Court should decline to exercise jurisdiction over this matter because the Plaintiff-Appellant has not demonstrated that there is a sufficient public or great general interest.

If a party believes his cause to be one of public or great general interest, pursuant to the Rules of Practice of the Supreme Court of Ohio, he may seek leave of this Court to hear his

cause by filing with the clerk a motion to certify the record. The sole issue for determination at the hearing upon such motion is whether the cause presents a question or questions of "public or great general interest as distinguished from questions of interest primarily to the parties." Whether the question or questions argued are in fact ones of public or great general interest rests within the discretion of the court. *Williamson v. Rubich*, 171 Ohio St. 253, 254; 168 N.E.2d 876 (1960).

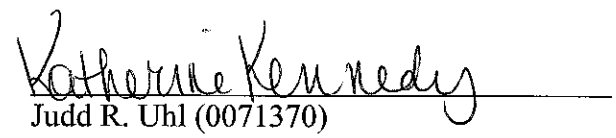
Plaintiff-Appellant's apparent explanation for why this case involves a public or great general interest is her argument that the Twelfth District's requirement that she obtain legal representation "ignores the public safeguarding-purpose of demanding proper legal representation for plaintiff servicing." *See* Pl.'s Memo. in Support of Jurisdiction at 4.

It is the Defendant-Appellees' position that the desire for an individual to engage in the unauthorized practice of law by representing the estate of a decedent is not an issue of public or great general interest. In fact, the opposite is true. This Court's jurisdiction extends to regulating the unauthorized practice of law to protect the public from agents "who have not been qualified to practice law and who are not amenable to the general discipline of the court." *Union Sav. Assn. v. Home Owners Aid, Inc.*, 23 Ohio St. 2d 60, 64, 262 N.E.2d 558 (1970). This Court restricts the practice of law to licensed practitioners as a means to "protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation." *Cleveland Bar Assn. v. Comp Management, Inc.*, 104 Ohio St. 3d 168, 2004 Ohio 6506, 818 N.E.2d 1181, P40. Thus, the purpose of restricting the practice of law is actually to protect the public, and not to create a disservice to the public as the Plaintiff-Appellant claims. As such, there is no public or great general interest such that the Court should exercise jurisdiction over this appeal.

III. CONCLUSION

As stated above, it is clear under Ohio law that the Plaintiff-Appellant is engaged in the unauthorized practice of law. Plaintiff-Appellant Raichyk is attempting to represent her son's estate and the beneficiaries of the estate. For this reason, Defendant-Appellees respectfully requests that Court decline to exercise jurisdiction and the appeal in this matter be dismissed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent this 29th day of May, 2012 to:

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