First Judicial Circuit Court

Tami Bern
Circuit Court Judge

211 W. Main
Vermillion, SD 57069
Fax: 605.677.8885

Mary Anne Meyer
Official Court Reporter

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FILED
DEC 26 2019
Jessica Bosse
Clay County Clerk of Courts
1st Judicial Circuit Court of South Dakota

December 26th, 2019

Mr. Kevin Loftus
322 Walnut Street
Yankton, SD 57078

Mr. Stewart Hines
2704 E. Main
Vermillion, SD 57069

Mr. Joseph Ruben Hill
5175 Grant Street, Unit 2
Casper, Wy82601

RE: Clay County Civ. 18-15

Dear Mr. Loftus, Mr. Hines and Mr. Hill:

This matter was before the court on Defendant's Motion to Dismiss and Motion for Summary Judgment. Defendant asserts the action should be dismissed for Plaintiff's failure to prosecute its claim pursuant to SDCL 15-6-41(b) and, alternatively, should be granted summary judgment as there are no genuine issues of any material fact and Defendant is entitled to judgment as a matter of law. Plaintiff asserts it has prosecuted its claim and there are material facts in dispute precluding summary judgment. Because the court finds neither Mr. Hines nor Mr. Hill have the authority to appear pro se on behalf of the trust, the court finds that Plaintiff has failed to diligently prosecute its claim and to comply with the rules of civil procedure and this court pursuant to SDCL 15-6-41(b) and enters a judgment of dismissal.

Facts

Joseph Ruben Hill, Managing Fiduciary Party, as a Trustee on behalf of, Forbes-Robertson Group, a Prue Trust Organization commenced this action against Defendant for fraudulent conveyance of trust property. The summons and complaint were filed by Mr. Hill pro se on February 7th, 2018. Although it is uncertain when or how Defendant was served with the summons and complaint, she filed an answer and counterclaim on March 2nd, 2018. Thereafter, a number of pleadings were ostensibly filed by Mr. Hill pro se for the Trust and later, by Mr. Hines pro se for Mr. Hill pro se for the Trust by purported authority of a power of attorney granted to him by Mr. Hill.

1. Mr. Hill cannot litigate pro se a legal claim on behalf of the Trust.

SDCL 16-18-1 requires license and bar membership to practice law in this state as follows:

EXHIBIT 1

> Excepting as provided by 16-18-2, no person shall engage in any manner in the practice of law in the State of South Dakota unless such person be duly licensed as an attorney at law, and be an active member of the State Bar in good standing. Any person engaging in any manner in the practice of law in violation of this section may be restrained by permanent injunction in any court of competent jurisdiction, at the suit of the attorney general of any citizen of the state.

SDCL 16-18-2 references the admission of non-resident attorneys and is not applicable to this action. It is without question that Mr. Hill has been engaged in the practice of law by the preparation of legal documents as well as appearing before the court on behalf of the Trust. The South Dakota Supreme Court has consistently held that the opportunity to practice law in this state is a privilege, not a right. *See Steele v. Bonner,* 2010 S.D. 37, ¶ 16, 782 N.W.2d 379, 383-4 (discussing the well-settled position of the South Dakota Supreme Court that the opportunity to practice law in front of courts in this state is a privilege, not a right). "Only those who meet this high fiduciary standard are allowed to assist those in need of competent legal representation . . ." *Id.* In *Bonner*, the trial court found that the Defendant had engaged in the practice of law when she suggested another attorney's client sign a "power of attorney" to talk to her in jail which would "protect [Defendant's] conversation with the young man by the attorney/client privilege." *Bonner*, 2010 S.D. 37, ¶ 4, 782 N.W.2d at 381. The trial court further found that Defendant had engaged in the practice of law when she filed a "report" with the Seventh Circuit court entitled "a report to the court concerning three children" and signed "[Defendant], independent investigator and advocate of Rapid City South Dakota, also an associate professor of Sociology at Oglala Lakota College." *Id.* at ¶ 5. The trial court had found other instances that would constitute the practice of law and had thus entered an injunction permanently prohibiting certain conduct. *Id.* at ¶ 10.

Other states have addressed advocates attempting to practice law under the guise of the right to proceed pro se. The Supreme Court of Ohio, in a per curiam decision, held that

> [the] law recognizes that a person has the inherent right to proceed pro se in any court. But it also prohibits a person from representing another by commencing, conducting, or defending any action or proceeding in which the person is not a party. When a person not admitted to the bar attempts to represent another in court on the basis of a power of attorney assigning pro se rights, he is in violation of this statute . A private contract cannot be used to circumvent a statutory prohibition based on public policy.
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> *Disciplinary Counsel v. Coleman*, 2000-Ohio-288, 88 Ohio St. 3d 155, 157–58, 724 N.E.2d 402, 404.

The Supreme Court of Ohio further opined on the matter of a power of attorney appearing before a court of law:

> In the first place, persons holding powers of attorney have historically not been considered attorneys who can appear in the courts. When a principal through the execution of a 'power of attorney' designates another to transact some business that could have been transacted by the principal, he appoints an agent to act for him as an 'attorney in fact' or 'private attorney.'"
>
> *Id.*

The Supreme Court of Ohio distinguishes 'attorneys in fact' from an 'attorney at law' as individuals who hold a power of attorney but simply are not permitted to practice in courts. *See*

also Christiansen v. Melinda, 857 P.2d 345, 348 (Ala. 1993) (holding that "a principal can engage 'an agent' to practice law on his behalf only if that agent is a licensed attorney and a member of the state bar. Thus, the practice of law is not something 'that the principal can do through an agent' unless that agent is an attorney-at-law.").

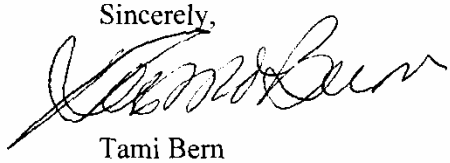
The party in interest is the trust. Not Mr. Hill. His purported status of trustee does not grant him authority to engage in the unauthorized practice of law. *See Mayer v. Lindenwood Female College*, 453 SW3d 307 (Mo.App.E.D., 2019) (holding trustees, acting on behalf of trusts, were engaged in unauthorized practice of law when they filed notice of appeal from judgment against trusts); *Bank of New York v. Miller*, 923 NE2d 651 (Ohio App. 3rd 2009) (trustee, not a named party and not a licensed attorney, could not represent trust in foreclosure action); *Lee v. Catron*, 203 P3d 104 (N.M. 2008) (trustee who administered trust for other beneficiaries could not represent trust pro se); *EHQF Trust v. S & A Capital Partners, Inc.*, 947 So.2d 606 (Fa 4th DCA 2007) (trustee engaged in the unauthorized practice of law when it appeared pro se on behalf of trust and signed notice of appeal that was filed by trust in civil action); *Application for Water Rights of Town of Minturn*, 359 P.3d 29 (Co. 2015) (non-attorney trustee could not proceed pro se on behalf of trust).

Accordingly, as Mr. Hill may not proceed on behalf of the trust, any purported transfer or assignment of that nonexistent authority to Mr. Hines is of no effect. The court adopts the procedural history of this matter as set forth in argument #1 commencing at page 2 through page 5 of Defendant's Motion to Dismiss. Plaintiff's pleadings in this matter constitute the unauthorized practice of law, fail to comply with the rules of civil procedure and are of no effect. As a result, Plaintiff's complaint is dismissed pursuant to SDCL 15-6-41(b). As this matter is resolved on the issue of involuntary dismissal, the court does not address the remainder of issues pled in Defendant's motion to dismiss and motion for summary judgment.

As neither Mr. Hines nor Mr. Hill had the authority to proceed on behalf of the trust in this matter, the court declines to enter an award of attorney's fees in favor of Defendant against the trust in this proceeding. SDCL 15-6-11(c) provides that the court may impose appropriate sanctions upon attorneys, law firms, or parties that have violated 15-6-11(b). Sanctions pursuant to this statute are not the appropriate remedy for the unauthorized practice of law in this matter. Further, as Plaintiff's answer to Defendant's counterclaim has been ruled to be of no force or effect, the trust has sixty days from the date of the court's order in this matter to file an answer to Defendant's counterclaims by way of an attorney licensed to practice law in this state unless Defendant elects to dismiss those counterclaims against the trust.

Counsel for Defendant may prepare an Order in accordance with this opinion incorporating the same by reference.

Sincerely,



Tami Bern
Circuit Court Judge

EXHIBIT 1