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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

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Robert F. Pipes, Jr., as trustee of the Robert F. Pipes, Jr. Living Trust, and Annette Pipes, as agent and attorney in fact for the Robert F. Pipes, Jr. Living Trust

v.

Weyerhaeuser Company

**Appeal from Clarke Circuit Court
(CV-18-900119)**

THOMPSON, Presiding Judge.

Weyerhaeuser Company ("Weyerhaeuser") filed a complaint in the Clarke Circuit Court ("the trial court") on August 30, 2018, seeking a judgment declaring that a lease agreement

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("the agreement") entered into by the parties' respective predecessors in 1972 was valid and had not been terminated. Weyerhaeuser claimed that, pursuant to the agreement, it had a leasehold interest in 100 acres of land ("the Pipes Trust land") owned by the Robert F. Pipes, Jr. Living Trust ("the Pipes Trust"). Robert F. Pipes, Jr., as trustee of the Pipes Trust, and his wife, Annette Pipes, as agent and attorney in fact for the Pipes Trust, were named as the defendants in the action; in other words, they were sued in their representative capacities on behalf of the Pipes Trust, not in their individual capacities. In the complaint, Weyerhaeuser also sought any injunctive relief that might be necessary to enforce the specific performance of the agreement. Under the agreement, Weyerhaeuser asserted, it had access to the Pipes Trust land and to the timber on that land.

On December 16, 2019, the trial court entered a summary judgment in favor of Weyerhaeuser. In the judgment, the trial court pointed out that Robert and Annette had "proceed[ed] pro se in their respective capacities on behalf of the Robert F. Pipes, Jr. Living Trust." On January 27, 2020, the Pipeses filed a timely notice of appeal to the Alabama Supreme Court.

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That court transferred the appeal to this court pursuant to § 12-2-7(6), Ala. Code 1975.

The notice of appeal was signed only by Annette Pipes, as agent for the Pipes Trust, and Annette and Robert purport to continue to appear pro se on appeal. On August 3, 2020, this court asked the parties to submit letter briefs on the issues of whether Robert and Annette are attorneys licensed to practice law in the State of Alabama, and, if not, whether they could properly appear without counsel in the appeal of this matter. The parties have complied with this court's request.

It is undisputed that Robert and Annette are not attorneys licensed to practice law in Alabama. Pursuant to § 34-3-6(a), Ala. Code 1975, a nonlawyer may represent himself or herself in court but is prohibited from representing another person or a separate legal entity. Under Alabama law, one is engaged in the practice of law if he or she

"[i]n a representative capacity appears as an advocate or draws papers, pleadings, or documents, or performs any act in connection with proceedings pending or prospective before a court or a body, board, committee, commission, or officer constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of

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the judicial power of the state or any subdivision thereof."

§ 34-3-6(b) (1), Ala. Code 1975. Additionally,

"[i]f any person shall, without having become duly licensed to practice, ... practice or assume to act or hold himself or herself out to the public as a person qualified to practice or carry on the calling of a lawyer, he or she shall be guilty of a misdemeanor and fined not to exceed \$500, or be imprisoned for a period not to exceed six months, or both."

§ 34-3-1, Ala. Code 1975.

"'[T]he courts of this State have held that a person must be a licensed attorney to represent a separate legal entity, such as a corporation. In Stage Door Development, Inc. v. Broadcast Music, Inc., 698 So. 2d 787, 787 (Ala. Civ. App. 1997), the Court of Civil Appeals held that "[o]ne who is not an attorney may not appear as an advocate on behalf of a corporation, even one he wholly owns, without engaging in the unauthorized practice of law." Further, in A-OK Constr. Co. v. Castle Constr. Co., 594 So. 2d 53, 54 (Ala. 1992), this Court stated that generally "a corporation can appear in court only through an attorney." Accord Ex parte Lamberth, 242 Ala. 165, 5 So. 2d 622 (1942).'

"Ex parte Ghafary, 738 So. 2d 778, 779 (Ala. 1998)."

Rimpsey Agency, Inc. v. Johnston, 218 So. 3d 1242, 1244-45

(Ala. Civ. App. 2016).

Although this court's research has revealed no caselaw regarding the ability of a nonattorney to represent a trust before a court of law in a civil action, it is clear that Alabama law prohibits nonattorneys from representing other individuals and entities in other analogous contexts. In Chambers v. Tibbs, 980 So. 2d 1010, 1013 (Ala. Civ. App. 2007), this court held that parents or guardians were not permitted to represent their minor children in a lawsuit on behalf of the children, explaining that,

"in Ex parte Ghafary, 738 So. 2d 778 (Ala. 1998), our Supreme Court addressed the issue whether the nonattorney executrix of an estate could represent the estate in an action. In that case our Supreme Court examined both Article I, § 10, of the Constitution of Alabama of 1901, which establishes the right of a person to represent himself before any tribunal in the state, and § 34-3-6, Ala. Code 1975, which restricts those persons who have authority to practice law to those persons who 'are regularly licensed.' The Supreme Court concluded in Ex parte Ghafary that the right of a person to represent himself under Article I, § 10, did not 'extend to the representation of interests other than those of the pro se litigant.' Id. at 779. Additionally, the Supreme Court determined that § 34-3-6(a) 'prohibits a nonattorney executor or personal representative from representing an estate before a court of law.' Id. at 781. That conclusion was reiterated in Godwin v. State ex rel. McKnight, 784 So. 2d 1014 (Ala. 2000), in which our Supreme Court noted, '[a]lthough the law allows Mr. Godwin to file complaints pro se, it does not allow him to file a complaint on behalf of anyone else,

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even an estate of which he is the executor.' Id. at 1015."

In Ex parte Ghafary, 738 So. 2d 778 (Ala. 1998), discussed in Chambers, supra, our supreme court made clear that a nonattorney executor is not permitted to represent the estate in court, even though he or she is a party to a civil action involving the estate. Similarly, in Estate of Wilson v. Berry, 68 So. 3d 178, 181 (Ala. Civ. App. 2011), this court held that the Fayette County administrator, who was not an attorney, could not properly file a pleading on behalf of the county. In Franklin v. Max Federal Credit Union, 168 So. 3d 83 (Ala. Civ. App. 2014), a person who was not licensed to practice law in Alabama but who held a power of attorney for another individual was not permitted to represent the person in court for whom she held the power of attorney.

In their letter brief to this court, Annette and Robert contend that, because Robert is a trustee of the Pipes Trust and his interests are identical to the Pipes Trust's interests, he cannot be barred from appearing pro se in this action. The trust instrument is not included in the record on appeal, and many of the assertions the Pipeses made in their letter brief regarding the character and terms of the Pipes

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Trust do not appear in the record. However, it is unnecessary for this court to reach the issue of whether Robert, as a nonattorney trustee, can represent the Pipes Trust in court. The record is clear that only Annette executed the notice of appeal and related documents such as the docketing statement filed in this matter. Robert did not execute the notice of appeal. Based on the authorities cited above, Annette's role as an agent or attorney in fact did not permit her to represent the Pipes Trust in court as a nonattorney.

Our supreme court has described a pleading filed by a nonattorney on behalf of a separate legal entity as a "nullity." Ex parte Ghafary, 738 So. 2d at 781. In Ex parte Williams, 89 So. 3d 135 (Ala. Civ. App. 2011), the executive director of the Selma Housing Authority signed and filed a complaint alleging unlawful detainer in the Dallas District Court. The executive director was not an attorney. This court granted a petition for a writ of mandamus directing the trial court in that case to dismiss the action on the ground that, because the action was filed by a nonattorney, the trial court did not obtain subject-matter jurisdiction over the action. Id. at 137. See also Progress Indus., Inc. v. Wilson, 52 So.

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3d 500, 507-08 (Ala. 2010) ("This court has thus held that a pleading filed by a non-attorney engaging in the unauthorized practice of law in purporting to represent a separate legal entity is a nullity."); Ex parte Lamberth, 242 Ala. 165, 167, 5 So. 2d 622, 623-24 (1942) (directing the trial court to vacate its order denying the plaintiff's motion to strike the answer of a corporation filed by the president of the corporation); and Estate of Wilson v. Berry, 68 So. 3d 178, 181 (Ala. Civ. App. 2011) (holding that motion to dismiss Fayette County as a party, filed by the county administrator, a nonattorney, was a nullity).

This court dismissed the appeal in Stage Door Development, Inc. v. Broadcast Music, Inc., 698 So. 2d 787 (Ala. Civ. App. 1997), because a nonattorney filed an appellate brief on behalf of a corporation. In that case, we wrote: "Having received, in essence, no brief from the appellant, we dismiss the appeal. See Rule 2, Ala. R. App. P." Id. at 787. The notice of appeal that Annette filed in this case is likewise a nullity. As a result, in essence, no notice of appeal was filed; therefore, the jurisdiction of

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this court was not invoked, and this appeal must be dismissed.

Stage Door Development, supra, and Franklin, supra.

APPEAL DISMISSED.

Moore, Donaldson, Edwards, and Hanson, JJ., concur.