



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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June 29, 2017

Rex D. Winter
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Counsel for Defendants David Pascoe and Kathleen Pascoe

Re: *Rex D. Winter, et al. vs. David B. Pascoe, et al.*
Case No. CL-2016-0017752

Dear Counsel, Mr. Winter, and Ms. Nunez:

This matter came before the Court on June 2, 2017, on Defendants' Motion to Dismiss the Complaint as to Plaintiffs I.W. and T.W. At that time, the Court took the matter under advisement. For the reasons set forth below, the Motion is granted.

Background

This action involves a neighbor dispute. Plaintiffs Rex Winter and Linci Nunez filed suit *pro se* against Defendants David Pascoe and Kathleen Pascoe. In addition, Mr. Winter and Ms.

OPINION LETTER

Nunez filed suit as “next friends” on behalf of their minor children I.W. and T.W. and signed pleadings on their behalf.

Plaintiffs’ thirty-five page Second Amended Complaint can be distilled to the following for the purpose of this motion. Defendants allowed a fence that borders Plaintiffs’ property to fall into disrepair, and the fence is both inherently dangerous and an inadequate barrier to Defendants’ swimming pool. Also, Defendants added dirt to their backyard, which causes flooding on Plaintiffs’ property. Plaintiffs seek damages and a permanent injunction against Defendants based on eleven causes of action related to theories of trespass, nuisance, and negligence.

In response, Defendants seek to have the minor children dismissed as Plaintiffs in this lawsuit, arguing that Mr. Winter and Ms. Nunez are not permitted to litigate their minor children’s claims.¹ Because Virginia Code § 8.01-8 is not a gateway that permits Mr. Winter and Ms. Nunez to sign pleadings on behalf of their children, the Court agrees with Defendants’ position.

Analysis

Virginia Code § 8.01-8 states, “Any minor entitled to sue may do so by his next friend. Either or both parents may sue on behalf of a minor as his next friend.” The statutory language is not explicit as to whether allowing parents to “sue on behalf of a minor” as next friend permits a parent to manage a minor child’s lawsuit by signing and filing pleadings on the child’s behalf, or whether Virginia’s signature requirements for pleadings prohibit such activity.

Under the signature requirements of Virginia Code § 8.01-271.1 and Virginia Supreme Court Rule 1:4(c), all pleadings either must be signed by a licensed Virginia attorney acting as counsel of record or by a *pro se* litigant. Virginia Code § 8.01-271.1 contains two exceptions, neither of which is applicable to this case.

The Supreme Court of Virginia repeatedly has articulated the rule that a pleading signed by another, in a representative capacity for the party with the cause of action, is a legal nullity. *Aguilera v. Christian*, 280 Va. 486, 488 (2010); *Shipe v. Hunter*, 280 Va. 480, 483 (2010); *Kone v. Wilson*, 272 Va. 59, 62-63 (2006); *Nerri v. Adu-Gyamfi*, 270 Va. 28, 31 (2005); *Wellmore Coal Corp. v. Harman Mining Corp.*, 264 Va. 279, 283 (2002). While only persuasive authority, the United States Court of Appeals for the Fourth Circuit analyzed Virginia’s next friend statute, and similarly concluded that Virginia Code § 8.01-8 does not permit parents *pro se* to litigate claims of their minor children. *Myers v Loudoun Cty. Pub. Schs.*, 418 F.3d 395, 400 (4th Cir. 2005).

¹ Defendants make other arguments in the Motion to Dismiss, such as assumption of risk and contributory negligence being bars to Plaintiffs’ recovery and the Second Amended Complaint failing to state essential elements of the claims. Without addressing the merits, a motion to dismiss is an improper pleading for addressing these matters.

In this litigation, the parents of minor children I.W. and T.W. signed the Second Amended Complaint as next friends on behalf of their children. This does not comply with Virginia's signature requirements for pleadings. Accordingly, the Motion to Dismiss I.W. and T.W. from the lawsuit is granted, without prejudice.

Sincerely,



Stephen C. Shannon
Circuit Court Judge

OPINION LETTER