



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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February 1, 2022

LETTER OPINION

Ms. Gladys M. Wood
616 Fox Wind Way
Columbia, SC 29229
Plaintiff

Mr. Joseph A. Cerroni
Attorney at Law
5033-B Backlick Rd.
Annandale, VA 22003
Counsel for Defendants

Re: *Gladys M. Wood vs. George L. Marshall, et al.*
Case No. CL-2021-15106

Dear Ms. Wood and Mr. Cerroni:

This cause is before the Court on Plaintiff Gladys M. Wood's Motion for Default Judgment based on her Complaint seeking to compel transfer of a deed. The threshold question is whether Plaintiff has the standing to maintain the underlying cause of action for the Court to grant her a default judgment. To answer such question, this Court must

OPINION LETTER

determine (1) whether Plaintiff has sued as an individual or as personal representative of her deceased mother's estate, and (2) whether Plaintiff must appear through an attorney.

The Court finds that, while the caption of the Complaint identifies only the individual name of Plaintiff, the body of the pleading demonstrates that Plaintiff is suing as "personal representative" of her mother's estate. Nevertheless, although asserting the proper capacity for suit, Plaintiff's filing is a legal nullity because she is not represented by counsel. Therefore, the case must be dismissed without prejudice.

BACKGROUND

This matter came before this Court on January 14, 2022, on Plaintiff's motion seeking entry of default judgment on her Complaint to Convey Deed. Gladys M. Wood, the Plaintiff, filed her Complaint on November 3, 2021, seeking relief from harm allegedly caused by George L. Marshall, to wit, the failure to transfer a deed to her mother pursuant to a contractual obligation. This Court previously adjudicated George L. Marshall to be an incapacitated adult. Kenyon Marshall and Greer Louise Marshall act as conservators for George L. Marshall's estate. The Complaint was served on the conservators of George L. Marshall's estate on November 17, 2021, given to a family member, Cynthia Marshall. While Defendants maintain service was not proper as the conservators did not reside at such address, the conservators chose not to contest service and instead submitted to the personal jurisdiction of this Court to contest the sufficiency of the Complaint and assert a bar of statute of limitations thereto, albeit in the peril of making their filings beyond 21 days of service of the Complaint.

On December 16, 2021, Ms. Wood filed her Motion for Default Judgment against the conservators of the Estate of George L. Marshall for failing to respond timely after service of the Complaint, and Ms. Wood also noticed the case for hearing on January 14, 2022. The conservators of the estate filed a Plea in Bar and Demurrer in this Court on December 16, 2021, and a Motion for Leave to File Late Responsive Pleadings on January 12, 2022, both of which were filed more than 21 days after the conceded service of the Complaint.

ANALYSIS

In considering whether the Court may enter a default judgment “[t]he consistent constitutional rule has been that a court has no power to adjudicate a personal claim or obligation unless it has jurisdiction over the person of the defendant.” *McCulley v. Brooks & Co. Gen. Contractors*, 295 Va. 583, 589 (2018) (citation omitted). Further, “an action filed by a party who lacks standing is a legal nullity.” *Kocher v. Campbell*, 282 Va. 113, 119 (2011). Therefore, “[s]tanding to maintain an action is a preliminary jurisdictional issue having no relation to the substantive merits of an action.” *Andrews v. American Health & Life Ins. Co.*, 236 Va. 221, 226 (1988). Accordingly, this Court is called upon to determine whether Plaintiff is maintaining her suit in a capacity and by a means that afford her standing to obtain a lawful judgment.

- I. **Though the Caption of Plaintiff’s Suit Names Her Only as an Individual, With Reference to the Body of the Complaint, It Is Clear Plaintiff Filed in a Representative Capacity of Her Mother’s Estate**

The first issue for this Court to decide is whether Plaintiff has sued in a proper capacity. The caption of the Complaint names Ms. Wood as an individual plaintiff as opposed to as personal representative of her mother's estate. It has long been held that for a litigant to establish standing to sue, they must "show an immediate, pecuniary, and substantial interest in the litigation, and not a remote or indirect interest." *Platt v. Griffith*, 299 Va. 690 (2021) (citing *Westlake Prop., Inc. v. Westlake Pointe Prop. Owners Ass'n., Inc.*, 273 Va. 107, 120 (2007)). In *Platt*, the Court reasoned that the beneficiary's claim relating to the rescission of an *inter vivos* transfer was inherently on behalf of the estate, because the beneficiaries only benefit indirectly from any property or transfer the estate owns. *Id.* Specifically, the Court held that any rescission of the transfer would have belonged to the deceased during their lifetime. Thus, when a litigant sues as a mere beneficiary of an estate, the litigant will not have standing because the disposition of the case would directly benefit the estate, while only indirectly benefitting the beneficiaries. *Id.*

For the Court to find that Ms. Wood has standing in this case, the Court must initially determine that Ms. Wood sued in a representative capacity on behalf of the estate. Here, Ms. Wood named only herself in the caption of the case. Additionally, Ms. Wood claims that it is her mother that was harmed by George L. Marshall's alleged actions. Specifically, Ms. Wood outlines in an affidavit that her deceased mother, Elsie Pinkett Johnson, was the original aggrieved owner of the property in question.¹ (Aff. in Support of Compl. ¶ 4.)

¹ The Court finds this affidavit is incorporated into the Complaint because the affidavit was mentioned in the Complaint. Va. Sup. Ct. R. 1:4(i).

On its face, the Complaint appears to be fatally defective because the party in interest, the Estate of Elsie Pinkett Johnson, is the proper party to maintain the action and a representative of her estate must be named as plaintiff. However, the Supreme Court of Virginia held recently that incorrect naming of a party-defendant in a complaint may be considered a misnomer if the true party to the suit is sufficiently identified. *Hampton v. Meyer*, 299 Va. 121, 128 (2020) (holding plaintiff incorrectly named but correctly sued the right person). In *Hampton*, the Supreme Court imparted that the “entire pleading as a whole” must be considered when it appears the complaint contains a misnomer. *Id.* (citing *Estate of James v. Peyton*, 277 Va. 443, 455 (2009)). “Thus, whether a party named in a caption is a proper party to the action is to be determined not merely by how that party is identified in the caption of the pleading, but by the allegations set forth within a pleading that identify that party more specifically.” *Estate of James*, 277 Va. at 455.

The reasoning the Supreme Court of Virginia applied to a misnamed party-defendant in *Hampton v. Meyer* is equally applicable to Ms. Wood’s case at hand. In her Complaint, Ms. Wood clearly identified herself as the “Personal Representative of Elsie Pinkett Johnson,” the “original owner” of the property in controversy. (Compl. ¶ 1.) In determining the sufficiency of an initial pleading, the Court may consider “the amended complaint and any attachments to that complaint.” See *TC MidAtlantic Development v. Commonwealth*, 280 Va. 204, 212 (2010) (citing *Fun v. Virginia Military Institute*, 245 Va. 249, 252 (1993)) (emphasis added). Attached to the Complaint are also “Letters of Administration” from a North Carolina Superior Court issued October 20, 2020, identifying Ms. Wood as “Administrator” of “the Estate of Elsie Pinkett Johnson,” which may thus also

be considered in concluding Ms. Wood is acting in such capacity. (Compl., Exhibit 1.) Additionally, Ms. Wood prays for relief in the Complaint that the property in question be conveyed back, referencing that it was once owned by her mother. (Compl. ¶ 5.)

Under the reasoning in *Hampton*, although Ms. Wood is only named individually in the caption of the Complaint, her role as the Personal Representative of the Estate of Elsie Pinkett Johnson is sufficiently identified to conclude that the incomplete caption name in this matter is at most merely a misnomer. This Court finds that Ms. Wood did not sue in her individual capacity but rather as personal representative of her mother's estate, and therefore she is the proper Plaintiff.

II. Plaintiff Does Not Have Standing to Maintain the Within Suit on Behalf of Her Mother's Estate Because She Did Not Appear by and Through Counsel

The second question for this Court to determine is whether Ms. Wood, being the proper Plaintiff in terms of her representative capacity, is nevertheless foreclosed from maintaining suit on behalf of her mother's estate because she has not appeared by and through counsel. Generally, it is the unauthorized practice of law for a non-lawyer to represent another person or entity in court. See Va. Code § 54.1-3904. In parallel, business entities must in most circumstances also appear through counsel to maintain or defend a suit. See Va. Code § 16.1-88.03; see also *Richmond Ass'n of Credit Men v. Bar Ass'n of City of Richmond*, 167 Va. 327 (1937) (recognizing that corporations must be represented by counsel that is not employed by the corporation or a client of the corporation).²

² An exception to this rule is that a corporation may appear without counsel through a duly authorized officer for suits involving an amount in controversy of up to \$2,500 if such concern is not publicly traded and has

Thus, a representative of an estate is not entitled to maintain any cause of action belonging to the estate without representation by an attorney. *Kone v. Wilson*, 272 Va. 59, 62-63 (2006) (holding that an administrator of a decedent's estate, who is not licensed to practice law in Virginia, may not file a wrongful death action *pro se*, and that such filing was a legal nullity). Under the Supreme Court's reasoning in *Kone*, although the right of action may exist for Ms. Wood as personal representative to prosecute any proper cause of action on behalf of the Estate of Elsie Pinkett Johnson, Ms. Wood cannot do so *pro se*.

CONCLUSION

The Court has considered Plaintiff Gladys M. Wood's Motion for Default Judgment based on her Complaint seeking to compel transfer of a deed. The threshold question is whether Plaintiff has the standing to maintain the underlying cause of action for the Court to grant her a default judgment. To answer such question, this Court must determine (1) whether Plaintiff has sued as an individual or as personal representative of her deceased mother's estate, and (2) whether Plaintiff must appear through an attorney.

The Court finds that, while the caption of the Complaint identifies only the individual name of Plaintiff, the body of the pleading demonstrates that Plaintiff is suing as "personal representative" of her mother's estate. Nevertheless, although asserting the proper capacity for suit, Plaintiff's filing is a legal nullity because she is not represented by counsel. Therefore, the case must be dismissed without prejudice.

no more than five shareholders. Va. Code § 16.1-81.1. Additionally, non-lawyer representatives of entities listed in Virginia Code § 16.1-88.03 may sign certain pleadings without benefit of counsel in some proceedings in the General District Courts.

Consequently, the Court shall by separate order dismiss this case without prejudice to refile. This Court shall enter an order incorporating its ruling herein, and until such time this cause continues.

Sincerely,



David Bernhard
Judge, Fairfax Circuit Court