

RENDERED: MAY 4, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000676-MR

JACKIE LYNN THOMPSON,
ADMINISTRATRIX OF THE ESTATE
OF EDNA LOUISE BROWN, DECEASED

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SUSAN SCHULTZ GIBSON, JUDGE
ACTION NO. 17-CI-000741

JEWISH HOSPITAL & ST. MARY'S HEALTHCARE, INC.
d/b/a JEWISH HOSPITAL; AND STEPHEN SELF, M.D.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KRAMER, CHIEF JUDGE; COMBS AND JONES, JUDGES.

COMBS, JUDGE: Appellant, Jackie Lynn Thompson, Administratrix of the Estate of Edna Louise Brown, Deceased, appeals from the denial of her motion to alter,

amend, or vacate the order dismissing the Complaint which she filed *pro se*.

Finding no error, we affirm.

On February 9, 2017, Thompson, as Administratrix of the Estate, filed a Complaint in Jefferson Circuit Court against the Appellees, Jewish Hospital & St. Mary's Healthcare, Inc., d/b/a Jewish Hospital, Stephen Self, M.D., and Unknown Defendants pursuant to the survival of actions statute, KRS¹ 411.140, and the wrongful death statute, KRS 411.130. Thompson signed the Complaint as "Jackie Lynn Thompson"; underneath the signature line is written "Jackie Lynn Thompson, Administratrix of the Estate of Edna Louise Brown" followed by Thompson's address.

On February 28, 2017, Appellees filed an Answer and a Motion for Judgment on the Pleadings that Thompson apparently was seeking to prosecute the action on behalf of her deceased mother's estate. Acting *pro se*, she was engaging in the unauthorized practice of law.

On March 9, 2017, the trial court entered an Order dismissing without prejudice on ground that the "Estate ... is a legal entity separate and apart from Ms. Thompson. Because Ms. Thompson is not acting in her own behalf, she may not represent, as counsel, the Estate."

On the same day (March 9, 2017) as the entry of that court order, Jeffrey T. Sampson, Esq., filed a Notice of Entry of Appearance as counsel for "the Plaintiff, Jackie Lynn Thompson, Administratrix of the Estate of Edna Louise

¹ Kentucky Revised Statutes.

Brown, Deceased.” On March 10, 2017, Appellants filed a response noting that Thompson had not appeared on their motion which was before the court on March 6, 2017, and that “there was otherwise no objection made.”

On March 15, 2017, Thompson, by counsel, filed a Motion to Alter, Amend or Vacate pursuant to CR 59.05. She contended that although the Estate is a separate legal entity, any proceeds recoverable would inure directly to her benefit as a wrongful death beneficiary. Appellees filed a response, citing *Shepherd v. Wellman*, 313 F.3d 963, 970 (6th Cir. 2002), which holds that an administratrix of an estate may not proceed *pro se* where there are other beneficiaries and creditors. In her reply, Thompson contended that she was a direct beneficiary of the Estate, that “all other heirs” had signed waivers in support of her appointment as Administratrix, and that Kentucky’s wrongful death statute (KRS 411.130) specifically provides that a wrongful death action may be prosecuted by the personal representative of the Estate.

The trial court denied Thompson’s Motion to Alter, Amend or Vacate. by Order entered March 31, 2017, in relevant part, as follows:

Defendants ... cite the Sixth Circuit case of *Shepherd v. Wellman* In that case, the decedent’s brother, who was the personal representative of the estate, filed a *pro se* §1983 action ... on behalf of the estate. The court dismissed the action, stating:

Although 28 U.S.C. § 1654 provides that “[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel,” that statute does not permit plaintiffs to appear *pro se*

where interests other than their own are at stake. See *Iannaccone v. Law*, 142 F.3d 553, 558 (2d Cir.1998) (“[B]ecause *pro se* means to appear for one's self a person may not appear on another person's behalf in the other's cause.”). Moreover, the Second Circuit has held that “an administratrix or executrix of an estate may not proceed *pro se* when the estate has beneficiaries and creditors other than the litigant.” *Pridgen v. Andresen*, 113 F.3d 391, 393 (2d Cir.1997). Under *Pridgen and Iannaccone*, Gary Shepherd cannot proceed *pro se* with respect to the § 1983 action because he is not the sole beneficiary of the decedent's estate.

Id. at 970. In a cursory review of case-law nationwide, this Court has been unable to find any authority which would persuade it that a personal representative may maintain a *pro se* action on behalf of an estate where there are other beneficiaries of the estate. The fact that the other beneficiaries may have agreed that [Thompson] be appointed as administratrix does not mean that they are not separate individuals with their own interests in the Estate. As a non-attorney, Plaintiff may not prosecute this action on behalf of the Estate.

On April 13, 2017, Thompson filed a Notice of Appeal to this Court.

She contends that pursuant to Kentucky jurisprudence, she was permitted to file and to prosecute the underlying action, *pro se*, and that the trial court erred in dismissing her complaint. Our review of a judgment on the pleadings is *de novo*. *Scott v. Forcht Bank, NA*, 521 S.W.3d 591 (Ky. App. 2017).

We conclude that the trial court reached the correct result in the case before us. In *Baldwin v. Mollette*, 527 S.W.3d 830 (Ky. App. 2017), this Court explained that:

In Kentucky, one may represent himself or herself *pro se* but that ability is limited to one's self. As stated in *Taylor v. Barlow*, 378 S.W.3d 322, 326 (Ky. App. 2012), “an individual may file and practice his own lawsuit in any court within the Commonwealth....” Our Supreme Court clarifies the role of a *pro se* litigant by explaining if people represent themselves, they are bound by the same rules and procedures as a licensed lawyer. *Id.* But the Supreme Court notes that **only** persons who are admitted to the bar may practice law and represent others. The sole exception is the person acting in his own behalf.

Id. at 835 (emphasis in original). An administratrix does not act in her own behalf in filing a wrongful death claim. “KRS 411.130 ... gives a cause of action to a personal representative for the sole benefit of named beneficiaries. The recovery in an action for wrongful death is not for the benefit of the estate but for the next of kin The administrator is merely a nominal plaintiff.” *Vaughn's Adm'r v. Louisville & N.R. Co.*, 297 Ky. 309, 316, 179 S.W.2d 441, 445 (1944).

Thompson contends that KRS 411.130 provides for the prosecution of a wrongful death action by the personal representative and that if the Legislature had intended that an attorney must file such an action, it would have included that language in the statute.

As our Supreme Court explained in *Turner v. Kentucky Bar Ass'n*, 980 S.W.2d 560, 563 (Ky. 1998), “[T]he separation of powers principles strictly prohibit the legislature from infringing upon the judiciary's exclusive power to make rules governing the practice of law, court procedures, and any exceptions thereto.” *Turner* involved a statute authorizing non-attorneys to act as legal

representatives in workers' compensation cases. The Court held that the recitations in that legislative language were beyond the scope of the Legislature's purview. "Legal representation by a lay person before an adjudicatory tribunal, however informal, is not permitted by SCR 3.700, as such representation involves advocacy that would constitute the practice of law." *Id.* at 564. In effect, the Legislature had improperly crossed the line defining separation of powers. Kentucky Constitution §§27 and 28.

We affirm the Order of the Jefferson Circuit Court entered on March 31, 2017, denying Thompson's motion to alter, amend or vacate its Order of dismissal entered March 9, 2017.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffrey T. Sampson
Louisville, Kentucky

BRIEF FOR APPELLEES:

Gerald R. Toner
Andrew D. Pellino
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