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DISTRICT II

December 14, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2015AP1291

Dano Underwood Special Needs Trust v. DOR
(L.C. # 2014CV1659)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

The Dano Underwood Special Needs Trust (Trust) appeals a circuit court order dismissing a complaint filed by its trustee, Norman E. Underwood, Jr., (Norman), against the Wisconsin Departments of Revenue (DOR) and Workforce Development (DWD). Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ Because we agree that the Trust's defective pleadings deprived the circuit court of jurisdiction, we affirm. Consequently, we deny as moot the Trust's motion for relief pending appeal.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Purporting to represent the Trust, Norman filed a complaint asking the circuit court to declare the Trust a spendthrift trust, enjoin the State from collection efforts against the Trust, remove a tax warrant filed by the DOR, and “remove/prevent” a lien filed by the DWD. Norman signed and filed the pleadings as “Trustee and Guardian” and indicated he was a lawyer with an office in Illinois. Norman is not a licensed Wisconsin attorney and was not admitted to practice *pro hac vice* in the circuit court.

The DOR and the DWD filed a motion to dismiss the complaint arguing that the circuit court lacked jurisdiction over the action because Norman, a non-attorney in Wisconsin, could not initiate an action by signing and filing pleadings on behalf of the Trust. The Trust filed a brief in opposition contending that Wisconsin’s Trust Code, WIS. STAT. ch. 701, authorized Norman to initiate a civil action on behalf of the Trust as its trustee. Concluding that the law required the Trust to be represented by a licensed Wisconsin attorney, the circuit court determined that Norman’s signing and filing of the complaint constituted a fundamental defect in the pleadings which deprived the court of jurisdiction.² The circuit court dismissed the matter “without prejudice, in its entirety.”

We conclude that the circuit court properly dismissed the complaint for lack of jurisdiction. Under WIS. STAT. § 802.05, the complaint was required to contain either the signature of a licensed Wisconsin attorney or a named party. *See* § 802.05(1) (“Every pleading, written motion, and other paper shall be signed by at least one attorney of record ... or, if the party is not represented by an attorney, shall be signed by the party.”). The party was the Trust,

² In this court, Norman appears *pro hac vice* as counsel for the Trust. We therefore have jurisdiction over the appeal.

and a trust must be represented by counsel in court proceedings. *Life Science Church v. Shawano Cty.*, 221 Wis. 2d 331, 334, 585 N.W.2d 625 (Ct. App. 1998) (per curiam). When Norman signed and filed the pleadings on behalf of the Trust, he was neither licensed to practice law in Wisconsin nor admitted pro hac vice before the circuit court. This violation of the subscription requirement in § 802.05 created a “fundamental defect” in the pleadings that deprived the circuit court of jurisdiction. *Schaefer v. Riegelman*, 2002 WI 18, ¶¶37-38, 250 Wis. 2d 494, 639 N.W.2d 715.

The Trust argues that WIS. STAT. ch. 701 authorizes Norman to represent the Trust as a layperson in circuit court by virtue of his status as guardian, trustee, sole parent, and/or an individual with substantially identical interests to the Trust’s beneficiary.³ We agree with the circuit court that the provisions cited to and relied upon by the Trust do not authorize Norman, a non-Wisconsin lawyer, to represent the Trust in court proceedings. The “represent and bind” language in Chapter 701 authorizes a trustee like Norman to bind the Trust in contractual agreements and does not conflict with the holding in *Life Science Church* that trustees who are not licensed to practice law may not “represent the legal interests of their trusts or trust beneficiaries in their representative, fiduciary capacities as trustees.” *Id.*, 221 Wis. 2d at 334.

Upon the foregoing reasons,

³ The Trust points to several provisions in WIS. STAT. §§ 701.0303 and 701.0304, which provide that the guardian, trustee, sole parent or person having a substantially identical interest to the minor may “represent” or “represent and bind” the ward, beneficiaries, or minor child. *See* § 701.0303(2),(4),(6),(6)(a); § 701.0304.

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the appellant's motion for relief pending appeal is denied as moot.

Diane M. Fremgen
Clerk of Court of Appeals