[Cite as *Marin v. Kandpal*, 2010-Ohio-4360.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94491

MEL M. MARIN

PLAINTIFF-APPELLANT

vs.

DOE KANDPAL, M.D., ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga Common Pleas Court
Case No. CV-700300

BEFORE: Blackmon, J., Gallagher, A.J., and Stewart, J.

RELEASED AND JOURNALIZED: September 16, 2010

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PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Mel Marin appeals the trial court's judgment dismissing his injunction and assigns nine errors for our review.[1]

{¶ 2} Having reviewed the record and relevant law, we dismiss Marin's appeal. The apposite facts follow.

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[1]See appendix.

Facts

{¶ 3} On July 25, 2009, Marin brought his 90-year old mother, Eva Marinkovic, to the Cleveland Clinic ("Clinic") emergency room. The mother was admitted into the hospital for testing and rehabilitation. A dispute arose between Marin and the staff as to whether his mother should be prescribed sleeping pills, prompting the staff to alert security.

{¶ 4} Because the doctor in charge of his mother refused to give her sleeping pills, Marin attempted to remove his mother from the hospital. However, he was unable to do so because the Department of Senior & Adult Services ("DSAS") indicated that they were conducting an investigation on whether the mother had been "abused, neglected, or exploited." The agency obtained an Emergency Protective Service Order from the probate court, which was valid for 14 days. The order gave the agency the authority to act on the mother's behalf regarding her care, and ordered that the mother not be removed from the hospital.

{¶ 5} As a result of the hospital's refusal to release Marin's mother, he filed a complaint for injunctive relief. The defendants moved to dismiss the complaint when the protective order expired because the mother was no longer under their authority and was discharged from the hospital.

{¶ 6} On September 17, 2009, the trial court dismissed the case with prejudice as to DSAS and Sylvia Pa-Raith only. On December 11, 2009, the

trial court dismissed the case as to the Clinic and Saraubh Kandpal, M.D., stating:

> **"After review, the court finds defendants Doe Kandpal, M.D., Dan DiCello and Cleveland Clinic's motion to dismiss filed 9/02/2009, is well taken and granted. Further, the court finds that plaintiff, who is appearing pro se, has not asserted any causes of action personal to himself. Because plaintiff is not licensed to practice law in Ohio, he may not bring claims on behalf of others. Pursuant to this court's inherent power and duty to regulate the bar, it finds that plaintiff has asserted no claim that the court can recognize."** Journal Entry, December 11, 2009.

<u>Unauthorized Practice of Law</u>

{¶ 7} We agree with the trial court that Marin is without legal authority to represent his mother pro se. Although his mother designated him as her representative in her power of attorney form, her designation does not give him the authority to represent her in a legal action. To allow Marin to do so would allow him to practice law without a license, which is prohibited by R.C. 4705.01.

{¶ 8} The Ohio Supreme Court in *Office of Disciplinary Counsel v. Coleman*, 88 Ohio St.3d 155, 2000-Ohio-288, 724 N.E.2d 402, addressed this precise issue and explained:

> **"[T]he use of a power of attorney as a contract to represent another in court violates the laws of Ohio. In *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, 1 O.O. 313, 193 N.E. 650, paragraph one of the syllabus, we held that among other activities, '[t]he practice of law * * * embraces the preparation of pleadings and other papers incident to actions and special**

proceedings and the management of such actions and proceedings on behalf of clients before judges and courts.'

"R.C. 4705.01 provides: 'No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order to the supreme court in compliance with its prescribed and published rules.'

"This law recognizes that a person has the inherent right to proceed pro se in any court. But it also prohibits a person from representing another by commencing, conducting, or defending any action or proceeding in which the person is not a party. When a person not admitted to the bar attempts to represent another in court on the basis of a power of attorney assigning pro se rights, he is in violation of this statute. A private contract cannot be used to circumvent a statutory prohibition based on public policy.

"Finally, courts in other states have all held, as have we, that a non-lawyer with a power of attorney may not appear in court on behalf of another, or otherwise practice law. Cf. *Christiansen v. Melinda* (Alaska 1993), 857 P.2d 345; *In re Estate of Friedman* (1984), 126 Misc.2d 344, 482 N.Y.S.2d 686; *Kohlman v. W. Pennsylvania Hosp.* (1994), 438 Pa. Super. 352, 652 A.2d 849."

{¶ 9} Consequently, because Marin failed to assert any cause of action personal to him, he lacks the authority to present his claims. Accordingly, his appeal is dismissed.

Appeal dismissed.

It is ordered that appellees recover from appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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PATRICIA ANN BLACKMON, JUDGE

SEAN C. GALLAGHER, A.J., and
MELODY J. STEWART, J., CONCUR

Appendix

Assignments of Error:

> **"I. Court erred by ignoring son's preliminary injunction motion, and his Rule 59 motion against the County's summary judgment and his suggestion of recusal."**
>
> **"II. Court prejudicially erred by refusing to give required time to defend against the County's summary judgment."**
>
> **"III. Court prejudicially erred by granting County's summary judgment prior to discovery."**
>
> **"IV. Court erred by dismissing County with prejudice."**
>
> **"V. Court erred by refusing leave to amend."**

“VI. Court erred by ignoring a timely motion to vacate to improperly help the County that had waived help.”

“VII. Court erred by dismissing clinic on surprise grounds without allowing briefing.”

“VIII. Court prejudicially erred by dismissing Clinic with prejudice when it was a jurisdictional dismissal.”

“IX. Court’s basis for dismissal of Clinic erred because son has personal standing for his own claims.”