

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 1165

SENIOR'S CLUB ADHC AND PCA CENTER (LA MEDICAID PROVIDER NO. 17259), MRS. KAREN MCCOY & MR. T.J. MCCOY, JR.

VERSUS

STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF HEALTH & HOSPITALS

Judgment Rendered: DEC 22 2016

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number C629987

Honorable Timothy Kelley, Presiding

Karen R. McCoy
Shreveport, LA

Plaintiff/Appellant
Pro Se

Douglas L. Cade
Sandra A. Jelks
Baton Rouge, LA

Counsel for Defendant/Appellee
State of Louisiana, through the Dept.
of Health & Hospitals

BEFORE: WHIPPLE, C.J., GUIDRY, AND McCLENDON, JJ.

GUIDRY, J.

Plaintiffs/appellants, Karen McCoy, T.J. McCoy, Jr., and Senior's Club ADHC and PCA Center (Senior's Club), appeal from a judgment of the district court affirming a decision and order of the Division of Administrative Law, which upheld a decision by the defendant/appellee, State of Louisiana through the Department of Health and Hospitals (DHH), to recoup \$6,851.26 in Medicaid overpayments from Senior's Club. For the reasons that follow, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

Senior's Club is a provider of adult day health care services and long-term personal care services under Medicaid provider number 17259. Karen McCoy and T.J. McCoy, Jr. are the sole owners of Senior's Club. In January 2010, DHH notified Senior's Club, Karen McCoy, and T.J. McCoy, Jr. that it intended to recoup \$11,769.16 in alleged overpayments for long-term personal care services and \$3,221.34 in alleged overpayments for adult day health care services and to exclude Senior's Club, Karen McCoy, and T.J. McCoy, Jr. from participation in the Louisiana Medicaid Program for five years.

Senior's Club, Karen McCoy, and T.J. McCoy, Jr., through counsel, thereafter sought administrative review in the Division of Administrative Law of all the sanctions imposed by DHH. After a hearing on December 28, 2012, the Division of Administrative Law granted in part a motion for summary judgment filed by Senior's Club, Karen McCoy, and T.J. McCoy, Jr., reversing DHH's decision to recoup \$3,221.34 in alleged overpayments for adult day health care services. Additionally, DHH thereafter returned \$3,758.56 to Senior's Club and withdrew its exclusion of Senior's Club, Karen McCoy, and T.J. McCoy, Jr. from participation in the Medicaid Program and reactivated their Medicaid provider numbers. Accordingly, the only remaining issue for review by the Division of

Administrative Law was recoupment of \$6,851.26 from Senior's Club for alleged overpayment of long-term personal care services. Following another hearing on December 19 and 20, 2013, the Division of Administrative Law judge rendered a decision, affirming DHH's decision to recoup \$6,851.26 from Senior's Club.

Thereafter, Karen McCoy, T.J. McCoy, Jr., and Senior's Club filed a petition for judicial review of the Division of Administrative Law's decision in the Nineteenth Judicial District Court. After briefing and oral argument, the district court upheld the decision of the Division of Administrative Law, affirming DHH's recoupment. Karen McCoy subsequently filed, *pro se*, a motion for suspensive appeal on behalf of herself, T.J. McCoy, Jr., and Senior's Club. The district court signed the order of suspensive appeal on March 30, 2015.

Following the lodging of the appeal, this court, *ex proprio motu*, issued a rule to show cause, finding the appeal to be defective in that Karen McCoy, appearing *pro se*, had filed a request for suspensive appeal not only on her own behalf but also on behalf of T.J. McCoy, Jr. and Senior's Club. This court ordered the parties to file briefs as to whether or not each plaintiff is entitled to be recognized with the status of "appellant" in this appeal.

Additionally, DHH filed in this court a peremptory exception raising the objection of no right of action. DHH asserted that because Karen McCoy is neither licensed nor admitted to practice law in Louisiana, she cannot represent anyone in proper person except herself. Furthermore, because the sole issue before the Division of Administrative Law was whether DHH was legally authorized to recoup \$6,851.26 from Senior's Club, Karen McCoy has no right of action in any proceeding seeking to overturn DHH's decision.

DISCUSSION

Rule to Show Cause

First, we address the rule to show cause issued by this court. The parties do not dispute that Karen McCoy filed the motion for suspensive appeal on behalf of herself, as well as on behalf of T.J. McCoy, Jr. and Senior's Club. Further, the parties do not dispute that Karen McCoy is neither licensed nor admitted to practice law in Louisiana.

It is unlawful for a natural person who has not been first duly and regularly licensed and admitted to practice law by the Louisiana Supreme Court to engage in the practice of law in this state. La. R.S. 37:213(A)(1); Alco Collections, Inc. v. Poirier, 95-2582, p. 9 (La. App. 1st Cir. 9/27/96), 680 So. 2d 735, 741, writ denied, 96-2628 (La. 12/13/96), 692 So. 2d 1067. Louisiana Revised Statute 37:212(A)(1) provides that the "practice of law means and includes [i]n a representative capacity, the appearance as an advocate or, the drawing of papers, pleadings or documents, or the performance of any act in connection with pending or prospective proceedings before any court of record in this state." Thus, neither a president of a corporate defendant nor an individual member of a limited liability company who is not licensed to practice law can represent the corporation or limited liability company before any court of record in this state. See Bankston v. Tasch, LLC, 09-1573, p. 8 (La. App. 4th Cir. 6/2/10), 40 So. 3d 495, 499; Deal v. Lexing-Powell, 36,168, p. 9 (La. App. 2nd Cir. 8/16/02), 824 So. 2d 541, 547.

Accordingly, because Karen McCoy is not licensed to practice law in Louisiana, she cannot represent Senior's Club or anyone else in proper person. See Succession of Populus, 95-1469, p. 3 (La. App. 1st Cir. 2/23/96), 668 So. 2d 747, 748. Furthermore, because Karen McCoy is not permitted by law to file a motion for appeal on behalf of either Senior's Club or T.J. McCoy, Jr., neither Senior's Club or T.J. McCoy, Jr. have perfected an appeal within the appropriate time

delays. See La. C.C.P. art. 2123. Thus, because Senior's Club and T.J. McCoy, Jr. did not timely perfect an appeal of the district court's judgment, this court lacks jurisdiction to hear their appeal, and as such, their appeal must be dismissed. See Lamartiniere v. Fringe Facts, Inc., 412 So. 2d 1161, 1161-62 (La. App. 3rd Cir. 1982).

However, as to the appeal filed by Karen McCoy, La. R.S. 37:212(B) provides that no person is prohibited "from attending to and caring for his own business, claims, or demands." Therefore, we find that Karen McCoy timely perfected a suspensive appeal of the district court's judgment as to herself and recall the rule to show cause as it relates to her appeal.

Exception of No Right of Action

As noted above, DHH has filed in this court a peremptory exception raising the objection of no right of action, asserting that because the sole issue before the Division of Administrative Law was whether DHH was legally authorized to recoup \$6,851.26 from Senior's Club, Karen McCoy has no right of action in any proceeding seeking to overturn DHH's decision.

The peremptory exception pleading the objection of no right of action challenges whether the plaintiffs have an actual interest in bringing the action. See La. C.C.P. art. 927(A)(6); Estate of Mayeaux v. Glover, 08-2031, p. 4 (La. App. 1st Cir. 1/12/10), 31 So. 3d 1090, 1093, writ denied, 10-0312 (La. 4/16/10), 31 So. 3d 1069. Whether a person has a right of action depends on whether the particular person belongs to the class in whose favor the law extends a remedy. In other words, the exception questions whether the plaintiff has an interest in judicially enforcing the right asserted. Estate of Mayeaux, 08-2031 at p. 5, 31 So. 3d at 1093. Simply stated, the objection of no right of action tests whether this particular plaintiff, as a matter of law, has an interest in the claim sued on. OXY

USA Inc. v. Quintana Production Company, 11-0047, p. 12 (La. App. 1st Cir. 10/19/11), 79 So. 3d 366, 376, writ denied, 12-0024 (La. 3/2/12), 84 So. 3d 536.

A defendant may plead the exception raising the objection of no right of action in any court prior to the submission of the case for decision if proof of the ground for the exception appears in the record. La. C.C.P. arts. 927 and 2163; Horrell v. Horrell, 99-1093, p. 5 (La. App. 1st Cir. 10/6/00), 808 So. 2d 363, 368, writ denied, 01-2546 (La. 12/7/01), 803 So. 2d 971.

In the instant case, the only claim presented to the Division of Administrative Law was the claim related to recoupment by DHH from Senior's Club of \$6,851.26 for alleged overpayment of long-term personal care services. As such, Senior's Club, the juridical person from which DHH sought to recoup the overpayment, is the party with an interest in judicially enforcing its rights. Karen McCoy, though a member of Senior's Club, is a separate person from Senior's Club. See La. C.C. art. 24. Therefore, we sustain DHH's exception raising the objection of no right of action as to Karen McCoy and dismiss her appeal.

CONCLUSION

For the foregoing reasons, we dismiss the appeal filed by Karen McCoy, on behalf of herself, T.J. McCoy, Jr., and Senior's Club ADHC and PCA Center. Given the pauper status of plaintiffs/appellants, Karen McCoy, T.J. McCoy, Jr., and Senior's Club ADHC and PCA Center, we decline to assess costs of this appeal to them. See Rainey v. A Acadian, Inc., 09-1437 (La. App. 1st Cir. 3/26/10) (unpublished opinion).

APPEAL DISMISSED.