

COURT OF APPEALS  
KNOX COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

BANK OF NEW YORK	:	JUDGES:
	:	
Plaintiff-Appellee	:	Hon. William B. Hoffman, P.J.
-vs-	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
PAUL EUGENE MILLER	:	
	:	Case No. 09-CA-20
Defendant-Appellant	:	
-vs-	:	
	:	
CHARLES N. BRADLEY, ET AL.	:	O P I N I O N
	:	
Defendants-Appellees	:	

CHARACTER OF PROCEEDING: Appeal from the Knox County Court of  
Common Pleas Case No. 08FR060357

JUDGMENT: DISMISSED; MOTION FOR SANCTIONS  
DENIED

DATE OF JUDGMENT ENTRY: November 18, 2009

APPEARANCES:

For Plaintiff-Appellees:

SALLIE A. CONYERS 0074810  
MATTHEW C. GLADWELL 0075591  
DANIEL A. COX 0076369  
Reisenfeld & Associates LPA, LLC  
3962 Redbank Road  
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Counsel for Bank of New York

Scott A. Pullins 0076809  
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Mount Vernon, Ohio 43050  
Counsel for Charles and Sonya Bradley

For Defendant-Appellant:

PAUL EUGENE MILLER, PRO SE  
AS TRUSTEE FOR THE MONROE  
MILLS TRUST  
P.O. Box 417  
Utica, Ohio 43080

*Delaney, J.*

{¶1} Appellant Paul Eugene Miller appeals from the judgment of the Knox County Court of Common Pleas, disqualifying him as a “pro se representative” of The Monroe Mills Trust on the grounds that Appellant was not properly licensed legal counsel authorized to file pleadings in the matter. Appellees are Plaintiff Bank of New York and Defendants Charles and Sonya Bradley.

{¶2} On June 11, 2008, Plaintiff-Appellee Bank of New York, as Trustee for the Certificate holders CWABS, Inc. Asset-Backed Certificates, Series 2006-IM1 (“Plaintiff-Appellee”), filed a complaint for foreclosure in the Knox County Common Pleas Court against the following defendants: Charles N. Bradley, Sonya M. Bradley, Dennis Emmers, Trustee of The Monroe Mills Trust, Unknown Tentant at 14919 Monroe Mills Road, Howard, Ohio, 43055, Knox County Treasurer, The Monroe Mills Trust, Unknown Beneficiaries of The Monroe Mills Trust, Unknown Trustees and Successor Trustees of The Monroe Mills Trust, and Unknown Grantors of The Monroe Mills Trust. Appellant was never personally named as a defendant in the action. However, on September 4, 2008, he was substituted as Trustee for The Monroe Mills Trust for Dennis Emmers, who resigned as Trustee for the Trust.

{¶3} On July 16, 2008, Appellant Paul Eugene Miller filed an answer in a “pro se” capacity, but on behalf of The Monroe Mills Trust. On August 15, 2008, Defendants-Appellees, Charles and Sonya Bradley (Defendants-Appellees), filed a Motion to Disqualify and Strike the responsive pleading filed by Appellant.

{¶4} The trial court did not immediately rule on Defendant-Appellees’ motion. Subsequent to the filing of the Motion to Disqualify, Appellant filed a Request for

Production of Documents on October 8, 2008, and on November 10, 2008, he filed a Motion to Dismiss, Motion to Compel, and Motion to Strike Plaintiff's Motion for Default Judgment.

{¶5} On February 18, 2009, the trial court entered an order disqualifying Appellant as a pro se representative of Defendant The Monroe Mills Trust. The court also ordered that any pleadings filed by Appellant be stricken from the record. The court also granted The Monroe Mills Trust until March 13, 2009, to obtain licensed legal counsel to represent the Trust and to file a responsive pleading to the Complaint filed by Plaintiff-Appellee.

{¶6} Appellant appealed the trial court's order and raises one Assignment of Error:

{¶7} "I. THE COMMON PLEAS COURT IMPROPERLY DISQUALIFIED APPELLANT PAUL-EUGENE: MILLER AS A PRO SE REPRESENTATIVE AS TRUSTEE OF THE MONROE MILLS TRUST AND IMPROPERLY ACCUSED APPELLANT PAUL-EUGENE: MILLER OF PRACTICING LAW WITHOUT A LICENSE. THE COMMON PLEAS COURT LACKED STANDING UNDER THE OHIO REVISED CODE TO MAKE THE DETERMINATION OF THE PRACTICE OF LAW WITHOUT A LICENSE."

{¶8} This matter is before this Court, sua sponte, for consideration of dismissal of the action. Appellant has filed a notice of appeal and merit brief in an appeal from a judgment entered against him by the Knox County Court of Common Pleas, disqualifying him from representing The Monroe Mills Trust in any legal proceedings.

{¶9} While Appellant purports to be a trustee of The Monroe Mills Trust, he is not personally a party to this action nor is he an attorney at law authorized to practice law in front of this or any other court in the State of Ohio.

{¶10} A trustee of a trust, who is not a licensed and registered attorney at law, may not file pleadings, argue or otherwise represent the trust as its counsel in a court. *Scott v. H.T.M. Trust*, 3rd Dist. No. 12-90-4, citing *Williams v. Global Constr. Co., Ltd.* (1985), 26 Ohio App.3d 119, 498 N.E.2d 500, syllabus; see, R.C. 4705.01; see also *Palmer v. Westmeyer* (1988), 48 Ohio App.3d 296, 549 N.E.2d 1202 (disallowing officer of corporation from representing corporation in legal proceedings in a pro se capacity where officer is not an attorney at law).

{¶11} Appellant attempted to file an answer to Plaintiff-Appellee's complaint in the trial court on behalf of The Monroe Mills Trust, and also filed responsive pleadings in the case after Defendant-Appellees filed a Motion to Disqualify Appellant from filing any pleadings on their behalf.

{¶12} With regard to claims against any defendant, Appellant Paul Eugene Miller is limited to representing his interests only as a pro se litigant. *Otto v. Patterson* (1962), 173 Ohio St. 174, 180 N.E.2d 575.

{¶13} This Court may not and does not condone the unauthorized practice of law. When a non-attorney files a notice of appeal and attempts to prosecute the appeal in court as counsel on behalf of another, such constitutes the unauthorized practice of law for which the pleadings filed should be stricken and the proceeding thus attempted dismissed. *Scott*, supra, citing *Union Savings Assn. v. Home Owners Aid* (1970), 23 Ohio St.2d 60; 262 N.E.2d 558, *Palmer v. Westmyer* (1988), 48 Ohio App.3d 296, 596

N.E.2d 1202; *Studer v. Fisher* (November 27, 1989), 3rd Dist. No. 1-88-8 unreported; *Western Monetary Consultants, Inc. v. Rush* (May 6, 1987), 9th Dist. No. 4097 unreported.

{¶14} The unauthorized practice of law is defined as “the rendering of legal services for another by any person not admitted to practice in Ohio under Rule I and not granted active status under Rule VI, or certified under Rule II, [interns], Rule IX [temporary certification], or Rule XI [foreign legal consultants] of the Supreme Court Rules for the Government of the Bar of Ohio.” Gov.Bar.R VII(2)(A).

{¶15} Moreover, R.C. 4705.01 prohibits any person not admitted to the Ohio Bar by order of the Supreme Court of Ohio from commencing, conducting, or defending any legal action or proceeding in which the person is not a *party* concerned. *Cleveland Bar Association v. Boyd*, 112 Ohio St.3d 331, 2006-Ohio-6590, 859 N.E.2d 930.

{¶16} Appellant was never a named party in the instant action, and filed pleadings on behalf of The Monroe Mills Trust, allegedly in a pro se capacity. However, in so doing, Appellant represented the interests of the trust, not his own interests as a party. The Trust is a separate legal entity and party from Appellant, and therefore, Appellant was not engaging in pro se representation, but rather was engaging in the unauthorized practice of law. See *Mahoning County Bar Assn. v. Alexander*, 79 Ohio St.3d 1220, 1997-Ohio-1, 681 N.E.2d 934. As we previously stated, a trustee of a trust, who is not a licensed and registered attorney at law, may not file pleadings, argue or otherwise represent the trust as its counsel in a court. *Scott v. H.T.M. Trust*, 3rd Dist. No. 12-90-4.

{¶17} As Appellant is not a named defendant in this action and is not acting in a pro se capacity, but rather has engaged in the unauthorized practice of law by representing The Monroe Mills Trust, the trial court was within its discretion in disqualifying Appellant as a representative of The Monroe Mills Trust. Moreover, since Appellant is continuing to engage in the unauthorized practice of law by filing an appeal on his own behalf and as “Trustee for the Monroe Mills Trust,” we cannot condone such conduct and therefore dismiss his appeal.

{¶18} Defendants-Appellees, Charles and Sonya Bradley, additionally move this court to consider imposing sanctions against Appellant for frivolous conduct pursuant to Appellate Rule 23. App. R. 23 states, “If a court of appeals shall determine that an appeal is frivolous, it may require the appellant to pay reasonable expenses of the appellee including attorney fees and costs.”

{¶19} In *Burdge v. Supervalu Holdings, Inc.*, 1st Dist. No. C-060194, 2007-Ohio-1318, ¶22, the First District Court of Appeals recently noted,

{¶20} “App. R. 23 provides a court of appeals with authority to order an appellant or his attorney to pay the reasonable expenses of the appellee, including attorney fees and costs, where the court determines that the appeal is frivolous. An appeal is deemed frivolous when it does not present a reasonable question for review.” (Internal citations omitted).

{¶21} Appellant argues that no trial court could ever find that he has engaged in the unauthorized practice of law, as only the Ohio Supreme Court has jurisdiction to so determine pursuant to R.C. 4705.07(B)(2). While Appellant cites no case law in support of this contention and having already stated in this Opinion that the case law in Ohio is

established that a trustee or officer of a company cannot represent that company in legal proceedings unless they are a licensed attorney in the State of Ohio, we find this appeal presents a reasonable question for review. Accordingly, Defendants-Appellees' motion for sanctions is overruled.

{¶22} Appeal dismissed.

By: Delaney, J.

Hoffman, P.J. and

Wise, J. concur.

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HON. PATRICIA A. DELANEY

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HON. WILLIAM B. HOFFMAN

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HON. JOHN W. WISE

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FIFTH APPELLATE DISTRICT

BANK OF NEW YORK	:	
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PAUL EUGENE MILLER	:	JUDGMENT ENTRY
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-vs-	:	
	:	Case No. 09-CA-20
CHARLES N. BRADLEY, ET AL.,	:	
	:	
Defendants-Appellees	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Knox County Court of Common Pleas is dismissed. Costs assessed to Appellant pursuant to App. R. 24. Defendants-Appellees' Motion for Sanctions, filed April 21, 2009, is denied.

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HON. PATRICIA A. DELANEY

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HON. WILLIAM B. HOFFMAN

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HON. JOHN W. WISE