Affirmed and Memorandum Opinion filed August 24, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00641-CV

MARK TRIMBLE, Appellant

V.

ONEWEST BANK N/K/A CIT BANK, N.A., FEDERAL NATIONAL MORTGAGE ASSOCIATION AND LANE LAW FIRM, Appellees

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On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Cause No. 15-CV-0457

M E M O R A N D U M O P I N I O N

This appeal is brought by appellant Mark Trimble, assignee of I. B. Henderson and Mildred Henderson, complaining of two orders of the trial court. Appellant presents two issues on appeal. First, appellant contends the trial court erred in ordering the Hendersons to appear either in person or through counsel. Second, appellant contends the trial court erroneously struck his petition in intervention. For the reasons set forth below, we affirm.

I. Background

The original lawsuit in this case derives from the foreclosure of the home of I. B. Henderson and Mildred Henderson located on Alaska Avenue in League City, Texas (the "property"). The Hendersons originally filed this lawsuit against appellees OneWest Bank n.k.a. CIT Bank N.A., Federal National Mortgage Association, and the Lane Law firm alleging wrongful foreclosure and seeking declaratory relief.

The Hendersons were initially represented by attorney W. David Marion from the Lane Law Firm. The firm terminated their legal representation agreement due to the Hendersons' failure to pay for legal fees. The Hendersons subsequently assigned their claims in this matter to appellant. Appellant was hired to perform repairs on the property before the conclusion of the foreclosure proceedings. The record does not reflect that appellant had any contractual relationship with any of the appellees involving the property. Further, appellant claims the Hendersons did not pay for his repair work but the record does not show appellant sought compensation from the Hendersons for the repairs he did on the property. Rather, he obtained an assignment from the Hendersons in order to participate in the litigation and recover compensation from appellees.

On August 26, 2015, appellant gave notice to the trial court that the Hendersons had assigned their claims involving this litigation over the property to him. The actual assignment states that appellant may "in his own name and for his own benefit, prosecute, collect, settle, compromise and grant releases on the said claim in his sole discretion as he deems advisable." Contrary to the terms of the assignment, however, appellant pursued legal relief on behalf of the Hendersons. Accordingly, on September 2, 2015, the Plaintiff's First Amended Original Petition was written, submitted, and signed by appellant, as "[a]ssignee for Plaintiffs I.B.

Henderson and Mildred Henderson." This was the first of several documents appellant wrote and filed with the trial court on behalf of the Hendersons based on his alleged status as their assignee.

On March 28, 2016, the trial court ordered the Hendersons to appear in person or through counsel for the case to continue. On April 17, 2016, appellant sought to file a petition in intervention. In response, appellees filed a motion to strike. On July 12, 2016, while that motion was pending, the Hendersons non-suited all of their claims pending in this action instead of appearing in court, in person or through counsel.

In response, on July 14, 2016, the trial court entered two consecutive orders. The trial court agreed with appellees that appellant had no justiciable interest in the Hendersons' pending lawsuit and granted their motion to strike appellant's petition in intervention. The trial court also ordered that in light of the Hendersons' non-suit of all their claims, nothing remained pending in the action before it. It is from the trial court's final order on July 14, 2016, which struck appellant's petition in intervention,[1] and the trial court's order on March 28, 2016, which required the original plaintiffs to represent themselves or retain legal counsel, that appellant now brings this appeal.

II. Issues and Analysis

A. No Error in Ordering Plaintiffs to Appear in Person or Through Counsel

In his first issue, appellant contends the trial court erred by "constructively invalidating his assignment" when it ordered the Hendersons to appear in person or through counsel for the case to continue. Appellant argues this ruling prohibited him

[1] *See Crites v. Collins*, 284 S.W.3d 839, 840 (Tex. 2009) (recognizing that an order determining the last claim is final) (citing *Lehmann v. Har–Con Corp*., 39 S.W.3d 191, 200 (Tex. 2001)).

from pursing the cause of action, nullifying the Hendersons' assignment of their claims to him. We determine the trial court did not err and overrule appellant's issue for the reasons stated below.

Rule 7 of the Texas Rules of Civil Procedure provides that "[a]ny party to a suit may appear and prosecute or defend his rights therein, *either in person or by an attorney of the court*." Tex. R. Civ. Proc. 7 (emphasis added). The trial court's order, therefore, was in accordance with the law. *See id*. Thus the Hendersons and appellant may each prosecute or defend his or her own rights. However, persons who are not licensed attorneys may not represent anyone other than themselves. *In re Moody*, 105 B.R. 368, 370 (S.D. Tex. 1989). This court has previously held that a *pro se* plaintiff unlicensed to practice law may not represent or defend the rights of other *pro se* plaintiffs. *Shafer v. Frost Nat'l. Bank*, No. 14-06-00673-CV, 2008 WL 2130418 (Tex. App.—Houston [14th Dist.] May 22, 2008, no pet.) (mem. op.). Appellant, who is not licensed to practice law, may not act as an attorney on behalf of the Hendersons. *See id*. If the trial court had allowed appellant to act as an attorney on behalf of the Hendersons, it would have been permitting an unauthorized practice of law. *See Shafer*, 2008 WL 2130418, at *3; *see also In re Moody*, 105 B.R. at 370 ("Unlicensed laymen are not permitted to represent anyone other than themselves."); *see generally* Tex. Penal Code Ann. § 38.123 (West 2003) (setting forth the offense of "Unauthorized Practice of Law").

The Texas legislature has defined the practice of law as "the preparation of a pleading or other document incident to an action … or the management of the action or proceeding on behalf of a client before a judge in court. …" Tex. Gov. Code Ann. § 81.101(a) (West 2013). This statutory description is not exclusive. *Shafer*, 2008 WL 2130418 at *3 n.14 (citing *Crain v. Unauthorized Practice of Law Comm'n of Supreme Court of Tex.*, 11 S.W.3d 328, 333 (Tex. App.—Houston [1st Dist.] 1999,

pet. denied)). Therefore, non-lawyers like appellant are unauthorized to commit any actions that could meet the practice-of-law definition. *See Shafer*, 2008 WL 2130418, at *3 (citing *Jimison v. Mann*, 957 S.W.2d 860, 861 (Tex. App.—Amarillo 1997, no writ) (per curiam) (striking documents filed by layperson having no authority to file them on behalf of another)). In *Shafer*, when pleadings and motions were filed by the assignee, we refused to consider them. 2008 WL 2130418, at *3-4. In line with our *Shafer* decision, documents filed by laypersons having no authority to file them on behalf of another should be struck, and the trial court was correct to rule accordingly. *See id*.; *see also Simmonds v. O'Reilly*, No. 14-09-00337-CV, 2010 WL 2517976, at *1 n.1 (Tex. App.—Houston [14th Dist.] June 24, 2010, no pet.) ("[A] *pro se* non-attorney may not file pleadings on behalf of other parties.").

Appellant also argues that the trial court's ruling invalidated his assignment. But even the assignment itself states that appellant may only prosecute the claims "in his own name and for his own benefit." In this appeal, appellant complains that the trial court ordered the Hendersons to appear in person or retain counsel because appellant wants to prosecute their claims. This contradicts the assignment itself and the law.

Additionally, we reject appellant's assignment-based arguments because we conclude the assignment is void.[2] The security agreement at issue contains an anti-assignment clause, which states:

[2] We address this additional ground for affirmance in the interest of judicial economy because it was preserved below and the record contains a copy of the security agreement at issue. *See Cincinnati Life Ins. Co. v. Cates*, 927 S.W.2d 623, 626 (Tex. 1996) (summary judgment rulings); *see also State Farm v. S.S.*, 858 S.W.2d 374, 382, 387 (Tex. 1993) (Phillips, C.J., concurring; Cornyn, J., concurring; Hecht, J., dissenting); *Whataburger Rest. LLC v. Cardwell*, — S.W.3d —, No. 2017 WL 3167487, *7 (Tex. App.—El Paso, July 26, 2017, no pet. h.) (not yet released for publication); *In re Brock Specialty Serv., Ltd*., 286 S.W.3d 649, 656–57 (Tex. App.—Corpus Christi 2009, no pet.) (applying principle in arbitration context). "Appellate courts must give effect to the intended findings of the trial court and affirm the judgment if it can be upheld on

> **16. Successors and Assigns Bound; Joint and Several Liability.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender. Borrower [the Hendersons] may not assign any rights or obligations under the Security Instrument or under the Note, except to a trust that meets the requirements of the Secretary. Borrower's covenants and agreements shall be joint and several.

In Texas, anti-assignment clauses are enforceable unless rendered ineffective by an applicable statute. *Reef v. Mills Novelty Co*., 126 Tex. 380, 89 S.W.2d 210, 211 (1936); *see also In re Hughes*, 513 S.W.3d 28, 34 (Tex. App.—San Antonio 2016, pet. denied) (enforcing contract language prohibiting assignment); *Texas Dev. Co. v. Exxon Mobil Corp*., 119 S.W.3d 875, 879 (Tex. App.—Eastland 2003, no writ); *Texas Farmers Ins. Co. v. Gerdes*, 880 S.W.2d 215, 218 (Tex. App.—Fort Worth 1994, writ denied); *Texas Pac. Indem. Co. v. Atlantic Richfield Co.*, 846 S.W.2d 580, 583 (Tex. App.—Houston [14th Dist.] 1993, writ denied). In the absence of a successful attack upon an anti-assignment clause, a party is entitled to have the trial court enforce anti-assignment clauses. *Texas Pac. Indem. Co*., 846 S.W.2d at 583.

Because the Hendersons' purported assignment of their claims to Trimble was invalid, all claims and causes of action articulated in the live petition were claims and causes of actions of the Hendersons. Trimble had no authority to assert or compromise them. Thus, the trial court was correct to compel the Hendersons to appear in person or through counsel.

For these reasons, the trial court did not err by refusing to allow appellant to pursue the Hendersons' claims. Appellant's first issue is overruled.

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any legal theory that finds support in the evidence." *Black v. Dallas Cty. Child Welfare Unit*, 835 S.W.2d 626, 630 n.10 (Tex. 1992); *see also In re W.E.R.*, 669 S.W.2d 716, 717 (Tex. 1984) (per curiam).

B. No Error in Striking Appellant's Petition in Intervention

In his second issue, appellant contends the trial court erred by striking his petition in intervention. Appellant filed his petition claiming that he has an interest in the property. This interest, appellant argues, arises from the fact that he did the repairs on this property without receiving any compensation for his work. In response, appellees OneWest Bank and Federal National Mortgage Association filed a motion to strike, arguing that appellant had no justiciable interest in the litigation. The trial court granted the motion.

Before the trial court ruled on appellee's motion, however, the Hendersons non-suited all of their claims pending in this action. A non-suit is effective upon filing. *FKM P'ship, Ltd. v. Board of Regents of Univ. of Houston Sys.*, 255 S.W.3d 619, 632-33 (Tex. 2008). Assuming without deciding that appellant's petition to intervene survives the non-suit, the issue before us is to determine whether the trial court erred by striking appellant's petition in intervention. *See Quintanilla v. Law Office of Jerry J. Trevino*, P.C., No. 13-15-00105-CV, 2016 WL 1316560, at *3 (Tex. App.—Corpus Christi Mar. 10, 2016, no pet.) (mem. op.) (holding that the petition to intervene was not extinguished because the trial court had not yet ruled on the motion to strike at the time of the non-suit) (citing Tex. R. Civ. P. 162); *see also Zeifman v. Michels*, 229 S.W.3d 460, 468 (Tex. App.—Austin 2007, no pet.) (noting that, because appellant filed intervention one week before appellee non-suited her claims, appellant was a "proper party" at the time of the non-suit)." For the reasons set forth below, we find no error and affirm the decision of the trial court.

1. Standard of Review and Applicable Law

We review a trial court's striking of a petition in intervention for an abuse of discretion. *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990). The test for abuse of discretion is whether the trial court acted without

reference to any guiding rules and principles. *See Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

Under Rule 60 of the Texas Rules of Civil Procedure, any party may intervene in another's suit, but that right is subject to later being stricken by the trial court. Tex. R. Civ. P. 60. Once any party moves to strike the intervention, the intervenor has the burden to show a justiciable interest in the pending suit. *In re Union Carbide Corp*., 273 S.W.3d 152, 155 (Tex. 2008). A party has a justiciable interest in a lawsuit, and thus a right to intervene, if the intervenor could have brought the original action, or any part thereof, in his own name. *Guar. Fed. Sav. Bank*, 793 S.W.2d at 657. An intervenor's interest must be greater than a merely contingent or remote interest. *Mendez v. Brewer*, 626 S.W.2d 498, 500 (Tex. 1982). However, even if a justiciable interest exists, it is still within the trial court's broad discretion whether to strike the intervention. *See Guar. Fed. Sav. Bank*, 793 S.W.2d at 657. Because the trial court's discretion on whether to strike is "broad," it may consider all issues related to whether intervention was proper in the case under the circumstances, *i.e.*, any sufficient cause. *Allen Parker Co. v. Trustmark Nat'l Bank*, No. 14-12-00766-CV, 2013 WL 2457113, at *6 (Tex. App.—Houston [14th Dist.] June 6, 2013, pet. denied) (mem. op.) (citing Tex. R. Civ. P. 60). For example, a trial court may strike an intervention where (1) the intervention will complicate the case by excessive multiplication of the issues, or (2) the intervention is not necessary to effectively protect the intervenor's interests. *See id*.; *Guar. Fed. Sav. Bank*, 793 S.W.2d at 657. The trial court may also consider the allegations in the intervention petition, as well as the allegations of fact set forth in the pleadings of the other parties in its consideration of whether a justiciable interest in the lawsuit has been shown. *See Retzlaff v. Texas Dep't of Protective & Regulatory Serv.*, No. 03-98-00552-CV, 2000 WL 235174, at *1 (Tex. App.—Austin Mar. 2, 2000, no pet.) (mem. op.).

2. Analysis

When appellees moved to strike appellant's intervention, it triggered appellant's burden of showing his justiciable interest in the controversy. *See In re Union Carbide Corp*., 273 S.W.3d at 155. In appellant's response to appellees' motion to strike, he argued that his justiciable interest in the original action comes from the allegedly unpaid repairs debt. Appellant argues that the property in question was appraised at $44,000 before he made any repairs but afterwards its value was appraised at $113,000. Appellant's asserted frustration in this appeal comes from the fact that his repair work increased the value of the property but he was never compensated. *Id*. This lack of compensation, appellant argues, "forc[ed]" him to place a lien on the property. Appellant argues this evidence demonstrates a justiciable interest in the original suit.

As we previously stated, the law is clear that the proper measure of whether a justiciable interest exists is whether appellant could have brought this original action in his own name, without the participation of the Hendersons. *See Guar. Fed. Sav. Bank*, 793 S.W.2d at 657. The Hendersons filed the original lawsuit claiming CIT Bank wrongfully foreclosed on the property. Appellant's only connection to this property is that he performed repairs on it.

This leads us to conclude there are multiple reasons why appellant lacks a justiciable interest in this action and could not have brought the Hendersons' original suit in his own name. First, the relief appellant sought in his petition is unrelated to the relief previously sought by the Hendersons. Second, appellant's claims for repair reimbursement were entirely unessential to the resolution of the Hendersons' wrongful foreclosure claims. This is clearly evidence from which the trial court could have found appellant's intervention would only complicate the case and multiply the issues. *See Guar. Fed. Sav. Bank*, 793 S.W.2d at 657. Third, appellant

did not have any ownership interest in this property, and as appellant's own cited case holds, "[w]hen a party owns no interest in the real property that is subject of a suit, [he] has no justiciable interest in the suit." *In re Devon Energy Prod. Co., L.P.*, 321 S.W.3d 778, 783 (Tex. App.—Tyler 2010, no pet.). Fourth, appellant could not have brought this claim in his own name because he did not have any contractual relationship with any appellee involving this property. His agreement for the repair work was with the Hendersons and performed on their property but appellant did not sue the Hendersons to recover the alleged debt. Under *Guaranty*, the fact that intervention was not the only means to protect appellant's interests supports our conclusion that the trial court did not abuse its discretion in striking the petition in intervention. *See Guar. Fed. Sav. Bank*, 793 S.W.2d at 657. Accordingly, appellant's second issue is overruled.

III. Conclusion

We affirm the trial court's judgment.

/s/ John Donovan
Justice

Panel consists of Justices Boyce, Donovan, and Jewell.