IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CEDAR PROFESSIONAL CENTER, LLC, Respondent, v. CRAIG E. BERNHART, D.D.S., P.S., Appellant.	NO. 63712-6-I DIVISION ONE UNPUBLISHED OPINION FILED: November 26, 2012

Lau, J. — With limited exception not applicable here, Washington law requires individuals appearing before the court on behalf of another party to be licensed in the practice of law. Because nonlawyer Craig Bernhart attempted to represent a professional services corporation in this unlawful detainer action, we affirm the trial court's denial of the corporation's motion to revise.

FACTS

Cedar Professional Center, LLC is a Washington limited liability company. Cedar owned a building in Mountlake Terrace in which Craig E. Bernhart, DDS, P.S. (Bernhart P.S.), a Washington professional services corporation, was a tenant. Dr.

Craig Bernhart (Bernhart) was the sole shareholder, director, and officer of Bernhart P.S. He and Marian Danard were members of Cedar.

Bernhart and Danard are embroiled in a long-standing "partnership dispute" relating to certain common area maintenance charges assessed against Bernhart P.S. by Danard, in her capacity as Cedar's financial manager. Bernhart refused to pay the charges in full, believing them to be "bogus, trumped up, factitious, or arbitrary . . . ." He claims he paid an "estimated" amount based on similar fees "charged by the property owners of comparable buildings."

In March 2009, Cedar served Bernhart P.S. with a three-day notice to pay or vacate, followed approximately nine days later by an eviction summons, a complaint for unlawful detainer, and an order to show cause why the court should not issue a writ of restitution. These documents named only Bernhart P.S. as the defendant. On the afternoon before the show cause hearing, Bernhart prepared, signed, and filed with the county clerk's office a notice of appearance,[1] an answer, and a declaration of Craig Bernhart, purportedly on behalf of Bernhart P.S. It is undisputed that the commissioner never received these documents before the hearing.

At the show cause hearing, Bernhart attempted to appear on behalf of Bernhart P.S.[2] Cedar immediately objected, arguing that a nonlawyer may not represent a

[1] This notice identified Bernhart as Bernhart P.S.'s representative. Bernhart later filed a separate pro se notice of appearance.

[2] Bernhart P.S.'s attorney, Edward Weigelt, apparently declined to attend the show cause hearing based on an asserted conflict of interest. Cedar does not challenge Weigelt's representation of Bernhart P.S. on appeal.

corporate entity. The commissioner agreed and disallowed Bernhart P.S.'s appearance. Cedar then submitted proof of service of its three-day notice to pay or vacate, a copy of its summons and complaint, and a motion and proposed order. Cedar also submitted the declaration of K. Anderson, Cedar's "comptroller," who testified that Bernhart P.S. "breached its Lease by failing to pay its obligations owed under the Lease." Anderson further testified that Bernhart P.S. was $43,377.68 in arrears, exclusive of interest, fees, and costs.

The commissioner granted Cedar judgment for unlawful detainer and ordered the clerk to issue a writ of restitution. The commissioner suggested that if Bernhart P.S. retained counsel, it could file a CR 60(b) motion to vacate the judgment. The record shows Bernhart P.S. filed no CR 60(b) motion to vacate. Bernhart P.S. moved for revision of the commissioner's judgment and order on grounds that (1) the commissioner erroneously failed to consider the answer and declaration of Craig Bernhart filed on the eve of the show cause hearing and (2) the commissioner entered a judgment and order "without competent evidence of the service of a 3 day notice to pay rent or vacate . . . [and] without competent evidence that any rent was in fact even due." The trial court denied the motion in its handwritten order.

Again acting without counsel, Bernhart moved for reconsideration on behalf of Bernhart P.S. The court denied the reconsideration motion.[3] Bernhart P.S. appeals.

ANALYSIS

[3] Our record contains no order denying reconsideration, but we presume the motion was denied.

Bernhart P.S. argues that the commissioner erroneously entered a judgment and order at the show cause hearing and that the court should have set the matter over for trial.[4] Cedar responds that Bernhart P.S. has no procedural or evidentiary basis on which to challenge the judgment and order and that the trial court properly denied Bernhart P.S.'s motion for revision. We agree with Cedar and affirm the trial court.

Scope of Review

Bernhart P.S. appeals the judgment and order for a writ of restitution entered by the commissioner and the trial court's order denying revision. As a preliminary matter, "[w]here the superior court has made a decision on a motion for revision, the appeal is from the superior court's decision, not from the commissioner's decision." Boeing Emps.' Credit Union v. Burns, 167 Wn. App. 265, 270, 272 P.3d 908 (2012) (citing State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004)). However, "when the superior court denies a motion for revision, it adopts the commissioner's findings, conclusions, and rulings as its own." State ex rel. J.V.G. v. Van Guilder, 137 Wn. App. 417, 423, 154 P.3d 243 (2007); see also Williams v. Williams, 156 Wn. App. 22, 27-28, 232 P.3d 573 (2010) (reviewing court not required to enter separate findings and conclusions). Bernhart P.S.'s appeal is limited to the trial court's June 5, 2009 order denying Bernhart P.S.'s motion for revision and the commissioner's findings of fact and conclusions of law.

[4] Bernhart P.S. argues that the commissioner's entry of a judgment and order at the show cause hearing violated his right to a jury trial under RCW 59.12.130. That statute provides: "Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a jury be waived as in other cases." Given our resolution here, we need not reach this issue.

Standard of Review

In ruling on a motion for revision, "the superior court reviews both the commissioner's findings of fact and conclusions of law de novo based upon the evidence and issues presented to the commissioner." Ramer, 151 Wn.2d at 113. "When the record consists entirely of written material, an appellate court stands in the same position as the trial court and reviews the record de novo." Hous. Auth. of City of Pasco & Franklin County v. Pleasant, 126 Wn. App. 382, 387, 109 P.3d 422 (2005).

Nonlawyer Representation of a Corporate Entity

"Washington law, with limited exception, requires individuals appearing before the court on behalf of another party to be licensed in the practice of law." Lloyd Enters., Inc. v. Longview Plumbing & Heating Co., 91 Wn. App. 697, 701, 958 P.2d 1035 (1998). Accordingly, "corporations appearing in court proceedings must be represented by an attorney." Lloyd Enters., 91 Wn. App. at 701.

Bernhart P.S. argues that a nonlawyer may represent a professional services corporation if the nonlawyer is the corporation's president, director, and sole shareholder. See Appellant's Br. at 26. It relies principally on Willapa Trading Co. v. Muscanto, Inc., 45 Wn. App. 779, 727 P.2d 687 (1986). There, we concluded that the trial court did not abuse its discretion, under the circumstances, in permitting a nonlawyer president, director, and sole shareholder of a corporation to represent the corporation. We reasoned that because "[n]o financial interests other than [the nonlawyer's] were involved," the nonlawyer "was, in fact, acting on his own behalf."

Willapa, 45 Wn. App. at 787. Bernhart P.S. argues that like the nonlawyer in Willapa, Bernhart's interests were identical to those of the corporation he sought to represent.

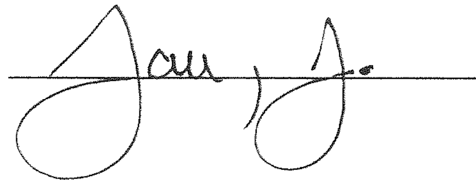
Our decision in Dutch Village Mall v. Pelletti, 162 Wn. App. 531, 256 P.3d 1251 (2011), controls. In Dutch Village Mall, 162 Wn. App. at 539, we described Willapa as an "aberrant" decision, and concluded that the case "cannot be read as giving trial courts the discretion to permit artificial entities to be represented by nonlawyers." Dutch Vill. Mall, 162 Wn. App. at 537. We then clarified that the traditional rule against nonlawyer representation of artificial entities applies in cases of nonlawyer representation of LLCs—even when the nonlawyer is the LLC's sole member. Dutch Vill. Mall, 162 Wn. App. at 539. We reasoned that such a rule "protect[s] the interests of other persons who may have financial interests in the artificial entity," relieves burdens on opposing parties and on the court, eliminates the "inequity of allowing an individual 'to establish the protections of a corporation [without] also fac[ing] the burdens of incorporation,'" and forestalls "threshold disputes over an LLC's claim to have but a single owner." Dutch Vill. Mall, 162 Wn. App. at 537-38 (quoting Lloyd Enters., Inc. v. Longview Plumbing & Heating Co., 91 Wn. App. 697, 702-03, 958 P.2d 1035 (1998)).

We apply Dutch Village Mall's rule here: A nonlawyer cannot represent a professional services corporation, even if he or she is the corporation's sole director, officer, and shareholder. We hold that as a nonlawyer, Bernhart was not entitled to represent Bernhart P.S. at the show cause hearing. The commissioner properly

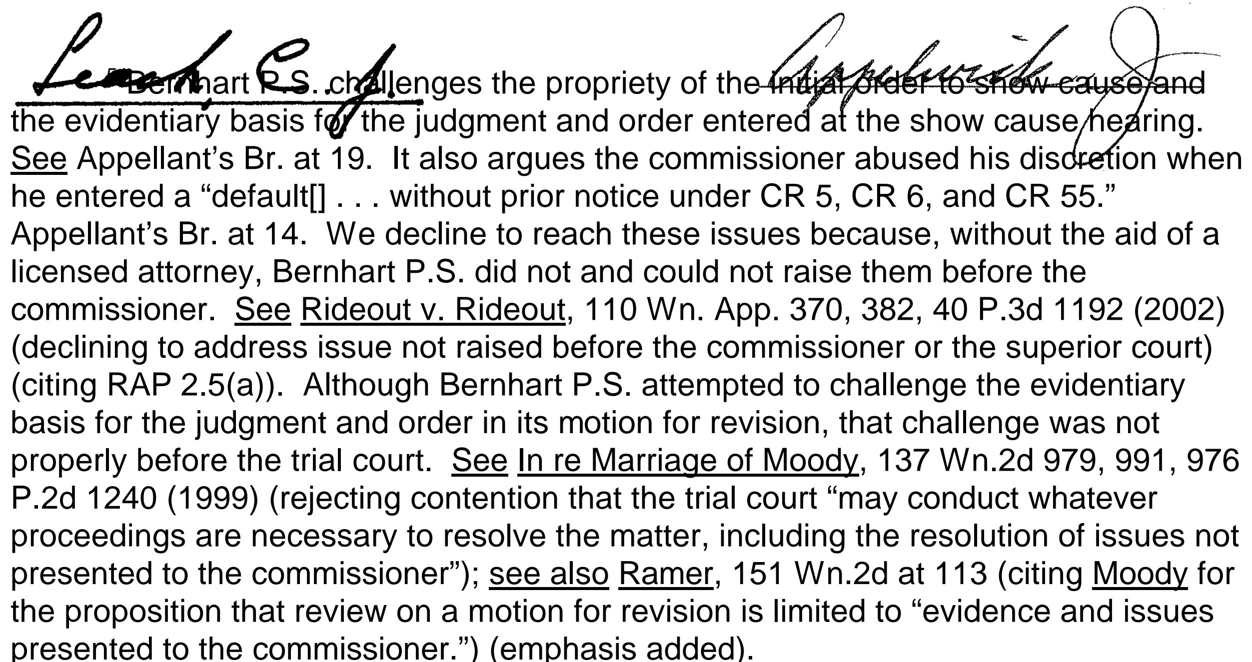
disallowed Bernhart to represent Bernhart P.S. at the show cause hearing. The commissioner also properly entered a judgment and order for a writ of restitution at the show cause hearing on the basis of the evidence submitted by Cedar.[5]

Both parties request attorney fees on appeal under RAP 18.1(a) and pursuant to paragraph 25.14 of the commercial lease, which provides that the prevailing party in any “action or proceeding,” including “any appeal,” shall be entitled to costs and reasonable attorney fees. We deny Bernhart P.S.’s fee request and grant Cedar’s fee request, subject to compliance with RAP 18.1(d).

Affirmed.



WE CONCUR:



[5] Bernhart P.S. challenges the propriety of the initial order to show cause and the evidentiary basis for the judgment and order entered at the show cause hearing. See Appellant’s Br. at 19. It also argues the commissioner abused his discretion when he entered a “default[] . . . without prior notice under CR 5, CR 6, and CR 55.” Appellant’s Br. at 14. We decline to reach these issues because, without the aid of a licensed attorney, Bernhart P.S. did not and could not raise them before the commissioner. See Rideout v. Rideout, 110 Wn. App. 370, 382, 40 P.3d 1192 (2002) (declining to address issue not raised before the commissioner or the superior court) (citing RAP 2.5(a)). Although Bernhart P.S. attempted to challenge the evidentiary basis for the judgment and order in its motion for revision, that challenge was not properly before the trial court. See In re Marriage of Moody, 137 Wn.2d 979, 991, 976 P.2d 1240 (1999) (rejecting contention that the trial court “may conduct whatever proceedings are necessary to resolve the matter, including the resolution of issues not presented to the commissioner”); see also Ramer, 151 Wn.2d at 113 (citing Moody for the proposition that review on a motion for revision is limited to “evidence and issues presented to the commissioner.”) (emphasis added).