

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOANNA AMMONS, as Independent Executor)	Appeal from the
of the Estate of BAIDWATIE RITA LECOIN)	Circuit Court of
a/k/a BAIDWATIE RITA JAGDEOSINGH-)	Cook County.
AMMONS,)	
)	
Plaintiff-Appellant,)	
)	
v.)	No. 17 L 12285
)	
WALGREEN CO., an Illinois corporation, d/b/a)	
WALGREENS, BOND DRUG COMPANY OF)	
ILLINOIS, LLC, ASTELLAS US)	
TECHNOLOGIES, INC., and ASTELLAS)	
PHARMA US, INC.,)	Honorable
)	Christopher E. Lawler,
Defendants-Appellees.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Mikva and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* We strike the briefs filed by a non-attorney, acting *pro se*, on behalf of an estate; and dismiss the appeal.

¶ 2 Joanna Ammons, as Independent Executor of the Estate of Baidwatie Rita Lecoin (plaintiff), appeals the trial court’s dismissal of her complaint as time-barred, based on its finding that the statute of limitations had expired. Ammons, a non-attorney proceeding *pro se*, has filed briefs with this court on behalf of the estate of Baidwatie Rita Lecoin. Because a non-attorney

may not represent the legal interests of an estate in a *pro se* capacity, we strike her briefs and dismiss the appeal.

¶ 3

BACKGROUND

¶ 4 This case involves negligence claims brought by plaintiff against Walgreen Co. d/b/a Walgreens and Bond Drug Company (Walgreens), and Astellas US Technologies, Inc. and Astellas Pharma US, Inc. (Astellas), stemming from allegations of mis-filled prescriptions. On December 1, 2017, plaintiff, acting through counsel¹, Angelini & Ori, LLC, filed a complaint in the circuit court of Cook County, alleging the following.

¶ 5 Lecoin was prescribed Prednisone 5mg tablets and presented her prescription to the Walgreens pharmacy located at 7350 Barrington Road in Hanover Park for filling. Instead of correctly filling the prescription, the Walgreens pharmacist filled it with Lasix. The pharmacist did not attempt to contact Lecoin regarding this error. Walgreens knew or should have known that Lecoin was a kidney transplant patient and recognized the importance of her Prednisone medication and the negative consequences that would result from taking Lasix. Additionally, “around April 2014” Lecoin’s physician prescribed her Prograf and she presented it to the Hanover Park Walgreens pharmacy. Instead of filling the prescription for Prograf, the pharmacist filled it with empty capsules and partially filled capsules. Astellas was the manufacturers of the drugs at issue. The pharmacist made no attempt to contact Lecoin regarding the error. As a result, Lecoin was injured.

¶ 6 The complaint further alleged that Lecoin was disabled and unable to manage her affairs as of November 2014. Specifically, in count VII, titled “Legal Disability/Survival Act,” the complaint stated that “[a]round November 2014 Lecoin was disabled as described in 735 ILCS

¹ Ammons, as executor of the estate, was represented by counsel throughout all proceedings in the circuit court.

5/13-110 [sic]² and unable to manage her own affairs.” As a result, Lecoin was incapable of reasonably knowing or becoming aware that the cause, nature, or extent of her injuries was caused by the wrongful conduct of Walgreens and Astellas. Lecoin’s diminished capacity, as it related to the discovery rule, effectively postponed the commencement of the statute of limitations. Thus, this action was “commenced within the timeframe set forth in 735 ILCS 5/13-209.” Lecoin died on December 5, 2016. On November 2, 2017, Ammons was named the independent executor of Lecoin’s estate.

¶ 7 On March 12, 2018, Walgreens filed a motion to dismiss pursuant to section 2-619(a)(5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5) (West 2018)), asserting that plaintiff’s complaint was not commenced within the time allowed by law, and thus was time-barred. The motion stated that personal injury actions must be brought within two years of the date the cause of action accrued, but plaintiff’s complaint was not filed until at least three years after the cause of action accrued. Walgreens asserted that the case of *Giles v. Parks*, 2018 IL App (1st) 163152, was directly on point and stood for the proposition that Lecoin’s alleged disability did not toll the statute of limitations for a claim brought by the representative of her estate—*i.e.*, Ammons. Thus, any claim regarding the mis-filling of prescriptions in April and June 2014 was required to be filed no later than July 2016 in order to be timely. Because plaintiff’s complaint was not filed until December 2017, it was untimely. In support of its motion, Walgreens attached the affidavit of Nish Patel, the Hanover Park Walgreens pharmacy manager, attesting that in July 2014, Ammons visited the Hanover Park Walgreens, complained that Lecoin’s prescriptions for Prograf and Prednisone were incorrectly filled, and expressed concern that Lecoin suffered an injury after taking the medications.

² We note that plaintiff’s complaint incorrectly cited section 13-110 of the Code, which refers to “Vacant land--Payment of taxes with color of title,” and is wholly irrelevant to the issues presented in this case. 735 ILCS 5/110 (West 2018).

¶ 8 Astellas filed a similar motion to dismiss on March 16, 2018. Plaintiff filed its response to both motions on June 21, 2018. Walgreens and Astellas both filed replies in support of their motions on July 13, 2018.

¶ 9 On September 6, 2018, the trial court denied the motions to dismiss. On October 1, 2018, Astellas filed a motion to reconsider and Walgreens was granted leave to join that motion. On October 18, 2018, plaintiff filed her response to the motion to reconsider. Astellas replied on October 30, 2018.

¶ 10 On December 12, 2018, the trial court granted the motion to reconsider. Specifically, the court's order stated as follows:

“After carefully reviewing the applicable precedent and the record, the Court acknowledges that it erred in its prior ruling. Plaintiff Joanna Ammons's decedent, Baidwatie Rita Lecoin, is the injured party. Lecoin's alleged injury occurred sometime in April and/or July 2014. Under *Giles*, Plaintiff cannot invoke section 13-211 as a mechanism to toll the statute of limitations, and the Court must disregard any legal disability that Lecoin might have had as to Plaintiff's rights. [See] *Giles*, 2018 IL App (1st) 163152[,] ¶ 16. Accordingly, the statute of limitations as to Plaintiff was not tolled by any legal disability. Thus, even though Lecoin lived until December 2016, Plaintiff had two years, until April and/or July 2016, to file her complaint. Plaintiff filed in December 2017, which was untimely. Defendants' motion to dismiss therefore should have been granted.”

The court's order dismissed plaintiffs' complaint as to both Walgreens and Astellas and stated that it was a final order, disposing of the case in its entirety.

¶ 11 On January 10, 2019, plaintiff, through counsel, Angelini, Ori & Abate Law, filed a notice of appeal, seeking reversal of the circuit court’s December 12, 2018, order that dismissed plaintiff’s complaint, and asking that the case be remanded to the circuit court for further proceedings.

¶ 12 On January 23, 2019, Ammons, acting *pro se*, filed a request for preparation of the record on appeal. Also on that date, Ammons, filed a docketing statement. In a section labeled “Counsel filing this statement,” it was denoted that “Pamela Davis Gorcowski prepared the Docketing Statement, but does not represent the Appellant on Appeal.” Later in the docketing statement, Ammons represented that on January 23, 2019, as a self-represented litigant, she requested the clerk of court to prepare the record on appeal. The notice of filing and certificate of service attached to the docketing statement was signed by Ammons.

¶ 13 Ammons, still acting *pro se*, filed an opening brief on behalf of the estate on April 8, 2019. The Astellas defendants filed their response brief through counsel on May 15, 2019, and the Walgreens defendants filed their response brief through counsel on June 13, 2019. On July 1, 2019, again in a *pro se* capacity, Ammons filed a reply brief on behalf of the estate.

¶ 14 ANALYSIS

¶ 15 On July 24, 2019, this court, on its own motion, ordered the parties to present supplemental briefing on the issue of “whether this court’s recent decision in *In re Estate of Carol Mattson*, 2019 IL App (1st) 180805, applies to this case, and if so, what effect it has.” Thereafter, all parties submitted timely supplemental briefs.

¶ 16 In *Mattson*, the petitioner, a non-attorney acting *pro se*, filed a petition for letters of administration, seeking to open a probate estate for his deceased mother, who did not leave a will. 2018 IL App (1st) 180805, ¶¶ 1-2. According to the petition, the petitioner and his two

siblings were the decedent's only heirs. *Id.* ¶ 3. The petitioner filed multiple petitions to open an estate for the deceased, but was informed multiple times by the court that as a non-attorney, he could not represent the interests of an estate. *Id.* The court ultimately denied the petition without prejudice because the petitioner had failed to obtain counsel to represent the estate. *Id.* ¶ 4. On appeal, the petitioner had still not retained counsel and again attempted to represent the interests of the estate as a non-attorney. *Id.* ¶ 5. This court struck the petitioner's *pro se* brief and dismissed the appeal. *Id.* The court recognized that one who is not duly authorized to practice law cannot represent the interests of another and that "although a *pro se* litigant is entitled to represent his own personal interests, a non-attorney cannot represent another's legal interests on behalf of that individual." *Id.* ¶ 6. The court explained that because the petitioner was neither an attorney nor a party to the suit, he could not represent the legal interests of the estate. *Id.* ¶ 7. Further, the suit was dismissed because the petitioner "impermissibly instituted legal proceedings on behalf of another, *i.e.*, the estate of Carol Mattson." *Id.*

¶ 17 Like the petitioner in *Mattson*, Ammons, a non-attorney acting *pro se*, has attempted to represent the interests of the estate, which she may not do. Pursuant to *Mattson*, we strike Ammons's opening brief and reply brief—both of which were filed by her on behalf of the estate—and dismiss her appeal. *Id.* ¶ 9; see also *Blue v. People*, 223 Ill. App. 3d 594, 597 (1992) (striking briefs of non-attorney father, acting *pro se*, on behalf of minor son). Although Ammons certainly has the right to represent her own interests in a *pro se* capacity in the proper context, she cannot, as a non-attorney, represent the interests of the estate in this case. *Mattson*, 2019 IL App (1st) 180805, ¶ 7; see also *Ratcliffe v. Apantaku*, 318 Ill. App. 3d 621, 627 (2000) (finding that a non-attorney could not represent the interests of a decedent's estate in a *pro se* capacity). Although Ammons's supplemental brief suggests that she is the only heir to Lecoin's

estate, the record does not contain an order appointing her as executor, an affidavit of heirship, or an order of the court declaring heirship, and thus we cannot confirm this. Further, Ammons does not cite, and we have not found, any case that allows a non-attorney acting *pro se* to represent the interest of an estate as long as the non-attorney is the estate's sole heir.

¶ 18 In her supplemental brief, Ammons stated that if we find *Mattson* applicable, she requests leave “to engage a member of the Illinois bar to represent her in this action.” However, Ammons’s supplemental brief reflected that “no attorney would take [her] case on appeal.” Specifically, she explained that the attorneys who filed the notice of appeal withdrew from representation because “their firm had concerns about appearing in the same court where *Giles v. Parks* was decided upon and informed [Ammons] that the firm had concluded it would not represent her further.” Ammons’s supplemental brief stated that she then contacted 13 attorneys who were unwilling to take her case. Further, this court will not appoint an attorney to represent an estate. See *Ratcliffe*, 318 Ill. App. 3d at 627 (denying *pro se* litigant’s request to appoint counsel in a probate matter because “an individual in a civil action has no right to counsel under the Illinois Constitution”). As a result, we deny Ammons’s request for leave to attempt to hire an attorney because she already had sufficient opportunity to engage counsel, but was unsuccessful in doing so.

¶ 19 Also in reliance on *Mattson*, we dismiss the appeal. In *Mattson*, the court struck the *pro se* litigant’s briefs and dismissed the appeal, finding that “where one not licensed to practice law has instituted legal proceedings on behalf of another, the suit should be dismissed.” 2019 IL 180805, ¶ 6, 9. Dismissal of an improperly-filed complaint is consistent with the “the nullity—or voidness—rule,” which provides that where a person who is not licensed to practice law in Illinois attempts to represent another party in legal proceedings, the court may dismiss the cause

and treat the actions taken by the self-represented litigant as a nullity. *Applebaum v. Rush University Medical Center*, 231 Ill. 2d 429, 435 (2008). Our supreme court explained that such a rule “ ‘is grounded in the fact that there are risks to individual clients and to the integrity of the legal system inherent in representation by an unlicensed person.’ ” *Id.* (quoting *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 389-90 (2005)). The purpose of the nullity rule is “to protect litigants against the mistakes of the ignorant and the schemes of the unscrupulous and to protect the court itself in the administration of its proceedings from those lacking requisite skills.” (Internal quotation marks omitted.) *Sperry*, 214 Ill. 2d at 389-90. Because Ammons, a non-attorney, has attempted to represent the interests of the estate, her briefs in this appeal are a nullity. As such, the appeal is dismissed and the circuit court is affirmed. See, e.g., *Mattson*, 2019 IL App (1st) 180805, ¶ 10.

¶ 20

CONCLUSION

¶ 21 Based on the foregoing, we strike Ammons’s opening brief filed on April 8, 2019, and her reply brief filed on July 1, 2019, and dismiss the appeal.

¶ 22 Appeal dismissed; circuit court judgment affirmed.