

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Alan Williams,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-28 (C.P.C. No. 07CVA04-5127)
James Griffith et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

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D E C I S I O N

Rendered on August 13, 2009

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*Alan Williams, pro se.*

*Reminger Co., L.P.A., and Lisa R. House, for appellees Villa Angela et al.*

*Lane Alton & Horst, LLC, and Gregory D. Rankin, for appellees Mohammed Shareef, M.D., and Mayyar Shareef, M.D.*

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APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Plaintiff-appellant, Alan Williams ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas which granted the defendants' motions to

dismiss the complaint. Appellant filed a timely notice of appeal and raises the following assignments of error:

#### First Assignment of Error

Did the Trial Court Err in granting dismissal for defendant James Griffith and all other defendants on the bases that they should enjoy relief from all of the Plaintiffs non-medical claims because the plaintiff did not file an acceptable affidavit of merit to support his wrongful death and medical negligence claim. The plaintiffs Wrongful death claim was not based on medical negligence but assault and battery which claims cannot be consumed under the medical negligence claim.

#### Second Assignment of Error

The Trial Court did commit intentional abuse of discretion claiming that the Wrongful Death of the child was to be subsumed under these claims, thus making it appear as if the plaintiff[s] entire case was subjected to the statute of limitation. None of the claims against the Appellee was subjected to the Statute of Limitation.

#### Third Assignment of Error

Did the Trial Court err in granting defendants defense of the claims when the court claims that the plaintiff did not file within one year of the statute of limitation.

#### Fourth Assignment of Error

The court did grossly erred [sic] when it ruled that the administrator of the estate cannot pursue the wrongful death action in for his sole benefit.

#### Fifth Assignment of Error

Did the Trial Court Err in its [sic] decision that the Plaintiff had committed the Unauthorized Practice of Law?

#### Sixth Assignment of Error

Did the court err by denying the administrator of the estate to pursue his own claims.

### Seventh Assignment of Error

The doctors James Griffith and the other defendants obtained no jurisdiction from the Probate Court to remove life sustaining or life prolonging treatment.

{¶2} The procedural history of the case is as follows: Plaintiffs Shamar Williams and Lakisha Williams (now deceased),<sup>1</sup> filed a pro se complaint on February 24, 2006, against James Griffith, Villa Angela Care Center, Lisa Mathis, RN, Lorrie Pratt, RPT, Larry Conr, RRT, Melissa Bishop, SRT, J. Newton, LPN, Larry Howard, RN, Korinne Knuebel, two maintenance personnel, all unnamed others of service team, Brian Colleran, Dianne Bozek, and co-administrator and owner unknown (collectively known as the "Villa Angela defendants"); Mohammed Shareef, M.D., and Nayyar Shareef, M.D., alleging that defendants failed to provide plaintiff Lakisha Williams with adequate medical care and this failure resulted in her death on August 26, 2004.

{¶3} On April 13, 2006, plaintiffs voluntarily dismissed the complaint pursuant to Civ.R. 41(A) and refiled it on April 13, 2007, as permitted by R.C. 2305.19, the Savings Statute.<sup>2</sup> The main causes of action included an action for wrongful death and medical malpractice involving the care of plaintiff, Lakisha Williams, in the Villa Angela nursing home before her death on August 26, 2004. The causes of action listed in the complaint are as follows: wrongful death, medical malpractice, malicious wrongful death, false imprisonment, tampering and destroying records, interference with family relations, illegal searches and invasions of privacy, violation of patient rights, menacing

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<sup>1</sup> Although the complaint included plaintiffs Alan Williams, Shamar Williams, and Lakisha Williams, only Alan Williams appealed the dismissal of the complaint.

<sup>2</sup> The original complaint is not part of the file, but the dates are referenced in other filed papers.

threats, intentional infliction of emotional distress, professional malpractice, violations of the First, Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, violation of HIPPA regulations, child abuse, violations of the Racketeer Influenced and Corrupt Organizations Act, Sections 1961-1968, Title 18, U.S.Code ("RICO"), loss of consortium, conspiracy to commit fraud, assault and battery, and cruel and unusual punishment.<sup>3</sup>

{¶4} The trial court in this case, granted the defendants' motions to dismiss finding that the wrongful death claim should be dismissed because it included allegations of medical negligence, and thus required the filing of an affidavit of merit pursuant to Civ.R. 10(D). The trial court found that plaintiffs had not filed the required affidavit of merit, nor had they explained why they had not done so in the nineteen months after they had refiled their complaint. The trial court also found that the medical negligence claim was time-barred by the one-year statute of limitations. The trial court found that the wrongful death claim was filed within the two-year statute of limitations for a wrongful death claim but dismissed that claim because the plaintiffs did not have standing or the capacity as a practicing attorney to maintain the claim. Thus, the trial court dismissed the complaint pursuant to Civ.R. 12(B)(6).

{¶5} Although the trial court dismissed the complaint without prejudice, the plaintiffs had already dismissed the complaint once, pursuant to Civ.R. 41(A), and refiled under the Savings Statute. Since the Savings Statute may only be used once,

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<sup>3</sup> The complaint did not contain a signed certificate of service and pursuant to Civ.R. 5(D), papers shall not be considered until proof of service is endorsed thereon or separately filed. However, attached to the complaint is an unsigned certificate of service, and the file contains the summons forms from the clerk of courts. Since the defendants eventually received service, we shall consider the complaint.

this dismissal by the trial court had the effect of being a dismissal with prejudice. See *Thomas v. Freeman*, 79 Ohio St.3d 221, 227, 1997-Ohio-395.

{¶6} In order for a trial court to grant a motion to dismiss for failure to state a claim upon which relief may be granted, "it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union* (1975), 42 Ohio St.2d 242, syllabus. In construing the complaint upon a Civ.R. 12(B)(6) motion, a court must presume all factual allegations contained in the complaint to be true and make all reasonable inferences in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. Appellate review of a judgment granting a Civ.R. 12(B)(6) motion to dismiss is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5.

{¶7} In his first assignment of error, appellant contends that the trial court erred in granting dismissal of the non-medical claims because the plaintiffs did not file an acceptable affidavit of merit to support the wrongful death and medical negligence claims. Appellant argues that the wrongful death claim was based on assault and battery rather than medical negligence, and therefore should not have been treated as a medical negligence claim. While appellant raised non-medical claims other than assault and battery in his complaint, on appeal he only raises the assault and battery claims as the basis for his wrongful death claim.

{¶8} Even if we accepted appellant's assertion that the trial court erred in finding that the assault and battery constituted part of the medical negligence claim, and thus required an affidavit of merit, appellant's claim for assault and battery would not entitle him to recovery. Appellant's assertions of assault and battery are based on

criminal statutes, and a claim for civil damages is inappropriate because criminal statutes do not create civil causes of action. *Biomedical Innovations, Inc. v. McLaughlin* (1995), 103 Ohio App.3d 122, 126.

{¶9} Appellant also seems to argue that the trial court was biased against appellant in favor of the government and argues that he was given no notice of the intention to dismiss his complaint. There is nothing in Civ.R. 12(B)(6) that requires a trial court to notify a plaintiff of its intention to grant a motion to dismiss for failure to state a claim upon which relief can be granted. See *Thrower v. Slaby* (Apr. 19, 1995), 9th Dist. No. 16935. Moreover, appellant received copies of the motions to dismiss and filed responses so he had notice that the court would rule on the motions and could dismiss the complaint.

{¶10} Therefore, appellant's first assignment of error is overruled.

{¶11} Appellant also argues that the trial court erred in finding that he had committed the unauthorized practice of law by pursuing the claims of others in connection with his wrongful death claim. The trial court found that appellant could represent himself or could present himself as the administrator of Lakisha's estate, but he could not represent others because to do so would constitute the unauthorized practice of law. Appellant argues that he is the administrator of Lakisha's estate, and that he has standing to represent his own and his son's interests.<sup>4</sup>

{¶12} A civil action must be asserted by the real party in interest because a party who is not the real party in interest lacks standing to prosecute the action. *State ex rel.*

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<sup>4</sup> Although these arguments were presented in appellant's brief in connection with the first assignment of error, it appears that they actually relate to appellant's fourth, fifth, and sixth assignments of error.

*Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 77, 1998-Ohio-275. Only a personal representative of the decedent has standing to bring a wrongful death action. R.C. 2125.02(A)(1). In Ohio, a personal representative of the decedent is a court-appointed administrator or executor of the decedent's estate and is not defined according to familial relationships as in other states. *Ramsey v. Neiman*, 69 Ohio St.3d 508, 511, 1994-Ohio-359. The *Ramsey* court listed good policy reasons for requiring that the person bringing the wrongful death action be appointed by a court, because such a requirement eliminates the possibility that the defendant will face more than one lawsuit, allows for potential conflicts of interest to be revealed in advance of the filing of the action, and ensures to some degree that the wrongful death action will be brought by a person who will act in the best interests of the beneficiaries, who are the real parties in interest. *Id.*

{¶13} "Thus, while a surviving spouse, child, or parent may be the real party in interest in the case, a suit brought by anyone other than the personal representative, admittedly a nominal party, will not meet the statutory requirements for the action." *Schaffer v. Gateway Harvestore, Inc.* (1998), 129 Ohio App.3d 448, 455, citing *Burwell v. Maynard* (1970), 21 Ohio St.2d 108, 110. "[A] personal representative of a decedent's estate stands in the shoes of the decedent to assert claims on behalf of the estate." *Hosfelt v. Miller*, 7th Dist. No. 97-JE-50, 2000-Ohio-2619. Thus, the personal representative represents the interests of the statutory next of kin. R.C. 2125.02(A)(1).

{¶14} Section 2(B)(1)(g), Article IV of the Ohio Constitution grants the Ohio Supreme Court constitutional power to regulate and control all matters relating to the practice of law in the state. Gov. Bar. R. VII § 2(A) defines the unauthorized practice of

law as "the rendering of legal services for another by any person not admitted to practice in Ohio." R.C. 4705.01 also provides that: "No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules." "The law recognizes that a person has the inherent right to proceed pro se in any court, but that right pertains only to that person. It does not extend to the person's spouse, child, or solely owned corporation." *State v. Block*, 8th Dist. No. 87488, 2007-Ohio-1979, ¶4.

{¶15} Appellant was appointed as the administrator of the estate of Lakisha Williams. However, he is not an attorney. Thus, while he may represent himself, pro se, he may not represent others that the statute designates as next of kin, because to represent others would constitute the unauthorized practice of law. As the trial court found, appellant could not proceed pro se by representing only himself, because the action has to be maintained by the personal representative on behalf of the statutory next of kin in one action. R.C. 2125.02. Thus, the trial court did not err in finding that appellant could not represent his son without constituting the unauthorized practice of law.

{¶16} Appellant contends that the trial court refused to address the case law that he had cited, and argues that if the trial court had read *In re Guardianship of Stein*, 105 Ohio St.3d 30, 2004-Ohio-7114, it would have not dismissed the complaint. However, the *Stein* case does not address the standing issue. In *Stein*, the Supreme Court of

Ohio determined that the probate court did not have the authority to appoint a limited guardian with the power to withdraw all life-sustaining support in the absence of a termination of parental rights. The right still belonged to the parents. However, whether appellant had the power to make life and death decisions regarding his daughter did not affect which plaintiffs had standing to bring a wrongful death action, which was the basis of this decision.

{¶17} Appellant's fourth, fifth, and sixth assignments of error are not well-taken, and are therefore overruled.

{¶18} In his brief, appellant cites *Weaver v. Edwin Shaw Hosp.*, 104 Ohio St.3d 390, 2004-Ohio-6549. In the syllabus of *Weaver*, the Supreme Court of Ohio determined that the term "disability" as used in R.C. 2305.16 refers only to the two descriptions contained in that statute—being within the age of minority or being of unsound mind. Also, the appointment of a guardian for a person within the age of minority or for a person of unsound mind neither removes the disability referred to in R.C. 2305.16, nor commences the running of the statute of limitations.

{¶19} Appellant also cites *Halbert v. Emch* (Sept. 20, 1985), 6th Dist. No. L-84-310, in which the Sixth District Court of Appeals found that despite R.C. 2305.11(B), under R.C. 2305.11(A), an incompetent's cause of action does not accrue when the guardian discovered or should have discovered the alleged medical malpractice.

{¶20} Appellant appears to be raising *Weaver* and *Halbert* for the proposition that the statute of limitations for the medical malpractice action was tolled in this case, which apparently relate to his second and third assignments of error. However, appellant did not provide any argument, just the case citations. App.R. 16(A)(7) states,

in relevant part, that an appellant's brief shall include "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions." App.R. 12(A)(2) provides that "[t]he court may disregard an assignment of error presented for review if the party raising it \* \* \* fails to argue the assignment separately in the brief, as required under App.R. 16(A)." It is appellant's duty to demonstrate his assigned error through legal argument supported by citations to legal authority and facts from the record. *Whitehall v. Ruckman*, 10th Dist. No. 07AP-445, 2007-Ohio-6780, ¶19, citing *State v. Vinson*, 9th Dist. No. 23739, 2007-Ohio-6045, ¶25.

{¶21} Although appellate courts often afford some leniency to pro se appeals, they do not "conjure up questions never squarely asked or construct full-blown claims from convoluted reasoning." *State ex rel. Karmasu v. Tate* (1992), 83 Ohio App.3d 199, 206. Ohio courts generally hold pro se litigants to the same rules and procedures as those litigants who retain counsel. Pro se litigants are not entitled to greater rights, and they must accept the results of their own mistakes. *Whitehall* at ¶21. However, "[i]f a court cannot understand the arguments advanced by a party, relief cannot be granted." *State v. Dunlap*, 10th Dist. No. 05AP-260, 2005-Ohio-6754, ¶10.

{¶22} Therefore, appellant's second and third assignments of error are overruled.

{¶23} In his seventh assignment of error, appellant contends that the defendants obtained no jurisdiction from the probate court to remove life-sustaining or life-prolonging treatment but does not allege an error by the trial court. However, appellant provided no separate legal argument for this assignment of error as required by App.R.

16(A). As stated above, App.R. 12(A)(2) provides that the court may disregard an assignment of error presented if the party raising it fails to argue the assignment separately in the brief. It is appellant's duty to demonstrate the errors of the trial court through legal argument supported by citations to legal authority. *Whitehall*, supra.

{¶24} Therefore, appellant's seventh assignment of error is overruled.

{¶25} Having overruled each of appellant's seven assignments of error, the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

FRENCH, P.J., and McGRATH, J., concur.

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