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Willner v. South County Hospital, 222 A.3d 1251 (R.I. 2020)

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Civil Procedure. *Willner v. South County Hospital*, 222 A.3d 1251 (R.I. 2020). A *pro se*¹ plaintiff cannot fulfill the right to self-representation through an attorney unauthorized to practice law in the state or whose representation would provoke conflicting interests. Additionally, Rule 17(c) of the Rhode Island Superior Court Rules of Civil Procedure addressing the appointment of an *ad litem*² guardian only applies when the incompetent person does not already have a guardian.

FACTS AND TRAVEL

While the Plaintiff's mother, Joyce Willner ("Ms. Willner"), was admitted to South County Hospital's inpatient hospice unit operated by Home and Hospice Care, the Plaintiff, Michael Willner, and Ms. Willner's husband, Kurt Willner, disagreed over the plan of care for Ms. Willner.³ Although the Plaintiff misrepresented himself as Ms. Willner's durable power of attorney, Ms. Willner's husband Kurt Willner was Ms. Willner's actual power of attorney who could decide the plan of care for Ms. Willner.⁴ The Plaintiff refused to respect Kurt Willner's role as the durable power of attorney and became a threat to hospital staff, at which point Kurt Willner instructed the staff not to give the Plaintiff any information about Ms. Willner's care.⁵ Shortly thereafter, Ms. Willner's

1. *Pro se* means an individual acting "on one's own behalf: without an attorney." See *Pro Se*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/pro%20se> [<https://perma.cc/D4ZL-44SG>] (last visited May 13, 2021).

2. *Ad litem* means "for the lawsuit or action: appointed by the court to represent a client or estate in a particular legal action." See *Ad Litem*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/ad%20litem> [<https://perma.cc/PY7E-SYNW>] (last visited May 13, 2021).

3. *Willner v. South Cty. Hosp.*, 222 A.3d 1251, 1253 (R.I. 2020).

4. *Id.* at 1253–54.

5. *Id.* at 1254.

condition improved and she was discharged.⁶ In 2014, the Plaintiff became Ms. Willner's guardian.⁷

Approximately three years later, the Plaintiff, acting *pro se*, filed a complaint against the hospital and the hospice care facility.⁸ The Plaintiff named himself, acting in the capacity as Ms. Willner's guardian, and Ms. Willner as plaintiffs.⁹ The Plaintiff then filed an eight-count amended complaint adding Ms. Willner's treating physician, Dr. Mahoney, as a defendant.¹⁰ During a hearing on November 27, 2017, the Rhode Island Superior Court learned that the Plaintiff, a member of the District of Columbia Bar, was representing himself *pro se* and also representing the Guardianship of Ms. Willner.¹¹ After the trial justice disqualified the Plaintiff from representing the Guardianship, the Plaintiff filed a motion to represent the Guardianship *pro hac vice*,¹² which was subsequently denied.¹³

Despite this, the Plaintiff continued to represent the Guardianship, at which time Defendants Mahoney and Home and Hospice Care filed motions to disqualify the Plaintiff from acting in a representative capacity, to hold him in contempt, and to strike the Guardianship's pleadings.¹⁴ The motions to disqualify and the motion to strike were granted, while the motions to hold the Plaintiff in contempt were denied.¹⁵ However, the Plaintiff continued to represent the Guardianship.¹⁶ Thereafter, Defendant Mahoney filed a motion to dismiss all claims brought by the Plaintiff acting *pro se* as well as the claims he filed in his

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Pro hac vice* means "for this occasion—used for participation in a legal proceeding by an attorney not licensed in the jurisdiction." *See Pro Hac Vice*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/pro%20hac%20vice> [<https://perma.cc/9V3A-KWYK>] (last visited May 13, 2021).

13. *Willner*, 222 A.3d. at 1254.

14. *Id.*

15. *Id.*

16. *Id.*

representative capacity.¹⁷ The hospital and the hospice care facility also filed motions for summary judgment regarding the amended complaint.¹⁸ The trial justice granted the motions and dismissed all of the Plaintiff's claims.¹⁹ This appeal followed.²⁰

ANALYSIS AND HOLDING

In reviewing the Superior Court order, the Rhode Island Supreme Court had to determine whether a *pro se* plaintiff could exercise the right to self-representation through another individual. The Plaintiff made two arguments: First, that Ms. Willner should have been able to represent herself *pro se*, and that the Plaintiff should have been able to step in as her guardian in that representative capacity, allowing Ms. Willner to exercise her right to represent herself.²¹ Alternatively, the Plaintiff argued that the trial justice should have granted his request to appoint an *ad litem* guardian under Rule 17(c).²²

Conducting a *de novo* review, the Court rejected both of these arguments, holding that Ms. Willner cannot exercise the right to self-representation through the Plaintiff, who was not a member of the Rhode Island Bar and whose *pro hac vice* request was denied.²³ Moreover, the Court held that even if the Plaintiff was licensed to practice law in Rhode Island, his duties as Ms. Willner's attorney and his duties as her guardian cannot coexist.²⁴ Finally, the Court noted that because the Plaintiff was an important fact witness in the case, he could not also serve as Ms. Willner's attorney.²⁵

Furthermore, the Court rejected the Plaintiff's request to appoint a guardian *ad litem* because Rule 17(c) of the Rhode Island Superior Court Rules of Civil Procedure only allows the appointment of a guardian where an incompetent person is not

17. *Id.*

18. *Id.* at 1254–55.

19. *Id.* at 1255.

20. *Id.*

21. *Id.*

22. *See id.*; *see also* R.I. SUPER. R. CIV. P. 17(c).

23. *Willner*, 222 A.3d at 1256.

24. *Id.*

25. *Id.*

already represented.²⁶ Because the Plaintiff became Ms. Willner's guardian in 2014, Rule 17(c) no longer applied.²⁷ Thus, the Court affirmed the judgment of the trial court that dismissed the Plaintiff's claims alleged on behalf of Ms. Willner as her guardian and denied the Plaintiff's request to have a guardian appointed *ad litem*.²⁸

COMMENTARY

The Rhode Island Supreme Court expressly acknowledged that the right to self-representation has limits and is not "a license not to comply with relevant rules of procedural and substantive law."²⁹ Thus, the right to self-representation does not overcome the requirement that out-of-state attorneys practicing in Rhode Island must be authorized to do so. Additionally, the Court noted that, regardless of whether the Plaintiff could appear *pro hac vice*, he could not simultaneously represent his mother's interests as her attorney and still serve as a fiduciary to her Guardianship,³⁰ further illustrating that the right to self-representation may not come at the expense of other procedural rules.

Moreover, the Court also pointed out that when an incompetent party already has a guardian, a guardian need not be appointed under Rule 17(c) of the Rhode Island Superior Court Rules of Civil Procedure.³¹ Thus, the Court wished to emphasize that no unnecessary or redundant steps may be taken to fulfill a plaintiff's

26. *See id.*; *see also* R.I. SUPER. R. CIV. P. 17(c).

27. *See Willner*, 222 A.3d. at 1256.

28. *Id.*

29. *See id.* (citing *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 140 (1st Cir. 1985)).

30. *See id.*

31. *See id.* Rule 17(c) states:

Whenever an infant or incompetent person has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, the infant or incompetent person may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as the court deems proper for the protection of the infant or incompetent person.

R.I. SUPER. R. CIV. P. 17(c).

right to self-representation. Accordingly, the right to self-representation is not an unfettered entitlement.

CONCLUSION

The Rhode Island Supreme Court held that *pro se* plaintiffs do not have a right to be represented by someone “not authorized to practice law” in the jurisdiction because the right to self-representation does not usurp other relevant procedural rules. Moreover, the Court determined that when a plaintiff already has a guardian, Rule 17(c) of the Superior Court Rules of Civil Procedure does not apply.

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