

VERMONT SUPERIOR COURT
Chittenden Unit
175 Main Street, PO Box 187
Burlington VT 05402
802-863-3467
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 23-CV-00757

Robert Lafayette v. BJ Robertson et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss Burlington School District (Motion: 6)
Filer: Joseph A. Farnham
Filed Date: April 03, 2023

The motion is granted for the reasons stated therein. The court can discern no valid legal claim against the District. No ministerial duty is cited on which to rest a mandamus claim; no abuse of discretion is coherently alleged; no adequate basis for injunctive relief is alleged.

In addition, the court notes that Mr. Lafayette may not assert claims here on behalf of his son without a lawyer to represent the son. Generally, a non-lawyer may not appear in court on behalf of another party. To do so is to engage in the unauthorized practice of law. In re Welch, 123 Vt. 180, 182 (1962). “It is essential to the administration of justice and the proper protection of society that only qualified persons duly licensed be permitted to engage in the practice of law.” Id. See also, Mandeville v. Wertheimer, 2002 WL 432689 (S.D.N.Y. 2002) (denying daughter right to appear pro se on behalf of her parents pursuant to a power of attorney); Ziegler v. Nickel, 64 Cal. App. 4th 545, 548 (Cal. Ct. App. 1998)(“[O]ne who is not a licensed attorney cannot appear in court for another person.”). The Second Circuit has explained the doctrine as applied to minor parties:

[A] non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child. The choice to appear *pro se* is not a true choice for minors who under state law, *see* Fed.R.Civ.P. 17(b), cannot determine their own legal actions. There is thus no individual choice to proceed *pro se* for courts to respect, and the sole policy at stake concerns the exclusion of non-licensed persons to appear as attorneys on behalf of others.

It goes without saying that it is not in the interests of minors or incompetents that they be represented by non-attorneys. Where they have claims that require adjudication, they are entitled to trained legal assistance so their rights may be fully protected. There is nothing in the guardian-minor relationship that suggests that the minor's interests would be furthered by representation by the non-attorney guardian. . .

Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59, 61 (2d Cir. 1990); *see also* Meeker v. Kercher, 782 F.2d 153, 154 (10th Cir. 1986) (“a minor child cannot bring suit through a parent acting as next friend if the parent is not represented by an attorney”); Munoz v. Stableford, No. CV135034701S, 2014 WL 486662, at *1 (Conn. Super. Ct. Jan. 10, 2014) (citing federal and state cases); Blue v. People, 585 N.E. 2d 625, 626 (Ill. App. Ct. 1992) (“one not authorized to practice law may not represent a minor in a court of record.”).

While Vermont Rule of Civil Procedure 17 might suggest that a guardian alone could be sufficient, other courts have rejected such an interpretation of similar rules, finding that the reference to a guardian ad litem “suing or defending” on behalf of a minor means only that they may hire and direct counsel. Byers-Watts v. Parker, 18 P.3d 1265, 1267–69 (Ariz. Ct. App. 2001), as amended (Mar. 29, 2001). The rule “permits authorized representatives, including parents, to sue on behalf of minors, but does not confer any right upon such representatives to serve as legal counsel.” Devine v. Indian River Cty. Sch. Bd., 121 F.3d 576, 581 (11th Cir. 1997); *see also*, Chambers v. Tibbs, 980 So. 2d 1010, 1013 (Ala. Civ. App. 2007) (“We similarly conclude that Rule 17(c), Ala. R.

Civ. P., does not confer upon a representative of a minor a right to practice law on behalf of that minor.”); Yulin Li ex rel. Lee v. Rizzio, 801 N.W.2d 351, 361 (Iowa Ct. App. 2011). (“[T]he rule of civil procedure [allowing a parent to act as next friend] does not create an exception allowing a non-attorney parent to actually litigate the child’s claim in court.”); *but see* Machadio v. Apfel, 276 F.3d 103, 107 (2d Cir. 2002) (allowing parent to appear for child on case by case basis in social security disability appeals because of unique nature of such cases).

Thus, “the majority of jurisdictions” addressing the issue have “concluded their rules of civil procedure allowing a next friend or similar representative to bring suit on behalf of a minor did not permit the non-attorney parent to also prosecute the claim.” Yulin Li, 801 N.W.2d at 361. Instead, “[t]hey held that non-attorney parents who bring suit on behalf of their child must be represented by counsel.” Id. “The rule ‘helps to ensure that children rightfully entitled to legal relief are not deprived of their day in court by unskilled, if caring, parents.’ It is not in a child’s best interests to be represented by a nonattorney.” Goodwin v. Hobza, 762 N.W.2d 623, 627 (Neb. App. 2009) (quoting Devine, 121 F.3d at 582); *see also* Citizens Walgreen Drug Agency, Inc. v. Gulf Ins. Co., 213 So. 2d 814, 817 (Ala. 1968) (“It is a principle long-existing in Anglo-American jurisprudence that a court of equity is the guardian and protector of the rights of minors who come before it. The court was under a continuing duty, as we view it, to exercise extraordinary precautions relative to the interest of the minor.”). Thus, the “overwhelming majority” of courts have required parents to obtain counsel to represent a minor child. Yulin Li, 801 N.W.2d at 361; Goodwin, 762 N.W. 26 at 627.

Even if Rule 17 were interpreted more broadly, it would remain a discretionary decision for the court. V.R.C.P. 17. (“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 it deems proper for the protection of the infant or incompetent person.*”)(emphasis added). Here, the court concludes that to protect the minor’s interests, a lawyer is clearly necessary.

Order

The claims against the District are dismissed without prejudice. The court will give Mr. Lafayette thirty days to engage an attorney to represent his son. If no attorney appears by that date, all claims on behalf of the son will be dismissed.

Electronically signed on April 21, 2023 pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Helen M. Toor", written over a horizontal line.

Helen M. Toor
Superior Court Judge