

SUPREME COURT OF SOUTH CAROLINA

Medlock v. University Health Services, Inc.

404 S.C. 25 (2013) · Decided June 12, 2013

SUMMARY

The South Carolina Supreme Court held that a non-attorney may present a claim against an estate and petition for allowance of the claim in probate court on behalf of a business entity without engaging in the unauthorized practice of law. The Court reasoned that these activities do not require an attorney's professional judgment or specialized legal knowledge.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Per Curiam; Toal, C.J.; Pleicones, J.; Beatty, J.; Kittredge, J.; Hearn, J.
JURISDICTION	South Carolina
DECIDED	June 12, 2013
DISPOSITION	other
PROCEDURAL POSTURE	Petition for original jurisdiction seeking a declaration that a non-attorney's filing of an estate creditor claim and petition for allowance of the claim on behalf of a business entity constituted the unauthorized practice of law.
PRECEDENTIAL VALUE	Published South Carolina Supreme Court opinion; binding precedent on the stated probate-court representation rule.
PARTIES	Dana Allison Medlock, personal representative of the Medlock Estate v. University Health Services, Inc.

TOPICS

probate procedure creditor claims probate civil procedure

PRACTICE AREAS

Probate Unauthorized practice of law Civil procedure

QUESTIONS PRESENTED

1. Whether a non-attorney may file a creditor's claim against an estate in probate court on behalf of a business entity without engaging in the unauthorized practice of law.

2. Whether a non-attorney may petition for allowance of that claim in probate court on behalf of a business entity without engaging in the unauthorized practice of law.

HOLDINGS

1. A non-attorney may present a claim against an estate in probate court on behalf of a business entity without engaging in the unauthorized practice of law.
2. A non-attorney may petition for allowance of a claim in probate court on behalf of a business entity without engaging in the unauthorized practice of law.

KEY QUOTATIONS

“We dispense with further briefing and hold that a non-attorney may present claims against an estate and petition for allowance of claims in the probate court on behalf of a business entity without engaging in the unauthorized practice of law.” (at 27)

“Pursuant to that invitation, we now hold a non-attorney may represent a business entity in the probate court to make an estate claim and subsequently petition for allowance of the claim without engaging in the unauthorized practice of law.” (at 29)

FACTUAL BACKGROUND

University Health Services, Inc. filed and served a statement of creditor's claim against the Medlock Estate in probate court. Its director of collections, Albert J. Sullivan, signed the claim and later signed a petition for allowance of the claim, while the petition identified an attorney who was not licensed in South Carolina. The probate judge continued the hearing without deciding whether Sullivan could represent the business entity, and the respondent subsequently withdrew its claim.

PROCEDURAL HISTORY

University Health Services, Inc. filed a creditor's claim against the Medlock Estate in probate court, and its director of collections, Albert J. Sullivan, signed the claim and subsequent petition for allowance. After the probate judge continued the hearing without ruling on Sullivan's authority to appear, the estate's personal representative petitioned the South Carolina Supreme Court for original jurisdiction. The Supreme Court granted the petition, referred the matter to a special referee, and received stipulated facts; the respondent later permanently withdrew its claim.

DISPOSITION

other

CASES CITED

- Brown v. Coe, 365 S.C. 137, 139, 616 S.E.2d 705, 706 (2005)
- Doe v. McMaster, 355 S.C. 306, 312, 585 S.E.2d 773, 776 (2002)
- State ex rel. Daniel v. Wells, 191 S.C. 468, 477, 5 S.E.2d 181, 185 (1939)

- *Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 651-53, 515 S.E.2d 257, 258-59 (1999)
- *In re Unauthorized Practice of Law Rules Proposed by the S.C. Bar*, 309 S.C. 304, 305-07, 422 S.E.2d 123, 124-25 (1992)

OPINION

PER CURIAM.

PER CURIAM. This Court granted the petition of Dana Allison Medlock (Petitioner) in its Original Jurisdiction to determine whether a non-attorney who files a claim and petition for allowance of a claim in probate court on behalf of a business entity is engaging in the unauthorized practice of law.

We dispense with further briefing and hold that a non-attorney may present claims against an estate and petition for allowance of *27claims in the probate court on behalf of a business entity without engaging in the unauthorized practice of law. Petitioner is the personal representative of the Medlock Estate.

On August 9, 2012, Respondent filed and served a Statement of Creditor's Claim (the claim) against the Medlock Estate in probate court. Albert J. Sullivan signed the claim as Respondent's "Director of Collections." The claim did not indicate Sullivan was an attorney or that Respondent was represented by an attorney. Petitioner filed and served a disallowance of the claim.

Respondent then petitioned for allowance of the claim. Sullivan signed the petition for allowance of the claim, which was captioned, "Albert J. Sullivan, Petitioner v. [Petitioner]." The petition further indicated that Edward Burr was Respondent's attorney. Burr is not licensed to practice law in South Carolina. At the hearing on Respondent's petition for allowance of the claim, Petitioner argued Sullivan could not appear on Respondent's behalf because he was not a licensed attorney.

The probate judge continued the hearing without ruling on whether Sullivan could properly appear. Petitioner then filed a petition for original jurisdiction with this Court, requesting the Court declare Sullivan engaged in the unauthorized practice of law by filing the claim and subsequently petitioning for allowance of the claim without the assistance of an attorney licensed in South Carolina.

On January 25, 2013, this Court granted the petition and referred the case to the Honorable James O. Spence as special referee to make findings of fact and recommendations to this Court. Judge Spence has since provided the Court with a stipulation of facts from the parties and notice that Respondent permanently withdrew its claim against the Medlock Estate on April 1, 2013.

South Carolina limits the practice of law to licensed attorneys. *Brown v. Coe*, 365 S.C. 137, 139, 616 S.E.2d 705, 706 (2005). The generally understood definition of the practice of law embraces

the preparation of pleadings and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts.

Id. at 139, 616 S.E.2d at *28706-07. However, this Court has consistently refrained from adopting a definition of “the practice of law.” *Doe v. McMaster*, 355 S.C. 306, 312, 585 S.E.2d 773, 776 (2002). It is the character of the services rendered, and not the denomination of the tribunal where the services are rendered, that determines whether such services constitute the practice of law.

State ex rel. Daniel v. Wells, 191 S.C. 468, 477, 5 S.E.2d 181, 185 (1939). A business entity may be represented by a non-attorney in civil magistrate court proceedings, but it must be represented by an attorney in the circuit and appellate courts. Rule 21, SCMCR; *Renaissance Enters., Inc. v. Summit Teleservices., Inc.*, 334 S.C. 649, 651-53, 515 S.E.2d 257, 258-59 (1999); *In re Unauthorized Practice of Law Rules Proposed by the S.C.*

Bar, 309 S.C. 304, 305-06, 422 S.E.2d 123, 124 (1992). We have encouraged any interested individual to bring a declaratory judgment action in this Court’s original jurisdiction to determine the validity of any questionable conduct. See *In re Unauthorized Practice of Law Rules*, 309 S.C. at 307, 422 S.E.2d at 125. Pursuant to that invitation, we now hold a non-attorney may represent a business entity in the probate court to make an estate claim and subsequently petition for allowance of the claim without engaging in the unauthorized practice of law.

To file a claim in the probate court, a claimant must merely deliver to the personal representative and the probate court a written statement of the claim indicating its basis, the claimant’s name and address, the amount claimed, and the date upon which the claim is due. S.C.Code Ann. § 62-3-804(1) (2009). Similarly, a petition for allowance of a claim in the probate court merely requires a creditor to complete a one-page standard form, located on the South Carolina Judicial Department website, requesting the probate court allow the claim and attesting that such claim is valid, timely presented, and has not been paid.

None of these activities require the professional judgment of an attorney or entail specialized legal knowledge and ability. Accordingly, we hold a non-attorney may present claims against an estate and petition for allowance of claims in the *29probate court on behalf of a business entity without engaging in the unauthorized practice of law. TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.