

**Summary of SC93404, *Naylor Senior Citizens Housing LP, et al., and John Dilks v. Sides Construction Company Inc., et al.***

Appeal from the Ripley County circuit court, Judge J. Michael Ligons

Argued and submitted November 7, 2013; opinion issued February 25, 2014

**Attorneys:** The Naylor Senior Citizens Housing partnerships were represented by John M. Beaton, a solo attorney in Poplar Bluff, (573) 776-1086. Schultz Engineering Services Inc. was represented by Jeffrey R. Schmitt and David A. Zobel of Danna McKittrick PC in Clayton, (314) 726-1000; Dille & Travel LLC was represented by Brian R. Plegge of Brown & James PC in St. Louis, (314) 421-3400; the city of Naylor was represented by M. Douglas Harpool and Rachel A. Riso of Baird Lightner Millsap & Harpool PC in Springfield, (417) 887-0133; the Naylor R-11 Public Schools were represented by William D. Holthaus Jr. of Brown & James PC in St. Louis, (314) 242-5298; and Sides Construction Co. was represented by Pamela M. Triplett of the Law Offices of Donald B. Balfour of St. Louis, (314) 317-3700.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** Two statutory limited partnerships appeal the trial court's dismissal of claims purported to be asserted on their behalf by an unrepresented individual. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the judgment. Limited partnerships may appear and assert claims in court only by and through an attorney licensed or admitted to practice law in this state. The attempt by the individual who was not an attorney to assert claims on behalf of the partnerships constituted the unauthorized practice of law. Because such actions are not to be given effect, the trial court properly dismissed those claims.

**Facts:** In September 2011, John Dilks filed an original petition, without an attorney, to recover damages he suffered as a result of a September 2006 flood. In that petition, he also sought to assert claims on behalf of two statutory limited partnerships – Naylor Senior Citizens Housing LP and Naylor Senior Citizens Housing II LP. In October 2011, one defendant filed a motion to dismiss the suit on two grounds. It sought to dismiss Dilks' claims on the ground that he lacked standing to sue for damage suffered by the partnerships. It also moved to dismiss the claims Dilks attempted to assert on behalf of the partnerships because partnerships cannot represent themselves in court and Dilks cannot represent them because he is not a licensed attorney. Ultimately, all the defendants asserted similar motions and arguments. In March 2012, the trial court dismissed the partnerships' claims. It found that, because Dilks was not a licensed attorney and he attempted to assert claims on behalf of the partnerships, the original petition was "a nullity" and "had no legal effect from the date of filing" for purposes of asserting claims on behalf of the partnerships. Later that month, Dilks' counsel signed and filed an amended petition that does not purport to assert claims on behalf of the partnerships, does not identify the partnerships as plaintiffs and seeks damages only on behalf of Dilks. In May 2012, the trial court restated its March order in the form of a partial judgment and made the findings required for appeal. Only the partnerships appeal.

**AFFIRMED.**

**Court en banc holds:** (1) Limited partnerships may appear and assert claims in court only by and through an attorney licensed or admitted to practice in Missouri by this Court. A natural person may represent himself in court proceedings in Missouri. Limited partnerships, however, are not natural persons but exist only to the extent they comply with the provisions of the state's uniform limited partnership law, chapter 359, RSMo. It is an indisputable fact that statutory entities cannot act except through individuals acting on their behalf. The act of appearing in court to assert or defend claims on behalf of another lies at the very heart of the practice of law. An individual appearing pro se, i.e. for himself, is not engaging in the practice of law because he is not representing another in court. But because the only way a statutory entity can appear in court is to have an individual appear on its behalf, that individual – by definition – is “representing another” in court and, therefore, necessarily is engaging in the practice of law. This Court restricts the practice of law solely to attorneys licensed or admitted to practice by this Court. Dilks' attempt to assert claims on behalf of the partnerships by signing the original petition constituted the unauthorized practice of law.

(2) Because actions constituting the unauthorized practice of law are not to be recognized or given effect, dismissal of the claims that Dilks purported to assert on behalf of the partnerships was proper. Here, Dilks retained a licensed attorney to assert the claims on behalf of the partnerships, but when the attorney later refused to represent the partnerships, Dilks decided – on behalf of the partnerships – that he would represent them, despite not being a licensed attorney, because he feared their claims otherwise might be lost.

Rule 55.03(a) requires court filings to be signed by an attorney of record or the self-represented party and clarifies that a failure to sign can be corrected, in certain circumstances, only by the attorney or party making the filing. It is not designed to prevent the unauthorized practice of law and does not apply here. It is nonsensical to suggest that the partnerships are self-represented parties who filed the original petition but forgot to sign it. As statutory entities, they cannot file or sign anything unless some individual performs those acts on their behalf. Because Dilks is not an attorney, he cannot be the partnerships' counsel of record, nor did he forget to sign the petition. Accordingly, the partnerships cannot use Rule 55.03(a) to supply an “omitted” signature. This follows many cases decided in Missouri that hold that actions taken in court by a layperson on behalf of another may not be given effect and, when objected to in a timely manner, must be stricken. Parties cannot consent to the unauthorized practice of law, and courts may act, on their own motion, to strike filings on this basis.