AMARECH LEGESSE, Plaintiff and Appellant, v. ALTA BATES MEDICAL CENTER, Defendant and Respondent.

A099472

COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FOUR

2003 Cal. App. Unpub. LEXIS 2195

March 6, 2003, Filed

PRIOR HISTORY: Alameda County Super. Ct. No. H219427-3.

JUDGES: Reardon, Acting P.J. We concur: Sepulveda, J., Rivera, J.

OPINION BY: Reardon

Amarech Legesse, appearing in pro. per., appeals from a judgment of dismissal after the trial court sustained demurrers of respondent Alta Bates Medical Center (sued herein as Herrick Hospital Psychiatric Facility) (Alta Bates) to her third amended complaint. The trial court ruled that appellant lacked standing to recover; had failed to allege facts stating a legally cognizable cause of action despite three attempts; and the complaint was so uncertain that Alta Bates could not reasonably respond. We affirm.

DISCUSSION

Appellant's third amended complaint sought damages for defamation, assault and battery and "lost society [and] comfort." The complaint and related papers asserted that appellant's adult daughter, Helena, was **[*2]** admitted to Alta Bates on June 6, 2000. She was mentally incompetent. Alta Bates convened a meeting with staff and Helena's parents to consider Helena's pregnancy, with staff suggesting abortion. Alta Bates coerced Helena to consent to an abortion over mother's strong objection; appellant and Helena had agreed that Helena would "keep the pregnancy to term" and appellant would help raise the child. The abortion was performed in a "referral clinic." Helena's father was present for the procedure. On October 20, 2000, Helena was tragically killed by a freight train.

The judgment is correct.

First, appellant lacks standing to pursue any claim related to allegations that

Helena's consent was coerced and therefore the abortion deprived *Helena* of the constitutional right to bear a child. These allegations do not support a cause of action *by appellant*. (Code Civ. Proc., § 367 [requiring that every action be prosecuted in name of real party in interest].) Further, even if appellant had succeeded in being appointed as representative of Helena's estate, which the record does not establish, she would lack standing to maintain the lawsuit in pro. per. By definition one cannot appear **[*3]** in "propria" persona for someone else. A person may not practice law for another in California unless he or she is an active member of the State Bar. (*Drake v. Superior Court* (1994) 21 Cal.App.4th 1826, 1830.) Thus, a nonlawyer acting as conservator or executor of another's estate cannot appear in pro. per. on behalf of the estate. (See *City of Downey v. Johnson* (1968) 263 Cal. App. 2d 775, 779-780, 69 Cal. Rptr. 830.)

Second, appellant repeatedly has failed to allege facts sufficient to sustain a cause of action on her own behalf. Appellant maintains that she has stated a claim for infliction of emotional distress, citing *Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 216 Cal. Rptr. 661, 703 P.2d 1. A plaintiff may recover damages for emotional distress caused by observing negligently inflicted injury to another only if such plaintiff (1) is closely related to the victim; (2) "is present at the scene of the injury-producing event at the time it occurs and is then aware that it is causing injury to the victim" (*Thing v. La Chusa* (1989) 48 Cal.3d 644, 668, 257 Cal. Rptr. 865, 771 P.2d 814); and (3) suffers serious emotional **[*4]** distress as a result of the above (*ibid*.). Appellant has never asserted that she was present during the abortion or that she was present when Helena was counseled about an abortion. The pleadings fail the *Thing* test.

Third, appellant cannot state a claim for herself for the death of the unborn grandchild. There is no cause of action in this state for wrongful death of an unborn fetus. (*Justus v. Atchison* (1977) 19 Cal.3d 564, 567, 139 Cal. Rptr. 97, 565 P.2d 122, disapproved on other grounds in *Ochoa v. Superior Court*, *supra*, 39 Cal.3d at p. 171.)

Finally, there is no authority to support the notion that a health care provider has any duty to the parent of an adult child not to counsel that adult child with respect to abortion.

The judgment is affirmed.

Reardon, Acting P.J.

We concur:

Sepulveda, J.

Rivera, J.