

No. 24-822

IN THE
Supreme Court of the United States

ALEJANDRO ALERS, JR.,

Petitioner,

v.

OLYMPIA MEDICAL CENTER, *et al.*,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT**

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, HealthCare Partners Affiliates Medical Group makes the following disclosure: it is a medical group that is wholly owned by Optum California, which is a Division of UnitedHealth Group (with headquarters in Eden Prairie, Minnesota).

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I. INTRODUCTION

In accordance with this Court's Rule 15.1, this brief in opposition is submitted to address misstatements of fact or law in the petition that bear on what issues would be properly before the Court if certiorari were granted.

The petition for certiorari attempts to present a stale issue, the dismissal of an estate because it was not represented by an attorney, relative to which the time for appeal expired long before the appellate proceedings that led to this petition.

Moreover, the petition fails to accurately describe the proceedings below. Neither Hazel Alers nor Alejandro Alers, Jr., the widow and surviving son of plaintiffs' decedent, Alejandro Alers, Sr., were prevented from presenting their case to the California courts. Rather, long before the appeal at issue here, the trial court dismissed Estate of Alejandro Alers, Sr. as a named plaintiff in the action because there was no attorney representing that estate. As indicated, no appeal of that judgment was ever filed.

The petition for certiorari should be denied.

II. THE JUDGMENT OF THE CALIFORNIA COURT WAS NOT AFFECTED BY HAZEL ALERS'S REPRESENTATION OF HERSELF

The determination of the Court of Appeal did not depend on whether Hazel Alers or Alejandro Alers, Jr. were represented by an attorney.

The Court of Appeal's decision resolved the issues on their merits based upon the record as presented to it, as reflected by that Court's opening remarks:

Following the death of the 98-year-old Alejandro Alers, Sr. (decedent), his wife, Hazel Alers, and son, Alejandro Alers, Jr., brought suit against a number of individuals and entities involved in his care. The defendants all prevailed in pretrial motions and judgment was entered in their favor. Plaintiffs appealed. Previously, we granted multiple defendants' motion to dismiss the appeal as against them, on procedural grounds. In addition, while this action was pending, another defendant Windsor Terrace Healthcare Center filed a petition for bankruptcy, and the appeal is stayed as to that party. We now address plaintiffs' appeal as to the remaining defendants. Plaintiffs, who are proceeding in *propria persona*, have submitted briefs and an appellate record that are largely inadequate to enable review. To the limited extent their arguments are cognizable, they are meritless. We affirm.

Alers v. Kossuth, No. B322634, 2024 WL 2972674, at *1 (Cal. Ct. App. June 13, 2024)

III. THERE WAS NO APPEAL OF THE JUDGMENT THAT DISMISSED THE ESTATE; NOTICE OF ENTRY OF THAT JUDGMENT WAS ON DECEMBER 16, 2021

The Court of Appeal observed that, after the trial court held a hearing on an order to show cause regarding

representation of the estate, on December 9, 2021, the court ordered the estate dismissed without prejudice.” Petitioner’s Appendix A, p. 55; *Alers v. Kossuth, supra*, 2024 WL 2972674, at *3. “The next day, the court signed a counsel-prepared order, specifically dismissing (by number), each cause of action in the second amended complaint brought by the estate – or, more accurately, each cause of action brought by wife as decedent’s surviving spouse. HealthCare Partners served notice of entry of the order of dismissal on December 16, 2021.” *Ibid.* “While this order disposed of all of the causes of action alleged by the estate, it did not resolve the entirety of the action against HealthCare Partners. The second amended complaint had added a cause of action for wrongful death, pursued by wife on her own behalf.” *Ibid.* Notice of entry of the order of dismissal was served on December 16, 2021. *Ibid.*

There was no appeal of the dismissal of the estate. The deadline for any such appeal was February 14, 2022, 60 days after a party served a “Notice of Entry.” Cal. R. Ct. 8.104 (a)(1)(B).

The petition effectively acknowledges that procedural history. The petition does not purport to be asserted by the estate. Petition, cover and p. i of preliminary pages. Rather, the petition only identifies the petitioner as Alejandro Alers, Jr. and identifies “Hazel Alers (Deceased)” in the “List of Parties.” *Ibid.*

Otherwise, the petition acknowledges the procedural history that included the dismissal of the estate, referring to objections made to the estate being represented by persons who were not licensed attorneys, based on

pursuant to California Business and Professions Code sections 6125 and 6127, which precluded those persons from representing the estate. Petition, pp. 8-9. The petition acknowledges that “the Estate of Alejandro Alers, Sr had been deleted as a party as of November 23, 2021 when the SAC was filed.” Petition, p. 15.

The only appeal filed relative to the trial court proceedings was filed on August 5, 2022, on behalf of Hazel Alers and Alejandro Alers, Jr., which did not purport to appeal on behalf of the Estate of Alejandro Alers, Sr. Respondents’ Appendix, filed November 2, 2023, pp. HCP-RA 43-45.

Considering the issue of representation of the estate was not among the issues addressed by the appeal to the California Court of Appeal, the issue was not preserved for presentation to this Court.

IV. THE STATE OF CALIFORNIA PROPERLY REQUIRES THAT ONLY A LICENSED LAWYER CAN REPRESENT AN ESTATE

The California Court of Appeal appropriately recognized that one must be licensed as an attorney to represent another person or an estate, which is well within the usual police powers of the State of California.

In *Theard v. United States*, 354 U.S. 278 (1957), this Court explained: “The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. The court’s control over a lawyer’s professional life derives

from his relation to the responsibilities of a court.” *Id.* at p. 281. “The power of disbarment is necessary for the protection of the public in order to strip a man of the implied representation by courts that a man who is allowed to hold himself out to practice before them is in ‘good standing’ so to do.” *Ibid.*

California Business and Professions Code section 6125 provides: “No person shall practice law in California unless the person is an active member of the State Bar.”

In *Birbrower, Montalbano, Condon & Frank v. Superior Ct.*, 17 Cal. 4th 119, (1998) the California Supreme Court explained that section 6125 was enacted “in 1927 as part of the State Bar Act (the Act), a comprehensive scheme regulating the practice of law in the state.” *Id.* at p. 127. “Since the Act’s passage, the general rule has been that, although persons may represent themselves and their own interests regardless of State Bar membership, no one but an active member of the State Bar may practice law for another person in California.” *Ibid.* ***The prohibition against unauthorized law practice is within the state’s police power and is designed to ensure that those performing legal services do so competently.*** *Ibid.* (emphasis added).

As a consequence of the restriction on the practice of law, the rule is well-established: “a conservator, executor, or personal representative of a decedent’s estate who is unlicensed to practice law cannot appear in propria persona on behalf of the estate in matters outside the probate proceedings.” *Hansen v. Hansen*, 114 Cal. App. 4th 618, 619, 621 (2003). “Since the passage of the State Bar Act in 1927, persons may represent their own interests

in legal proceedings, but may not represent the interests of another unless they are active members of the State Bar.” *Id.* at p. 621. “[A] nonlawyer representing his mother’s estate as conservator and executor cannot appear in *propria persona* on behalf of the estate.” *Drake v. Super. Ct.*, 21 Cal. App. 4th 1826, 1830-1831 (1994); see also, *City of Downey v. Johnson*, 263 Cal. App. 2d 775, 780 (1968).

Regarding the inability of non-lawyers to represent others, the decision of the Court of Appeal in this matter appropriately included:

The court’s initial ruling, that plaintiffs could not represent the estate in *propria persona*, was correct. “[A] conservator, executor, or personal representative of a decedent’s estate who is unlicensed to practice law cannot appear in *propria persona* on behalf of the estate in matters outside the probate proceedings.” (*Hansen v. Hansen* (2003) 114 Cal.App.4th 618, 619.) While unlicensed individuals can represent their own interests in legal proceedings, they cannot represent the interests of others. (*Id.* at p. 621.)

The question next raised is whether wife could avoid this prohibition by recasting the claims by the estate as claims brought by “herself as the surviving spouse of the [e]state” and by invoking the statutes governing survival of causes of action. She cannot. Preliminarily, she has not alleged a sufficient basis to pursue the causes of action under the survival statute. Code of Civil Procedure section 377.30 provides,

“A cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent’s successor in interest [subject to identified sections of the Probate Code] and an action may be commenced by the decedent’s personal representative or, if none, by the decedent’s successor in interest.” [Footnote omitted.] A “surviving spouse” is not necessarily a successor in interest nor a personal representative of the estate – she may be either, both, or neither. Moreover, the survival doctrine alone cannot solve plaintiffs’ representation problem. If wife is purporting to pursue these causes of action as the personal representative of the estate, rather than for herself as a sole successor in interest, she would still be representing others’ interests, and be barred from proceeding in *propria persona*.

In short, plaintiffs’ amendment of their pleading did not resolve the issue that they could not pursue causes of action on behalf of the estate in *propria persona*, and the court did not err in dismissing those claims.

Alers v. Kossuth, No. B322634, 2024 WL 2972674, at *6.

The Court of Appeal observed there was no lawyer representing either the estate or Hazel Alers in the action, stating:

At no point before the trial court or on appeal did son argue that he was proceeding as anything but a *propria persona* litigant.

However, the proofs of service plaintiffs submitted with their appellate briefs indicate service was made by son, with the state bar No. 240532, of the “Law Office of Alex Alers.” We take judicial notice of the information on the California State Bar’s website pertaining that bar number. Those records indicate that son was, at one time, licensed to practice law. He was ordered inactive prior to the filing of the complaint in this matter, and was disbarred shortly thereafter, on October 31, 2020. <<https://apps.calbar.ca.gov/attorney/Licensee/Detail/240532>> [as of June 11, 2024] archived at <<https://perma.cc/YBU9-SYQK>>. We caution son against further representations that he is licensed to practice, whether intentional or inadvertent.

Alers v. Kossuth, No. B322634, 2024 WL 2972674, at *4, fn. 11.

The decision of the Court of Appeal did not prevent Hazel Alers or Alejandro Alers, Jr. from representing themselves. The underlying appeal failed to assert any contention that the trial court prevented Hazel Alers or Alejandro Alers, Jr. from representing themselves.

V. CONCLUSION

Because the record and proceedings below do not present any issues relative to the ability of persons to represent themselves in propria persona, the petition for certiorari should be denied.

Respectfully submitted,

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