

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
February 19, 2003 Session

**ROBERT D. PELTS**

v.

**INTERNATIONAL MEDICAL SERVICES CORP.,  
HUGH A. HINES, JR., CARLTON SMITH, AND BERNARD TIBBETTS**

Appeal from the Chancery Court for Shelby County  
No. CH-00-1102-3 D.J. Alissandratos, Chancellor

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No. W2002-00388-COA-R3-CV - Filed August 28, 2003

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This case involves specific performance of a contract to sell real property. A medical services corporation was formed by three individuals. One founder received a majority of the stock of the corporation and became the chairman of the corporation's board of directors. The other two founders were minority shareholders. The corporation purchased a certain piece of real property. The corporation then filed bankruptcy. After the bankruptcy was discharged, the majority shareholder, the chairman of the board of directors of the corporation, convened a shareholders' meeting that was not attended by the other two founders of the corporation. The chairman elected himself president of the corporation and authorized himself to sell the realty. The now-president then entered into a contract to sell the property to a purchaser. He subsequently convened a meeting of the board of directors of the corporation and installed two new board members. The new board ratified the contract for the sale of the land to the purchaser. The two remaining original owners of the company asserted that the president of the corporation had no legal ability to contract to sell the land because he fraudulently obtained his majority ownership of the company. The purchaser filed a lawsuit against the corporation and the shareholders for specific performance of the contract for sale of the land, and then moved for summary judgment. The trial court granted summary judgment to the purchaser and ordered the sale of the land. On appeal, the minority stockholder argues that the trial court erred for a number of reasons. We affirm, holding that the minority shareholder, proceeding *pro se*, cannot represent the corporation, and finding no error in the trial court's decision as it relates to the minority shareholder.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

HOLLY M. KIRBY, J., delivered the opinion of the court, in which ALAN E. HIGHERS, J., and DAVID R. FARMER, J., joined.

Carlton Smith, appellant, Memphis, Tennessee, pro se (Notice of Appeal filed by Carlton Smith on behalf of Carlton Smith, International Medical Services Corp. and Bernard Tibbetts)

James H. Kee, Memphis, Tennessee, for the appellee, Robert D. Pelts.

## OPINION

In 1994, three investors formed International Medical Services Corporation (“International Medical”). The three investors, Hugh A. Hines, Jr. (“Hines”), Bernard Tibbetts (“Tibbetts”), and Carlton Smith, Jr. (“Smith”), were the only members of the board of directors of International Medical. Hines was elected Chairman of the Board of Directors, Smith was elected President, and Tibbetts was elected Secretary/Treasurer. A total of one-hundred shares of non-par value stock in International Medical were issued at \$10 per share to the three investors, pursuant to stock subscription agreements executed by the investors. The issuance was in accordance with resolutions passed at the first meeting of the board of directors as well as the “Plan for Issuance of Stock.” Of the one-hundred shares, Hines received sixty shares, Tibbetts received twenty shares, and Smith received the remaining twenty shares.

The resolutions passed at the board meeting reflect that the corporation was to issue and deliver the stock “upon receipt of the consideration therefor” and that “the shares so issued shall be fully paid and non-assessable.” The stock certificates were in fact issued to Hines, Tibbetts, and Smith. However, in lieu of payment of \$10 per stock share issued, Hines, Tibbetts, and Smith agreed that Hines would quitclaim to the corporation certain properties he owned, valued at approximately \$800,000, and that Tibbetts and Smith would contribute to the corporation a combined total of \$20,000. One of the properties transferred by Hines into International Medical was a 1.04 acre parcel of land.

Shortly after incorporating, International Medical purchased a 13.92 acre property adjacent to the 1.04 acre parcel. To facilitate the purchase of the 13.92 acres, Tibbetts and Smith contributed an additional \$20,000.

International Medical filed for bankruptcy in October 1995. The bankruptcy proceedings were later terminated.<sup>1</sup> Although International Medical conducted no other business, it continued to hold the 13.92 acre parcel of land.

In June 1996, Hines requested that his attorney give notice of a special meeting of the shareholders of International Medical, to be held on July 8, 1996. Neither Tibbetts nor Smith attended the meeting. Hines’s attorney purportedly assured Hines that the two minority shareholders, Tibbetts and Smith, were properly notified of the shareholders’ meeting and that, as the majority shareholder, Hines could properly transact corporation business. At the meeting, Hines’s attorney became the acting Secretary, Hines was elected to serve as President of International Medical, and Hines’s wife, Kathy Hines, was elected to serve as Secretary. At the same meeting, Hines was

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<sup>1</sup>The outcome of the bankruptcy proceedings and the date on which they were resolved is unclear from the record in this cause. Indeed, the record in this case is such that many of the facts were unclear. The parties’ appellate briefs do little to clarify the facts, with each party citing its version of the salient facts as undisputed evidence, with little overlap between the competing views.

authorized by the new board to sell the 13.92 acre tract of land. In 1999, as President of International Medical, Hines executed two deeds of trust on the property in exchange for \$250,000. Smith soon became aware of the trust deeds executed by Hines.

The following month, Hines gave notice to Smith and Tibbetts that an informal meeting was to be held. Hines, Smith, Smith's attorney, and a court reporter attended the meeting. At the meeting, Hines informed Smith and his attorney of the July 8, 1996 meeting, that Hines had been voted President of International Medical at that meeting, and that Hines was authorized to sell the land owned by International Medical.

Next, Smith and James E. Nelson ("Nelson") formed the Remote Internet Corporation ("Remote Internet"). On November 9, 1999, Remote Internet purchased the first mortgage on the 13.92 acre property from First Citizen's National Bank, the holder of the mortgage. Shortly after the purchase, International Medical defaulted on the mortgage. Remote Internet sent Hines a Notice to Foreclose Mortgage, calling for acceleration of debts owed. At some point, Hines made a "For Sale" sign, and placed it on the property, advertising the entire parcel for \$155,000. This parcel included the 1.04 acre parcel that was again in Hines's possession, as well as the 13.92 acre property owned by International Medical.

In addition to Hines posting a "For Sale" sign after receipt of the notice of foreclosure, Hines contended that he had listed the properties for sale with a broker on "one or more occasions" since 1996, and that he had also placed "For Sale" signs on the property at various other times. He claimed there was a homemade "For Sale" sign on the property for several months in 1999, but that the sign was stolen in the latter part of that year. Smith, in his deposition testimony, acknowledged that he saw a "For Sale" sign on the land at least five times in the spring of 2000. Tibbetts stated at least four times in his deposition that he saw the "For Sale" sign up in 1999. He later filed an errata sheet with his deposition testimony asserting that the year was 2000, not 1999.

Plaintiff-Appellee Robert D. Pelts ("Pelts") inquired about the property. On May 2, 2000, Pelts executed a contract to purchase the land for \$155,000. Paragraph sixteen of the agreement to purchase the land from International Medical provided that:

Should either party employ an attorney or attorneys to enforce any of the provisions hereof, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach of this Agreement, the party losing in any final judgment agrees to pay the other party all reasonable costs, charges and expenses, including attorney's fees, expended or incurred in connection therewith.

Thus, under this provision, if a party to the contract hired an attorney to enforce any portion of the contract, the losing party was liable for the prevailing party's attorney's fees.

In connection with Pelts's execution of the contract with International Medical to purchase the land, Pelts's counsel requested evidence from Hines of Hines's authority to sell the land. He was

provided with a copy of the notice of the special meeting of shareholders, dated June 25, 1996. Pelts's attorney was also provided with a copy of the minutes from the July 8, 1996 shareholders' meeting that included Hines's authorization to sell the land.

On May 23, 2000, Pelts received a fax message from Tibbetts and Smith alleging the illegality of the sale of the land to Pelts. Thereafter, on June 6, 2000, Pelts sued International Medical, Hines, Tibbetts, and Smith for specific performance of the contract between Pelts and International Medical for sale of the real property. He argued that Hines, as the duly elected President of International Medical, was authorized to sell the land, and therefore, the contract was valid and enforceable. Pelts later amended his complaint, asserting, *inter alia*, that Hines had apparent authority to sell the land because Hines had posted "For Sale" signs on the property for months prior to the actual contract, and Smith and Tibbetts knew or should have known that Hines was attempting to sell the property. He argued that Smith and Tibbetts were barred from contesting the sale based on the doctrine of unclean hands and because their claims and defenses were barred by the doctrine of laches. In the alternative, Pelts contended that, if Hines was not the duly elected President of International Medical, he was the "de facto" President of International Medical. The amended complaint stated that Pelts and others had already purchased the 1.04 acre tract, which had been foreclosed upon for \$50,000 plus \$862.50 in expenses, and that Pelts was tendering the remainder of the original contract price of \$155,000, or \$104,137.50, for the purchase of the 13.92 acres of land.

On June 28, 2000, Remote Internet intervened in the lawsuit as the primary mortgage holder of the 13.92 acre parcel. Remote Internet asserted that Pelts's claim was frivolous because Hines defaulted on the mortgage and had no right to sell the land.

On November 28, 2000, Tibbetts called his own annual meeting of International Medical stockholders. The record does not reflect whether Hines was notified of this meeting. At this meeting, Tibbetts and Smith were the only stockholders present. They voted to invalidate Hines's stock ownership in International Medical, as well as the contract for sale of the land to Pelts. Consequently, Tibbetts and Smith thereafter claimed to own one-hundred percent of the stock of International Medical.

On April 6, 2001, Hines gave notice of the annual meeting of International Medical's shareholders to be held on April 17, 2001. The record does not reflect whether Tibbetts and Smith received notice of this meeting. At the meeting called by Hines, which Tibbetts and Smith did not attend, new directors of the corporation were elected, and the new directors ratified the contract between Pelts and International Medical for sale of the land.

Smith and Tibbetts, proceeding pro se, answered Pelts's complaint individually. Each answer included lengthy recitations regarding Hines's family members who originally owned certain portions of the land, fraudulent transfers of land by Hines into International Medical for which Hines received his stock in International Medical, Hines's personal use of International Medical funds, the deeds of trust on the property issued by Hines, the value of the land compared to what Pelts offered

to pay for the land, and Hines's loss of right to sell the land because the mortgage was in default. Smith and Tibbetts alleged that they did not receive notice of the July 8, 1996 shareholders' meeting, that the notice was forged and backdated by Hines, and that the minutes of that meeting were also forged and backdated.

Remote Internet advertised the land for foreclosure sale. Remote Internet also provided a payoff statement for the property, which Pelts asserted was excessive considering the amount of principal and interest owed to Remote Internet. Pelts sought from the trial court a temporary restraining order and a temporary injunction, enjoining Remote Internet from conducting a foreclosure sale of the property until the trial court could resolve title of the ownership of the land and approve a detailed accounting of the monies owed on the property. The trial court granted Pelts's motion.

Pelts next moved to strike portions of Smith's and Tibbetts's answers to his original complaint, pursuant to Tennessee Rule of Civil Procedure 12.06. He argued that certain portions of the answers were immaterial and not relevant to Pelts's complaint for specific performance of the contract for sale of the land. Pelts also moved for a protective order prohibiting discovery of the stricken materials. After a hearing and over Smith's and Tibbetts's objection, the trial court granted Pelts's motion to strike portions of Smith's and Tibbetts's answers. The trial judge explained:

The Defendants' sole objection to granting the Motion to Strike is their concern that they not be foreclosed to take discovery and present evidence regarding Mr. Hines' authority to execute the real estate contract in question; the existence of the first mortgage on the subject property and the provisions of the corporate by-laws. It further appears that such issues are pertinent and should be specifically preserved.

Thus, the trial judge struck certain portions of Smith's and Tibbetts's answers to Pelts's complaint and prohibited discovery on those issues, but allowed discovery on issues decreed pertinent and not stricken from the record.

On July 20, 2001, Smith answered Pelts's first amended complaint. Pelts moved to strike the majority of the answer because it failed to constitute a sufficient defense and contained information related to "redundant, immaterial, impertinent or scandalous matters."<sup>2</sup>

Pelts next moved for summary judgment. His motion argued in part that, even if Hines was not properly acting on behalf of International Medical, Pelts was entitled to specific performance of

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<sup>2</sup>The record does not reflect the disposition of Pelts's motion.

the contract for sale because Hines had apparent authority to act on behalf of International Medical to sell the land:

Assuming, for purposes of this Motion only, that Hines was not properly elected as president of [International Medical] in 1996, Plaintiff is nonetheless entitled to Summary Judgment herein on the grounds that:

- a. [International Medical] and the defendants, Smith and Tibbetts, are bound by Hines' actions as de facto president of [International Medical] under color of authority and acting with the knowledge and consent of Smith and Tibbetts respecting the sale of the subject property; and
- b. Plaintiff's contract with [International Medical] has been ratified by the duly elected directors of [International Medical] and is fully enforceable.

Pelts also moved to compel Nelson and Remote Internet to produce a mortgage payoff statement.

Smith and Tibbetts each filed a response opposing Pelts's motion for summary judgment. Pelts objected to their responses, asserting that most of their arguments violated the parol evidence rule, or were "unsubstantiated conclusions expressed without factual foundation, legal opinions which [Tibbetts and Smith were not qualified] to express, and irrelevant and immaterial statements and allegations."

International Medical answered Pelts's motion for summary judgment as well. In addition, International Medical filed a cross-motion for summary judgment. International Medical argued that a proper quorum of the board was not present when Hines was authorized to sell the land in question, and, therefore, the contract with Pelts was void.

On January 11, 2002, the trial court, after considering the numerous motions from the parties, various documents, as well as "statements and arguments of counsel and defendant," granted Pelts's motion for summary judgment. The trial court found that Hines was the owner of sixty percent of the stock of International Medical. The trial judge ordered that Smith's and Tibbetts's opposition to Pelts's motion for summary judgment be stricken from the record and that International Medical's cross-motions for summary judgment be denied. The trial court found that the contract between International Medical and Pelts was valid and enforceable, and that, pursuant to the contract for sale, Pelts was entitled to receive reasonable expenses and attorney's fees from International Medical.

The trial court filed a separate order that required Nelson and Remote Internet to produce a mortgage payoff statement. Nelson failed to provide the payoff statement in a timely manner. Consequently, Pelts moved to hold Nelson in contempt. Nelson opposed Pelts's motion. He asserted that he had made his best effort to determine what was owed, even though he was eighty

years old, and he had made arrangements to keep all the mortgage records current. He contended that the motion to hold him in contempt was merely a ruse by Pelts's attorney to add legal fees to counsel's tab, which would later be assessed against Nelson. The trial court found that Nelson and Remote Internet were in contempt, but that they had purged the contempt by filing the mortgage statement at a later date. The trial judge further found that the filed statement contained "patent mathematical errors" and "certain other items claimed [that were] not allowable or not substantiated." Thus, the trial court set the payoff at \$91,685.47. On February 11, 2002, Smith and Tibbetts filed a notice to appeal the trial court's grant of summary judgment to Pelts.

On February 12, 2002, Tibbetts filed a petition to reconsider the trial court's grant of Pelts's motion for summary judgment. He then filed two supplements to the petition. The petition and the supplements include over sixty pages of supporting documentation.

Pelts moved to enter a final decree, to set attorney's fees, and to establish a procedure to pay Remote Internet pending the appeal. Tibbetts opposed the motion. He argued that, under the Fourteenth Amendment of the United States Constitution, he was entitled to "protection from collusion and conspiracy of counsel and plaintiffs seeking to unlawfully take the property of Defendants, by abuse of the processes of civil courts." He asserted that there was an "extraordinary record of attorney misconduct" including submission of a "bogus" set of by-laws. He noted that sworn complaints regarding Pelts's counsel's "criminal conduct" had been forwarded to the Bar Association and the local police. Based on these contentions, Tibbetts submitted that no final judgment should be rendered and that a jury trial ensue. Smith also opposed Pelts's motion.

The trial court issued its final decree on May 24, 2002. The trial judge denied Tibbetts's petition to reconsider the grant of summary judgment to Pelts. Pelts was awarded \$28,570 in attorney's fees and permitted to tender payment for the property, at which point Pelts would be subrogated to Remote Internet's rights with regard to the property.

A notice of appeal was filed by Smith, representing himself pro se. The notice of appeal stated that it was also filed on behalf of Tibbetts and International Medical. The notice of appeal was not signed by an attorney, and the record does not indicate that Smith is a licensed attorney.

On appeal, Smith argues on behalf of himself, Tibbetts, and International Medical. He assigns a number of errors to the actions of the trial court. Smith filed four briefs with this Court: his principal appellate brief, a supplement to that brief, an errata to the supplement, and his reply brief. The numerous errors raised by Smith fall into several categories: issues relating to Hines's alleged fraud in obtaining stock in the corporation, issues relating to the case at bar and Pelts's legal right to purchase the land in question, and issues in which Smith's arguments are not supported by any law.

At the outset, we note that Smith filed a notice of appeal, as well as appellate briefs, in which he purports to represent Tibbetts and International Medical as well as himself. The record contains

no indication that Smith is a licensed attorney. The Rules of our Supreme Court clearly prohibit any person from engaging in the practice of law without a license:

No person shall engage in the “practice of law” or the “law business” in Tennessee, except pursuant to the authority of this Court, as evidenced by a license issued in accordance with this Rule, or in accordance with the provisions of this Rule governing special or limited practice.

Tenn. Sup. Ct. R. 7, art. § I, 1.01. This Rule, of course, prohibits Smith from representing Tibbetts in this appeal. The Rule prohibits Smith from representing International Medical as well. As stated by this Court *Humphries v. Breakstone*:

A pleading in a lawsuit must be signed by an attorney of record or by the party to the lawsuit. *Old Hickory Eng. & Mach. Co. v. Henry*, 937 S.W.2d 782, 785 (Tenn.1996). A corporation is an artificial entity, separate from the corporation’s officers and shareholders. *Id.* Consequently, Tennessee statutes which permit a party to a lawsuit to represent himself in the lawsuit are not applicable to corporations; a corporation cannot file a lawsuit *pro se*. *Id.* Since the preparation and filing of a lawsuit requires the judgment of a lawyer and constitutes the practice of law, allowing a shareholder to sign a complaint filed on the corporation’s behalf would amount to permitting the shareholder to represent the corporation on a legal matter. *Id.* To do so would be a direct violation of the rules of our Supreme Court, which prohibit any person from engaging in the practice of law without a license. *Id.* at 786. Thus, a non-lawyer agent, such as a shareholder, may not represent a corporation in court proceedings. *Id.*

*Humphreys v. Breakstone*, No. W1999-02502-COA-R3-CV, 2001 WL 99570, \*3 (Tenn. Ct. App. Jan.30, 2001). Thus, Smith cannot represent either Tibbetts or International Medical in this appeal.

Consequently, Tibbetts and International Medical are not properly before this Court on appeal, and issues pertaining to them, and not Smith, are not at issue in this appeal. On appeal, Smith may raise only issues that relate to him.

Under these circumstances, the majority of the arguments by Smith before this Court relate to issues that are not properly before this Court. The first category of issues argued by Smith pertain to his contention that Hines’s procurement of International Medical stock was fraudulent, and that therefore Hines did not have actual authority to sell the land. However, neither Smith nor Tibbetts filed a lawsuit against Hines challenging his authority to act on behalf of International Medical.<sup>3</sup> Indeed, neither Smith nor Tibbetts even filed a cross-claim against Hines in this lawsuit, which is

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<sup>3</sup>For example, section 48-18-109 of the Tennessee Code Annotated provides for the removal of corporate directors by the court for, among other reasons, “fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation.” Tenn. Code Ann. § 48-18-109 (2002).



an action by Pelts to enforce Pelts's contract with International Medical. Since neither Smith nor Tibbetts had availed themselves of any legal measure to remove Hines from his position with International Medical, we must conclude that the trial court's finding that Hines is a sixty percent shareholder in International Medical is well substantiated by evidence in the record, and Smith's arguments on these issues are without merit.

The second category of issues relate to Pelts's legal right to purchase the land in question. However, Smith's arguments pertain to International Medical, not Smith individually. The relief in this case was awarded against International Medical, that is, the specific performance of International Medical's contract of sale with Pelts. Although Smith is a shareholder of International Medical, he took no procedural steps to assert International Medical's claim. Therefore, Smith, individually, cannot contest in this appeal relief that was awarded against International Medical, and not against Smith.<sup>4</sup> Similar analysis must be applied to the next two issues raised on appeal.

Smith asserts that the trial court erred in finding Nelson in contempt and fining him \$1,000. Nelson did not appeal, and Smith has no standing to assert this issue. Consequently, it will not be considered by this Court.

Smith next asks this Court to set aside the award of attorney's fees to Pelts's lawyer. This relief was awarded against International Medical, not Smith. Consequently, this issue will not be considered in this appeal.

The final category of issues relate to Smith individually. Smith asserts that the trial court erred in striking certain portions of his answers to Pelts's complaint, and that the trial court further erred in striking his opposition to Pelts's motion for summary judgment. Rule 12.06 of the Tennessee Rules of Civil Procedure permits a trial court to "order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Tenn. R. Civ. P. 12.06. An additional purpose of granting such a motion to strike is "to enforce Tenn. R. Civ. P. 8.05's requirement that pleadings be simple, concise and direct." *Doe v. Mama Taori's Premium Pizza, L.L.C.*, No. M1998-00992-COA-R3-CV, 2001 Tenn. App. LEXIS 224, at \*8 (Tenn. Ct. App. Apr. 5, 2001). Appellate review of a motion to strike is under the deferential "abuse of discretion" standard. *Id.* at \*11-\*12. After considering the extraneous arguments contained within the pleadings, relating to, for example, Hines's alleged fraudulent procurement of International Medical

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<sup>4</sup>Included in these issues is Smith's argument that the trial court erred in granting summary judgment in favor of Pelts against International Medical, and requiring specific performance of the contract between Pelts and International Medical for the sale of the land. Even if this issue were properly before the Court on appeal, it is clear that the trial court did not err in enforcing the contract, because Hines had apparent authority to act on behalf of International Medical to sell the land. Here, Hines was in fact a sixty percent shareholder in International Medical's stock. Despite their arguments of fraud, neither Smith nor Tibbetts had taken any available legal measures to remove Hines from this position. Thus, Hines was able to call a shareholders' meeting with a quorum under International Medical's bylaws, and obtain authority to sell the land. When Pelts asked for confirmation of Hines's authority, he was provided documentation of the shareholders' meeting and Hines's authority to act on behalf of International Medical to sell the property. All of this occurred despite the fact that Smith and Tibbetts had actual notice of Hines's attempts to sell the land. In view of Hines's apparent authority, the trial court did not err in granting Pelts's summary judgment.

stock, and the law regarding motions to strike matters from court pleadings, we cannot find that the trial court abused its discretion in granting Pelts's motions to strike matter from Smith's answers to his complaint and Smith's oppositions to Pelts's motion for summary judgment.

Smith asserts that the trial court erred in accepting Pelts's Statement of Undisputed Facts and Pelts's Supplemental Statements of Undisputed Facts. Smith offers no law or argument to support his conclusory contentions. This issue is without merit.

Smith's supplement to his appellate brief argues that the trial court erred in failing to redetermine the disposition of Hines's sixty shares of International Medical following the filing of the motion to reconsider the grant of summary judgment. Even assuming that Smith has standing to assert this issue on appeal, Smith's argument is without merit.

The decision of the trial court is affirmed. Costs are taxed to the appellant, Carlton Smith, Jr., and his surety, for which execution may issue, if necessary.

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HOLLY M. KIRBY, JUDGE