IN THE

Supreme Court of Virginia

RECORD NO. 091738

HARRY SHIPE,

Appellant,

v.

MICHAEL J. HUNTER,

Appellee.

BRIEF OF APPELLEE

C. Mark Whittington
Virginia State Bar No. 37655
Michael L. Davis & Associates
5285 Shawnee Road, Suite 110
Alexandria, Virginia 22312
(703) 813-4400 Telephone
(703) 813-4430 Facsimile
mark.whittington.jewp@statefarm.com

Counsel for Appellee

LANTAGNE LEGAL PRINTING 801 East Main Street Suite 100 Richmond, Virginia 23219 (804) 644-0477
A Division of Lantagne Duplicating Services

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... ii, iii

STATEMENT OF THE CASE 1

QUESTIONS PRESENTED 2

STATEMENT OF FACTS 2

PRINCIPLES OF LAW AND ARGUMENT..... 5

I. A Complaint that is signed only by an out-of-state lawyer who is not licensed to practice law in Virginia is an invalid pleading with no legal effect 5

II. The trial court properly dismissed this case with prejudice because Shipe failed to commence a valid personal injury action within the time required by the applicable statute of limitations 15

CONCLUSION.....23

TABLE OF AUTHORITIES

CASES Page(s)

Arrington v. Peoples Sec. Life Ins. Co.,
250 Va. 52, 458 S.E.2d 289 (1983).....22

Bernhard v. Washington,
69 Va. Cir. 195 (Fauquier County 2005). 12, 13

Fowler v. Winchester Medical Center, Inc.,
266 Va. 131, 580 S.E.2d 816 (2003).....20

Gilbreath v. Brewster,
250 Va. 436, 463 S.E.2d 836 (1995).....22

Harmon v. Sadjadi,
273 Va. 184, 639 S.E.2d 294 (2007).....20

Hubbard v. Henrico Ltd. P'ship,
255 Va. 335, 497 S.E.2d 335 (1998).....6, 7

Johnston Mem'l Hospital v. Bazemore,
277 Va. 308, 672 S.E.2d 858 (2009).....21

Kone v. Wilson,
272 Va. 59, 630 S.E.2d 744 (2006).....17, 18, 19, 20

Nerri v. Adu-Gyamfi,
270 Va. 28, 613 S.E.2d 429 (2005) 10, 11, 19

Richmond Ass'n of Credit Men, Inc. v. The Bar Ass'n of Richmond,
167 Va. 327, 189 S.E. 153 (1937) 8, 9

Vollin v. Arlington County Electoral Bd.,
216 Va. 674, 222 S.E.2d 793 (1976).....7

CASES (cont'd)

Wellmore Coal Corp. v. Harman Mining Corp.,
264 Va. 279, 568 S.E.2d 671 (2002).....9, 10, 19, 22

STATUTES

Va. Code § 8.01-6, *et seq*. 19
Va. Code § 8.01-271.1 ..... 5, 6, 13, 14, 15, 17, 21
Va. Code § 8.01-230 20
Va. Code § 8.01-243(A)..... 20
Va. Code § 54.1-3904 ..... 8, 10

RULES

Va. Sup. Ct. Rule 1A:4..... 5, 6, 7, 8, 10, 14
Va. Sup. Ct. Rule Pt. 6 § I 7, 8, 13, 14

OTHER REFERENCES

Black's Law Dictionary (7th ed. 1999).....10, 12

COMES NOW THE APPELLEE, Michael J. Hunter ("Hunter"), by counsel, and for his Brief of Appellee states as follows:

STATEMENT OF THE CASE

On May 16, 2008, appellant Harry Shipe ("Shipe") commenced this personal injury action by filing a Complaint with the Arlington County Circuit Court. It has since been conclusively established that the Complaint was not personally signed by Shipe or by an attorney who is licensed to practice law in the Commonwealth of Virginia. In his appeal, Shipe challenges the Final Order entered by the Honorable William T. Newman, Jr., of the Circuit Court of Arlington County on May 27, 2009. Judge Newman sustained Hunter's motion for summary judgment and dismissed Shipe's action with prejudice after finding that Shipe's Complaint was invalid, and of no legal effect, because it had been signed only by an out-of-state lawyer who was not licensed to practice law in the Commonwealth of Virginia.

QUESTIONS PRESENTED

1. Whether a Complaint that is signed only by an out-of-state lawyer who is not authorized to practice law in this Commonwealth is an invalid pleading and, therefore, has no legal effect?

2. Whether the trial judge properly dismissed this action with prejudice where no valid Complaint was filed within the applicable statute of limitations?

STATEMENT OF FACTS

This personal injury action arises out of an automobile accident between the parties on May 28, 2004, in Arlington County. Shipe filed his first Complaint in the Circuit Court of Arlington County on May 24, 2006(Joint Appendix pp.11-13). Shipe never requested service of process of the first Complaint and it was nonsuited by Order entered on November 30, 2007 (Brief of Appellant, p.2). Shipe then filed the present Complaint in the Circuit Court of Arlington County on May 16, 2008(Joint Appendix pp.1-3). Hunter was served with process on or about December 7, 2008 and the parties commenced discovery.

The first Complaint and the present Complaint identify a Virginia lawyer, Leo R. Andrews, Jr., at the end of each pleading.

Although each Complaint appears to bear Mr. Andrews's signature, Shipe concedes that neither the first Complaint nor the present Complaint was personally signed by Mr. Andrews or by any lawyer licensed to practice law in the Commonwealth of Virginia. Rather, each Complaint was personally signed only by Jay S. Weiss, an attorney who is licensed to practice law in the District of Columbia but who is not licensed to practice law in the Commonwealth of Virginia(Joint Appendix pp.31-35). Mr. Weiss never obtained, and never even requested, permission from the Circuit Court of Arlington County to appear as an out-of-state lawyer *pro hac vice* in either this action or the previously nonsuited action.

Shipe admits that Mr. Weiss drafted the first Complaint(Joint Appendix p.32). The allegations in the present Complaint are identical to those in the first Complaint. The present Complaint even bears the name, address and telephone number of Mr. Weiss's law firm in the left margin.

The signatures of Shipe's attorneys on the first Complaint give no hint that the pleading was not personally signed by each

lawyer(Joint Appendix p.13). On the present Complaint, however, the initials "JW" appear in parentheses following the handwritten name of the Virginia attorney, Mr. Andrews. Counsel for Hunter did not notice this subtle defect until many months after entering his appearance in this action. Upon discovery of the signature defect in April 2009, and after confirming his suspicions in a candid telephone conversation with Mr. Weiss, counsel for Hunter promptly filed a motion for summary judgment(Joint Appendix pp.4-30). That pleading sought the dismissal of this action, with prejudice, on the grounds that the signature defect rendered the present Complaint invalid, a nullity and of no legal effect.

On May 8, 2009, Hunter's motion for summary judgment came before Honorable William T. Newman, Jr. After considering the pleadings and arguments of counsel, and after taking the matter under advisement, Judge Newman sustained the motion for summary judgment. On May 27, 2009, Judge Newman entered a Final Order dismissing this action with prejudice. In relevant part, Judge Newman found that "the Complaint is

invalid, and is therefore a nullity, as it was not signed by plaintiff or by an attorney licensed to practice law in the Commonwealth of Virginia."

PRINCIPLES OF LAW AND ARGUMENT

I. A Complaint that is signed only by an out-of-state lawyer who is not licensed to practice law in Virginia is an invalid pleading with no legal effect.

When a party is represented by an attorney in a Virginia action, every pleading must be signed by at least one attorney of record in his individual name. Va. Code § 8.01-271.1.

Rule 1A:4 of the Rules of this Court governs the practice of law in Virginia by out-of-state lawyers. Effective July 1, 2007, this Rule was amended to more clearly define the circumstances under which an out-of-state lawyer may appear as counsel *pro hac vice* in a particular case and details the procedures that must be followed to obtain such permission. The out-of-state lawyer may only appear as counsel in a case "upon compliance with this rule." Rule 1A:4(1). The Rule requires the association of "local counsel" who is an active member in good standing of the Virginia State Bar and describes local counsel's duties. Rule 1A:4(2).

Among other procedures, the Rule requires the out-of-state lawyer to file a notarized application, pay a fee and submit the request to the circuit court after notice to all parties. Rule1A:4(3). If the application is approved, the circuit court is required to enter an order allowing the appearance of the out-of-state lawyer and to file the order with the Clerk of this Court. Id. Unless temporary admission has been approved, the Rule prohibits an out-of-state lawyer from making an appearance in a case until after entry of the order granting the motion to associate counsel *pro hac vice*. Rule 1A:4(3)(c). Significantly, the Rule states: "Any pleading or other paper required to be served . . . shall be invalid unless it is signed by local counsel." Rule 1A:4(2).

The words "sign" and "signed" are used in both Code § 8.01-271.1 and in Rule 1A:4. Neither the statute nor the Rule includes a definition of these terms. When a statute is clear and unambiguous "a court may look only to the words of the statute to determine its meaning." Hubbard v. Henrico Ltd. P'ship, 255 Va. 335, 339, 497 S.E.2d 335, 337 (1998)(citations omitted). In

Hubbard this Court went on to state that "[w]hen, as here, a statute contains no express definition of a term, the general rule of statutory construction is to infer the legislature's intent from the plain meaning of the language used." Id. at 340, 497 S.E.2d at 338. It is well-settled in Virginia that "the ascertainment of legislative intent is the paramount object of statutory construction. The plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow or strained construction." Vollin v. Arlington County Electoral Bd., 216 Va. 674, 678-79, 222 S.E.2d 793, 797 (1976).

The Introduction to the Unauthorized Practice Rules and Considerations, Va. Sup. Ct. Rule Pt. 6 § I, warns that "no one has the right to represent another; it is a privilege to be granted and regulated by law for the protection of the public." The Unauthorized Practice Rules generally prohibit a "non-lawyer" from engaging in the practice of law in Virginia. Preparation of a legal instrument is deemed to be the practice of law. Id.

Mr. Weiss is a "non-lawyer" as that term is defined in the Unauthorized Practice Rules because he was neither "duly

licensed or authorized to practice law in the Commonwealth of Virginia," Va. Sup. Ct. Rule Pt. 6 § I (C), nor was he admitted to appear in the case as counsel *pro hac vice* pursuant to Rule 1A:4. By his act of preparing and signing the Complaint, Mr. Weiss was engaging in the practice of law in the Commonwealth of Virginia. Va. Sup. Ct. Rule Pt. 6 § I (B)(2) and (4); *see also* Va. Code § 54.1-3904.

In Richmond Ass'n of Credit Men, Inc. v. The Bar Ass'n of Richmond, 167 Va. 327, 189 S.E. 153 (1937), this Court recited the following as well-settled principles:

> "The practice of law is not a business open to all, but a personal right, limited to a few persons of good moral character, with special qualifications ascertained and certified after a long course of study, both general and professional, and a thorough examination by a state board appointed for the purpose. The right to practice law is in the nature of a franchise from the State, conferred only for merit. It cannot be assigned or inherited, but must be earned by hard study and good conduct. No one can practice law unless he has taken an oath of office and has become an officer of the court, subject to its discipline, liable to punishment for contempt in violating his duties as such, and to suspension or removal. It is not a lawful business except for members of the bar who have complied with all the conditions required by statute and the rules of the courts. . . ." (citations omitted).

> It logically follows that the courts have the inherent power, apart from statute, to inquire into the conduct of any person – whether an individual, a lay agency, or a corporation – to determine whether he or it is usurping the functions of an officer of the court and illegally engaging in the practice of law and to put an end to such unauthorized practice where it is found to exist. (citations omitted)

Id. at 334-6, 189 S.E. at 157.

These principles are embodied in both the Preamble to the Virginia Rules of Professional Conduct and the Introduction to the Unauthorized Practice Rules.

This Court addressed an issue similar to the issue in the case at bar in Wellmore Coal Corp. v. Harman Mining Corp., 264 Va. 279, 568 S.E.2d 671 (2002). Wellmore Coal was represented by a Kentucky attorney who had been admitted *pro hac vice* and associated with local counsel for the duration of the underlying case. After a jury trial, judgment was entered against Wellmore Coal in the amount of $6 million. Wellmore Coal filed a timely notice of appeal signed only by the Kentucky attorney. Wellmore Coal subsequently filed an amended notice of appeal, signed by a Virginia attorney, but that pleading was not filed until after the deadline to file a notice of appeal. This Court granted Harman's

motion to dismiss the appeal on the grounds that the original notice of appeal, though timely filed, was an "invalid" pleading under Rule 1A:4. This Court adopted the *Black's Law Dictionary* (7th ed. 1999) definition of "invalid" as "[n]ot legally binding". Id. at 283, 568 S.E.2d at 673. Accordingly, this Court held that the original notice of appeal had no legal effect and dismissed the appeal. Id. at 284, 568 S.E.2d at 673.

Similarly, this Court held that a motion for judgment signed by a Virginia attorney whose license was administratively suspended was an invalid pleading. Nerri v. Adu-Gyamfi, 270 Va. 28, 613 S.E.2d 429 (2005). The Nerri Court noted that

> the status of an attorney during the time his or her license is administratively suspended is no different from that of an individual or an attorney who has never been licensed in Virginia-neither is authorized to practice law in this Commonwealth and both are subject to prosecution for practicing law without a license. Code § 54.1-3904.

Id. at 31, 613 S.E.2d at 430. After reciting the holding in Wellmore Coal, *supra*, the Nerri Court reasoned:

> Just as there is no practical distinction between the ability of the unlicensed foreign attorney to practice law and the attorney on administrative suspension, we find

> no rational basis to treat the pleadings filed by the former as invalid and those filed by the latter as valid.

Id.

In the present case, it is established that Mr. Weiss is the only person who actually signed the first Complaint in 2006 and that he is the only person who actually signed the 2008 Complaint in the present action. Likewise, it is undisputed that Mr. Weiss was not licensed to practice law in the Commonwealth of Virginia at the time he signed either Complaint. Mr. Weiss never obtained, and never even applied for, permission from the Circuit Court of Arlington County to participate in either action as an out-of-state lawyer appearing *pro hac vice*. Under these circumstances, Mr. Weiss had no lawful authority to prepare or sign pleadings in a Virginia action. Regardless how long Mr. Weiss has been a licensed attorney in good standing in other jurisdictions, he has no more power to prepare or sign a Virginia pleading than a Virginia lawyer whose license is suspended. Likewise, Mr. Weiss has no more power to prepare or sign a Virginia pleading than a person who has never been licensed to practice law in any jurisdiction.

In his Brief of Appellant, Shipe argues that it is permissible for a Virginia lawyer to authorize an out-of-state lawyer to sign the Virginia lawyer's name to a pleading. Shipe cites no Virginia statute, Virginia Rule or Virginia Supreme Court decision that supports this assertion because there simply is no such authority. Instead, Shipe relies heavily on Bernhard v. Washington, 69 Va. Cir. 195 (Fauquier County 2005), a circuit court case that is inconsistent with this Court's holdings that a Virginia pleading is invalid when signed only by a foreign attorney.

In Bernhard, the Motion for Judgment appeared to be signed by both Maryland counsel and Virginia counsel, both of whom were identified on the face of the pleading. Upon further investigation, it was determined that the Maryland attorney had signed both for himself and on behalf of the Virginia attorney, with the Virginia attorney's authorization. Judge Parker analyzed definitions of the words "signature" and "signed" from both the Uniform Commercial Code and *Black's Law Dictionary* (7th ed. 1999). Judge Parker held that, while this was not a wise practice, the permissive act of the Maryland attorney signing on behalf of

the Virginia attorney had the same legal effect as a physical signature of the Virginia attorney himself. Id. at *3.

Judge Parker applied simple agency principles to the signing of court pleadings and failed to take into account, or to even discuss, Va. Code § 8.01-271.1 or the Unauthorized Practice Rules and Considerations. While Judge Parker was correct in finding that one may sign another's name with authority in some circumstances, it seems he failed to consider that authorizing someone to sign a court pleading, such as a civil Complaint or a notice of appeal, has broader implications than authorizing a signature to a business document.

To apply Judge Parker's rationale in Bernhard would effectively give every Virginia lawyer the power to authorize any person to prepare and sign pleadings and, thus, engage in the practice of law in Virginia. Such power would not be limited to out-of-state lawyers. For example, under Judge Parker's rationale a Virginia lawyer could properly authorize his secretary, his wife, his law clerk, a friend or even a perfect stranger to sign

his name to a pleading, regardless whether he or she holds a license to practice law in any jurisdiction.

Hunter respectfully submits that this Court should not construe the terms "sign" and "signed" so broadly as to allow a litigant to file pleadings that are prepared and personally signed only by an out-of-state lawyer, even when the out-of-state lawyer has a Virginia lawyer's authority to do so. Such a rule would be contrary to this Court's prior decisions and inconsistent with the requirements of Virginia Code § 8.01-271.1, the *pro hac vice* rules in Rule 1A:4, the Virginia Rules of Professional Conduct and the Virginia Unauthorized Practice Rules.

As noted in the Introduction to the Unauthorized Practice Rules and Considerations, Va. Sup. Ct. Rule Pt. 6 § I, this Court "has the inherent power to make rules governing the practice of law in the Commonwealth of Virginia." This Court exercised that power when it enacted the clear, unambiguous and mandatory language in Rule 1A:4. This Court has consistently held that Rule 1A:4 means that any pleading signed only by a person who is not licensed to practice law in the Commonwealth of Virginia, and

who is not a party to the action, is a legal nullity. The Complaint filed in this action is invalid and, therefore, has no legal effect.

II. The trial court properly dismissed this case with prejudice because Shipe failed to commence a valid personal injury action within the time required by the applicable statute of limitations.

Shipe complains that Judge Newman should have allowed Virginia counsel, Mr. Andrews, to "cure" the signature defect by signing the Complaint himself after Hunter challenged the legal validity of that pleading. Shipe relies upon the following language in the Virginia Code: "If a pleading, written motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Va. Code § 8.01-271.1. Although Judge Newman did not expressly deny Mr. Andrews's request to sign the pleading, such denial can fairly be found in his dismissal of the Complaint with prejudice. Judge Newman properly refused to allow Mr. Andrews to sign the pleading for three (3) reasons:

First, the saving provision of the statute applies where a pleading "is not signed." Id. The present Complaint was, in fact,

signed. It was personally signed only by Mr. Weiss, the effect of which renders the pleading itself invalid. Rule 1A:4.

Second, the absence of Mr. Andrews's signature on the Complaint was not an "omission." Mr. Andrews asserts that he expressly authorized the out-of-state lawyer, Mr. Weiss, to sign Mr. Andrews's name to the Complaint knowing that Mr. Weiss would file the pleading in a Virginia court. Stated differently, Mr. Andrews's failure to personally sign the pleading was a knowing act, the reasons for which are unclear considering the Arlington County courthouse is located just blocks from Mr. Andrews's office while Mr. Weiss's office is in the District of Columbia.

Third, the "omission" of Mr. Andrews's signature on the Complaint was not "called to [his] attention" when Hunter filed the motion for summary judgment on May 1, 2009. Mr. Andrews authorized Mr. Weiss to sign his name on the first Complaint in 2006, and then again knowingly authorized Mr. Weiss to sign his name to the present Complaint in 2008. The present Complaint was pending for almost one year before Mr. Andrews sought leave to sign it. Such a delay fails to satisfy the requirement that

a pleading that is not signed "shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Va. Code § 8.01-271.1(emphasis added).

Although Section 8.01-271.1 does allow a lawyer's signature to be placed on a pleading in the event of an omission, that statute does not state that such signature "relates back" to the date of the original filing. Accordingly, even if Judge Newman had allowed Mr. Andrews to personally sign the present Complaint as requested on May 8, 2009, that signature would not have saved Shipe's claim against Hunter. Such a signature would have marked the first time in almost exactly five (5) years that Shipe filed a valid pleading in any action against Hunter. A signature by Mr. Andrews on the present Complaint in May 2009 may have cured the defect in the pleading itself, but it would not have cured the fact that the statute of limitations expired nearly three (3) years earlier.

Hunter suggests that this Court's reasoning in Kone v. Wilson, 272 Va. 59, 630 S.E.2d 744 (2006), compels the

conclusion that Judge Newman properly dismissed the present Complaint with prejudice.

Kone involved a wrongful death action against several health care providers for alleged medical malpractice. The administrator of the decedent's estate filed a timely wrongful death action that was properly signed by a Virginia attorney. That action was subsequently nonsuited. The administrator, proceeding without counsel, then re-filed a timely motion for judgment against the health care providers. The administrator was not licensed to practice law in Virginia and the re-filed motion for judgment was not signed by a Virginia lawyer; instead, the administrator signed the pleading as if he was a plaintiff *pro se*. The health care providers moved to strike the motion for judgment on the grounds that it was invalid as it was not signed by a Virginia attorney. The trial court denied the motion to strike and directed the administrator to engage a Virginia attorney. A Virginia attorney then entered his appearance more than six (6) months after the first case had been nonsuited. The health care providers again moved to strike the motion for judgment, arguing

that the plaintiff failed to file a pleading that tolled the statute of limitations. In response, the administrator sought leave to file an amended motion for judgment, or to permit his Virginia attorney's signature on the initial pleading to relate back to the date it had been filed. The trial court denied the administrator's requests, sustained the motion to strike and dismissed the case with prejudice.

This Court affirmed. Citing Wellmore Coal and Nerri, supra, this Court held that the re-filed motion for judgment was invalid and without legal effect because it was not signed by a Virginia lawyer. Kone at 63, 630 S.E.2d at 746. This Court then held that the signature defect could not be cured by filing an amended motion for judgment because "in the absence of a valid motion for judgment, there were no pleadings before the court that could have been amended." Id. Finally, the Kone Court affirmed the trial court's refusal to allow the Virginia lawyer's signature to relate back to the date of the timely-filed motion for judgment:

> [T]he circuit court lacked authority to grant [the administrator's] request that his counsel's signature relate back to the date of the initial pleading. The provisions of Code §§ 8.01-6 through -6.2, which

> permit a circuit court to authorize amendments to pleadings to relate back to the date of an original pleading in a case, are limited to instances in which a party seeks to correct a misnomer, add a party, or add a claim or defense. *Id*. A defect in a signature to a pleading is not a defect that can be corrected pursuant to these statutes. Moreover, because [the administrator's] initial pleading was invalid, there were no valid proceedings pending before the court. Therefore, we hold that the circuit court did not err in dismissing [the administrator's] motion for judgment.

Id.

To the extent Shipe ever had a viable personal injury claim against Hunter, his cause of action accrued on May 28, 2004, the date of the subject automobile accident. Va. Code § 8.01-230. Shipe was required by the applicable statute of limitations to file a valid Complaint against Hunter on or before May 28, 2006. Va. Code § 8.01-243(A).

Since each of Shipe's Complaints is invalid and of no legal effect, neither pleading tolled the statute of limitations. Fowler v. Winchester Medical Center, Inc., 266 Va. 131, 580 S.E.2d 816 (2003); Harmon v. Sadjadi, 273 Va. 184, 639 S.E.2d 294 (2007). Although both Fowler and Harmon involved actions that were of "no legal effect" due to lack of standing, the rationale in those

cases applies with equal force where, as in the case at bar, the Complaint is invalid due to a signature defect. "The reason why an action is without legal effect, however, is of no consequence. If an action is a nullity, regardless of the reason it is such, then no legal proceeding is pending. . . ." Johnston Mem'l Hospital v. Bazemore, 277 Va. 308, 672 S.E.2d 858 (2009).

Shipe mischaracterizes Judge Newman's dismissal of this action as a "sanction" under Section 8.01-271.1. In fact, Hunter never requested sanctions and Judge Newman was not sanctioning Shipe by dismissing his case. For example, when a trial judge sustains a defendant's plea in bar on the ground that plaintiff filed his action after the expiration of the statute of limitations, the trial judge is not sanctioning the plaintiff or his lawyer; rather, he is dismissing the case as a matter of law because it was not filed in a timely manner.

Shipe also complains that the dismissal of this action was unduly harsh because it unfairly punished the client for the mistake of his lawyer. Unfortunately, even excellent lawyers sometimes make inadvertent errors that have harsh

consequences for the client. For example, when a lawyer files an action after the expiration of the statute of limitations, the action will be dismissed with prejudice when properly challenged. Arrington v. Peoples Sec. Life Ins. Co., 250 Va. 52, 458 S.E.2d 289 (1983). And, when a lawyer fails to perfect service of a Complaint within the time required by Rule 3:3 the consequence to the plaintiff is a dismissal of his case with prejudice. Gilbreath v. Brewster, 250 Va. 436, 463 S.E.2d 836 (1995). Perhaps even closer to the issue in the present case, the appellant in Wellmore Coal, *supra*, had its appeal to this Court dismissed because of the signature defect in the notice of appeal, leaving the client to satisfy a $6 million judgment that had been entered against it.

More than five (5) years have now passed since his cause of action accrued and Shipe has never filed a valid Complaint against Hunter. The statute of limitations was never tolled. There was no valid pleading pending before the Arlington County Circuit Court so there was no pleading that Judge Newman could have allowed Shipe to amend. Likewise, Judge Newman properly declined Mr. Andrews's belated request to sign the present

Complaint because doing so would not relate back to a timely-filed Complaint and would not otherwise have saved Shipe's claim against Hunter.

CONCLUSION

An out-of-state lawyer who was not licensed in the Commonwealth of Virginia, and who never sought or obtained permission to participate in this action *pro hac vice*, prepared and signed the present Complaint. The Complaint was not personally signed by an attorney who is licensed to practice law in the Commonwealth of Virginia. A pleading signed by someone other than a party or an attorney licensed in Virginia is an invalid pleading and has no legal effect. Shipe's first Complaint, filed in 2006, is a nullity. The Complaint at issue in the present action, filed in 2008, is a nullity. Neither Complaint tolled the running of the statute of limitations. Shipe's cause of action against Hunter is time-barred. Under these circumstances, Judge Newman did not err when he sustained Hunter's motion for summary judgment and dismissed this action with prejudice.

FOR THE FOREGOING REASONS, appellee Michael J. Hunter, by counsel, respectfully requests this Honorable Court to affirm the lower court's dismissal with prejudice, and for such other and further relief as this Court finds just and appropriate under the circumstances.

MICHAEL J. HUNTER
By Counsel

Michael L. Davis & Associates

By: _____

C. Mark Whittington
VA Bar No. 37655
Counsel for Appellee
5285 Shawnee Road
Suite 110
Alexandria, VA 22312-2328
(703)813-4400
(703)813-4430 (Fax)
Email: mark.whittington.jewp@statefarm.com

CERTIFICATE OF SERVICE

I hereby certify that in compliance with Rule 5:26(d), fifteen (15) true copies of the foregoing were hand delivered to the Clerk of the Virginia Supreme Court, along with the electronic copy sent in PDF format by email to the Clerk of the Virginia Supreme Court, and three (3) true copies were mailed, postage prepaid, to Leo R. Andrews, Jr., Esquire, counsel for Appellant Harry Shipe, at 2055 North 15th Street, Arlington, VA 22201, on March 9, 2010.

C. Mark Whittington