





APPEARANCES:

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HEADNOTES

Civil Procedure – Motions – Unopposed

By rule, the failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. Pillias v. Saki Stores, 20 FSM R. 391, 393 (Chk. 2016).

Civil Procedure – Parties – Minors

An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. In law, an "infant" is a minor, anyone under the age at which they legally become an adult, which in the FSM is age eighteen. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

Civil Procedure – Parties – Minors

A minor lacks the capacity to sue on his own, but may sue by next friend. A next friend is a person who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff but who is not a party to the lawsuit and is not appointed guardian ad litem. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

Civil Procedure – Parties – Minors; Civil Procedure – Parties – Pro Se

If the plaintiff was appearing through an attorney, the naming of the parent as the plaintiff appearing on behalf of an injured minor could be overlooked as an error of form, not of substance. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

Civil Procedure – Parties – Pro Se

To appear "pro se" means to appear on one's own behalf, without a lawyer. A person appearing pro se thus appears only for himself or herself and does not represent any other person or anyone else. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

Civil Procedure – Parties – Pro Se

Because pro se means to appear for one's self, a person may not appear on another person's behalf in the other's cause. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

Civil Procedure – Parties – Pro Se

Since a person must be litigating an interest personal to him. For example, a lay person may not appear on behalf of his or her own minor child. Thus, the threshold question becomes whether a given matter is the pro se plaintiff's own case or one that belongs to another. Pillias v. Saki Stores, 20 FSM R. 391, 394 (Chk. 2016).

Civil Procedure

Although the court must look first to FSM sources of law rather than begin reviewing other courts' cases, when an FSM court has not previously construed an aspect of an FSM civil procedure rule that is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance. Pillias v. Saki Stores, 20 FSM R. 391, 395 n.1 (Chk. 2016).

Attorney and Client; Civil Procedure – Parties – Minors; Civil Procedure – Parties – Pro Se

A non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child since the choice to appear *pro se* is not a true choice for minors. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

Attorney and Client; Civil Procedure – Parties – Minors

A minor child cannot bring suit through a parent acting as a next friend if the parent is not represented by an attorney. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

Civil Procedure – Parties – Pro Se

The rule forbidding a next friend to litigate *pro se* on behalf of another person is to protect the rights of the represented party. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

Attorney and Client; Civil Procedure – Parties – Minors; Civil Procedure – Parties – Pro Se

The requirement that a minor be represented by counsel is based on two cogent policy considerations. First, there is a strong governmental interest in regulating the practice of law. The second consideration is the importance of the rights at issue during litigation and the final nature of any adjudication on the merits. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

Attorney and Client; Civil Procedure – Parties – Minors

A non-attorney parent must be represented by counsel in bringing an action on behalf of a child. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

Civil Procedure – Dismissal; Civil Procedure – Parties – Minors; Civil Procedure – Parties – Pro Se

Because the goal is to protect the rights of infants, a complaint should not be dismissed with prejudice as to the minor. The minor may himself sue as a plaintiff, either *pro se* or by counsel, within two years after he turns eighteen years old, but before then his father may not appear without counsel on his behalf. Pillias v. Saki Stores, 20 FSM R. 391, 396 (Chk. 2016).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This comes before the court on defendant Saki Store's Motion to Dismiss for Lack of Jurisdiction (Standing) or in the Alternative to Strike Complaint, filed April 21, 2016. No opposition was filed. By rule, the failure to oppose a motion is generally deemed a consent to the motion, FSM Civ. R. 6(d), but even if there is no opposition, the court still needs good grounds before it can grant the motion. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 442 (App. 1994); Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

Saki Stores moves to dismiss the complaint with prejudice on the ground that Pisente Pillias does not have standing to appear *pro se* on behalf of his minor son, FJ Pillias and standing is a jurisdictional prerequisite. The motion is granted, but generally without prejudice, and the case is dismissed on basis

of and for the reasons that follow.

I.

The complaint alleges that a Saki Store employee drove a Saki Store truck underneath sagging lines that were strung from a Chuuk Public Utility Corporation (CPUC) utility pole and the truck snagged those wires, causing those wires to pull down the CPUC utility pole which fell on Sichang Uehara's house breaking FJ Pillias's arm. FJ Pillias is a minor and the son of Pisente Pillias. Pisente Pillias, who is not admitted to practice law before the FSM Supreme Court, filed this lawsuit, *pro se* (that is without an attorney) as a representative of his minor son, seeking to be paid damages for the injuries that he alleges that FJ, his son, suffered.

II.

Saki Stores contends that this action must be dismissed with prejudice because a parent does not have standing to appear *pro se* to represent a minor child. Saki Stores further contends that the plaintiff, Pisente Pillias, cannot appear *pro se* to represent another natural person since Pisente Pillias is not a lawyer admitted to practice before the court and thus his representation of another person would constitute the unauthorized practice of law.

Under the court's rules, "[a]n infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem." FSM Civ. R. 17(c). "In law, an 'infant' is a minor, anyone under the age at which they legally become an adult. In the Federated States of Micronesia, an infant would be anyone under the age of eighteen." Tarauo v. Arsenal, 18 FSM R. 270, 273 n.1 (Chk. 2012). Since FJ Pillias is a minor, he lacks the capacity to sue on his own, but may sue by next friend. A next friend is "[a] person who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff but who is not a party to the lawsuit and is not appointed guardian ad litem." BLACK'S LAW DICTIONARY 1142 (9th ed. 2009). Thus, FJ Pillias may sue as a plaintiff by his next friend, his father, but his father would only have "standing" to appear as a non-party, a next friend.

But that does not appear to be the case here. Here the father is not appearing as a next friend but is, appearing *pro se* and suing as the plaintiff himself for his minor son's injuries. If the plaintiff was appearing through an attorney, the naming of the parent as the plaintiff appearing on behalf of the injured minor could be overlooked as an error of form, not of substance. *See, e.g., Tarauo v. Arsenal*, 18 FSM R. 270 (Chk. 2012) (two-year statute of limitations tolled by statute in favor of a minor for whose benefit the action was brought). But there is no plaintiff's attorney here.

In the trial court, a party, who is a natural person, has a choice whether to appear *pro se* or appear through counsel. To appear "pro se" means to appear "on one's own behalf; without a lawyer." BLACK'S LAW DICTIONARY 1341 (9th ed. 2009). "A person appearing *pro se* thus appears only for himself [or herself] and does not represent any other person or anyone else." FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

"[B]ecause *pro se* means to appear for one's self, a person may not appear on another person's behalf in the other's cause. A person must be litigating an interest personal to him. For example, a lay person may not . . . appear on behalf of his or her own minor child. Thus, the threshold question becomes whether a given matter is [the *pro se*] plaintiff's own case or one that belongs to another.

Iannaccone v. Law, 142 F.3d 553, 558 (2d Cir. 1998).<sup>1</sup> The plaintiff here, Pisente Pillias, is not appearing *pro se* and litigating an interest personal to him – he is appearing *pro se* and litigating the interests of his minor child, FJ Pillias, the real party in interest. It is FJ Pillias who allegedly sustained the broken arm. Accordingly,

a non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child. The choice to appear *pro se* is not a true choice for minors who under state law cannot determine their own legal actions. There is thus no individual choice to proceed *pro se* for courts to respect, and the sole policy at stake concerns the exclusion of non-licensed persons to appear as attorneys on behalf of others.

It goes without saying that it is not in the interests of minors . . . that they be represented by non-attorneys. Where they have claims that require adjudication, they are entitled to trained legal assistance so that their rights may be fully protected. There is nothing in the guardian-minor relationship that suggests that the minor's interests would be furthered by representation by the non-attorney guardian.

Cheung v. Youth Orchestra Found. of Buffalo, 906 F.2d 59, 61 (2d Cir. 1990) (citation omitted). "A minor child cannot bring suit through a parent acting as a next friend if the parent is not represented by an attorney." Meeker v. Kercher, 782 F.2d 153, 154 (10th Cir. 1986). "[T]he rule forbidding a next friend to litigate *pro se* on behalf of another person is to protect the rights of the represented party." Elustra v. Mineo, 595 F.3d 699, 706 (7th Cir. 2010).

The requirement of representation by counsel is based on two cogent policy considerations. First, there is a strong [governmental] interest in regulating the practice of law. Requiring a minimum level of competence protects not only the party that is being represented but also his or her adversaries and the court from poorly drafted, inarticulate, or vexatious claims. The second consideration is the importance of the rights at issue during litigation and the final nature of any adjudication on the merits. Not only is a licensed attorney likely to be more skilled in the practice of law, but he or she is also subject to ethical responsibilities and obligations that a lay person is not. In addition, attorneys may be sued for malpractice.

Collingsru v. Palmyra Bd. of Educ., 161 F.3d 225, 231 (3d Cir. 1998) (citations omitted).

In summary, as one court has noted, "an overwhelming majority of jurisdictions . . . hold that a non-attorney parent must be represented by counsel in bringing an action on behalf of a child." Chisholm v. Rueckhaus, 948 P.2d 707, 709 (N.M. Ct. App.), *cert. denied*, 949 P.2d 282 (N.M. 1997).

### III.

Accordingly, this action is dismissed with prejudice as to Pisente Pillias appearing as a plaintiff, but is dismissed without prejudice as to any future lawsuit with his minor son, FJ Pillias, appearing as the plaintiff and Pisente Pillias appearing as FJ Pillias's next friend and represented by an attorney.

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<sup>1</sup> Although the court must look first to FSM sources of law rather than begin reviewing other courts' cases, when an FSM court has not previously construed an aspect of an FSM civil procedure rule that is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance. *See, e.g.*, Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 n.1 (App. 2008); Arthur v. FSM Dev. Bank, 14 FSM R. 390, 394 n.1 (App. 2006). The court has not had the need to construe Civil Procedure Rule 17(c) before.

Johns v. County of San Diego, 114 F.3d 874, 877-78 (9th Cir. 1997). "Because the goal is to protect the rights of infants, the Complaint should not [be] dismissed with prejudice as to [the minor]." *Id.* at 878. Alternatively, FJ Pillias may himself sue as a plaintiff, either pro se or by counsel, within two years after he turns eighteen years old. See Tarauo, 18 FSM R. at 273 (citing Sarapio v. Maeda Road Constr. Co., 3 FSM R. 463, 464, (Pon. 1988) and Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 113-15 (Pon. 1985)); see also Johns, 114 F.3d at 878. But his father may not appear without counsel on his behalf.

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FSM SUPREME COURT TRIAL DIVISION

NAMIKO SOLOMON,	)	CIVIL ACTION NO. 2014-040
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
FEDERATED STATES OF MICRONESIA,	)	
JOSES R. GALLEN, in his official capacity,	)	
and APRIL DAWN SKILLING (nee Cripps), in	)	
her personal capacity,	)	
	)	
Defendants.	)	
_____	)	

ORDER

Beauleen Carl-Worswick  
Associate Justice

Hearing: May 2, 2016  
Decided: May 23, 2016

APPEARANCES:

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Johns v. County of San Diego, 114 F.3d 874, 877-78 (9th Cir. 1997). "Because the goal is to protect the rights of infants, the Complaint should not [be] dismissed with prejudice as to [the minor]." *Id.* at 878. Alternatively, FJ Pillias may himself sue as a plaintiff, either pro se or by counsel, within two years after he turns eighteen years old. See Tarauo, 18 FSM R. at 273 (citing Sarapio v. Maeda Road Constr. Co., 3 FSM R. 463, 464, (Pon. 1988) and Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 113-15 (Pon. 1985)); see also Johns, 114 F.3d at 878. But his father may not appear without counsel on his behalf.

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ORDER

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