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IN THE
COURT OF APPEALS OF INDIANA

CAROLYNDA APPLEBURY-TODOSICHUK,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A02-0809-CV-866
	)	
DAMIAN STEVENSON,	)	
	)	
Appellee-Respondent.	)	
	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Miller, Judge
Cause No. 49D05-0310-CT-1771

March 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

For the underlying proceedings in the trial court, appellant Carolynda Applebury-Todosichuk was represented by local Indiana counsel and an out-of-state attorney granted *pro hac vice* status by the trial court. Although out-of-state counsel failed to seek permission to proceed *pro hac vice* on appeal, both attorneys signed Applebury-Todosichuk's Notice of Appeal. Out-of-state counsel then filed an Appellant's Brief bearing only her signature; local counsel did not sign the brief. We cannot consider the merits of a brief improperly filed by an attorney not licensed to practice law in Indiana and not granted temporary permission to proceed in this Court. Because Applebury-Todosichuk has failed to timely file an appellate brief pursuant to Indiana Appellate Rule 45(B), we dismiss this appeal.

Facts and Procedural History[1]

Applebury-Todosichuk and Damian Stevenson, the parties to this appeal, have engaged in protracted litigation relating to the parenting of their child, A.A.-S. In October 2001, Applebury-Todosichuk lived in Massachusetts, while Stevenson lived in Indiana. Appellant's App. p. 9. Due to an alleged incident occurring while Applebury-Todosichuk exercised visitation with A.A.-S. in Indianapolis on October 5, 2001, Applebury-Todosichuk filed a tort suit against Stevenson in October 2003. *Id.* at 9-13. In August 2007, the trial court dismissed the lawsuit because of Applebury-Todosichuk's failure to prosecute the claim. *Id.* at 6.

[1] We recite facts from information provided in the Appellant's Appendix, which was also verified only by out-of-state counsel, in order to provide readers with the procedural background of this case.

In November 2007, Indiana attorney Sherwood Hill entered an appearance for Applebury-Todosichuk. *Id.* The following year, in July 2008, Pennsylvania attorney Erica Burns of the law firm Richard Ducote & Associates, PLC, filed a petition for permission to receive *pro hac vice* admission in order to proceed before the Indiana trial court as co-counsel with Attorney Hill. *Id.* The trial court granted the petition. *Id.*

In August 2008, Applebury-Todosichuk filed a Trial Rule 60(B) motion to vacate the August 2007 order dismissing her claim. *Id.* at 24-31. The trial court denied the motion, *id.* at 7, and Applebury-Todosichuk appeals.

Applebury-Todosichuk timely filed a Notice of Appeal signed by both Attorney Hill and Attorney Burns. *Id.* at 38-40. The record does not reflect, however, that Attorney Burns sought temporary admission in order to appear before this Court. Attorneys Hill and Burns then both signed and filed an Appellant's Case Summary, and Attorney Burns handwrote under her signature "Counsel pro hac vice." The trial court filed an amended notice of the completion of its clerk's record on November 6, 2008. Without obtaining permission to proceed before this Court and without signatures from Attorney Hill, Attorney Burns then filed an Appellant's Brief and an Appellant's Appendix.

Discussion and Decision

Attorney Burns's appellate brief raises several issues on Applebury-Todosichuk's behalf. However, we are faced with the threshold question of whether we may even consider the brief.

Our review of the record turns up nothing to indicate that Attorney Burns is licensed to practice law or admitted *pro hac vice* in the Court of Appeals of the State of Indiana. Although Attorney Burns received permission to proceed *pro hac vice* during the proceedings below, Indiana Admission and Discipline Rule 3 requires that an attorney who is not licensed in Indiana petition *the court before which the attorney wishes to proceed* for temporary admission. Ind. Admission and Discipline Rule 3(2)(a). Before temporary admission will be granted, the court must determine that there is good cause for the out-of-state attorney's appearance and a number of conditions must be met. *Id.* Because Attorney Burns has not received temporary admission before this Court, any brief or papers filed by Attorney Burns absent the signature of local counsel are a nullity. *Gifford v. Hartford Steam Boiler Inspection and Ins. Co.*, 811 N.E.2d 853, 857-858 (Ind. Ct. App. 2004) ("Our review of the instant record turns up nothing to indicate, and [the appellant] fails to direct us to any evidence that shows, that either person identified on [the appellant's] answer was licensed to practice law or admitted *pro hac vice* in the State of Indiana. As a result, any brief, papers, or pleadings filed in this case by [the out-of-state attorneys] are a nullity."), *trans. denied*; *Prof'l Laminate & Millwork, Inc. v. B & R Enters.*, 651 N.E.2d 1153, 1157 (Ind. Ct. App. 1995) ("Here, [the appellant's attorney] was not licensed to practice law in Indiana. [The appellant] neither petitioned the Vanderburgh Superior Court for the "courtesy" that [the appellant's out-of-state attorney] be allowed to enter an appearance nor procured the signature of local Indiana counsel on its filing. . . . [W]ithout leave of the court, and absent the signature of local counsel

licensed to practice law in this state, any papers filed by [the appellant] were a nullity."). Thus, Applebury-Todosichuk has failed to file an appellant's brief.

Indiana Appellate Rule 45(B) provides that "[t]he appellant's brief shall be filed no later than thirty (30) days after . . . the trial court clerk or Administrative Agency issues its notice of completion of the Transcript." Appellate Rule 45(D) further provides that "[t]he appellant's failure to timely file the appellant's brief may subject the appeal to summary dismissal." As we have previously cautioned, "[a]lthough we will exercise our discretion to reach the merits when violations are comparatively minor, if the parties commit flagrant violations of the Rules of Appellate Procedure we will hold issues waived, or dismiss the appeal." *Miller v. Hague Ins. Agency, Inc.*, 871 N.E.2d 406, 408 (Ind. Ct. App. 2007), *reh'g denied*.

Here, Applebury-Todosichuk failed to file an appellant's brief, a violation of Indiana Appellate Rule 45(B). *See Prof'l Laminate & Millwork, Inc.*, 651 N.E.2d at 1157 (party failed to act within the time required by law because filings by out-of-state attorney who had not received temporary admission were a nullity). This is a flagrant violation of the Rules of Appellate Procedure, and we therefore dismiss the appeal.[2]

Dismissed.

RILEY, J., and DARDEN, J., concur.

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[2] Lest our dismissal of this appeal be thought harsh, we observe that this is not the first time a member of Attorney Burns's law firm, Richard Ducote & Associates, PLC, has attempted to proceed in this Court *on behalf of Applebury-Todosichuk* without first petitioning for temporary admission. In May 2005, while representing Applebury-Todosichuk in another proceeding, attorney Richard Ducote filed Applebury-Todosichuk's Appellant's Case Summary with local Indiana counsel. Our Online Docket includes the notation: "Atty. Ducote has not yet been admitted pro hac vice and will need to petition to this Court before his signature may appear on any filing." Online Docket, *Applebury-Todosichuk v. Stevenson*, 49A04-0505-CV-00250 (formatting changed). Attorney Ducote subsequently petitioned for and received temporary admission before this Court.