

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2006

MARCUS DAVID BENEDETTO,
etc., et al.,

Appellants,

v.

Case No. 5D06-76

COLUMBIA PARK HEALTHCARE
SYSTEMS, etc., et al.,

Appellees.

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Opinion filed March 10, 2006

Appeal from the Circuit Court
for Orange County,
Theotis Bronson, Judge.

Marcus D. Benedetto, Miami, in proper
person.

Walter J. Tache and Frank Massabki of
Zuckerman Spaeder LLP, Miami, for
Appellees.

TORPY, J.

ON MOTION FOR CLARIFICATION AND EXTENSION OF TIME

Appellant seeks to have us clarify a prior order requiring him to show cause why this appeal should not be dismissed because, although Appellant advances this appeal in his capacity as personal representative of an estate, he is not represented by counsel. Appellant also seeks additional time to retain counsel. We grant Appellant's motions to the extent expressed herein.

Appellant challenges the dismissal of an independent action he initiated as personal representative of the estate of his deceased mother. From the limited record

before us, we are not able to determine the nature of the claim, nor can we determine whether Appellant is the "sole interested person" in the related probate proceeding.

Florida Rule of Probate Procedure 5.030(a) provides in relevant part as follows:

(a) Required; Exception. Every guardian and every personal representative, unless the personal representative remains the sole interested person, shall be represented by an attorney admitted to practice in Florida. A guardian or personal representative who is an attorney admitted to practice in Florida may represent himself or herself as guardian or personal representative.

Because an independent action on behalf of an estate is ancillary to the estate administration, this rule governs both the estate administration itself and any independent proceedings prosecuted or defended by the estate. Thus, unless Appellant is the "sole interested person," as defined by law, he is precluded from maintaining this appeal without counsel. *See, Dimitroff v. Taylor*, 651 So. 2d 131 (Fla. 2d DCA 1995). *See also* § 731.201(21), Fla. Stat. (2005) (defining "interested person").

Having now clarified our prior order, Appellant shall, within thirty (30) days of the date of this order, furnish to this court relevant portions of the probate record, and appropriate argument in proper form, to establish that he is the "sole interested person" in the related probate proceeding. Alternatively, Appellant may, within thirty (30) days of the date of this opinion, secure the proper, written appearance of counsel. To this extent only, Appellant's request for additional time is granted. Failure to comply with this order may result in dismissal without further notice.

MOTIONS GRANTED.

THOMPSON and ORFINGER, JJ., concur.