

IN RE: ESTATE OF SEYMOUR BAUM
_____ /

ANNEEN NINA GLORIA BAUM,

Petitioner,

IN THE CIRCUIT COURT FOR THE
18TH JUDICIAL CIRCUIT IN AND FOR
BREVARD COUNTY, FLORIDA

Probate Division

Case No.: 05-2012-CP-048323

v.

DAVID A. BAUM, as Personal
Representative, et al.

Respondents.
_____ /

**PERSONAL REPRESENTATIVE'S RESPONSE TO PETITIONER'S MOTION FOR
RELIEF FROM ORDER**

David Baum, as personal representative of the Estate of Seymour Baum (the "Personal Representative"), hereby files this response to Petitioner's Motion for Relief from Order and states as follows:

1. Petitioner's Motion for Relief from Order should be denied.
2. Like she did in the underlying litigation, Petitioner continues to abuse process by failing to follow procedure and by filing pleadings which are patently false. She has filed more than 18 sets of papers, pleadings, and motions in this case since this court dismissed this case for failure to serve.
3. This latest motion for rehearing based upon allegedly "newly discovered evidence" (§ 3 of the motion) contains nothing new. Indeed, Petitioner was given ample opportunity to present evidence concerning the reasons why she needed more time to complete service, *and never did so*, despite warnings from this Court. A motion for relief from an order based upon "new evidence" under Florida Rule of Civil Procedure 1.540(b) is only proper if the evidence could not have been discovered by due diligence. "As a general rule, courts should

look with disfavor upon applications for new trial based upon newly discovered evidence.” Brown v. McMillian, 737 So. 2d 570, 571 (Fla. 1st DCA 1999)(holding that it is the movant's burden under Rule 1.540(b) to establish the exercise of due diligence and that it is not sufficient to merely show that the evidence was not known or discovered by counsel prior to trial; “rather, the movant must make his or her vigilance apparent”); *see also* King v. Harrington, 411 So.2d 912, 915 (Fla. 2d DCA 1982) (“The party applying must make his vigilance apparent; for if it is left even doubtful that he knew of the evidence, or that he might, but for the negligence, have known of and produced it, he will not succeed in his application”). If the motion for relief from judgment “does not set forth a basis for relief on its face, then an evidentiary hearing is unnecessary, the time and expense of needless litigation is avoided, and the policy of preserving the finality of judgments is enhanced.” *See* Freemon v. Deutsche Bank Trust Company Americas, 46 So. 3d 1202, 1204 (Fla. 4th DCA 2010).

4. The affidavits submitted by the Petitioner in support of the motion are from the process server she retained and her own attorney- *evidence that was always readily available*. If Petitioner or her attorneys felt that the personal representative was “actively avoiding service” as she now contends, she could have brought that to the attention of the Court at the November 11 hearing, the December 17, 2013 hearing, the March 18, 2014 hearing, or at any point in between. Yet, she never did so. This is because the allegations are untrue. Petitioner grossly distorts the facts in an effort to accuse the undersigned counsel of misconduct as a part of a last effort to place blame on others. The Motion for Relief from Order should be denied without a hearing because the alleged “new evidence” is not new at all and could have been presented by Petitioner prior to the hearing on March 18, 2014 and this Court’s Order.

5. The Motion for Relief should also be denied because the facts alleged in the motion are belied and contradicted by Petitioner's own affidavits. In particular,

(a) Florida Probate Rule 5.025 required that the Amended Petition filed in this matter be served by Formal Notice. Florida Probate Rule 5.040 provides that service by Formal Notice can be served upon the attorney for a party (in this case the undersigned counsel as attorney for the personal representative). Petitioner again makes the false claim that the undersigned counsel refused to accept service. There is absolutely no truth to this allegation. Petitioner presents no evidence to support the claim. In fact, the email which Petitioner attaches to the affidavit of Kenneth Manney completely contradicts this point. In the email dated August 27, 2013 (attached to Mr. Manney's affidavit), the undersigned counsel informed Petitioner's counsel that he could be served in his office. Mr. Manney was informed that counsel would be in the "office all week except for Wednesday". Service was never attempted on the undersigned counsel. Instead, the record reflects that Petitioner continued her pattern of delay and dilatory tactics by terminating and refusing to cooperate with her attorneys.

(b) Consistent with her pattern in this case of making false claims,¹ Petitioner also claims that David Baum's attorney, Richard Bennett, called her process server, Ronald Kostin, with a purported new matter as a "decoy" to obtain the make and model of her process server's car so that David Baum could avoid service. The motion attaches an affidavit from the process server which provides this opinion. It is clear that Mr. Kostin's opinion is based upon the false

¹ As this Court may recall, Petitioner initially claimed in her Petition and Amended Petition in this case that she was never served with Notice of Administration and Notice to Creditors. At the December 18, 2013 hearing, she then admitted that she was served because she believed it would benefit her legal position. At the recent hearing on March 18, 2014, Teresa Hoffman (her new counsel) retreated to the prior position and again claimed that Petitioner was never served with Notice of Administration. These vacillating positions are indicative of Petitioner's abuse of the system and willingness to manipulate the truth.

assumption and speculation that there was no matter which required service. Mr. Bennett had, in fact, called Mr. Kostin on October 18, 2013. However, it was not to assist David Baum in any plan to avoid service. Mr. Bennett was assisting David Baum's elderly mother, Liza Baum, in hiring a process server to serve Nina Baum with a "Temporary Order of Protection", which had been entered by the New York Court relating to the harassment and abuse at her home in New York (which included attempts to break into her mother's home and severing her mother's utility cables). On the very day Mr. Kostin says he received the call from Richard Bennett, Nina Baum was served with the "Temporary Order of Protection". Nina Baum was served at the Melbourne Civic Theater, which is the very location Mr. Kostin claims he was requested to serve in the "decoy" matter. The Affidavit of Service and papers served on Nina Baum are attached as Exhibit "A". There was no "decoy" to "avoid service" as Mr. Kostin claims/surmises. Nina Baum was the person to be served. Nina Baum undoubtedly never told him, or her own counsel, that she was served with papers that day from the New York proceedings leading to yet another false filing.

As a final point, all of the activity alleged in Mr. Kostin's affidavit occurred more than a month before the November 13, 2013 hearing in which the Court set deadlines for completing service. The undersigned counsel and this court were never notified that there was a problem with service at any time before or after the November 11, 2013 hearing. These issues were not even mentioned at the March 18, 2014 hearing.

6. In sum, this Court should deny the Motion for Relief from Order without a hearing based upon the fact that it is legally or factually inadequate. Petitioner has presented no "new evidence" which could not have been discovered with due diligence prior to the last hearing. Further, the factual allegations presented do not support a claim sufficient to set aside

this Court's prior orders or require an evidentiary hearing. None of the allegedly new evidence submitted explains why Petitioner failed to take the simple steps of serving the personal representative's attorney. As explained by the Court in its order, Petitioner wholly failed to show why her failure to serve and comply with the Court's orders was anything other than her own dilatory behavior and stall tactics.

I CERTIFY that on May 2, 2014, a copy of the foregoing was furnished by e-mail to Teresa Abood Hoffman, Esq., Law Office of Hoffman & Hoffman, P.A., 848 Brickell Ave., Suite 810, Miami, FL 33131, Eservice@hoffmanpa.com, Teresa@hoffmanpa.com, Christina@hoffmanpa.com, William E. Boyes, Esq., 3300 PGA Boulevard, Suite 600, Palm Beach Gardens, FL 33410, bboyes@boyesandfarina.com, asabocik@boyesandfarina.com, czill@boyesandfarina.com, David H. Jacoby, Esq. David H. Jacoby, P.A., 2111 Dairy Road, Melbourne, FL 32904, d.jacoby@davidhjacobypa.com, j.bentley@davidhjacobypa.com and Wayne Alder, Esq., Becker & Poliakoff, PA, 625 N. Flagler Dr., 7th Floor, West Palm Beach, FL 33401, walder@BPLegal.com, abourget@BPLegal.com.

/s/ William T. Hennessey III
William T. Hennessey III
Florida Bar Number: 0104809
GUNSTER YOAKLEY & STEWART, P.A.
777 South Flagler Drive, Suite 500E
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E-Mail: whennessey@gunster.com
Secondary E-Mail: dcarr@gunster.com
Secondary E-Mail: eservice@gunster.com

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FAMILY COURT
STATE OF NEW YORK
COUNTY OF Queens:

RETURN DATE: 2-14-14
PART CVO-B
DOCKET NO. 0-11471-13

I, Peggy Girard being duly sworn, depose and say
(Name of Person Making Service)

YOU
MUST
Complete
This
Section

1. That I am at least 18 years of age and not a party to the above action, and reside at:
535 Fernwood Ave NW Palm Bay Florida Brevard
(Street) (City) 32907 (County) Florida
2. On the 18 day of October, 2013, at 2:53 pm
(specify time)
at 817 E. Strawbridge Ave in the City of Melbourne, County of Brevard
State of Florida I personally served a copy of
☒ Order ☒ Petition ☒ Summons ☐ Order to Show Cause
☐ Objections to Support Magistrate Final Order ☐ Notice of Motion/Affidavit in Support
☐ Rebuttal to Objections to Support Magistrate Final Order ☐ UCCJEA Notice
on Nina Baum, in the above-mentioned action by:

Check All
that Apply

If Papers
SERVED
IN
PERSON
Complete
this Section

3. I personally served Nina Baum copies of the said papers by
(Name of Person Served)
delivering and leaving with Nina Baum at said time and place
(Name / to whom papers given)
4. I knew the person so served to be Nina Baum
(Name / to whom papers given)
a. ☒ the person named in said papers as the (respondent / petitioner in this action)
b. ☐ I believe this person would give the papers to the Respondent / Petitioner. (You must also
mail a copy and complete #6)
5. DESCRIPTION OF PERSON SERVED:
sex: F; color of skin: White; hair: Blonde; approx. age: 49; approx. ht: 5'3"
5'2"; approx. wt. 115; other identifying features: green eyes
She had a small dog with her - long black dress, i.d.
aided by - photo attached - identified herself as Nina Baum

Complete
IF MAIL
SERVICE
ORDERED
BY COURT
or 4b IS
CHECKED

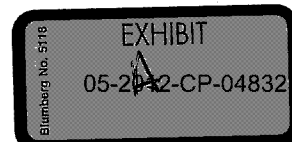
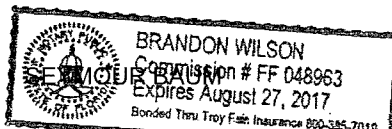
6. Depositing a true copy of said papers upon _____
(Name of Person Served)
enclosed in a post-paid wrapper in the
☐ Post Office ☐ a Branch Post Office ☐ a Post Office Box
regularly maintained by the United States government at _____
County of _____, State of New York,
directed to _____
(Address papers mailed to)
☐ the residence of said _____
OR (Person papers mailed to)
☐ the address within the State designated by (him)(her) to receive communication by mail.

YOU
MUST
Complete
This
Section

Sworn to before me this

22nd day of October, 2013
Brandon Wilson
(Notary Public)

Peggy Girard
(Signature / Person Serving)





Return Date 2-14-14
PART CVO-B
Docket:
O-11471-B

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

GF2 8/2002

In the Matter of a **Family Offense** Proceeding

File #: 134173

Docket #: O-11471-13

Liza Baum,

Petitioner,

SUMMONS

- against -

Nina Anneen Baum,

Respondent.

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To: Nina Anneen Baum
(Address Unknown)

A petition under Article 8 of the Family Court Act having been filed with this Court, and annexed hereto

YOU ARE HEREBY SUMMONED to appear before this court on

Date/Time: February 14, 2014 at 9:00 AM
Purpose: Return of Process
Part: CVO-B
Floor/Room: Floor 4/Room 460
Presiding: JANE A. MCGRADY, Referee
Location: Queens County
151-20 Jamaica Avenue
Jamaica, NY 11432

to answer the petition and to be dealt with in accordance with the Family Court Act.

On your failure to appear as herein directed, a warrant may be issued for your arrest.



Dated: October 15, 2013

Vaunda L. Strachan, Clerk of Court

NOTICE: Family Court §154(c) provides that petitions brought pursuant to Article 4, 5, 6, 8 and 10 of the Family Court Act, in which an order of protection is sought or in which a violation of an order of protection is alleged, may be served outside the State of New York upon a Respondent who is not a resident or domiciliary of the State of New York. If no other grounds for obtaining personal jurisdiction over the Respondent exist aside from the application of this provision, the exercise of personal jurisdiction over the respondent is limited to the issue of the request for, or alleged violation of, the order of protection. Where the Respondent has been served with this summons and petition does not appear, the Family Court may proceed to a hearing with respect to issuance or enforcement of the order of protection.

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

In the Matter of a **Family Offense Proceeding****File #:** 134173**Docket #:** O-11471-13**Liza Baum,**

Petitioner,

**FAMILY OFFENSE
PETITION**

- against -

Nina Anneen Baum,Respondent.

TO THE FAMILY COURT:

The undersigned Petitioner respectfully states that:

I, Liza Baum reside at¹ 208-10 Union Turnpike, Bayside, NY 11364.

The Respondent, Nina Anneen Baum resides at (Address Unknown).

The Respondent and I are related in the following way: I am the mother of the Respondent.

The Respondent committed the following family offenses against me and/or my children which constitute attempted assault, assault in the second or third degree, aggravated harassment in the second degree, harassment in the first or second degree, disorderly conduct, menacing in the second or third degree, reckless endangerment, stalking, criminal mischief, sexual abuse in the second or third degree², sexual misconduct, forcible touching, strangulation, and criminal obstruction of breathing or circulation.

The most recent incident was...Petitioner states: "Approximately June 7, 2013...Received numerous calls throughout the day and night, and months prior. In one call, she called me evil. In another call, Nina left message: 'I know that you don't ever want to see me again.' May 8, 2013...Nina tried to enter my house thru the back window of my house; She severed utility wires on my property and tried to open my front door. Nina called the Police to my home, causing great distress. I told them I was all right, and didn't want to see her or have any contact with her. May 9, 2013...Nina returned to my house several times throughout the day, including parking in my driveway and blocking my car. On 5-16-13 Nina returned again at around 10 pm and put something in my mailbox. Throughout all these times, she would peek in the window and walk about the property. On May 8, 2013, she remained in front of my house until the next morning. She also threatened my son David, saying if he didn't pay her expenses, she would come to my home. My daughter is a convicted felon."

MOST SERIOUS INCIDENT...Petitioner states: "May 8, 2013...Nina appeared to be

¹If your health or safety or that of your child or children would be put at risk by disclosure of your address or other identifying information, you may apply to the Court for an address confidentiality order by submitting General Form GF-21, which is available on-line at www.nycourts.gov. See Family Court Act § 154-b.

²Where victim is incapable of consent for reason other than being under age 17 [Penal Law § 130.60(1)].

concealing something, and sometime after I found numerous utility wires severed. Although Nina has been estranged for many years, except for sporadic visits which were unwelcome, she called the Police to my home in order to alarm and annoy me."

I have filed a criminal complaint concerning these incidents: The Petitioner has a copy of the Report.

I have no children under 18 and there are no other children living in my home.

The following court cases are pending between me and the Respondent: Petitioner states: "Nina is suing me in Florida for a matter that I have no interest in, to further annoy me."

The Respondent has the following criminal convictions: Petitioner states: "Convicted felon.

I have not made any previous application to any court or judge for the relief requested in this petition.

WHEREFORE, Petitioner respectfully requests this Court to:

- adjudge the Respondent to have committed the family offenses alleged;
- enter an order of protection, specifying conditions of behavior to be observed by the Respondent in accordance with Section 842 of the Family Court Act:
 - **Petitioner Requests:**
 - **Exclude the Respondent from the Petitioner's home;**
 - **Do not menace, harass or assault the Petitioner;**
 - **No e-mails, instant messaging, text messages to the Petitioner;**
 - **No phone calls or beeper contact;**
 - **Stay away from: The Petitioner and her home;**
 - **Adjudge that the Respondent committed the following family offenses:**
 - **Stalking and criminal mischief;**
- order such other and further relief as the Court deems just and proper.

Dated: June 11, 2013



Liza Baum, Petitioner

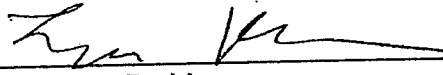
VERIFICATION

STATE OF NEW YORK)

:ss:

COUNTY OF QUEENS)

Liza Baum being duly sworn, says that he/she is the Petitioner in the above-named proceeding and that the foregoing petition is true to his/her own knowledge, except as to matters stated to be alleged on information and belief and as to those matters he/she believes them to be true.


Liza Baum, Petitioner

Sworn to before me on
June 11, 2013


Chief Clerk or Designee
Notary Public

ORI No: NY040023J
Order No: 2013-007751
NYSID No: _____

At a term of the Family Court of the State of New York,
held in and for the County of Queens, at Queens County 151-20
Jamaica Avenue, Jamaica, NY 11432, on October 15, 2013

PRESENT: Francine Seiden, Court Attorney Referee

In the Matter of a FAMILY OFFENSE Proceeding

Liza Baum (DOB: 07/23/1933),
Petitioner,

- against -

Nina Anneen Baum (DOB: 05/02/1964),
Respondent.

File # 134173

Docket # O-11471-13

Temporary Order of Protection

Ex Parte

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CRIMINAL CONTEMPT, AND/OR MAY SUBJECT YOU TO FAMILY COURT PROSECUTION AND INCARCERATION FOR UP TO SIX MONTHS FOR CONTEMPT OF COURT. IF YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND THEN CONTINUES IN EFFECT UNTIL A NEW DATE SET BY THE COURT.

A petition under Article 8 of the Family Court Act, having been filed on June 11, 2013 in this Court and good cause having been shown, and Nina Anneen Baum having been not present in Court,

NOW, THEREFORE, IT IS HEREBY ORDERED that Nina Anneen Baum (DOB:05/02/1964) observe the following conditions of behavior:

[01] Stay away from:

[A] Liza Baum (DOB: 07/23/1933);

[B] the home of Liza Baum (DOB: 07/23/1933);

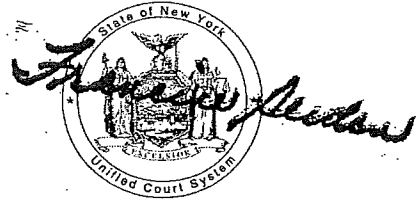
[14] Refrain from communication or any other contact by mail, telephone, e-mail, voice-mail or other electronic or any other means with Liza Baum (DOB: 07/23/1933);

[02] Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or circulation, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats or any criminal offense against Liza Baum (DOB: 07/23/1933);

It is further ordered that this temporary order of protection shall remain in force until and including February 14, 2014, but if you fail to appear in court on this date, the order may be extended and continue in effect until a new date set by the Court.

Dated: October 15, 2013

ENTER



Francine Seiden, Court Attorney Referee

The Family Court Act provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties authorizes, and sometimes requires such officer to arrest a person who is alleged to have violated its terms and to bring him or her before the court to face penalties authorized by law.

Federal law requires that this order is effective outside, as well as inside, New York State. It must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if the person restrained by the order is an intimate partner of the protected party and has or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect due process rights (18 U.S.C §§ 2265, 2266).

It is a federal crime to:

- cross state lines to violate this order or to stalk, harass or commit domestic violence against an intimate partner or family member;
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition while this Order remains in effect (Note: there is a limited exception for military or law enforcement officers but only while they are on duty) ; and
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition after a conviction of a domestic violence-related crime involving the use or attempted use of physical force or a deadly weapon against an intimate partner or family member, even after this Order has expired (18 U.S.C. §§ 922(g)(8), 922(g)(9), 2261, 2261A, 2262).

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check Applicable Box(es):

- ☐ Party against whom order was issued was advised in Court of issuance and contents of Order
- ☐ Order personally served in Court upon party against whom order was issued
- ☒ Service directed by other means[specify]: Petitioner to Arrange
- ☐ [Modifications or extensions only]: Order mailed on [specify date and to whom mailed]:
- ☐ Warrant issued for party against whom order was issued[specify date]: _____
- ☐ ADDITIONAL SERVICE INFORMATION [specify]: _____

This is to certify that this document is a true copy of a Temporary Order Of Protection issued by the Family Court of the State of New York and contained in the official record of the Family Court within the City of New York, for the County of Queens.

Vaunda L. Strachan Clerk of Court

Dated: October 15, 2013