

1 IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL
2 CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA

3 IN THE PROBATE DIVISION
4 CASE NO.: 05-2012-CP-048323-XXXX-XX

5 IN RE: ESTATE OF SEYMOUR BAUM,

6 Deceased,
7 _____/

8 ANNEEN NINA GLORIA BAUM,

9 Petitioner,

10 v.

11 DAVID A. BAUM, individually and as Personal
12 Representative of the Estate of Seymour Baum;
13 BRUCE M. BAUM, LIZA CIOLKOWSKI BAUM,
14 KEVIN P. MARKEY, CHABAD OF SPACE COAST,
15 INC., a/k/a CHABAD JEWISH COMMUNITY CENTER
16 a/k/a CHABAD OF SPACE COAST AND TREASURE COAST
17 a Florida not for profit corporation, THE WOMAN'S
18 ZIONIST ORGANIZATION OF AMERICA, INC., a
19 foreign not for profit corporation, d/b/a HADASSAH,
20 and FRIENDS of ISRAEL DEFENSE FORCES, INC., a
21 Florida not for profit corporation,

22 Defendants.
23 _____/

24 HEARING BEFORE: HONORABLE JOHN HARRIS

25 DATE TAKEN: December 17, 2013

TIME: 1:00 p.m. to 4:20 p.m.

PLACE TAKEN: Moore Justice Center
2825 Judge Fran Jamieson Way
Viera, Florida

REPORTED BY: LORI W. PYRON, FPR
Notary Public

1 is also here with me today.

2 THE COURT: Very good.

3 MR. HENNESSEY: Do you want to do any other
4 introductions, or would you like me to get right
5 to it and jump in?

6 THE COURT: I'm ready to get right to it.

7 MR. HENNESSEY: Okay. Thank you, Your Honor.

8 MR. GURALNICK: Your Honor, I'm sorry, may I
9 make a brief --

10 THE COURT: Absolutely. Yes, sir.

11 MR. GURALNICK Good afternoon. I'm Mark
12 Guralnick, appearing with Nina Baum on behalf of
13 Nina Baum. And I'm very mindful of the
14 rejections, just a day ago, of my late breaking
15 -- moving for a continuance.

16 THE COURT: Yes, sir.

17 MR. GURALNICK: Motion to Withdraw. The
18 Court had previously taken under advisement, or
19 deferred ruling on my Motion to Withdraw.

20 I did want to reiterate for the record
21 that I am somewhat paralyzed today in defending
22 this petition again, because of the break down in
23 communications between myself and my client,
24 because of -- was a very scant file, because I
25 was never given a file, other than what I can

1 access online through the Court, but I don't have
2 the benefit of prior orders filed, which
3 according to him is in my client's hands, and
4 according to my client, it's in his hands.

5 And as you can see, just by looking at the
6 two tables here, I am in a much smaller position,
7 so to speak, then they are. And while I'm very
8 mindful of the Court's calendar, and I'm not a
9 novice to these kind of proceedings, and I don't
10 want to obstruct or delay in any manner, I'm
11 cautioned by the fact that there are essential
12 due process issues here for Ms. Baum.

13 There are conflict of interest issues that
14 arrived, ethical issues that have arisen between
15 me and her, and there are considerations that are
16 frankly limiting my ability, in good faith, to go
17 forward.

18 And I would ask the Court to consider, before
19 proceeding, my Motion to Withdraw. And if not,
20 then consider it immediately thereafter.

21 THE COURT: All right. Thank you, sir.
22 Do you want to respond to that?

23 MR. HENNESSEY: Your Honor, this Court has
24 had this matter on the calendar for several
25 months now. It was agreed to previously after

1 many, many weeks of wrangling for a hearing date.
2 You made it very clear on November 11th, when we
3 stood before you, that this case would go forward
4 on December 17th, and Mr. Guralnick had appeared
5 at that hearing on behalf of Nina Baum.

6 It was only two weeks later that he then
7 sought to withdraw on the basis that his client
8 -- like the last set of lawyers, was facing a
9 situation where his client was being
10 uncommunicative in not cooperating in her
11 prosecution of this case.

12 And Your Honor, I would ask that you allow us
13 to proceed today, and that you deny his Motion to
14 Withdraw for the purposes of our hearing today,
15 that you reconsider it after the hearing, but
16 that we be permitted to proceed today on the
17 basis that everybody here has had fair warning
18 on this.

19 And if Mr. Guralnick were to withdraw at this
20 point, or you were to grant that withdraw, which
21 you've already since denied, we might face an
22 argument where Nina would attempt to say, well,
23 golly, I don't have a lawyer today, and that
24 would just be unfair to us -- given the
25 circumstances, given the fact that she's the



1 one that's contributed to all of this. Thank ✓
2 you, Your Honor.

3 THE COURT: Yes, sir. For the reasons we've
4 already talked about in the previous hearings,
5 I'm going to deny the Motion to Continue, and the
6 Motion to Withdraw, at this point.

7 I might be inclined to take up that Motion to
8 Withdraw at the conclusion of the hearing today.

9 MR. HENNESSEY: Thank you, Your Honor.
10 Your Honor, Seymour Baum died in June of 2012.
11 My client, David Baum, is the decedent's son.
12 Nina Baum is the decedent's daughter.

13 We're going to be discussing several claims,
14 which Nina filed against the estate today, and --

15 THE COURT: There's two claims, right?

16 MR. HENNESSEY: There are two claims, and
17 then there's a Will contest. And so there are
18 two creditor claims.

19 The first creditor claim is for support.
20 In promised support by the decedent, where she
21 alleges that the decedent promised to support
22 her. She's seeking some 8 million dollars in
23 damages for that claim.

24 The second claim is for funeral expenses,
25 which she alleges she incurred in the amount of

1 these issues. And ultimately, Your Honor, the
2 courts have said that there's no question that
3 these statutes apply.

4 If a creditor wants to file a creditor claim,
5 they have to follow the procedural steps of our
6 probate code. So in this case, Your Honor, when
7 Ms. Baum filed her creditor claim, if she
8 intended to assert, as she's doing now, that she
9 was a reasonably ascertainable creditor, she had
10 thirty days after we sent her that notice to file
11 the Petition for Extension of Time, and she never
12 did. So, she's time barred. Thank you, Your
13 Honor.

14 MR. GURALNICK: Just a quick response, one
15 second?

16 THE COURT: Yeah, go ahead.

17 MR. GURALNICK: There's no need to seek an
18 extension of time if you don't need an extension
19 of time.

20 If she was served by personal service, and
21 that's the first notice she got of it, and timely
22 filed her claim after that, then there is no
23 extension of time necessary, regardless of
24 whatever they serve on her.

25 THE COURT: Mr. Guralnick, any argument you'd

✓

1 like to present at this time on your Motion to
2 Withdraw?

3 MR. GURALNICK: Yes, I would, Your Honor.
4 At this point, I think for having been fired one
5 week after I was retained, making unsuccessful
6 attempts to resurrect a relationship, I think
7 I've more than contributed my duty to this case,
8 now onboard for more than a month.

9 I think there is a lingering breakdown in
10 communications in positions between my client
11 and myself. It's a burden that has become
12 insurmountable for me, at this point, and it
13 would not serve anybody's interest for me to
14 remain onboard in this case.

15 I've shown Counsel a proposed form of a
16 order permitting me to withdraw on each case, and
17 with the Court's indulgence, and incorporating
18 what I've previously put in my moving papers, I
19 would ask the Court to please reconsider my
20 application.

21 THE COURT: Thank you, sir. Ms. Baum, do
22 you understand that motion?

23 MS. BAUM: Not exactly.

24 THE COURT: Your Attorney is asking to
25 withdraw as your attorney of record in this case,

1 citing basically irreconcilable differences, or a
2 conflict of interest in continuing to represent
3 you. Do you have any objection at this time to
4 him withdrawing as your counsel in this case? ✓

5 MS. BAUM: Well, I need a lawyer.

6 THE COURT: Right.

7 MS. BAUM: Because in addition to needing
8 a lawyer, I -- it was very confusing to me.

9 THE COURT: Do you need some time to
10 retain a new attorney?

11 MS. BAUM: Well, it's a little difficult
12 because so many attorneys that I've contacted
13 have told me that -- what did they say, I'm black
14 listed, conflict, because apparently David Baum
15 has contacted over twenty lawyers in Brevard
16 County.

17 THE COURT: So you're having a difficult time
18 finding an attorney?

19 MS. BAUM: Yes, and then what happened
20 with Mr. Guralnick -- I didn't know he was
21 representing me because I didn't get the retainer
22 back. And within that month -- within that week,
23 I panicked and I just tried to look for another
24 lawyer because I even marked up the retainer, and
25 I didn't know that he accepted it and signed it.

1 I had no idea he was my lawyer.

2 So I tried to look for another lawyer, and
3 then I got a letter from him right after I was
4 going to retain someone else.

5 But this whole confusing conflict, coupled --
6 some of it's my fault because of my injury I have
7 speech problems, and my memory is good. I just
8 don't recall everything all the time right away,
9 but eventually I do, but I need a lawyer
10 desperately.

11 And I mean, I can't force someone to
12 represent me. I mean, he already said that --
13 I mean, unfortunately, today he should have
14 had gotten me more prepared, I guess. I
15 don't know. I can't force someone to do
16 something. I need a lawyer, because I don't
17 know how get out of this position.

18 THE COURT: Okay. I understand.

19 MR. JACOBY: Your Honor, may I just --

20 THE COURT: We'll get to you in a second.

21 MS. BAUM: I'm so sorry.

22 THE COURT: You don't have any reason at
23 all to apologize, ma'am.

24 Mr. Hennessey, do you have anything to
25 say on the Motion to Withdraw?

1 MR. HENNESSEY: Just real briefly, Your
2 Honor. We had two other motions that were
3 scheduled for today.

4 THE COURT: Right.

5 MR. HENNESSEY: One of them is pretty
6 intensive legally, but the other two were fairly
7 simple. They dealt with the failure to serve.

8 You had directed Nina Baum to serve the
9 remaining parties in both the Will contest and
10 the Trust contest by last Friday.

11 And so before -- even if we don't get to the
12 legal argument on the rest of that claims that
13 are pending, we have the issue here where we have
14 claims that have not been served, and you told ✓
15 Nina that parties would be dropped and removed,
16 if the complaint in the civil case and the Will
17 contest were not served.

18 MR. GURALNICK: Can I comment just on that?

19 THE COURT: Yes.

20 MR. GURALNICK: Because I investigated that.
21 We made immediate efforts after our last
22 conference with the Court to serve those parties,
23 and prepare the summons and the complaints for
24 submissions to the sheriff, they have never been
25 served.

1 Unfortunately, we learned in the process
2 that all the summons have expired. Prior counsel
3 apparently had made no effort. The summons that
4 were issued by the Clerk could not be accepted by
5 the sheriff, because there are outdated, at this
6 point.

7 So we went through the process, and we are
8 somewhere in that process now of obtaining the
9 alias summons and serving it through the sheriff.

10 That paperwork is in the file and available
11 to whomever will take over for me. It's in the
12 works, I paid for it.

13 MS. BAUM: Your Honor, I forgot something.

14 THE COURT: Okay.

15 MS. BAUM: The other thing is, the last few
16 lawyers I contacted, somehow -- after I spoke to
17 them, they wanted my case. One, I even signed a
18 retainer with, but then all of the sudden they
19 got bombarded by Mr. Hennessey with all these
20 awful things about me.

21 Like, horrible, horrible things, and I
22 wouldn't want a client like that either, and
23 told them about motions that I'm unfamiliar
24 with, about sanctions. And one said that it
25 would be -- what did he say? It looks like not

1 only are they taking all your money -- he said
2 something about going for the jugular.

3 It was really awful. So, he said --

4 MR. GURALNICK: -- I don't mean to interrupt
5 here, but I think in light of the circumstances
6 maybe Ms. Baum, if the Court would be so
7 indulgent, and if Counsel -- especially during
8 the holiday season, and the obvious difficulty
9 she's been having retaining counsel, could afford
10 her sixty days. I think that would be a
11 reasonable period of time given where she lives
12 and where we are.

13 THE COURT: That's sort of the number I
14 had in mind.

15 MS. BAUM: Your Honor, I had -- on
16 April 26th.

17 THE COURT: Right.

18 MS. BAUM: Upon being served with the
19 papers, all the little money I had was taken
20 away. I have nothing. I took out a loan
21 on my medical case. I have no money. I have
22 nowhere to live. This can -- I can go and on
23 and on. It has been awful, beyond awful. I
24 don't even know how I've survived until now, but
25 it's so bad.

1 THE COURT: Okay. Well, I understand, ma'am.

2 Mr. Boyes, do you have anything on the Motion
3 to Withdraw?

4 MR. BOYES: I have no objection.

5 THE COURT: Mr. Jacoby, you have something?

6 MR. JACOBY: Yes, Your Honor. Your Honor,
7 my only objection is that we were right in the
8 middle her deposition. We spent eight hours,
9 basically, spinning our wheels.

10 We were just getting to, what I consider
11 to be the meat of the testimony, that hopefully
12 was the basis of Ms. Baum's claims in this
13 matter, and it seems like we're going to be kind
14 of stuck for quite a long time, which I believe
15 is prejudicial to everyone in this manner.

16 It seems like Ms. Baum is taking the position
17 almost like a Defendant, instead of Plaintiff,
18 when the Plaintiff is supposed to be prosecuting
19 her claim. And there's no discovery response.
20 The deposition just spun for hours, Your Honor,
21 of simple questions like your name. Simple
22 questions, like, are you on any medication, and
23 that took like two hours.

24 And so we were just about to get into the
25 meat of what -- you know, the basis of the actual

1 complaint, and my concern is that if
2 Mr. Guralnick gets out of this case, and the
3 Court grants the sixty days, and then we don't
4 get to proceed with the deposition, none of the
5 discovery will proceed, and it will just
6 languish, which is unusual if it's -- when the
7 Plaintiff -- we're talking about the Plaintiff
8 here, in the one case -- to sit there, and it
9 just seems like it's prejudicial to the estate
10 and it's prejudicial to the estate's
11 beneficiaries.

12 I represent a trinity, and we're waiting --
13 we can't get -- fulfill Mr. Baum's wishes to
14 produce a chabad center in Brevard County, and
15 because of Ms. Baum's claim, everything is
16 sitting here. And she's supposed to be the
17 Plaintiff, and we need to continue to move this
18 case forward. Thank you, Your Honor.

19 MR. GURALNICK: Your Honor, just briefly.
20 I fully appreciate that circumstance. I was in
21 the same deposition, and should say burdened by
22 it as well. It would be unduly burdensome and
23 unfruitful to keep me onboard while we're
24 conflicted and unable to produce the kind of
25 information that would assist the Defendants.

1 I believe giving Ms. Baum the necessary time
2 to retain counsel, perhaps fixing a deadline
3 thereafter for the deposition to be completed,
4 and making it clear that those are the rules of
5 the Court, I think would be the much more
6 productive way to go. I can't contribute much to
7 this case, at this point, and I fear that another
8 eight hours of the same is only going to burden
9 me.

10 THE COURT: Okay. I understand, sir.
11 Mr. Hennessey, last word. Do you have anything
12 else?

13 MR. HENNESSEY: Only, Your Honor, going
14 back to the Motions to Dismiss that are pending
15 today, service issues, Mr. Guralnick argued
16 alias summons, and those are pretty easy. I can
17 go down to the courthouse and ask the clerk for
18 an alias summons, and have another summons issued
19 and served.

20 You exercised your discretion in the case
21 once already to allow them additional time.
22 This case has now been pending -- or these cases
23 have been pending since June, and still haven't
24 been served.

25 We're well beyond a hundred and twenty days,

1 and when we came before you last time we were
2 already at 157, I believe it was, and you
3 gave them an additional thirty days.

4 And we're still, to this day, not served,
5 including my client as the personal
6 representative of the estate, even in the action
7 of the Will contest.

8 And so you indicated that if they didn't
9 serve within that timeframe that the parties
10 would be dropped.

11 THE COURT: And that's the order that's
12 in the case right now, right?

13 MR. HENNESSEY: Yes.

14 THE COURT: That's where we are.

15 MR. HENNESSEY: Okay.

16 MR. GURALNICK: We're all put on notice,
17 note that in getting those summons, just about
18 every single party to be served is David Baum,
19 because he's the personal representative of the
20 estate, or the resident agent of the party.

21 In each case, he's the person. All the
22 summons are going to the same exact address, or
23 two addresses to David Baum. There's no
24 prejudice. I mean, we're talking about a
25 technical informality.

1 THE COURT: Well, you need to file them,
2 and whatever comes after -- you may need to file
3 a motion to address that later on, but I entered
4 a ruling last time, which I think the 17th was
5 the deadline, and it wasn't met.

6 So, that order is going to kind of speak for
7 itself, at this point. If anybody needs relief
8 from that, they can file an motion for relief
9 from that order, but going back to the question
10 I had at the beginning of the case. I'm frankly
11 not sure whose burden it was today to establish
12 Ms. Baum's status as a reasonably ascertainable
13 creditor.

14 But frankly, I don't think it really matters
15 based on the evidence and the testimony that was
16 presented here today.

17 I find that Nina Baum wholly failed to
18 establish her identity as a reasonably
19 ascertainable creditor of her father's estate.
20 Not as a beneficiary, but as a creditor of the
21 estate; i.e., for the outstanding funeral
22 expenses, or for the support maintenance claim.

23 At the same time I'm finding that Mr. Baum
24 was able to show -- not just by a greater weight
25 of the evidence, but by clear and convincing

1 evidence, that she was not a potential creditor
2 of Seymour Baum's estate, or that her identity
3 as a potential creditor was not reasonably
4 ascertainable to him under the facts and
5 circumstances of the case. I think that's
6 probably a more accurate way to put that.

7 So as such, there was no requirement that she
8 receive actual notice, or personal service of
9 notice to creditors. The fact that that was
10 done, doesn't really matter.

11 Publication of the notice on February 14th
12 is legally sufficient, making the deadline to
13 file a creditor's claim May 14th of this year.

14 The claims were not timely filed whether by
15 six days, six hours, or six months. It doesn't
16 really matter. There was no extension of the time
17 requested or granted.

18 As a result, the petition to strike the
19 claims is well taken, and is going to be granted.
20 I'm also going to grant the Motion to Withdraw
21 as Counsel. That order will be effective once
22 you guys have agreed on the language of the order
23 striking the creditor's claim.

24 So, I'm going to ask Mr. Hennessey to
25 draft that order, and work out the language

1 with Mr. Guralnick. Once that's done, I will
2 sign the order. And, at that point, I will sign
3 the order allowing you to withdraw.

4 The other issues, we're not going to have
5 time to get today, including the Motion to
6 Dismiss.

7 MR. GURALNICK: Your Honor, is there going to
8 be a time limit on my client finding new counsel?

9 THE COURT: Well, she's not a personal
10 representative. She's not required to be
11 represented by counsel. She certainly should
12 have counsel. I'm not going to delay this case
13 more than sixty days.

14 So, if you are going to get an attorney, you
15 need to do it within sixty days from now, not
16 from the order relieving Mr. Guralnick. It's
17 sixty days from today.

18 If you don't have an attorney by then, the
19 case is going to get cranked up and start then,
20 and you'll be representing yourself in this case.

21 So, it's certainly to your advantage to get
22 another skilled attorney, like you have here, to
23 help you out going forward. So, don't waste any
24 time. You need to get on that right away, and
25 start looking for a lawyer.

1 All right, Mr. Hennessey, get me the
2 proposed order, please?

3 MR. HENNESSEY: Yes, Your Honor.

4 MR. GURALNICK: Thank you, Your Honor.

5 THE COURT: You folks have a good day.

6 (The proceedings were concluded at 4:20 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25