

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION: IA
50-2023-MH-001072-XXXX-MB
No.: 50-2023-GA-000245-XXXX-MB

In RE Patricia Sahm,

An alleged incapacitated person,

EMERGENCY MOTION:
OPPOSITION TO MOTION TO STRIKE

and

IN RE: Guardianship of Patricia A. Sahm,

Ward,`

EMERGENCY MOTION:
OPPOSITION TO MOTION TO STRIKE

COMES NOW Kevin R. Hall, an interested person herein, who respectfully moves this Court for such other relief as follows:

1. I am an interested person under law as Manager of Bernstein Family Realty, LLC (BFR) with direct, immediate, non-contingent interests and rights that are affected by the proceedings and Judgment herein.

2. Respectfully, the threshold issue before this Court is the lack of any proper Guardianship and authority for either Charles Revard to act for Pat Sahm and the Kitroser firm to act for Charles Revard on behalf of Pat Sahm.
3. No proper Guardianship, no authority to move to strike and where these very proceedings ongoing for over a year demonstrate my standing and interests in the proceedings by delaying resolution with BFR where I am Manager and damaging the equity interests in the real estate that secure my right to payment under law.
4. Through this fraud on the Court involving the Courts Charlie and the Kitroser firm with Joanna Sahm have been able to silence Pat Sahm as a Witness to the fraud and to settle her own matters which she is capable of doing with proper counsel but instead allowing unnecessary litigation and fees to rack up while Pat Sahm is silenced and not heard when the law is supposed to protect Pat Sahm Sr.
5. Objection is made to any proceeding where Pat Sahm sr is not present.
6. This Court has been expressly aware by email and by filing under DE No. 204 filed 9-11-24 that this Court record has none of the following;;
 - A. No Record of any "Adjudicatory Hearing" to determine capacity as required by law;
 - B. No Record of any fact finding as required by law to determine the

level of incapacity if any with specifics by clear and convincing evidence;

C. No Record of any consideration by the Court (Judge Burton) of alternatives to Guardianship;

D. No Consent by Pat Sahm, Sr. to Guardianship except possibly a limited ETG as shown by the Amber Patwell Answer and Response, not a limited Guardianship, an ETG at best which did not include any express waiver of the statutory right to Appear by Pat Sahm, Sr.

See DE No 204 filed 09/11/2024 EMERGENCY MOTION

CONTINUANCE EXTENSION F/B PRO SE KEVIN R HALL

7. A privileged status as a “party” in a guardianship should not be determined by a race to the courthouse.
8. The whole purpose of a guardianship proceeding is to protect the ward's interests. See *Romano v. Olshen*, 153 So.3d 912, 917–18 (Fla. 4th DCA 2014).
9. Next of kin” and “interested persons” are permitted to participate in incapacity and appointment of guardian determinations because usually they are well situated to act in the ward's best interest. See, 4th DCA *Zelman v. Zelman*, 175 So. 3d 871 (Fla. Dist. Ct. App. 2015).

10. The Zelman family sought relief within the guardianship that directly impacted Lois's marriage, the marital home, and her finances. See, 4th DCA Zelman v. Zelman, 175 So. 3d 871 (Fla. Dist. Ct. App. 2015).
11. The interests are similar to establish standing especially where Pat Sahm Sr expressly asked me several times to appear to participate and protect her.
12. In the guardianship setting, a person's standing to “participate” in a proceeding depends on whether he or she qualifies as an “interested person.” See In re Guardianship of Trost, 100 So.3d 1205, 1210 (Fla. 2d DCA 2012). See, 4th DCA Zelman v. Zelman, 175 So. 3d 871 (Fla. Dist. Ct. App. 2015).
13. Stated generally, “[s]tanding depends on whether a party has a sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected by the outcome of the litigation.” Weiss v. Johansen, 898 So.2d 1009, 1011 (Fla. 4th DCA 2005). See, 4th DCA Zelman v. Zelman, 175 So. 3d 871 (Fla. Dist. Ct. App. 2015).
14. The Supreme Court has characterized standing to sue as a “direct and articulable stake in the outcome of a controversy.” Brown v. Firestone, 382 So.2d 654, 662 (Fla.1980). See, 4th DCA Zelman v. Zelman, 175 So. 3d 871 (Fla. Dist. Ct. App. 2015).
15. By statutorily defining an “interested person” as including any person “who may reasonably be expected to be affected by the outcome of the

proceeding,” the Florida Probate Code, through section 731.201(21), Florida Statutes (2014), sought to “incorporate[] the general standing principles.”

Hayes v. Guardianship of Thompson, 952 So.2d 498, 507–08 (Fla.2006).

See, 4th DCA Zelman v. Zelman, 175 So. 3d 871 (Fla. Dist. Ct. App. 2015).

16.DE 185 TRANSCRIPT of May 13, 2024 Non Evidentiary Hearing

Argument on Standing with Pat Sahm, Sr. called to the proceeding at urging of Kevin R. Hall to protect Pat Sahm, Sr.

17. See DE No. 190 - Transcript of May 23, 2024 MS. SAHM: Yes, good

morning. And I hope your day is starting off well, Your Honor.

THE COURT: Well, I don’t know who all these people are on a closed guardianship proceeding, so I’m a little concerned about -- having a public hearing, we could have just invited everyone in the county, that probably wouldn’t have been a great idea.

MS. SAHM: It’s fine if they’re there.

THE COURT: Okay. Somebody said, tell them you want them there, that’s nothing like free will.

Okay. Good. Thanks. That’s Patty, Patricia Sahm,

18. Florida Supreme Court - **Before a right can be removed from an incapacitated person,** section 744.331(3)(a) requires the guardianship court to appoint a three-member examining committee, of which one member must be a psychiatrist or other physician. . . . **An adjudicatory hearing must then be held, and "the partial or total incapacity of the person must be established by clear and convincing evidence."** § 744.331(5)(c), Fla. Stat. Smith v. Smith, 224 So. 3d 740 (Fla. 2017).
19. **4th District Court of Appeals: Compliance with the requirements of section 744.331 is mandatory and the trial court's failure to adhere to those requirements constitutes reversible error.** Id. at 608-09. See § 744.331(4), Fla. Stat. (2008); see also In re Keene, 343 So. 2d 916, 917 (Fla. 4th DCA 1977) ("Proceedings to determine the competency of a person are generally controlled by statute and where a statute prescribes a certain method of proceeding to make that determination, the statute must be strictly followed.") (citation omitted). An attorney for the person may not waive an adjudicatory hearing when required. See In re Frederick, 508 So. 2d 44, 45 (Fla. 4th DCA 1987). **There is good reason for such a rule. If a person is incompetent, it is the duty of the court to assure that person's protection and his or her autonomy is respected to the greatest extent possible.** See § 744.1012, Fla. Stat. (2008). To permit dismissal of proceedings where a

party is in fact incompetent may endanger that person. On the other hand, without knowing whether the person is actually incompetent, the court could restrict a person's independent ability to deal with his property and place it out of the control of a person who may be completely capacitated. The guardianship statutes and rules should not be used to protect competent persons from their spendthrift ways or to protect their beneficiaries. **An individual who is competent should not be subject to the control of the courts through guardianship proceedings, temporary or plenary.** See, Jasser v. Saadeh, No. 4D10-140 (Fla. Dist. Ct. App. Jul. 18, 2012) 4th DCA **2nd District Court of Appeals citing 4th District Court of Appeals approved by Fla Supreme Court**

20. **“The trial court made these rulings without holding an adjudicatory hearing and without making findings based on clear and convincing evidence that Holmes was incapacitated with respect to the exercise of her right to contract and engage counsel as required by sections 774.331(5) and 774.331(6), Florida Statutes (1999). Moreover, the trial court did not make factual findings with respect to the exact nature and scope of her incapacity as required by these same statutory provisions. We conclude that, under the particular circumstances of this case, this constitutes**

a departure from the essential requirements of law which cannot be remedied on plenary appeal.

21. In *Harmon v. Williams*, 596 So.2d 1139, 1142 (Fla. 2d DCA 1992), approved, 615 So.2d 681 (Fla. 1993), **this court held that a person is presumed competent to contract unless incompetency is established by due process of law.** Cf. *In re Guardianship of Bockmuller*, 602 So.2d 608, 609 (Fla. 2d DCA 1992) (holding right to contract was removed by order determining ward's incapacity). Here, by failing to conduct an adjudicatory hearing before finding that Holmes did not have the capacity to contract and retain counsel of her choice, **the trial court failed to establish Holmes' incapacity by due process of law.** Cf. *In re Fey*, 624 So.2d 770, 772 (Fla. 4th DCA 1993) (holding compliance with requirements of section 744.331 to be mandatory and failure to adhere to those requirements constituted error of fundamental proportions). This requires us to issue the writ and vacate the trial court's order confirming Burchett's appointment as counsel.
- Because Holmes is presumed competent to contract, on remand, the trial court shall permit Holmes to substitute Persse as her counsel of choice pursuant to the written notice of substitution she filed.” See, *Holmes v. Burchett*, 766 So. 2d 387 (Fla. Dist. Ct. App. 2000).

22. Yet virtually all of Pat Sahm's rights have been removed without proper hearing while simultaneously delaying and denying rights to myself and BFR and the Eliot Bernstein family.

23. This Court is reminded the Mental Health petition was filed within days of fraud being exposed in the Bankruptcy Court and the BFR matters were expressly a part of the MH petition and thus my standing is proper.

WHEREFORE, it is respectfully prayed for an Order striking or dismissing the Kitroser and Charlie Revard motion and granting standing to whatever extent there is a valid case and giving leave to rehear the prior motions not properly heard to vacate the Orders of Judge Burton and such other and further relief as may be just and proper.

Dated: November 15, 2024

/s/ **Kevin R. Hall, Pro Se Interested Person**
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CERTIFICATE OF SERVICE

The undersigned further hereby certifies that all parties requiring service were served electronically via the Florida ECourt filing portal on this 14th day of November, 2024.

Dated: November 15, 2024

/s/ Kevin R. Hall, Pro Se Interested Person
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