

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 14-CV-21776-WILLIAMS

BARBARA STONE,  
individually and as next  
friend of HELEN STONE,

Plaintiff,

vs.

JACQUELINE HERTZ;  
BLAIRE LAPIDES; ROY  
LUSTIG; ANGEL CARE  
MANAGEMENT; MICHAEL  
GENDEN; STEPHEN HERTZ;  
RANDY McMORRIS; FRED E.  
GLICKMAN; FRED E. GLICKMAN,  
P.A.; RICK SCOTT, Governor  
of the State of Florida; and  
PAM BONDI, Attorney General  
of the State of Florida,

Defendants.

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**ORDER**

THIS MATTER is before the Court on Plaintiff's Emergency *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause [D.E. 12] and Plaintiff's Motion for Hearing [D.E. 16]. For the reasons stated below, Plaintiff's motions are DENIED.

Plaintiff has filed a *pro se* Verified Complaint challenging the guardianship proceedings in the Probate Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, regarding her 86-year-old mother, Helen Stone [D.E. 2]. Plaintiff has raised several claims, including civil rights violations, violations of the Americans with Disabilities Act, and various tort claims against several Defendants, including her

mother's court-appointed guardians, the guardians' counsel, her own counsel, and the probate judge overseeing the guardianship. *Id.* Plaintiff believes that her mother is being abused and exploited by the court-appointed guardians, and that she has been wrongly prevented from having access to her mother by the guardians. *Id.* Plaintiff also alleges that Miami-Dade Circuit Judge Michael Genden wrongfully entered a "no contact" order preventing Plaintiff from seeing her mother. *Id.* Plaintiff filed an Amended Verified Complaint repeating these allegations on May 28, 2014 [D.E. 10].

That same day, Plaintiff filed an Emergency *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause [D.E. 12]. Specifically, Plaintiff seeks a restraining order removing her mother's guardians, Jacqueline Hertz and Blaire Lapidés, and preventing them from "removing any monies or other assets from any account in which her mother has any interest." *Id.* at ¶ 4. Plaintiff also seeks an order preventing the guardians from "excluding Applicant from unfettered companionship with her mother." *Id.*

To obtain a temporary restraining order, a party must demonstrate: (1) that there is a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threat of injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of relief would serve the public interest. See *Schiavo ex rel. Schindler v. Schiavo*, 430 F.3d 1223, 1225-26 (11th Cir. 2005). A restraining order may be issued without notice to the adverse party only if: specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and the movant's attorney certifies in writing any efforts made to


give notice and the reasons why it should not be required. Fed. R. Civ. P. 65(b)(1)(A) and (B). An *ex parte* temporary restraining order is “an extreme remedy to be used only with the utmost caution.” *Levine v. Comcoa Ltd.*, 70 F.3d 1191, 1194 (11th Cir. 1995) (Hill, J., concurring).

In her motion for a restraining order, Plaintiff alleges that her mother is in “fragile health,” and is “restrained in bed and in imminent danger” [D.E. 12 at 4]. Though Plaintiff has offered evidence that her mother was hospitalized several months ago, she has not offered any *specific* facts clearly showing a threat of *immediate* injury necessitating an *ex parte* restraining order. Indeed, it appears from the motion that Plaintiff is uncertain of her mother’s current whereabouts, let alone her mother’s current medical condition. Even assuming that Plaintiff has made a sufficient showing of imminent danger to her mother, it is not at all clear how the remedy Plaintiff seeks – the removal of the court-appointed guardians – would alleviate that danger. After reviewing the motion and the Verified Complaint, the Court finds that Plaintiff has not provided specific facts showing a danger of immediate and irreparable injury, as required by Rule 65(b)(1)(A). Nor has Plaintiff shown why this motion must be considered without notice to the adverse parties, as required by 65(b)(1)(B).

Aside from the requirements of Rule 65, Plaintiff’s motion for a restraining order still must fail because she has not established a substantial likelihood of success on the merits of her claims. Plaintiff’s Complaint contains a litany of claims, some of which appear to be brought on Plaintiff’s behalf and others which appear designed to vindicate her mother’s rights, not her own. To the extent that Plaintiff seeks to enforce claims on her mother’s behalf, it is unclear whether Plaintiff has standing to bring such claims, and

this issue alone prevents any finding that Plaintiff's chances of success on the merits are substantially likely. Nor does it appear substantially likely that Plaintiff will succeed in her efforts to challenge Judge Genden's orders in the guardianship proceeding: Under the *Rooker-Feldman* doctrine, a federal court does not have jurisdiction over "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Woodhull v. Fierle*, --- F. App'x ---, 2013 WL 6621013, at \*2 (11th Cir. Dec. 17, 2013) (affirming dismissal of § 1983 claims challenging a state probate judge's orders in a guardianship proceeding) (quoting *Alvarez v. Attorney Gen. for Fla.*, 679 F.3d 1257, 1262 (11th Cir. 2012)). While the Court is mindful of Plaintiff's concerns about her mother's welfare, these general fears do not by themselves meet the high burden required of a party seeking an *ex parte* restraining order. For these reasons, Plaintiff's Emergency *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause [D.E. 12] and Plaintiff's Motion for Hearing [D.E. 16] are DENIED.

DONE AND ORDERED in Chambers in Miami, Florida, this 2nd day of June, 2014.

  
KATHLEEN M. WILLIAMS  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

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