

*Baumstein v. Sunrise Communities*, 738 So. 2d 420 (Fla. 3d DCA 1999)

Firm Establishes Precedent For Civil Statutory Damages Claim for Developmentally Disabled

In *Baumstein v. Sunrise Communities*, 738 So. 2d 420 (Fla. 3d DCA 1999), attorneys with Colodny, Fass, Talenfeld, Karlinsky & Abate P.A., successfully argued in the Third District Court of Appeal to establish a private cause of action for damages based upon the violation of Florida's Bill of Rights for the developmentally disabled under § 393.13, Florida Statutes.

Karen Baumstein was a developmentally disabled adult with profound mental deficiency, significant impairment in adaptive functioning, and cerebral palsy which required 24-hour care and supervision.

Ms. Baumstein was admitted to an intermediate care facility after her sister became unable to provide her with the necessary care. At the time of admission, Ms. Baumstein had lived an active and productive life. She was in good health, partially ambulatory, and able to eat solid food. She had never suffered from any serious injuries or chronic pulmonary complaints.

However, during the eight months of her residence at the facility, Ms. Baumstein steadily and progressively deteriorated, suffered three bouts of pneumonia, cracked ribs, and lost necessary skills. She suffered injuries and conditions that were left untreated and was improperly confined to her bed and wheelchair, left unattended for long periods of time, permitted to soil herself and remain in such condition for long periods of time, and became unresponsive, emaciated, and non-ambulatory.

Ms. Baumstein ultimately died as a result of the gross treatment she received.

Initially, the plaintiff's complaint for damages for the defendants' alleged violation of rights guaranteed to such patients by section 393.13, Florida Statutes (1993), the Bill of Rights of Persons Who are Developmentally Disabled were dismissed by the trial judge on the sole ground that no private cause of action may be asserted under the act. The Court of Appeal reversed. "There is no question that the primary, perhaps the only, issue pertinent to the question of whether a private cause of action may be based upon the breach of a statute is whether the legislature intended that to be the case," the Court wrote. "In this instance, it has clearly answered that question in the affirmative."

The Court cited Section 393.13(5) as providing: (5) LIABILITY FOR VIOLATIONS.-- Any person who violates or abuses any rights or privileges of persons who are developmentally disabled provided by this act shall be liable for damages as determined

by law. Any person who acts in good faith compliance with the provisions of this act shall be immune from civil or criminal liability for actions in connection with evaluation, admission, habilitative programming, education, treatment, or discharge of a client. However, this section shall not relieve any person from liability if such person is guilty of negligence, misfeasance, nonfeasance, or malfeasance. [emphasis supplied] Section 393.13(5), Fla.Stat.(1993).

The Court further noted that “Despite the appellees’ imaginative attempts to make it mean something other than what it says, the statute could hardly be clearer. While courts have often recognized causes of action even in the absence of specific statutory language...we need not go that far here. Because we are bound by the legislature’s clear and unambiguous expression of its own intent [see *State v. Dugan*, 685 So.2d 1210 (Fla.1996)], we hold that civil liability for damages indeed arises from violations of Chapter 393. For this reason, the judgment of dismissal below is reversed...”

Third District Court of Appeal’s decision was the first to establish a private cause of action for damages based upon the violation of Florida’s Bill of Rights for the developmentally disabled under § 393.13, Florida Statutes. As a result, this led to a confidential settlement of this wrongful death damages claim.

The precedent established in *Baumstein v. Sunrise Community* has been cited in other cases, including *Maggie Knowles v. Beverly Enterprises-Florida, Inc., d/b/a Beverly Gulf Coast-Florida, Inc., d/b/a Washington Manor Nursing Home and Rehabilitation Center*, as showing “that there is no prohibition on ‘personal’ actions surviving pursuant to section 46.021.” The decision has been used to establish that “the statutory right that survived in *Baumstein*, a violation of section 393.13, Florida Statutes (1993), the ‘Bill of Rights of Persons Who Are Developmentally Disabled,’ was as ‘personal’ as a violation of the Nursing Home Bill of Rights.”