

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 02-cv-01827-RPM-GJR

TIBERIU KLEIN, individually and as
Executor of the Estate of CLAUDIA ZVUNCA,

Plaintiff,

v.

WESLEY JAY TATUM and
GREYHOUND LINES, INC.,

Defendants.

ORDER FOR DISMISSAL PURSUANT TO FED.R.CIV.P. 12(b)(1)

The defendant Greyhound Lines, Inc. moved for summary judgment of dismissal of this wrongful death action on the contention that Tiberiu Klein had no authority to pursue it under the Illinois Wrongful Death Act. There have been extensive pleadings filed here and in Illinois regarding the appointment of an administrator for the Estate of Claudia Zvunca, the decedent. On May 28, 2014, John Xydakis filed a Plaintiff's Withdrawal of Motion to Substitute [#265] and attached an order of the Probate Division of the Circuit Court of Cook County, Illinois, which, *inter alia*, appoints Cristina Zvunca as the Supervised Administrator of the Estate of Claudia Zvunca, deceased, and vacated previous appointments of her and Tiberiu Klein as Co-Administrators.

What is now clear from the flurry of pleadings in this civil action is that at the time of the filing of the complaint, Tiberiu Klein had no legal authority to pursue this wrongful death action

and that lack of capacity has not been cured.

From the papers filed in this court it appears that the wrongful death claim is being pursued in Illinois. There is only one wrongful death action and it may not be split and litigated in two different courts. While the motion was filed by Greyhound Lines, the lack of capacity to sue is a jurisdictional defect which prevents the claim against defendant Wesley Jay Tatum.

Accordingly, it is

ORDERED, that this civil action is dismissed pursuant to Fed.R.Civ.P. 12(b)(1).

Date: May 30, 2014

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge