

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D17-1607

ELIOT IVAN BERNSTEIN

L.T. CASE NOS. 2012CP004391XXXXNB

Appellant,

v.

ESTATE OF SIMON L. BERNSTEIN, et al.

Appellee.

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**APPELLEE'S, TED S. BERNSTEIN, TRUSTEE,
MOTION TO DISMISS APPEAL**

Appellee, Ted S. Bernstein, as successor Trustee of the Simon L. Bernstein Trust ("Trustee"), moves to dismiss this appeal for lack of appellate court jurisdiction.

1. The order appealed from is not a final order, nor does it meet any of the requirements for an appealable non-final order. There is no appellate jurisdiction.

2. The Order allegedly under review denied two forms of relief:
(i) disqualification of the Mrachek law firm as counsel to the Estate in an independent action filed by William Stansbury, along with a related request to vacate the prior unopposed order approving that firm's retention based on the disqualification; and
(ii) appointment of an administrator ads litem to represent the Estate's interests in the same independent action.

3. As to the first relief sought, Stansbury moved the probate court to disqualify Mrachek as the estate's counsel in the independent action. (Mrachek does not serve as the Estate's counsel in the probate administration; only in the independent action.) Appellant did not make the motion to disqualify or formally join in it. The effect of the Order under review is the denial of the disqualification motion for *lack of probate jurisdiction*, with the suggestion the trial court overseeing the independent action decide the disqualification issue. The motion to disqualify has since been withdrawn in the trial court. Therefore, there is nothing to appeal.

4. The second aspect of the order under review is the denial of a request by the Estate to appoint an administrator ad litem. Appellant opposed the motion and requested that it be denied, which is what the probate court did. Thus, because the result is the one sought by Appellant, Eliot Bernstein, there is nothing for him to appeal within that aspect of the Order.

WHEREFORE, because this is not an appealable non-final order, nor is it a final order, nor is it otherwise appealable, the appeal in this case should be dismissed.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been served by e-mail on all parties listed on the attached service list, this 9th day of June, 2017.

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