

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL
33401

May 03, 2016

CASE NO.: 4D16-0222
L.T.# 2011CP000653XXXXNB
2014CP003698XXXXNB
502012CP004391XXXXNB
502015CP001162XXXXNB

ELIOT IVAN BERNSTEIN v. TED BERNSTEIN, AS TRUSTEE, ET AL.
Appellant / Petitioner(s) Appellee / Respondent(s)

**Motion for Extension of Time to File Brief and Request for Order to Produce Indexes for
Appeal for Two Additional Cases the Appealed Order Addresses**

1. That yesterday, May 2, 2016, I spoke with Catherine Markisen from the Clerk's Office of the 15th Judicial Circuit to determine when the remainder of the necessary Record and Index on appeal in this case will be provided as previously requested.
2. As previously indicated to this Court, the 4th District Court of Appeals, despite having been recently granted Indigent status in both the 15th Judicial Circuit and 4th DCA, I was now being required to "re-apply" for Indigency status with the 15th Judicial Circuit which I promptly submitted on April 27th, 2016.
3. As of yesterday, May 2, 2016, the 15th Judicial Circuit was now last minute imposing the extra burden of submitting my Driver's License as part of the Indigency application which I only found out about yesterday, May 2, 2016 and promptly submitted yesterday May 2, 2016. A copy of the DL is not required with the indigent form according to the face of the document and this was not previously required when I submitted these applications.

4. This Clerk was also telling me that “somehow” my Indigency application had been re-routed and didn’t get to the right person, herself, which is why there was a delay in processing the application and indexes.
5. I was now being told for the first time, yesterday, May 2, 2016 from the Clerk at the 15th Judicial Circuit that I needed to obtain an Order “relating” the requisite cases in order for the Clerk’s Office to produce the Record and Index from the other cases for this appeal.
6. That on May 02, 2016 after securing additional time to file the brief from this Court until May 06, 2015, Appellant contacted the 15th Judicial to see the status of the Indigent Form and the missing Indexes and learned from the clerk Catherine Markisen in the Appeals department that the Indigent Form that usually comes to her desk had somehow been misplaced and that she would review it “as soon as possible”.
7. Catherine Markisen in Appeals at the 15th Judicial then stated that she could not do any other indexes for any cases but the case the Order was generated under, Case 2014CP003698XXXXNB and that this was due to the fact that the cases were not properly legally related and that Appellant would now have to seek an Order from this Court to have the indexes prepared for the other cases. I reminded her that the court had already done an additional index at anonymous’ request and that two were already done for the one case but she stated that was in error and that she still could not just do the others without an Order from this Court.
8. Catherine Markisen then directed me to Lynn Colletti at the 4th DCA who directed me to file this pleading seeking an order from this Court granting more time to file the Initial Brief and to request the indexes of the two missing cases that are improperly embedded in the case before the Court and where the Order on Appeal affects the other cases as if hearings were held in all four

cases. Neither clerk was sure what to do, either get this Court to issue an Order consolidating or relating all the cases or file three additional Notices of Appeal in the other cases to generate the Indexes properly, despite the fact that no hearing was scheduled in the other cases.

9. These extra requirements themselves highlight the problems in the underlying proceedings with Judge Phillips that I originally sought to clarify at a Case Management Conference on Sept. 15, 2015 when trying to clarify with Judge Phillips “which case” he was acting in on the Record since the case that was Noticed for Conference for that day was the Simon Bernstein Estate case (Case No. 502012CP004391XXXXNB) but the Judge was somehow moving in the Shirley Bernstein Estate and Trust case which had not been Noticed for the Conference.

10. Judge Phillips thereafter proceeded to Order a “one-day” “Validity” Trial for BOTH the Shirley Bernstein and Simon Bernstein Estate and Trust cases (technically 4 separate non related cases, Case Numbers:

- a. Case # 502012CP004391XXXXSB – Simon Bernstein Estate,
- b. Case # 502015CP001162XXXXNB – Simon Bernstein Trust to Remove Ted Bernstein as Trustee,
 - i. OLD CASE # Was Civil but Colin wanted to transfer to him in Probate ? 502014CA014637XXXXMB,
- c. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate,
- d. Case # 502014CP003698XXXXNB – Shirley Trust Construction,

et Judge Phillips nor any prior judge has issued an Order legally relating the cases.

11. These facts all suggest that each of the cases should have been heard separately as “complex” Cases under the Florida Rules of Civil Procedure but this did not occur. There are other cases in

the Probate Court that also “relate” such as the Oppenheimer case under Case Number # 502014CP002815XXXXSB.

12. Yet the Order which is now on Appeal in this case encompasses the four separate cases directly even though the cases were never marked legally related and never procedurally handled according to the Rules for complex cases.
13. It is fundamental that any such “Appeal” of this Order should have the Record and Index of all 4 cases available for the Appeal that were heard and are affected by the Order.
14. As the record reflects the hearing that generated the Order on Appeal in Case 2014CP003698XXXXNB was inappropriately set up at a status conference for Case 502012CP004391XXXXNB in the Simon Bernstein Estate.
15. The status conference was called only for case 502012CP004391XXXXNB but Alan B. Rose, Esq. misled the Court and the Court blindly followed that the conference had been scheduled for all four cases listed above although presumably the Court itself would have a copy of the Notice of Case-Management conference that was served.
16. Despite protests from Appellant and the creditor’s attorney, Peter Feaman, Esq. to Judge Phillips that the status was only called on only the Simon Bernstein Estate case and it was inappropriate and a violation of the rules to hear other cases, Judge Phillips ignored these facts and proceeded to hear and rule in three cases that were not part of the conference.
17. That the Order generated from the status conference in Case 502012CP004391XXXXNB was issued and the court demanded a **Validity Only Hearing** to be held on Estate and Trust documents in all four cases and scheduled the hearing under Case 2014CP003698XXXXNB.
18. Upon Appeal, Eliot Bernstein filed the Appeal listing all the cases he believed the Validity Trial had covered and the Order covered for Appeal under the one case the Order was issued in and

somebody at the Appeal Court then modified that to strike out certain of the cases for no apparent reason. See snapshot below of modified pleading.

PROBATE DIVISION IH
CASE NO. 502014CP003698XXXXNB
Related Cases:
502011CP00653XXXXSB ✓
502014CA014637XXXXMB
502014GP002815XXXXSB
502015GP001162XXXXNB
502015GP002717XXXXNB

19. From this change the case then somehow was docketed under the Shirley Bernstein Trust Case 2014CP003698XXXXNB and Shirley Bernstein Estate Case 502011CP000653XXXXSB.
 20. Upon requests for the Indexes to be produced by an anonymous party, the record for the Shirley Bernstein Estate Case and the Shirley Bernstein Trust Case were produced.
 21. That due to these procedural irregularities and extra requirements there has been delay in having the Indexes and Record produced by no fault of Appellant.
 22. Having proper access to the actual Indexes and Records is fundamental in completing a Brief for this Appeal.
 23. Appellant thus seeks to have this Court also grant additional time to produce the brief 15 days from the date that all the Indexes are produced and tendered to Appellant or a reasonable time herein.
 24. Appellant also seeks to have this Court issue an appropriate Order so the Clerk of the 15th Judicial can produce the fundamentally necessary and requisite Indexes and Records on Appeal.
- WHEREFORE**, Appellant prays this Court for an Order for the production of the requisite Indexes and Records on Appeal and thus further granting additional time to Appellant

to file the Initial brief a reasonable time thereafter and for such other and further relief as may be just and proper.

Dated: May 03, 2016

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 3rd day of May, 2016.

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