

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

CASE NO.: 4D16-1449
L.T. No.: 2014CP002815XXXXNB

ELIOT IVAN BERNSTEIN v. OPPENHEIMER TRUST CO.
OF DELAWARE, ET AL.

Appellant / Petitioner(s) Appellee / Respondent(s)

INITIAL BRIEF OF APPELLANT

On Appeal to the 4th District Court of Appeals from the “ORDER APPOINTING GUARDIAN AD LITEM FOR MINORS JOSHUA , JAKE AND DANIEL BERNSTEIN” of Judge John Phillips dated March 01, 2016. It is noted by Appellant herein that while the Order on Appeal refers to “Minors”, Joshua Bernstein had already reached the age of 18 as of August, 2015, some 6 months prior to issuance of the Order and where Appellee was aware of the age of the adult child at the time of filing said Petition for Guardianship.

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1. The Order must be reversed, vacated and remanded to a new Judge after the Lower Tribunal violated Court Rules for mandatory Recording of Guardian cases denying Appellant procedural due process protections and a proper record.
2. The Order is not supported by competent substantial evidence and must be reversed and vacated.
3. The lower tribunal abused its discretion by failing to schedule and allow for a proper hearing based on the extensive fraud in the cases and detailed factual pleadings of Appellant which were never heard.
4. The lower tribunal permitted fraud upon the Court by attorney Steven Lessne and then the Court itself committed fraud in Official records, the Order of the case and thus Judge John Phillips must now be permanently Disqualified from all Bernstein matters and all Orders, Judgments, Decisions vacated.

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1. Vollmer v. Key Dev. Props., 966 So.2d 1022 (Fla. 2nd DCA 2007).
2. Mora v. State, 814 So. 2d 322 (Fla. 2002).
3. Ferguson v. State, 417 So. 2d 639, 642 (Fla.1982).

STATUTES

1. Florida Statute 607.1601
2. F.S. 736.0201(1)
3. Florida Probate Code Rule 5.541
4. F.S. 744.109

RULES:

1. <http://15thcircuit.co.palm-beach.fl.us/web/guest/court-reporters>
2. http://15thcircuit.co.palm-beach.fl.us/documents/19739/25153/courtreporting_FAQ.pdf
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SUMMARY OF ARGUMENT

ARGUMENT

1. The Order must be reversed, vacated and remanded to a new Judge after the Lower Tribunal violated Florida Statutes, Probate Rules and 15th Judicial Court Rules for mandatory Recording of Guardian cases denying Appellant procedural due process protections and a proper record.

Procedural due process is a constitutional guarantee. See, e.g., *Vollmer v. Key Dev. Props.*, 966 So.2d 1022 (Fla. 2 nd DCA 2007). Appellant maintains that because this is a Trust case, this is a Civil case and subject to the Florida Rules of Civil Procedure. As set out in Florida Statutes, “736.0201 Role of court in trust proceedings.—

(1) Except as provided in subsections (5) and (6) and s. 736.0206, judicial proceedings concerning trusts shall be commenced by filing a complaint and shall be governed by the Florida Rules of Civil Procedure.” See, FS 736.0201.

The instant proceedings that gave rise to the Order on Appeal appointing a Guardian Ad litem were not a “construction” proceeding of the Oppenheimer Trusts which were not Testamentary Trusts and therefore should not have fallen

under the exception in FS 736.0201(5) to be filed or determined in the Probate Court under the Probate Rules. For procedural posture of this and all “related” cases, however, it is noted in fact that there still has never been any “construction” or “validity” of the involved Oppenheimer Trusts determined despite Appellant raising further “fraud” in Instruments and documents on the record with the involved Trusts herein.

The lower tribunal under Judge Martin Colin, however, somehow had the case marked and filed as a “Probate” case and to the extent the case was marked as a Probate case, the lower tribunal was required by Florida Statutes, Probate Rules and Court Rules to mandatorily Record the Hearing Digitally for Guardians. See, 15th Judicial Circuit Court Reporting Department and 15th Judicial Frequently asked questions. (Put in links from above)

In addition to the Rules of the 15th Judicial Circuit, Florida Statutes Sec. 744.109 and Florida Probate Rule 5.541 also mandate the Recording of Hearings either Electronically or by Stenographic recording for the appointment of a Guardian, all of which was denied by Judge John Phillips and which alone require reversal and vacating of the Order herein.

Appellant having been denied the procedural and substantive due process protections of the Florida Statutes and Rules for appointment of a Guardian ad litem, the Order must now be reversed and vacated in it’s entirety.

The Order is not supported by competent substantial evidence and must be reversed and vacated.

The Order appointing a Guardian Ad Litem is not supported by any evidence from any Hearing, much less competent substantial evidence as the Lower Tribunal acted illegally abusing its discretion in failing to ensure the Hearing was Digitally Recorded as required according to Florida Statutes 744.3109, Probate Rule 5.541, and the 15th Judicial Circuit Court Rules and Staff from the 15th Judicial Court Reporting Services Department. The arbitrary, capricious and illegal acts of lower tribunal Judge John L. Phillips in denying Digital Recording and denying Appellant time to get a court reporter at the hearing ensured that there is no competent evidence to support the Order.

All this Court is left with is the pleadings and papers in the Record on Appeal with no testimony or Records to assess the sufficiency of the evidence from. Competent substantial evidence is enough evidence to permit a rational trier of fact to reach the conclusion that was reached. See, Mora v. State, 814 So. 2d 322 (Fla. 2002). Appellate Courts have an independent duty to review the record to ensure the sufficiency of the evidence. See, e.g., Ferguson v. State, 417 So. 2d 639, 642

(Fla.1982). Yet in this case, all this District Court of Appeal has to review are untried, unheard and undetermined petitions and pleadings. This requires reversal of the Order and remand to the lower tribunal and assignment to an independent and neutral Judge.

The lower tribunal abused its discretion by failing to schedule and allow for a proper hearing based on the extensive fraud in the cases and detailed factual pleadings of Appellant which were never heard.

The essence of the argument for appointment of a Guardian ad litem as set out in the Petition filed by attorney Steven Lessne is that Appellant is allegedly a “vexatious” litigant who is on a campaign for justice in the Courts and changing the legal system and further attacking Appellant for doing what every Court in the State of Florida has the obligation to do, address Fraud in the Court and fraud in Pleadings. See, Florida Statewide Court Fraud Policy.

Yet, attorney Lessnee directly committed Fraud Upon the Court in his Pleadings by citing to alleged findings by the US District Court for the Southern District of New York that never occurred. See, Lessnee Petition ROA pages

The Court itself perpetuates this Fraud by making a Finding that Appellant was in fact adjudicated a “vexatious litigant” by the US SDNY District Court. Yet, the Court, in either a further act of direct fraud or act of extreme lack of competence in

reviewing pleadings, actually mis-reads and mis-cites pleadings in the same manner as alleged by Lessnee. For example,

What the Record on Appeal does show, however, is extensive pleadings showing misconduct of the various Fiduciaries and actual Fraud upon the Court. Yet, the lower tribunal never permitted these pleadings to be heard and never scheduled sufficient time to hear such pleadings in any event, another act in an abuse of discretion, arbitrary and prejudicial and pre-determined conduct.

The lower tribunal permitted fraud upon the Court by attorney Steven Lessne and then the Court itself committed fraud in Official records, the Order of the case and thus Judge John Phillips must now be permanently Disqualified from all Bernstein matters and all Orders, Judgments, Decisions vacated.

CONCLUSION

For all of the foregoing reasons, this Court should reverse

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

Dated: July 25th, 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 25th day of July, 2016.

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APPENDIX

Appendix Exhibits Filed Separately

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