

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

CASE NO. 4D16-1478

ELIOT IVAN BERNSTEIN

L.T. CASE NOS. 2014CP003698XXXXNB

Appellant,

v.

TED S. BERNSTEIN, AS TRUSTEE,
et al.

Appellee.

**APPELLEE'S, TED S. BERNSTEIN, AS TRUSTEE,
MOTION TO CONSOLIDATE APPEALS IN
CASES NO. 4D16-1449, 4D16-1476 AND THIS CASE, 4D16-1478**

Appellee, Ted S. Bernstein, as successor Trustee of the Shirley Bernstein Trust ("Appellee"), moves to consolidate three appeals brought by Appellant, Eliot Ivan Bernstein, relating to the appointment of a guardian *ad litem* to represent the interests of his children, and states:

1. Eliot Bernstein has requested an extension of time to file his initial brief in several appeals which relate to the appointment of a Guardian *Ad Litem* for his children and the selection of a specific guardian. Appellee previously advised this Court it had no objection to a 30-day extension of time for the filing of an initial brief.

2. Upon reflection and discussion with counsel for Oppenheimer, the Appellee in two other appeals involving the appointment of the same guardian *ad litem* for the children of Eliot Bernstein, Appellee believes that this series of pending appeals — Cases No. 4D16-1449, 4D16-1476 and this case, 4D16-1478 — should be consolidated for all purposes.

3. Specifically, consolidating the cases for all purposes will enable the pro se litigant to file a single brief, addressing the same issues in these three cases,¹ thereby making this task which is difficult for any pro se litigant an easier job for him, and making the resolution of this appeal more manageable for this Court.

4. By way of brief explanation, this is a probate matter. Eliot Bernstein is the son of Simon and Shirley Bernstein, and would have been one of their natural heirs. However, in their final testamentary documents, if valid, Eliot Bernstein was to be disinherited in favor of his children. Because the assets in these trusts would

¹ There are two other appeals by Eliot Bernstein pending in this Court; however, we believe those should remain separate because: (i) the issues are different; and (ii) an Initial Brief already has been filed in Case No. 4D16-222.

Case No. 4D16-222 is an appeal under Rule 9.170 from a final judgment upholding the validity of testamentary documents and determining beneficiaries (described in more detail below). That appeal does not involve Oppenheimer and addresses different issues. Case No. 4D16-2249 is an appeal of a final judgment in the Oppenheimer case, which is separate from the appeal of guardianship rulings.

be distributed to Eliot Bernstein's children, that would leave nothing for him and would also mean he lacks individual standing to participate in the case below.

5. Eliot Bernstein's challenge to the validity of the testamentary documents was tried to the probate court, and the issues were resolved against him by a final judgment dated December 16, 2015. That final judgment is on appeal in Case No. 4D16-222.

6. After it was determined that Eliot Bernstein was not a beneficiary, the trial court then entered an order determining that he lacked standing to participate in the probate matter. Despite that ruling, Eliot Bernstein still purported to act as the parent and natural guardian of his three children, who are beneficiaries. Appellee, joined by Oppenheimer in its case, moved for the appointment of a guardian *ad litem*.

7. After an evidentiary hearing, the probate court found that Eliot Bernstein was acting "adverse" and "destructive" to the interests of his children, and therefore would no longer be permitted to serve as their natural guardian in the litigation, and ruled a Guardian *Ad Litem* needed to be appointed, in consultation of the parties. Later, the probate court appointed Diana Lewis, a former Palm Beach County Circuit Court Judge, to serve in the role as Guardian *Ad Litem* for the interests of Eliot Bernstein's children.

8. Those separate orders entered in the Bernstein Trust and Oppenheimer cases are the subject of these appeals if consolidated. In Appellee's view, it would make sense practically and from a judicial economy standpoint for all of the issues relating to the appointment and selection of a guardian *ad litem* to be resolved in one appeal. Therefore, Appellee suggests that the following cases be substantively consolidated for all purposes, including the filing of one brief by the pro se Appellant, Eliot Bernstein: Case Nos. 4D16-1449; 4D16-1476 and 4D1478. The issues to be decided in the consolidated appeals would be: (i) whether the trial court erred in appointing a guardian *ad litem* for Eliot Bernstein's children, as beneficiaries of certain trusts; and (ii) whether the trial court erred in appointing former circuit judge Diana Lewis as the guardian.

9. The undersigned has consented to an extension for the filing of the Initial Brief. This Court, by Order dated August 3, 2016, granted that motion, such that the Initial Brief now is not due until September 2, 2016. The consolidated Initial Brief should be filed on or before that date.

CERTIFICATE OF GOOD FAITH CONFERENCE

10. The undersigned counsel has conferred with Eliot Bernstein and counsel for Oppenheimer to determine if there is opposition to the consolidation of these appeals.

a. Oppenheimer has no opposition and agrees that a consolidated of the three appeals is preferable.

b. The undersigned has attempted to confer with pro se Appellant, Eliot Bernstein, but he has not responded to an email sending a draft of this Motion and seeking his position.

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 4th day of August, 2016.

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