

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

ELIOT BERNSTEIN, et al.,

Appellant(s)

Case #4D2025-0996

L.T. #502018CA002317

v.

WALTER E. SAHM and PATRICIA
SAHM,

Appellees.

**RESPONSE TO MOTION BY APPELLANTS FOR REHEARING AND
TO REINSTATE THE APPEAL ON SPECIFIED JURISDICTION
UNDER RULE 9.130**

COMES NOW Appellee, Charles Revard, as Guardian of Patricia Sahm, by and through his undersigned counsel, and pursuant to Florida Rule of Appellate Procedure 9.330(a)(3) and files this his *Response to Appellants' Motion for Rehearing and to Reinstate the Appeal on Specified Jurisdiction Under Rule 9.130*, and in support thereof states as follows:

I. **RELEVANT HISTORY AND PROCEDURAL POSTURE**

Appellants fail to file a statement of jurisdiction, in violation of this Court's order

1. Appellants filed their *Notice of Appeal* on April 9, 2025.
2. On April 16, 2025, this Court entered an *Order to Show*

Cause requiring that

[w]ithin ten (10) days from the date of this Order, Appellant shall file in this court a brief statement explaining the basis for this court's subject matter jurisdiction over the order appealed in this case, citing supporting legal authorities. Appellant shall specifically address how the March 7, 2025 "Order Resetting Foreclosure Sale" is a final or nonfinal appealable order, as it appears to merely schedule a foreclosure sale pursuant to a final foreclosure judgment.

3. Appellants failed to file any statement regarding jurisdiction or any other documents in response in the instant appeal. However, a statement of jurisdiction *was* filed on June 24, 2025 in *Bernstein Family Realty, LLC v. Sahm*, case no. 4D2025-1033 (hereinafter "the BFR Appeal"), an appellate case also stemming from the same lower court matter, and in which the issues are identical.

Appellants twice fail to timely file their initial brief

4. After a brief delay due to Appellant Eliot Bernstein's bankruptcy filing (which was eventually dismissed), and notwithstanding Appellants' failure to file a statement of jurisdiction in the instant appeal, on June 18, 2025, this Court ordered that the appeal would proceed and that "Appellants shall file the initial brief

and appendix within twenty (20) days of the date of this order.”

5. Pursuant to Florida Rule of Appellate Procedure 9.420(e) and Florida Rule of Judicial Administration 2.514(a), the initial brief was due on July 8, 2025.

6. Appellants failed to file their initial brief by July 8, 2025, but instead filed their *Motion for Permission to Seek a Reasonable Extension of the Time to File the Initial Appellants’ Brief* (hereinafter “the *First Motion for Extension*”) two days later.

7. On July 22, 2025, this Court entered the following order (“the *July 22 Order*”):

...Appellants’ July 11, 2025 motion for extension of time is granted in part, and Appellants shall serve the initial brief and appendix within fifteen (15) days from the date of this order. in addition, if the initial brief is not served within the time provided for in this order, the above-styled case may be subject to dismissal or the court in its discretion may impose other sanctions.

8. Pursuant to Florida Rule of Appellate Procedure 9.420(e) and Florida Rule of Judicial Administration 2.514(a), the deadline to file the initial brief was Thursday, August 7, 2025.

9. Appellants again failed to timely file an initial brief, and

instead, on August 13, 2025, Appellants filed their *Motion by Appellants for Permission to Seek a Reasonable Extension of the Time to File the Initial Appellants Brief* (the “*Second Motion for Extension*”).

10. On August 19, 2025, Appellee filed his *Response and Objection to Appellants Second Motion to Seek a Reasonable Extension of the time to File the Initial Appellants Brief and (ii) Motion to Dismiss* (hereinafter “the *Second Motion for Extension*”).

11. In his *Response*, Appellee requested this Court to (i) deny the *Second Motion for Extension* and (ii) that the Court dismiss Appellants appeal in the entirety as a sanction for failure to comply with this Court’s *July 22 Order*, or in the alternative dismiss the appeal in part as to the Appellants seeking review of any portion of the lower court’s order granting entitlement to attorney’s fees.

This Court dismisses the appeal; Appellants move for reinstatement

12. On September 25, 2025, this Court entered the following order (“the *September 25 Order*”):

[O]RDERED sua sponte that the above-styled appeal is dismissed for lack of jurisdiction. See *S.-Owners Ins. Co. v.*

Logsdon, 75 So. 3d 1270, 1270 (Fla. 4th DCA 2011) (dismissing portion of appeal regarding award of attorney's fees as order granting entitlement to fees is not appealable); *Law Offs. of Jennifer S. Carroll, P.A. v. Brennan Brennan*, 287 So. 3d 627 (Fla. 4th DCA 2020) (order that granted award of attorneys' fees as a sanction, but did not set dollar amount of award, was not a final appealable order); *Pridgen v. First Union Bank*, 879 So. 2d 21 (Fla. 2d DCA 2004) ("An order that merely schedules a foreclosure sale is not a final appealable order."). Further, ORDERED that Appellants' August 13, 2025 motion for extension of time is denied as moot.

13. The *September 25 Order* does not address the Court's jurisdiction to hear the appeal of the lower court's dismissal of Appellants' 1.540 motion.

14. On October 1, 2025, Appellants filed their *Motion for Rehearing and to Reinstate the Appeal on Specified Jurisdiction under Rule 9.130* (hereinafter "the *Motion to Reinstate*").

15. In their *Motion to Reinstate*, Appellants concede that dismissal as to their claims of review of the entitlement to fees in a nonfinal order and the scheduling of the foreclosure sale are appropriate.

16. However, Appellants challenge the dismissal of the

remainder of their appeal, specifically as to the lower court's dismissal of the 1.540 and note that this Court has accepted jurisdiction of the same in the BFR Appeal. However, it should again be noted that the Appellant in the BFR Appeal *did* file a statement of jurisdiction. Appellants did not do so in the instant appeal.

II. ARGUMENT

17. Appellee acknowledges that the issues in the instant appeal and the BFR Appeal are identical. Appellant further concedes that this Court has accepted jurisdiction over the portion of the BFR Appeal challenging the lower court's dismissal of Appellant's 1.540 motion.

18. However, Appellee reiterates that while the Appellant in the BFR Appeal filed a statement of jurisdiction as ordered by this Court, Appellants in the instant appeal failed to file a statement of jurisdiction. Accordingly, to the extent that this Court dismissed the instant appeal in its entirety due to Appellants' failure to abide by this Court's April 16 *Order to Show Cause*, Appellant objects to the *Motion to Reinstate*.

19. However, in the event that the Court's dismissal of the entire instant appeal was inadvertent, and should this Court grant the *Motion to Reinstate*, Appellant respectfully requests that this Court enter an order reinstating the appeal as to the lower court's dismissal of the 1.540 *only*, not as to the order establishing entitlement to attorney's fees (which is a non-final, non-appealable order) or the order setting the foreclosure sale (which is a non-appealable order).

Additionally, should this Court reinstate the appeal in part, Appellee consents to the relief sought by Appellant to consolidate the instant appeal with the BFR Appeal. See the *Motion to Reinstate*, at ¶ 8.

WHEREFORE, Appellee, by and through his undersigned counsel, respectfully requests that this Honorable Court affirm the dismissal of the appeal insofar, or, in the alternative, (i) reinstate the appeal only as to the lower court's dismissal of Appellants' 1.540 motion; (ii) enter an order consolidating this appeal with the appeal pending under case no. 4D2025-1033, and (iii) grant any such other

and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished on the 13th day of October, 2025, via e-service through the e-portal to Eric Joseph Cvelbar, Esquire, 1181 NW 57th Street, Miami, Florida 33127-1307 (ecvelbar@hotmail.com) (Counsel for Appellant).

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing document has been composed in Bookman Old Style 14-point font and otherwise complies with the form requirements of Florida Rule of Appellate Procedure 9.045.

/s/ Kathryn N. Lewis

Kathryn N. Lewis, Esquire

Fla. Bar #59182