

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

CASE NO. 4D17-1932

ELIOT IVAN BERNSTEIN

L.T. CASE NOS. 2014CP003698 XXXX NB

Appellant,

v.

TED S. BERNSTEIN, AS TRUSTEE, et al.

Appellee.

/

**APPELLEE'S, TED S. BERNSTEIN, AS TRUSTEE,
MOTION TO DISMISS APPEAL FOR LACK OF STANDING, AND
REQUEST THAT COURT DISMISS APPEAL AND IMPOSE
NON-MONETARY SANCTIONS AGAINST PRO SE APPELLANT**

Appellee, Ted S. Bernstein, as successor Trustee of the Shirley Bernstein Trust ("Shirley Bernstein Trust"), moves to dismiss this latest appeal by serial pro se Appellant, Eliot Ivan Bernstein ("Eliot") for lack of standing, and states:

Dismissal

The appeal in this case should be dismissed because, among other reasons, Eliot lacks standing in this case by virtue of two final non-appealable orders: (i) a Final Judgment dated December 16, 2015 (Appendix at 1), affirmed by this Court in Case No. 4D16-222 (Appendix at 2); and (ii) *Order Determining Eliot Bernstein Lacks Standing Individually and Striking Eliot's Filings, and Deferring Ruling on the*

Appointment of a Guardian Ad Litem and Other Relief Sought dated February 1, 2016

(the "Bar Order"; see Appendix at 3.)

Specifically, as set forth in the Bar Order, the probate court has determined the proper and rightful beneficiaries of the Shirley Bernstein Trust. That issue was decided during a full trial on the merits, resulting in the now-affirmed Final Judgment. (Appendix at 1) Based on the Final Judgment, Simon Bernstein validly exercised a power of appointment over the assets in the Shirley Bernstein Trust, which nullifies Eliot's contingent remainder interest in that trust.

After the Final Judgment, the probate court entered the Bar Order:

3. Based upon the Court's determination of the validity of Simon's Will, Simon Bernstein exercised a power of appointment he held over assets in the Shirley Bernstein Trust, in favor of his "then living grandchildren." Eliot Bernstein is not a grandchild of Simon or Shirley Bernstein. **Based upon the exercise of the power of appointment, Eliot Bernstein is not a beneficiary of the Shirley Bernstein Trust. As a result, Eliot Bernstein lacks individual standing to participate in this proceeding, as he is not a beneficiary of either the Shirley Bernstein Trust or the Shirley Bernstein Estate.**

4. Accordingly, Eliot Bernstein is barred from any further participation in his individual capacity in this action, and is removed individually as a party. Any and all pending motions, claims, or other filings by Eliot Bernstein, individually, in this case are hereby stricken from the record, and no further individual filings will be

permitted except for a Notice of Appeal of the Final Judgment, should he desire to file one.

Bar Order at ¶¶3,4 (Appendix at 3)[emphasis added].

Eliot did appeal the Final Judgment, as was his right. If that appeal was successful, Eliot might be a beneficiary or potential beneficiary. But Eliot lost the appeal when this Court issued a per curium affirmation in Case No. 4D16-222 (Fla. 4th DCA Apr. 27, 2017; *reh'g denied*, June 5, 2017; mandate issued, June 23, 2017)(Appendix at 2). Thus, Eliot is not a beneficiary of the Shirley Bernstein Trust.

The Bar Order further bars Eliot from further participation in matters involving the Shirley Bernstein Trust. The Bar Order was not separately appealed. The PCA affirmation of the final judgment ensures the validity of the Bar Order as well.

Accordingly, this appeal should be dismissed immediately for lack of standing, to avoid forcing the Trust to unnecessarily incur thousands of dollars in legal fees responding to yet another unauthorized brief.

Non-Monetary Sanctions

Eliot has demonstrated in a series of related cases in this Court and in the Supreme Court, a pattern of filing appeal after appeal. Eliot persists in continuing to file appeal after appeal, with no merit and for the most part without filing a brief. Eliot has violated the trial court's Bar Order, including by filing the appeal in this

case. Eliot's pattern of abusive conduct has persisted for a lengthy time period, through more than 16 appeals and counting.¹

The time has come for this Court to impose some reasonable sanctions to prevent future abuse and violations of the Court's rules. In this regard, the Shirley Bernstein Trust seeks only non-monetary sanctions, and suggests the Court consider:

- (i) prohibiting any further appellate filings by Eliot Bernstein which are not signed by an attorney licensed by the Supreme Court to practice law in Florida; and/or
- (ii) terminating his ability to file appeals while paying no filing fee on the basis of his indigent status.

Indeed, simply by filing this appeal, Eliot has violated the Bar Order. And he will continue to violate court orders – regardless of the expense to the Trust or its ultimate beneficiaries – unless and until he is stopped by a court. Even the Bar Order was not enough to stop Eliot.

In addition to determining Eliot Bernstein lacked standing individually, the probate court ruled that Eliot was acting in a manner adverse and destructive to the interests of his children, who are indirect beneficiaries through trusts. Thus, the

¹In the last few years, and without paying any filing fees, Eliot Bernstein has filed at least the following appeals: SC15-1077; SC16-29; SC17-229; 4D15-3849; 4D16-64; 4D16-222; 4D16-1449; 4D16-1476; 4D16-1478; 4D16-2249; 4D16-3162; 4D16-3314; 4D16-4120; 4D17-1607; and 4D17-1608.

probate court appointed a guardian ad litem to protect the children's beneficial interests in certain trusts. The guardian ad litem orders are final as the appeals (SC16-29; 4D16-1449, -1476, -1478) have been dismissed.

Eliot continues to file these numerous appeals on a *pro se* basis, claiming indigent status so he does not have to pay any filing fee. While no one has ever contested his claimed indigency status, the opposing parties to each of his appeals is a trust or an estate which is not indigent yet, but is moving in that direction as a result of ongoing, continuing, and never ending litigation. Eliot gets a free ride at the expense of his children and the true beneficiaries of his parents' trusts and estates.

Eliot has been sanctioned by one court,² essentially branded a vexatious litigant. In this Court, there now is a clear record of frivolous, harassing, and vexatious appellate proceedings by this party.

WHEREFORE, Appellee, Shirley Bernstein Trust, requests this Court dismiss this appeal, and impose some reasonable non-monetary sanctions as requested to prevent, or at least dissuade, Eliot from filing meritless and frivolous appeals which are draining the trusts and estates of substantial sums of money.

²On August 29, 2013, a New York federal judge sanctioned Eliot Bernstein for repeatedly filing frivolous papers. *Eliot I. Bernstein v. State of New York, et al*, Case No. 1:07-cv-11196 (DE 54), Order on Motion for Sanctions (S.D. N.Y. August 29, 2013). He was ordered to pay \$3,500. No monetary sanctions are sought here.

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 26th day of June, 2017.

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