IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 502012CP4391XXXXNB

IN RE: ESTATE OF SIMON L. BERNSTEIN

Deceased.

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PROCEEDINGS BEFORE HONORABLE JOHN PHILLIPS

DATE: September 15, 2015

TIME: 9:27 a.m. to 10:32 a.m.

1 APPEARANCES: 2

1. APPEARING ON BEHALF OF THE PERSONAL REPRESENTATIVE:
2. BRIAN O'CONNELL, ESQ. JOIELLE A. FOGLIETTA, ESQ.
3. CIKLIN, LUBITZ & O'CONNELL West Palm Beach, FL 333401

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1. APPEARING OF BEHALF OF WILLIAM STANSBURY:
2. PETER FEAMAN, ESQ. PETER M. FEAMAN, P.A.
3. 3695 Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436

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1. APPEARING ON BEHALF OF MOLLY SIMON, et al:
2. JOHN MORRISSEY, ESQ. MORRISSEY LAW
3. 330 Clematis Street, 213 West Palm Beach, FL 33401

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1. APPEARING ON BEHALF OF TED S. BERNSTEIN:
2. ALAN B. ROSE, ESQ.

PAGE, MRACHEK, FITZGERALD & ROSE, P.A.

1. 505 S. Flagler Drive, Suite 600 West Palm Beach, FL 33401

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1. APPEARING ON BEHALF OF TESCHER & SPALLINA:
2. KENNETH S. POLLOCK, ESQ. SHENDELL & POLLOCK, P.L.
3. 2700 N. Military Trail, Suite 150 Boca Raton, FL 33431

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23

24 ALSO PRESENT: Eliot Bernstein 25

1. BE IT REMEMBERED, that the following
2. proceedings were taken in the above-styled cause
3. before Honorable JOHN PHILLIPS, at the Palm Beach
4. County Courthouse, 3188 PGA Blvd., Palm Beach
5. Gardens, County of Palm Beach, State of Florida, on
6. Tuesday, the 15th day of September, 2015, to wit: 7
7. THE COURT: We're here on the Simon
8. Bernstein case; is that right?
9. MS. FOGLIETTA: Yes, Judge.
10. THE COURT: This ended up in this division
11. of the Court because of a recusal from somebody
12. else in another division of the Court, right?
13. MR. FEAMAN: That raises an interesting
14. point. Peter Feaman on behalf of William
15. Stansbury, a creditor of the estate. I was
16. late coming in. Mr. O'Connell is late. All
17. the attorneys and the litigants are either in
18. West Palm or south. I respectfully don't
19. understand how we ended up here in the north
20. branch. Should we set it back to the main
21. branch?
22. THE COURT: No. That would be judge
23. shopping. When somebody recuses themselves
24. then it's randomly reassigned. I was verifying
25. this isn't a case that started out with me.
26. It's a case that started out with somebody
27. else.
28. MR. FEAMAN: Judge Colin, actually,
29. specifically said in his recusal order north
30. branch, which I didn't understand.
31. THE COURT: That's what the 4th DCA is
32. for. I'm not here to question some other
33. judge's order. You won't have me saying he was
34. wrong. I'm not the appellate judge. If
35. somebody made a mistake and you all think
36. there's relief that should be granted to
37. correct his mistake that's what the 4th is for.
38. Please have a seat.
39. We're here because somebody else is not
40. the judge in the case anymore and I am, right?
41. MR. FEAMAN: Right.
42. THE COURT: We'll go to the next step.
43. This is a case management conference. What is
44. it that I need to do to manage the case? I
45. received the trustees' status report which is
46. lengthy and comprehensive. I've read that.
47. Other than being brought up to speed by
48. having read that report what else needs to be
49. resolved to get this case done?
    1. MR. ROSE: Good morning. I'm Alan Rose.
    2. Can I speak from here?
    3. THE COURT: You can.
    4. MR. ROSE: I'm not planning on doing the
    5. whole hearing, but briefly there are,
    6. technically, four other cases that all were
    7. assigned. I think we've noticed a status
    8. conference in all four cases.
    9. There are two estates. The Simon
    10. Bernstein that Your Honor mentioned, he died in 11 2012.
50. THE COURT: Then there's the wife who
51. pre-deceased him, has a case, and I've been
52. asked to consider -- one of the things that
53. needs to be done is the closing of that estate.
54. MR. ROSE: Correct. She died in 2010.
55. Each of those estates builds into a trust, so
56. there's technically four pieces of pending
57. litigation; an estate of Shirley, a Shirley
58. trust construction, and an estate of Simon and
59. claim in the Simon trusts for the removal of my
60. client. Those are the four separate matters.
61. And then we came before you -- when Judge Colin
62. recused himself there were pending motions
63. counsel thought best to come and get some sort
64. of order.
65. The one thing that we believe, at least
66. which was in the status report which should be
67. addressed fairly early on, is whether we're
68. going to have a guardian ad litem for the three
69. minor children that are represented by Eliot
70. Bernstein, and try to bring some order to this
71. case which I think was a little bit out of
72. control in Judge Colin's courtroom.
73. THE COURT: Is there a motion for
74. appointment of a GAL? Has a motion been filed
75. by someone?
76. MR. ROSE: I think the -- my understanding
77. is the beneficiaries were about to file one. I
78. don't think they filed yet. There is a pending
79. motion to appoint an attorney for the children.
80. It's sort of a similar issue. Maybe
81. Mr. O'Connell can -- it's on one of his lists
82. of motions.
83. And then there's -- I think the main thing
84. we need to discuss is what order we're going to
85. do the hearings in because along with the
86. guardian ad litem it's our position the first
87. thing we should decide, since almost every
88. motion you're going to hear on Mr. O'Connell's
89. list is filed by Eliot Bernstein, is he's not a
90. beneficiary. We have a one-count complaint to
91. determine the validity of the documents. And
92. under the documents, as drafted, he's
93. disinherited. He's not a beneficiary under any
94. way and if you remove his standing then I
95. believe we can go to mediation and resolve
96. almost all of these motions without taking up,
97. probably, two or three weeks of the Court's
98. time.
99. THE COURT: Well, I noticed in the
100. trustee's status report that there was
101. mentioned several times that he's not a
102. beneficiary. So has there been an order that
103. establishes that or is that just the position
104. that's being argued by the --
105. MR. ROSE: Well, the documents themselves,
106. the operative document, for example, Simon
107. Bernstein's will -- the sole beneficiary is the
108. trust. Simon Bernstein's trust the soul
109. beneficiaries are his ten grandchildren.
110. Shirley Bernstein's will, the sole beneficiary
111. is her trust. Shirley Bernstein's trust gave
112. Simon Bernstein the power of appointment to
113. appoint and he appointed to his grandchildren.
114. So what we filed was a one-count complaint to
115. determine those documents. We actually filed a
116. trust construction action. Judge Colin advised
117. us to file -- to add a count. We added one
118. count to determine the validity of those
119. documents. It's been answered by everybody,
120. and what Judge Colin did was he severed that
121. one count from everything else and he stayed
122. everything else until we resolved that one
123. count. That's the issue that we believe, if
124. you resolve that issue first, a lot of the
125. stuff would go away and that was part of the
126. purpose of the status conference. The parties
127. can't, among themselves, agree what issues
128. should be heard first. If you did that issue,
129. either if he has standing or he doesn't, if he
130. doesn't have standing we'll good through
131. hundreds of thousands of dollars of legal fees
132. resolving motions that he filed if he lacked
133. standing.
134. I think if you couple it with a motion for
135. a guardian ad litem there is a motion pending
136. in a fifth case, the Oppenheimer case, that's
137. also before you, not today, for a guardian ad
138. litem. Judge Colin deferred on that. I
139. believe Mr. Morrissey's clients are going to
140. move for a guardian ad litem. I believe Mr.
141. Eliot Bernstein, in his papers, has indicated
142. that he has a conflict with his children and
143. they should have a lawyer and a guardian
144. representing them. He can speak for himself to
145. that point.
146. Those are the two issues we think should
147. go first. If it happens first this case would
148. become much more manageable and can even be
149. resolved because, as we indicated in our
150. report, these are relatively small estates.
151. There was a belief that's driving this
152. that there was $100 million left behind but
153. they left behind modest estates. Over time
154. we've been trying to sell property and trying
155. to narrow things and all we've been doing is
156. spending attorneys' fees between a curator --
157. THE COURT: I just want to figure out
158. what's on the judicial plate that needs to be
159. addressed.
160. MR. ROSE: That's what we think should
161. happen first, those two issues, and everything
162. else will fall into place.
163. THE COURT: What is the name or where is
     1. the document to be found that has this single
     2. count for determination of validity of estate
     3. documents or trust documents that was severed
     4. out by Judge Colin?
     5. MR. ROSE: It's in case 5020143698 --
     6. THE COURT: What are the two letters in
     7. between the 14 and the 36 --
     8. MR. ROSE: I'm sorry, CP003698XXX and now 9 --
164. THE COURT: I don't need that stuff.
165. What's the docket entry number?
166. MS. FOGLIETTA: The filing number?
167. THE COURT: I want to know where to find
168. this thing that seems to be one of the first
169. things --
170. MS. FOGLIETTA: Are you talking about the
171. amended complaint? I have a copy.
172. MR. ROSE: Just the docket entry, if you
173. don't mind.
174. THE COURT: I have a computer here so
175. don't think I'm being rude if I look away from
176. you all.
177. MR. ROSE: It was filed October 3, 2013.
178. MS. FOGLIETTA: I have a copy.
179. MR. ELIOT BERNSTEIN: Can I make an
     1. objection?
     2. THE COURT: Who are you?
     3. MR. ELIOT BERNSTEIN: I'm Eliot Bernstein.
     4. THE COURT: You can't object yet.
     5. MR. ELIOT BERNSTEIN: Can I make a
     6. statement?
     7. THE COURT: Not yet. I'm looking at this
     8. computer screen trying to find the docket.
     9. Everybody, please be seated. You're making me
     10. nervous.
     11. I'm just scrolling through the attorneys.
     12. I haven't even gotten to the pleadings yet.
     13. I'm looking for a pleading or an order entered
     14. October 3rd.
     15. MR. ROSE: An amended complaint.
     16. THE COURT: I have an amended complaint by
     17. Ted Bernstein.
     18. MR. ROSE: Yes.
     19. THE COURT: And in that amended complaint
     20. is the count that was referred to. It's Count

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 21 | II? |  | | |
| 22 |  | MR. | ROSE: | I believe it is, Sir. |
| 23 |  | THE | COURT: | All right. |
| 24 |  | MR. | ROSE: | Page 13 is the actual -- the |

25 count itself incorporates the allegations and

1. the documents.
2. THE COURT: All right. Count II starts at
3. Paragraph 79 of the document?
4. MR. ROSE: Yes, sir.
5. THE COURT: All right. And then at some
6. point in time you say Judge Colin severed out
7. this count and said it should be heard
8. separately. Is that --
9. MR. ROSE: He severed it and stayed --
10. THE COURT: Do you know when the order was
11. entered on that?
12. MR. ROSE: 10-6 according to the chart
13. from --

14 THE COURT: 10-6-14?

1. MR. ROSE: Yes. It says order on
2. amendments to pleadings. There might be an
3. order that predates that.
4. MS. FOGLIETTA: I do have a copy of it.
5. THE COURT: The other is almost the very
6. next docket entry. The amended petition is
7. Docket Entry 26. The order is Docket Entry 27.
8. MR. ROSE: Specifically Paragraph 3 on
9. Page 2.
10. THE COURT: There was a response filed by
11. Mr. Bernstein and the other defendants. Are
12. those things that happened?
13. MR. ELIOT BERNSTEIN: What case? Is this
14. Shirley Bernstein --
15. THE COURT: Case Number 14CP3698.
16. MR. ROSE: Everyone has either answered or
17. been defaulted and I noticed the case for
18. trial.
19. MR. ELIOT BERNSTEIN: Are we here for
20. Simon Bernstein? I'm confused. I'm not
21. prepared for Shirley Bernstein's case today.
22. Can I raise another point, Your Honor?
23. THE COURT: I only do one thing at a time.
24. You must stop.
25. MR. ELIOT BERNSTEIN: What?
26. THE COURT: You must stop. I do one thing
27. at a time. You're not that thing yet.
28. MR. ELIOT BERNSTEIN: Okay.
29. THE COURT: This is a case management
30. conference. I'm not deciding anything. I do
31. decide that I'm the one that runs this
32. courtroom so I don't have people jumping up and
33. blurting things out. That doesn't help me
34. orderly go through figuring out what the
35. problem is and how to attack and resolve the
36. problem. My specialty is wrestling stuff to
37. the ground and resolving it. That's what I'm
38. going to do in this case and that's what I do
39. in every case. This is a bigger one to wrestle
40. to the ground than some other ones but there's
41. no octopus case that I've ever met that I
42. haven't been able to figure out sooner or
43. later. The only way I can do that is talk to
44. one person at a time. We'll figure out one
45. thing at a time. I'm not a smart guy but I'm
46. persistent. All these guys know me. I'm
47. looking you in the eye because you haven't met
48. me before, right? Sir, yes, you haven't met
49. me?
50. MR. ELIOT BERNSTEIN: Yes, sir.
51. THE COURT: Okay. So you don't know me.
52. These other attorneys do because they're in
53. court in front of me on other cases where I've
54. done the same thing. I'm too stupid to --
55. well, I'm stupid. I take one thing at a time
56. and I make sure I know what I'm doing and I go
57. to the next thing. I try to be courteous to
58. everybody. I try to make sure everybody is
59. heard. I demand that people be courteous to me
60. in return. I don't take any crap. In that
61. method of proceeding we get through whatever is
62. uncomfortable, whatever is messed up, whatever
63. is complex. We simplify it down enough for me
64. to understand it and then we resolve it.
65. That's what is going to happen in this case.
66. MR. ELIOT BERNSTEIN: So my question is --
67. THE COURT: I told you I'm not talking to
68. you yet. I was talking to you to tell you what
69. I'm doing so you're not mystified, but now you
70. sit silently until it's my time to talk to you.
71. Right now I'm talking to some other people.
72. Okay, so --
73. MR. ROSE: May I approach --
74. THE COURT: -- the trustees believe the
75. first thing that needs to be done is the
76. resolution of this order that was entered by
77. Judge Colin severing out the count and the
78. amended complaint that deals with the validity
79. of the testamentary documents, correct?
80. MR. ROSE: Yes, sir.
81. THE COURT: All right. Does anybody
82. object to that issue being resolved first in
83. the order of events in this sequence of cases?
84. MR. O'CONNELL: Are you ready for me?
85. THE COURT: Yeah, I just want to know if
86. there's any objection to having that issue
87. heard and resolved first. That's the issue
88. that I'm chewing on right now.
89. MR. O'CONNELL: Okay. I wouldn't call it
90. an objection, but I'd like to be able to
91. explain my role in it and these other motions.
92. THE COURT: Well, first I want to know if
93. there's any reason I should attack this as the
94. first order of business in setting a trial or
95. hearing to have it resolved. Do you have any
96. objection?
97. MR. O'CONNELL: I wouldn't object to that.
98. THE COURT: All right. Does anybody else
99. seated at the tables have any objection?
100. MR. FEAMAN: May it please the Court.
101. Peter Feaman on behalf of William Stansbury.
102. He's a $2.5 million creditor of the estate of
103. Simon Bernstein.
104. We're here in the estate of Simon
105. Bernstein and it's the position of
106. Mr. Stansbury that a removal of Ted Bernstein
107. as successor trustee should be heard first.
108. THE COURT: Okay. Why?
109. MR. FEAMAN: The reason for that is if
110. that issue is determined one way or the other
111. we believe that is the linchpin to then
112. resolving probably all the other issues in this
113. case.
114. THE COURT: The trustee believes the issue
115. to resolving many of the issues is to determine
116. whether Eliot -- I'm using first names, I'm
117. sorry. Is it Mr. Bernstein, Eliot Bernstein?
118. MR. ELIOT BERNSTEIN: You can call me
119. Eliot.
120. THE COURT: Okay. I don't mean to be
121. disrespectful. I don't want to do that.
122. The trustee's thought is that resolving
123. whether Eliot has any standing to be involved
124. in the litigation is key. You're saying that's
125. not key, it's something else that's key? What
126. else is it that you're suggesting is the key
127. issue to be resolved?
128. MR. FEAMAN: Because that's the Shirley
129. Bernstein trust. The matter that is before
130. Your Honor today is the estate of Simon
131. Bernstein, and Simon Bernstein had a separate
132. trust which was different from the Shirley
133. Bernstein trust and the -- most of the assets
134. are in the Simon Bernstein trust which then had
135. the pour-over will into -- most of the assets
136. are in the Simon Bernstein estate and then had
137. the pour-over will into the trust and that's --
138. that's the matter that is the most significant,
139. in my humble opinion, that is before Your Honor
140. is the Simon Bernstein estate and the Simon
141. Bernstein trust. It's the opinion of
142. Mr. Stansbury that Mr. Ted Bernstein, as a
143. successor trustee to the Simon Bernstein trust,
144. should be heard first.
145. THE COURT: Let me ask this: How is it
146. that there is an order by Judge Colin severing
147. out this count about the validity of some
148. estate documents in the Simon Bernstein case if
149. the documents in question were filed in a
150. different estate? Maybe the trustee can
151. address that.
152. MR. ROSE: Sure.
153. THE COURT: What's up with that?
154. MR. ROSE: We have a trust construction
155. count that was to determine the validity and
156. then the construction of the Shirley Bernstein
157. trust. Within that claim, because there's an
158. overlap of issues there, the standing issue is
159. the same in both. What Judge Colin ordered me
160. to do was to file an additional count into that
161. complaint. Everyone was properly noticed. We
162. already had the jurisdiction over all the
163. beneficiaries, those that answered, those that
164. did not. Nobody moved to dismiss upon the
165. ground that it's not properly in one case, and
166. so because there's a direct overlap between
167. documents that were executed and the validity
168. of those documents, and the validity of the
169. will of Simon directly relates to the validity
170. of the exercise of power of appointment because
171. he exercised his power through his will. So
172. what Judge Colin did was he ordered me to file
173. a simple one-count complaint, as simple as it
174. could be, list the four documents and allege
175. that they're all valid and enforceable. In the
176. context of trying that issue you will decide
177. whether, for example, Simon Bernstein was
178. unduly influenced, if that's an allegation, to
179. execute the power of appointment. The power of
180. appointment is what deprives Mr. Eliot
181. Bernstein of standing. Judge Colin ordered us
182. all put it all in this count. He then stayed
183. everything else and severed that and we're
184. supposed to try that and we get bogged down
185. constantly in --
186. THE COURT: Don't get sidetracked or I'll
     1. get confused and disaster happens.
     2. Mr. Bernstein, Eliot Bernstein, you've got
     3. an objection to the trial of the issue about
     4. the validity of the estate documents that's
     5. just been discussed?
     6. MR. ELIOT BERNSTEIN: Yes, sir.
     7. THE COURT: What's your objection?
     8. MR. ELIOT BERNSTEIN: Several, with that
     9. being the first thing. The first part is that
     10. Mr. O'Connell has filed with the court in the
     11. Simon Bernstein estate nothing to be done with
     12. Ted Bernstein as trustee because Mr. O'Connell
     13. and Mr. Feaman, two prominent lawyers that you
     14. know, have claimed that the document itself
     15. that they're operating under precludes Ted
     16. Bernstein from being a trustee. The language
     17. says he can't be a related party --
     18. THE COURT: You got to get back to my
     19. question.
     20. MR. ELIOT BERNSTEIN: Here's the problem 21 --
187. THE COURT: No. I'm the one that's
188. telling you the question I'd like you to
189. answer. Remember I told you I chew on one tiny
190. thing at a time. I don't want to get confused.
191. I might make a mistake if I get confused.
192. This is the thing I'm trying to establish
193. in my mind now: What is your objection to
194. trying the issue about the validity of the
195. estate documents that are found in Count II of
196. the amended petition, Docket Entry Number 26?
197. MR. ELIOT BERNSTEIN: My problem is is
198. that if Ted is not a trustee properly serving,
199. and a fraudulent trustee as they're claiming
200. and he's acting improperly, to have a hearing
201. where Ted's arguing validity where he's
202. conflicted, I mean if he doesn't argue
203. successfully, his entire family and children
204. are cut out of everything. So he's got a
205. conflict in arguing a construction --
206. THE COURT: You're not even addressing my
207. question. Thank you. Please be seated.
208. MR. ELIOT BERNSTEIN: I did answer your
209. question because how can we have -- how can we
210. hear his --
211. THE COURT: You're asking me a question.
212. Your question started with how do we do
213. something. I don't know.
214. MR. ELIOT BERNSTEIN: I'm saying we can't
215. hear --
     1. THE COURT: Stop. Please be seated. You
     2. failed to answer my question. You got
     3. something else on your mind that doesn't
     4. address what I'm trying to figure out.
     5. Is it true that Judge Colin issued a stay
     6. order on the other parts of the litigation and
     7. it intended -- somehow he manifested an
     8. intention to resolve the validity of the estate
     9. documents? Is there an order that says that
     10. somewhere?
     11. MR. ROSE: I think that goes too far.
     12. There are multiple proceedings. He severed
     13. this count --
     14. THE COURT: I got that.
     15. MR. ROSE: It's our view that that should
     16. be what is decided --
     17. THE COURT: I know. But you said a minute
     18. ago that he stayed other proceedings. Is there
     19. an order that says that? Where do I find that
     20. order?
     21. MR. ROSE: It's the one that you looked
     22. at, October 6th. It stays the rest of the
     23. proceedings inside the Shirley Bernstein trust
     24. construction case. It doesn't stay everything
     25. in the Simon Bernstein side.
         1. THE COURT: Okay.
         2. MR. ROSE: That's what I was clarifying.
         3. THE COURT: Okay. You've been living with
         4. these cases for several years.
         5. MR. ROSE: Yes.
         6. THE COURT: I've been living with them for
         7. 30 minutes so I'm not as intimately familiar
         8. with the ins and outs of what's going on here.
         9. I'm not even familiar with everybody's names,
         10. so I apologize to you for that.
         11. Well, then there's no reason for me not to
         12. set a trial on that Count II of the amended
         13. complaint, right? I'll do that whether
         14. everybody wants me to do or not that way I'll
         15. get something done and that way we'll move down
         16. the road. That will be done. Court to order
         17. set. How much time you think we need to try
         18. that?
         19. MR. ROSE: Normally I would think we can
         20. try the case within a day.
         21. THE COURT: Okay. Anybody think we need a
         22. different amount of time?
         23. MR. ELIOT BERNSTEIN: Yeah. I think it
         24. will take several days.
         25. THE COURT: Why?
216. MR. ELIOT BERNSTEIN: Well, you're going
217. to have to first start with is Ted Bernstein a
218. valid trustee to argue the case. So that's --
219. THE COURT: No, I won't have to decide
220. that.
221. MR. ELIOT BERNSTEIN: You want somebody to
222. argue who's not valid --
223. THE COURT: What else? Any other issue?
224. Is there any other issue that's going to take
225. more than a day?
226. MR. ELIOT BERNSTEIN: Well, it's very
227. complicated.
228. THE COURT: No, this isn't going to be
229. complicated.
230. MR. ELIOT BERNSTEIN: Okay.
231. THE COURT: It's not. There's documents,
232. pieces of paper that somebody claims were
233. executed or not executed.
234. MR. ELIOT BERNSTEIN: There's been fraud
235. in the document.
236. THE COURT: I was explaining to you
237. something. If you interrupt me you can be held
238. in contempt. If I interrupt you I'm keeping
239. order in my courtroom. You see the difference
240. there? This is not a conversation. Okay. No
241. need for me to explain anything further. I
242. intend to set this for trial. I intend to set
243. it for a day. I intend that issue of the
244. validity of the estate documents will be
245. resolved in that trial. Is there any reason to
246. not think I can do that in a day other than
247. what Mr. Eliot Bernstein has mentioned?
248. MR. FEAMAN: On behalf of Mr. Stansbury we
249. have no involvement in the Shirley Bernstein
250. estate.
251. THE COURT: So you don't care what I do.
252. MR. ROSE: Mr. O'Connell is a party, he's
253. intervening because of the overlap of the power
254. of appointment. I can't speak for him but I
255. want to make sure he agrees that a day is
256. enough. We are all bad estimators.
257. THE COURT: I asked this question to the
258. entire courtroom. If anybody thinks
259. differently then what I'm getting ready to do
260. you're supposed to say something. He hasn't
261. said anything.
262. MR. MORRISSEY: Judge, John Morrissey. I
263. represent four of the adult grandchildren who
264. will ultimately be beneficiaries under the
265. trust document.
     1. THE COURT: Okay.
     2. MR. MORRISSEY: So certainly my clients
     3. have an interest here in what's going on. I
     4. just want to let Your Honor know, because I
     5. don't think -- I hope Mr. Feaman is not
     6. misleading the Court. On two occasions so far
     7. he said that he represents a creditor of the
     8. estate, that's incorrect.
     9. THE COURT: William Stansbury.
     10. MR. MORRISSEY: Correct. William
     11. Stansbury is not a creditor of the estate.
     12. He's someone who filed a claim in the estate.
     13. An objection was filed by the personal
     14. representative, or counsel for the personal
     15. representative, which means that Mr. Stansbury
     16. had 30 days to run off and file his lawsuit
     17. which he's done. He's not done anything with
     18. that separate civil litigation. It's not been
     19. reduced to a judgment. He is not a creditor,
     20. therefore, Judge, he does not have standing not
     21. only with respect to the validity of the
     22. documents but with respect to anything else in
     23. these various litigations.
     24. THE COURT: That's not helping me figure
     25. out how much time I need to set aside for this
266. trial.
267. MR. MORRISSEY: I'm sorry.
268. THE COURT: When I'm telling you I'm a
269. simple guy I'm not being modest. I'm just
270. being truthful. That's where I'm at. I'm
271. going to write down what I do next when I leave
272. this room. What I do next when I leave this
273. room is tell my judicial assistant to reserve a
274. day, set this trial date, send you notices.
275. Bang. That thing is done. So that's why I
276. want to stick with this. Do you have any
277. objection to that?
278. MR. MORRISSEY: No.
279. THE COURT: Okay. Great. This is the way
280. I intend to proceed -- I love Marty Colin.
281. This guy is a judge that's been around a long
282. time. I know him. He's an entirely different
283. guy than me. I expect that your experience
284. with Judge Colin has been different than
285. sitting here with me. Am I right? I never
286. appeared in front of him as a judge -- I never
287. appeared in front of him while he's a judge and
288. while I was a lawyer. He appeared in front of
289. me while he was a lawyer and I was a judge. I
290. don't know how he is as a judge but I am pretty
291. sure he's a different guy than me. Nice guy.
292. I like him. But we're different judges. Your
293. experiences with Judge Colin, put them aside.
294. You're having an experience with me now. We
295. have to do it the way I do it or else I'll mess
296. up.
297. The second thing I have on my list of
298. things to ask you about that I've been jotting
299. down here is this request for guardian ad
300. litem. I think I remember asking and being
301. told that no one has filed a formal request for
302. appointment of a guardian ad litem; is that
303. correct?
304. MR. O'CONNELL: Correct.
305. MR. ROSE: In these four cases no one has
306. done that yet.
307. THE COURT: Okay. Am I going to?
308. MR. ELIOT BERNSTEIN: I believe they have,
309. actually.
310. THE COURT: When was it filed? What
311. docket entry?
312. MR. ELIOT BERNSTEIN: I don't know. It
313. was denied a long time ago by Tescher and
314. Spallina, the guys that were removed for fraud
315. in the court. They tried to put guardians on

1 --

* 1. THE COURT: No, no, no. You see I don't
  2. want all the other baggage. I just want the
  3. answer to that question. When was it filed?
  4. MR. ELIOT BERNSTEIN: I don't know. At
  5. the beginning.
  6. THE COURT: At the beginning. That takes
  7. me to the bottom. That slows down progress on
  8. our case management conference. I will go
  9. through it. What was the title of the
  10. pleading?
  11. MR. ELIOT BERNSTEIN: I don't know. I
  12. don't think Joy's records went back that far.
  13. MS. FOGLIETTA: We pulled things that were
  14. pending, Judge. I don't have that.
  15. MR. MORRISSEY: On behalf of the four
  16. adult grandchildren it's our intention to file
  17. one. We were hoping to file one before today's
  18. hearing.
  19. THE COURT: Okay. Since that hasn't been
  20. filed then I'm not taking action on it. That's
  21. my practice. If there's something filed I'll
  22. move towards getting it resolved. If it's not
  23. been filed and it's just in somebody's mind I
  24. find that it's difficult to take any action.

1. I'm crossing that off my list.
2. There's a pending motion to appoint
3. attorneys -- an attorney for the children. Is
4. that an attorney ad litem?
5. MR. ELIOT BERNSTEIN: An attorney for my
6. children.
7. THE COURT: Who filed that motion?
8. MR. ELIOT BERNSTEIN: Me.
9. THE COURT: When did you file?
10. MR. ELIOT BERNSTEIN: Just to pay the fees
11. for counsel for my children.
12. THE COURT: When did you file it is what
13. I'm trying to figure it out.
14. MR. ELIOT BERNSTEIN: A while ago.
15. THE COURT: Any closer estimate than that?
16. MR. ELIOT BERNSTEIN: I've been filing
17. that since the first petition in this case in
18. May of 2013 which still isn't heard.
19. THE COURT: May of 2013 is when you filed
20. it?
21. MR. ELIOT BERNSTEIN: Yeah.
22. MR. O'CONNELL: We think we found one
23. August 28, 2014 in the Simon Bernstein estate.
24. THE COURT: The Simon Bernstein estate is
25. the only one I got up on the computer. The
26. only thing that happened on August 20th is an
27. order by Judge Colin maybe.
28. MR. O'CONNELL: 28th, sorry, Your Honor, 4 2-8.
29. THE COURT: Okay. I just got my trifocals
30. reissued. These are the old ones so an 8 and a
31. 0 look alike. I'm moving my head and trying to
32. focus. Bear with me a second.
33. I don't see anything anywhere near the
34. 28th of August of '14. Is that the year, '14?
35. MR. O'CONNELL: Yes. It says, "Motion to
36. compel estates of Simon and Shirley to pay
37. counsel for Eliot and his minor children."
38. MS. FOGLIETTA: That's in case number --
39. THE COURT: Well, I don't see any motion
40. with that description. Perhaps the Court
41. doesn't have it scanned in or something. Who
42. knows. Anybody have a paper copy of it that I
43. can look at?
44. MS. FOGLIETTA: I do.
45. THE COURT: I wouldn't mind looking at a
46. paper copy if you got one handy.
47. MR. O'CONNELL: Sure.
48. THE COURT: And was there a ruling on this
49. motion for having the estate pay for attorneys
50. for Eliot and his minor children? Has there
51. been an order on this?
52. MR. O'CONNELL: Not that I'm aware of,
53. Your Honor.
54. THE COURT: Was there ever a hearing?
55. MR. ROSE: I don't believe it was set for
56. hearing. That was alluded to that
57. Mr. Bernstein had requested an attorney for his
58. children and I would suggest that -- subject
59. to -- I don't think there was an objection from
60. anyone -- it's not appropriate to appoint an
61. attorney for his children. If you appoint a
62. guardian ad litem to represent his children
63. then the guardian ad litem has the power to go
64. out and retain counsel and to accomplish the
65. relief that's sought. We don't believe it's
66. appropriate though for Mr. Bernstein himself,
67. but certainly his children who are
68. beneficiaries should have --
69. THE COURT: All right. It looks like this
70. motion just asks for money. It's not asking
71. for the appointment of counsel. Mr. Eliot is
72. seeking the issuance of money from the trust
73. for the estate. He alludes to the children
74. needing an attorney but he doesn't ask for one
75. to be appointed. He asks if he can be given
76. money.
77. There's an order I see, Docket Entry 24,
78. where Judge Colin prohibits any new filings.
79. I've not read the order yet but I see the title
80. of the order takes up 20 lines of docket entry
81. here in our computer program. I hope the order
82. is shorter than the title.
83. MR. O'CONNELL: We got it for Your Honor.
84. (Handing)
85. THE COURT: Now are these copies ones I
86. should return to you all or can I keep these?
87. MS. FOGLIETTA: You can keep them.
88. THE COURT: Thanks. Judge Colin had a
89. case management conference. It's a case
90. management order. How about that. It's a
91. great order. He must have been having problems
92. with the progress of this case to issue an
93. order like that. That was at Docket Entry
94. Number 24 which leads me to ask this question,
95. perhaps foolishly, and that's the question if
96. this order was entered by Judge Colin in
97. September of 2014 at Docket Entry Number 24 how
98. come we're up to 82 docket entries and other
99. petitions and things and stuff being filed?
100. Did he disregard the order, because I think
101. it's a great order, or did something else
102. happen that I don't know about that changed the
103. order, or did he retract the order?
104. MR. O'CONNELL: Let me try to help there.
105. Just so you can get my position in all this, I
106. want to explain. I am a successor personal
107. representative in the Simon Bernstein estate,
108. so that's my universe in terms of this matter.
109. I got over a year at this point that I've been
110. involved in that capacity. With regard to that
111. particular order the way everyone has
112. interpreted it is it has to do with anyone to
113. institute new litigation, a new adversary
114. matter they would have to go before Judge
115. Colin, because we certainly have filed, on an
116. administrative level, a number of motions of
117. things that needed to happen.
118. THE COURT: Administrative stuff is
119. allowed to happen.
120. MR. O'CONNELL: To go to your good
121. question, well, why are there so many items,
122. not that we filed a ton of motions and
123. petitions but certainly, on my behalf, there
124. are definitely some that we have filed.
     1. THE COURT: Docket Entry Number 41 there
     2. is a petition to remove Theodore Stuart
     3. Bernstein as alleged successor trustee filed by
     4. Eliot Bernstein. How did that get filed? Did
     5. Judge Colin approved that?
     6. MR. ELIOT BERNSTEIN: He directed that.
     7. THE COURT: Say that again?
     8. MR. ELIOT BERNSTEIN: He directed that.
     9. THE COURT: So there was a hearing that he
     10. authorized this petition to be filed?
     11. MR. ELIOT BERNSTEIN: Yes. And then a new
     12. case was started. He ordered a new case to
     13. remove Ted and we're in the middle of that.
     14. That's one of the cases.
     15. Just to clarify something, I'm still
     16. confused, the first part about the hearing
     17. you're ordering, that's not --
     18. THE COURT: We're not on that subject.
     19. MR. ELIOT BERNSTEIN: Are we on Simon's
     20. case or Shirley's case? I'm confused by that.
     21. THE COURT: I'm confused too. Welcome to
     22. my world.
     23. MR. ELIOT BERNSTEIN: Welcome to mine.
     24. THE COURT: We're going to eliminate some
     25. of the confusion by trying some of these things
125. pled in this case and one of them that's been
126. pled is Count II of the amended petition of
127. Docket Entry 26 that Judge Colin severed out
128. and said is going to be tried separately.
129. MR. ELIOT BERNSTEIN: That's in Shirley.
130. THE COURT: I'm telling you what I'm
131. doing. You asked me what I'm doing, to clarify
132. what I'm doing. I just told you.
133. MR. ELIOT BERNSTEIN: Okay.
134. MR. ROSE: If I can, just briefly with
135. that, what Judge Colin was doing is you can fax
136. him the motion or bring it to his attention --
137. THE COURT: He uses fax? Okay. He is a
138. dinosaur.
139. MR. ROSE: He would give permission that
140. something could be filed or not filed. We had
141. to go through the extra step of sending him in
142. advance, or asking permission if I wanted to
143. file a motion to approve a sale or whatever we
144. had to get his permission in advance.
145. THE COURT: Okay. Thank you. I find
146. there's no pending motion for appointment of
147. attorneys for the children so I'm striking that
148. off my list.
149. Now back to the William Stansbury claim
     1. regarding the estate of Simon Bernstein. What
     2. is the pleading that sets up any claim that
     3. needs to be adjudicated in that case that was
     4. not already set? It's the one thing that
     5. you're not involved in. What about the claim
     6. you said that William Stansbury has?
     7. MR. FEAMAN: That's a separate action that
     8. was filed and is pending before Judge Blanc in
     9. the general jurisdiction division.
     10. THE COURT: Okay. So Blanc will figure
     11. that one out, right?
     12. MR. FEAMAN: And the estate is a
     13. defendant.
     14. THE COURT: I'm trying to figure out what
     15. I have to set. Blanc has that one, right?
     16. MR. FEAMAN: Yes, yes, Your Honor.
     17. The only thing, with regard to
     18. Mr. Stansbury, I believe, is Mr. Stansbury has
     19. filed a motion to discharge him from
     20. responsibility for funding the estate's
     21. participation in some Chicago litigation, and
     22. that should be borne by the estate, but that's
     23. already set before Your Honor on October 20th
     24. in the special set hearing.
     25. THE COURT: When was that set? When did
         1. the document hit the court records when --
         2. setting that hearing?
         3. MR. FEAMAN: I'd say ten days ago. It was
         4. set for the day after tomorrow and it had to be
         5. reset at my request due to a conflict, and then
         6. it was set October 20, 2015 pursuant to a
         7. notice of hearing I believe our office sent
         8. out, I believe, ten days ago, approximately.
         9. THE COURT: That would be in case number
         10. what?
         11. MR. FEAMAN: That would be case Number 12 124391CP -- 12 -- 2012CP4391.
150. THE COURT: Okay. So that's a different
151. case than I have on the computer screen. Let
152. me get that one up.
153. MR. FEAMAN: That's the case number that
154. actually brings us here today pursuant to
155. notice of hearing filed by Mr. O'Connell, the
156. personal representative of the estate.
157. THE COURT: Just a second. I've been
158. looking at, apparently, the trust case, 22 14CP3698.
159. MS. FOGLIETTA: Judge, that's the Shirley
160. trust.
161. THE COURT: Did you ever see Colin use a
     1. computer in court?
     2. MR. O'CONNELL: Not really.
     3. THE COURT: That's why I call him a
     4. dinosaur. I'd say it to his face trying to get
     5. him to be more tech savvy.
     6. I'm scrolling, okay. You see me scrolling
     7. with my finger. I've scrolled through all the
     8. attorneys. This is more like it. We're up to
     9. 386, and roughly ten days ago there was some
     10. sort of hearing set. A re-notice of hearing.
     11. MR. ELIOT BERNSTEIN: That was an
     12. objection to an accounting that I filed timely.
     13. THE COURT: The notice of hearing,
     14. Mr. Feaman, that you scheduled, or you sent out
     15. that I'm referring to is called the fifth
     16. re-notice of hearing and it sets hearing on the
     17. motion of creditor William Stansbury for a
     18. hearing on October 20.
     19. MR. FEAMAN: Yes, Your Honor.
     20. THE COURT: You set aside a 15-minute
     21. period of time for that. Judge Blanc has got
     22. the litigation that you referred to in his
     23. court and he'll figure that out.
     24. MR. FEAMAN: Correct.
     25. THE COURT: All right.
162. MR. FEAMAN: But there's also, with
163. regard, if I may, Your Honor, to
164. Mr. Stansbury's claim, Mr. O'Connell has also
165. filed a motion to enter and approve a
166. settlement agreement between the estate and
167. Mr. Stansbury which is still out there. But
168. related to that is a motion by Mr. O'Connell
169. filed on 7-20-2015 to have Simon Bernstein
170. declared the beneficiary of the JP Morgan IRA
171. account, and the reason it relates to
172. Mr. Stansbury is because the settlement money
173. contemplated to be paid to Mr. Stansbury would
174. come out of that account and there's a question
175. whether that is actually money that should be
176. part of the estate or not so before we actually
177. wanted to fund the settlement we wanted to -- I
178. don't mean to speak for Mr. O'Connell -- we
179. wanted to make sure that that would be
180. appropriate source of funds to fund the
181. settlement so there would be no clawback claims
182. either against Mr. Stansbury or the estate
183. subsequent to the consummation of the
184. settlement.
185. THE COURT: Is that petition at issue?
186. MR. FEAMAN: It -- Mr. O'Connell?
187. MR. O'CONNELL: I don't think it was filed
188. as an adversary matter. It's a free-standing
189. petition.
190. THE COURT: Okay.
191. MR. O'CONNELL: Everybody has been served
192. with it.
193. MR. ROSE: For the record we have no
194. objection to that motion being granted. I
195. don't know if anybody objects to the motion.
196. That's certainly something that should be heard
197. if it's objected to very early.
198. THE COURT: Unless somebody notices it up
199. for hearing, get ready for that.
200. We've used up all the time I set aside for
201. the Bernstein case. It would sure be nice to
202. spend the rest of my career talking to you
203. about this but I have other people scheduled at
204. 10:30 and I must see them now. Thanks a lot.
205. I'll do my work on setting the trial on the one
206. thing we got and we'll see what happens next.
207. MR. O'CONNELL: Thank you.
208. THE COURT: It was fun and look forward to
209. a long list of hearings as well.
210. (Whereupon, the hearing is concluded at 10:32 a.m.) 25

1 CERTIFICATE OF COURT REPORTER 2

1. I, JULIE ANDOLPHO, do hereby certify that
2. the foregoing transcript of the proceedings,
3. consisting of pages numbered 1 through 42,
4. inclusive, is a true and correct transcript of the
5. proceedings taken by me before the Honorable JOHN
6. PHILLIPS, on September 15, 2015.
7. I further certify that I am not a relative
8. or employee or attorney or counsel of any of the
9. parties, nor a relative or employee of such attorney
10. or counsel, or financially interested, directly or
11. indirectly, in this action.
12. The certification does not apply to any
13. reproduction of the same by any means unless under
14. direct control and/or direction or the reporter.
15. Dated this 12th day of October, 2015.

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