

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

CASE NO. 4D16-222

ELIOT BERNSTEIN

L.T. CASE NOS. 2014CP003698XXXXNB
2011CP000653XXXXNB

Appellant,

v.

TED S. BERNSTEIN, AS TRUSTEE,
et al.

Appellee.

_____/

APPELLEE'S, TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE,
SECOND MOTION TO DISMISS

Appellee, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust ("Trustee"), moves to dismiss the appeal filed by Eliot Ivan Bernstein for failure to file an initial brief, and states:

1. Appellant filed a Notice of Appeal on January 20, 2016, appealing a final judgment which determined the validity of certain testamentary documents, including certain wills and trusts, and thereby determined the persons to whom distributions should be made. Rule 9.170(b)(5), Fla. R. App. P. (2015).

2. Under the lower court's ruling, Eliot Bernstein's children (not Eliot) are among the class of beneficiaries entitled to distribution from certain trusts. The pendency of this appeal not only will cost the beneficiaries legal fees, it also likely

will delay the final distribution and closure of the estate and trust of Eliot Bernstein's mother, causing irreparable and unrecoverable damages to the beneficiaries. (Eliot Bernstein has been granted indigency status so this appeal costs him nothing and there is no likelihood of Appellee recovering any of the attorneys' fee or damages caused by Eliot Bernstein's constant delays.) In other words, any delay is very costly to the trusts and their beneficiaries, and there already has been considerable delay.

3. The appeal was docketed as an appeal of a final probate order, and under Rule 9.170(d), the Appellant's initial brief, accompanied by an appendix if applicable, was due to be served on or before March 30, 2016.

4. To date, Eliot Bernstein has filed four motions for enlargement – the first and second of which were granted taking the original deadline to May 28th, and the third and fourth of which were denied. Eliot Bernstein also has now filed four requests to delay the appeal for the ostensible purpose of supplementing the record, something he easily could have accomplished through an Appendix.

5. To date, no brief has been filed, despite the fact that it is now 84 days past the original deadline. The Court's Order dated June 9, 2016, clearly set forth a deadline of an extra five days for Eliot Bernstein to file the initial brief, which has not happened.

6. Appellee requests that the serial motions (including the fourth motion to supplement record filed June 20, 2016¹) filed by Eliot Bernstein seeking an extension or an expansion of the appellate record be stricken as unauthorized, and the appeal be immediately dismissed for lack of prosecution.

WHEREFORE, Appellee moves the Court to dismiss the appeal.

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 22nd day of June, 2016.

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By: /s/ Alan B. Rose
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¹ The June 20 filing attaches over 900 pages of hearing transcripts, including a duplicate copy of the entire trial transcript from the one-day trial on December 15, 2015, which already is in the record. There also are numerous transcripts from hearings in other cases, unrelated to the issues on appeal. None of this information needs to be in the record, and again, an Appendix could have been filed if there was something Eliot Bernstein believed actually needed to reference in his Initial Brief. ***What this latest filing proves is quite to the contrary: Eliot Bernstein already had everything he needed to file an Initial Brief if he wanted.***

SERVICE LIST - CASE NO. 4D16-222

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