

Sanctions Motion Filed Against Lawyers in Bitter Guardianship Case

Samantha Joseph, Daily Business Review

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David Gersten, with Gordon & Rees.
AM Holt

Former Third District Court of Appeal Chief Judge David Gersten is among three attorneys facing sanctions in a bitter probate case that has also engulfed a fourth lawyer in a criminal investigation.

Gersten is now a partner at Gordon & Rees. He and Miami attorneys Terry Fogel and Scott Rubin, of Fogel Rubin & Fogel, represent Jorge and Alina Lopez, the adult children of multimillionaire Jose Lopez Sr., who want to annul their father's marriage to his third wife, Mercy Flores.

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The attorneys are all subject to a [motion for sanctions](#) by Flores' attorney, Michael Schlesinger of Schlesinger & Associates, under Florida Statute 57.105, which punishes parties for frivolous court filings.

Dismissing the allegations, Gersten said lawyers increasingly abuse the statute.

"I'm not worried at all about the 57.105. It's something that seems to be going on in our community quite a bit where lawyers seem to be trying to intimidate you into backing off a case," he said. "I want to state emphatically we are not intimidated at all, and I would be shocked if any court found any merit in any of their allegations."

A fourth lawyer, Miami tax attorney Edward Guttenmacher, may also be in the hot seat with the State Attorney's Office over allegations of elder abuse. Guttenmacher has been the senior Lopez's attorney for about 30 years and serves as his trustee, according to court records.

News of that ongoing investigation emerged Monday during oral arguments at a hearing on the annulment case before Miami-Dade Circuit Judge David Miller.

Guttenmacher's attorney, Luis Barreto, did not respond to requests for comment by deadline, and the State Attorney's Office would neither confirm nor deny it was conducting an investigation.

The ethics accusations stem from the Lopezes' bitter family dispute in four suits over control of an estate reportedly worth north of \$30 million. They sprouted from litigation in late 2015 after the elder Lopez, now 83, suffered a series of medical crises and was declared legally incapacitated.

Two of Lopez's children from his first marriage have since wrestled with his wife for the right to administer their father's business, estate and medical affairs. They claimed Flores isolated and starved their father, but the wife asserted they waged war when they discovered trust documents and a prenuptial agreement awarding her \$1 million and the right to remain in the marital home.

The motion for sanctions claim the siblings' actions in trying to have the marriage annulled "have no basis in law or fact, and petitioners and their counsel knew or should have known of the frivolous nature of the allegations."

Guardianship questions

The elder Lopez has a history of marrying significantly younger brides. His first wife, the mother of the adult siblings involved in the probate litigation, died in 2000. His second wife, whom he later divorced, was decades his junior. He married Flores, now 55, in 2014 after years of friendship and two months of negotiating a prenuptial agreement, according to her attorneys.

Flores and the Lopez siblings signed a settlement agreement in September, while motions were pending to determine the elder Lopez's competency and to appoint guardians for him and his estate.

But Flores asserted her husband assigned her control under a pre-need guardianship, as he'd done with his two prior spouses. These documents named the Lopez siblings as secondary guardians.

"He would always tell me to stay strong and not chicken out, because he knew his children would attack," Flores said outside the courtroom Monday, following a hearing in the annulment case. "He never had a kind word for his children."

Under the settlement, Flores surrendered any rights from the pre-need document in exchange for exclusive use of the marital home and daily visitation with her husband, among other conditions.

But the wife petitioned the court to set aside the settlement, claiming the siblings defrauded her and never intended to honor it.

"A few months after they got appointed as guardians, they moved to annul the marriage and exclude her from visitation," Schlesinger said.

The siblings' attorneys fired back, as did David Goldberg, a court-appointed lawyer representing the elder Lopez. Each filed motions to dismiss Flores' action.

"I don't have a dog in the fight in the annulment; I don't have a dog in the fight in the trust case," Goldberg said. "What my client wanted was that his children should be the guardians."

Miami-Dade Circuit Judge Bernard Shapiro Tuesday denied their requests and cleared the way for the wife to push forward with her claims.

Fees take center stage

Attorneys on each side alleged their adversaries were drawing out the dispute for bigger paydays and acting in their own best interest, rather than that of Jose Lopez.

The siblings' attorneys pointed to Guttenmacher's creation of a trust that would compensate his firm for more than 60 years, as well as his greenlighting of the trust's reimbursement of Flores' litigation costs. But Schlesinger maintains that Lopez's living trust gave the trustee discretion in covering Flores' expenses and therefore allowed reimbursement of her litigation bills.

"You have a trustee who's paying for litigation against his own client," Gersten alleged during oral arguments. "Against his own client. I say it twice because I need it for the record for the appellate court."

Both judges at Monday's hearings voiced concerns over depletion of the estate's funds to cover litigation.

"I could easily see this costing \$1 million," Miller said, requesting the litigants secure budgets from their lawyers to outline all expenses.

Court records show the trust paid Goldberg, Lopez's court-appointed lawyer, \$42,154 for attorney's fees and expenses from April 3 to Dec. 17, 2015. Gersten is a legal heavyweight who commands \$750 per hour for meditations. Schlesinger charges \$585 per hour.

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