**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401**

CASE NO: 4D16-0222

CASE NO: 4D16-1449

CASE NO: 4D16-1476

CASE NO: 4D16-1478

L.T. No.: 2011CP000653XXXXSB  
 2014CP003698XXXXNB  
 2014CP002815XXXXNB

ELIOT IVAN BERNSTEIN v. TED BERNSTEIN, AS

TRUSTEE, ET AL.

Appellant / Petitioner(s) Appellee / Respondent(s)

**MOTION FOR RECONSIDERATION OF ORDER EN BANC RE: Appellant’s SEPTEMBER 6, 2016 MOTION FOR EXTENSION OF TIME AND TO STAY PROCEEDINGS**

1. While Eliot appreciates the attempt by opposing counsel Alan Rose and Steven Lessne to misinform this court of a concocted conspiracy theory claiming Eliot has sought stay in regards to delaying the cases through lying to the court about medical issues this is not factually the case.
2. Eliot suffers from Vasovagal and has been diagnosed with such over two years ago and this occurred during the litigation and the court was informed at the time of the diagnosis and medical condition that caused severe injury.
3. Vasovagal has several triggers that can cause fainting, including but not limited to,

Cause[edit]

Vasovagal syncope occurs in response to a trigger, with a corresponding malfunction in the parts of the nervous system that regulate heart rate and blood pressure. When heart rate slows, blood pressure drops, and the resulting lack of blood to the brain causes fainting and confusion.[6]

Typical triggers for vasovagal episodes include:[7]

**Prolonged standing or upright sitting**

**Stress directly related to trauma[8]**

**Stress**

**Any painful or unpleasant stimuli, such as:**

**Trauma (such as hitting one's funny bone)**

Sudden onset of extreme emotions

Lack of sleep

Coughing

Swallowing[12][[1]](#footnote-1)

1. It should be noted that Eliot had a tracheotomy done with a pen on the side of a road when he was 19 that has been identified as a possible cause by doctors in the first instance of his Vasovagal attack that led to severe injury from passing out at a friends home and falling forward off a chair directly onto a marble floor, which injury then included bleeding on the brain. The damages to my throat and airways was believed to be a primary trigger and if further identified as the cause after upcoming scheduled cardiological and neurological tests may need an ENT surgery to fix the damage if possible.
2. Eliot suffered from a fall previously in 2013 that caused bleeding on the brain and left him hospitalized for days and suffering from injuries for several months to his skeletal frame in the neck and shoulders caused by the fall.
3. Eliot has been to neurologists and cardiologists to make diagnoses of what was happening after the first hospitalization, as sudden fainting can lead to very serious injuries as were sustained in both attacks that led to hospitalization.
4. Eliot has been feeling highly stressed handling over 15 legal cases involving the estates of Simon and Shirley Bernstein in both state court and federal court and multiple filings have been due and hearings held that are all contributing to a mass of stress and lack of sleep.
5. Eliot was recommended for further treatment after the initial attack and injuries but put them off due to a mass of court filings and criminal complaints that due at the time and therefore postponed treatment for his medical condition.
6. Eliot began feeling vasovagal attacks coming on in June of 2016 and as it grew worse he sought to find a few weeks break to consult with doctors and get treatment. Eliot found it getting to the point of dangerous when he began fainting repeatedly primarily in bed.
7. Eliot was planning on scheduling medical visits with both cardiologists and neurologists to determine a course of treatment and sought in advance a several week break and stay to deal with these very serious and **life threatening** issues.from opposing counsel Alan Rose and Steven Lessne who refused.
8. On 9/5/2016, Eliot fainted in his kitchen and his son Jacob happened to be standing near him when he saw him coughing and then turn purple and then begin to fall backward and where his son caught him and broke most of the fall saving him from traumatic head injury again.
9. However, his 17 year old son seeing his father unconscious decided to give resuscitation to him and begin CPR which he had seen on TV and learned in a swim class years earlier. Being a varsity athlete he compressed Eliot’s chest with all of his strength, whereupon he heard a loud cracking and ripping and whereby Eliot woke immediately and cried out asking where he was and did somebody hit him in the chest with a bat.
10. Eliot then went to the Emergency room on 9/6/2016 and it was determined that he cracked his ribs and had injured and bruised cartilage and was told it would take 4-6 weeks to heal and was prescribed pain medicine and anti-inflammatory drugs. He was advised not to undergo stressful events that could trigger further attacks and seek immediate consultation regarding the fainting spells by a cardiologist and neurologist as soon as he recovered from the rib injury and felt well enough to undergo tests that involve strenuous physical activities, such as stress tests.
11. Eliot followed up with his primary doctor on 9/12/16 and was ordered to see a cardiologist and neurologist again and referrals were made and appointments are now scheduled to have new tests run and determine a course of treatment. It is anticipated that after the appointments and tests there will another several weeks to get results and determine further treatment, which may involve a complicated surgery.
12. Eliot is scheduled for the soonest appointment with a cardiologist recommended by his Primary Physician after his rib has been given time to heal to perform stress tests and more and after the doctor returns from the holidays on October 17, 2016.
13. Eliot is scheduled for the soonest appointment with a neurologist recommended by his Primary Physician on October 24, 2016.
14. That Steven Lessne and Alan Rose have concocted a conspiracy theory around this medical situation involving Eliot attempting to stay the cases without cause, while amusing it is quite offensive and abusive, as Eliot has done nothing wrong in any of these proceeding ever or dishonest and has never delayed the cases without cause.
15. On the other hand the truth is that the law firm of Tescher & Spallina, PA who are the attorneys that brought both Rose and Lessne into these estate and trust matters initially are now found to have committed fraud, fraud on the court, fraud on the beneficiaries and creditors, forgery of estate and trust documents and more and these appear the real cause of delay. Where Robert Spallina, (former Co-Personal Representative, Co-Trustee and Counsel to Ted Bernstein) and his partner Donald Tescher (former Co-Personal Representative, Co-Trustee and Counsel to Ted Bernstein) have now admitted their law firm committed MULTIPLE FRAUDS IN THESE MATTERS and this is the whole cause of all these burdens on the court, delays in proceedings, delays in inheritancy and massive damages to beneficiaries, creditors and interested parties.
16. In fact, Spallina represented Rose’s client Ted until he withdrew after admitting fraudulently creating a Shirley Bernstein Trust and sending it through US Mail to my children’s counsel, a crime the Court now has proof of through admission in the December 15, 2015 hearing before Judge Phillips in these matters and which as of yet, this Court and the lower court have DONE NOTHING to report the wrongdoings they too have become cognizant of to the proper criminal and ethical authorities as required by Judicial Canon, Attorney Conduct Code, the Florida Court Statewide Fraud Policy[[2]](#footnote-2) and State and Federal Law.
17. Further, while acting as Ted’s client, Tescher & Spallina filed multiple fraudulent and forged documents to the court in these matters as part of a fraud on the court that led to the reopening of the Estate of Shirley Bernstein as it was closed fraudulently through illegal misuse of my father’s identity in filing fraudulent documents Post Mortem. Again, this Court and lower court are cognizant of the admission of attorneys to these crimes and NOTHING HAS BEEN DONE TO REPORT THIS TO CRIMINAL AUTHORITIES BY JUDGES AND LAWYERS WHO ARE LEGALLY OBLIGATED TO DO SO and in fact efforts to cover up the crimes continues at every juncture within the civil court process.
18. These PROVEN frauds on the court were done while Tescher and Spallina were not only Co-PR’s and Co-Trustees in my father’s case but were retained by Ted Bernstein as his counsel and where all the fraudulent acts directly were designed to benefit Ted Bernstein’s family and the Court Officials and Court Appointed Officers and Fiduciaries.
19. Yet, due to the failure to follow fraud protocols designed to weed out those involved in Fraud on the Court, Ted Bernstein and his new replacement counsel to his counsel Tescher & Spallina who committed these frauds initially have been allowed to continue to act in fiduciary capacities to continue the frauds on the court, file false pleadings in efforts to cover up their and their friends crimes through further abuse of legal process.
20. Ted was the fiduciary at the time the fraudulent documents were submitted to the court in his mother’s case by his retained counsel Tescher & Spallina, PA (a now defunct law firm.)
21. Ted and all of his counsel should have been removed from these matters to cure the frauds they committed, that Judge Colin stated in the first hearing he had enough evidence at that moment to read them all their Miranda Rights but somehow (through failure of the court officers and court appointed officers to report the felony misconduct of attorneys and fiduciaries as required and take steps to rectify the frauds committed by members of the court) Ted and his new counsel Rose remain in the case and now try to spin a tale that Eliot is somehow the cause of any of these problems in the courts when IN FACT they all result from the frauds on the beneficiaries, the frauds on the court and frauds by Court Appointed Counsel (Officers of the Court), Fiduciaries and Guardians.
22. Rose and Lessne should concern themselves more with these frauds that the attorneys who brought them into the matters caused, that they are an extension of by aiding and abetting and more and they too should have also been removed had the crimes been reported properly by the courts as they were directly tied to Tescher and Spallina) and where the extent of the frauds that remains ongoing in these matters is still being investigated against these parties in state and federal, criminal and civil, proceedings.
23. New criminal and civil complaints are also in progress for a whole slew of new frauds involving abuse of process and more and whereby all of these new frauds and the old unprosecuted but admitted frauds are being investigated and will certainly be cause for appeal of these matters. Fraud on the court has no statutes of limitations and these frauds on and by the court officials continue to this day in these proceedings both in the trial court and this court if it does not immediately rectify and report the court fraud as required.
24. In fact, all of the attorneys and judges who have reviewed these matters and learned of these frauds of their fellow bar members have failed in their duties to follow the Florida Court Statewide Fraud Policy, Judicial Canons, Attorney Conduct Codes and state and federal law that require them to report these matters to the Florida Inspector General and other applicable criminal authorities, including members handling these matters in this Court.
25. All delays and costs and damages have been caused by the multiple frauds committed already in these matters by the COURT’S OFFICERS and APPOINTMENTS and the fact that the fraud has still been not rectified by the court as required, where the first cure would be removing parties who were directly involved with the attorneys at law and fiduciaries who committed these Post Mortem heinous grave robbing crimes and then resetting the cases with NEW NON-CONFLICTED PARTIES and VACATING ALL VOID ORDERS ISSUED IN FRAUD.
26. Since the court has not complied with its obligatory reporting to authorities the parties involved in the frauds have been able to remain in the case (other than Tescher & Spallina who resigned in all legal and fiduciary capacities after admitting to fraud to the Sheriff dept.)
27. Ted Bernstein was acting as the fiduciary in the Shirley estate and trust when it was his retained counsel (Tescher and Spallina) who committed frauds that directly benefited Ted’s family and when caught with forged and fraudulent documents this court nightmare began and continues today with Ted and his new counsel continuing the frauds.
28. While the attempt to spin a conspiracy out of Eliot’s request for medical delay against Eliot again is ludicrous it again represents unfounded slander and defamation in court filings by these parties in attempts to further confuse the Court of who and why these cases have taken so long and trying to cover up who is to blame for FELONY CRIMINAL ACTS INCLUDING FRAUD ON THE COURT COMMITTED BY OFFICERS OF THE COURTS and more that have caused MASSIVE DAMAGES to innocent victims.
29. Eliot is not coming to the court complaining that fraud occurred against his family by John or Jane Doe citizens who then tried to commit fraud in the court but rather the court officials and court appointed officials are the ones who have committed fraud against them and have MISUSED the court facilities and monies and resources to achieve the theft of millions/billions of dollars of assets from him and thus it is the Court’s duty to protect Eliot from further harm but that appears to be the exact opposite of what is going here and why a federal monitor has repeatedly been requested to oversight the Florida Courts and cease the ongoing frauds in, on and by members of the courts.
30. That Eliot will need several weeks to recover from the rib injury and to see the necessary doctors to determine a course of treatment, Eliot remains in need of a several week stay to complete these medically ordered treatments. To further stress Eliot with briefs due prior to this could cause dangerous fainting spells resulting in life threatening injuries and thus a stay is necessary.
31. That sanctions should be instituted against Rose and Lessne by this Court for attempting to create an imaginary situation where Eliot is trying to beat the clock of Judge John Phillips retirement and retirement from the cases. What this allegation in their reply to the initial stay request exposes is that for some reason they both feel that the case must be rushed through while Phillips is in his last days on the cases or else someone new may somehow prejudice the cases against them.
32. Where these cases were already Post Recusal STEERED to Phillips by Judge Colin’s judge shopping the cases improperly in the first place and again instead of resetting the cases due to the frauds the fraud continued through this judge shopping. The Court is cognizant of these facts from the record.
33. Where Eliot states further that this Court has no proper jurisdiction over the parties, as defined in the Initial Brief and throughout the proceedings, as the parties sued do not factually exist at this time, as there is no Simon L. Bernstein Trust dtd. 9/12/13 and there are not any sub trusts of that non-existent trust in the record to hold proper jurisdiction over Eliot or his children.
34. The whole case should therefore be vacated immediately, all orders voided and sanctions for the filing party Ted and Rose for further fraud upon the court and fraud upon the parties frivolously sued or at minimum stayed while this Court notifies the proper authorities of the frauds on the court, frauds on the beneficiaries, fraud on the creditor and interested parties and the Court takes all legally necessary steps to root out the fraudulent parties and report them as required by Judicial Canon, Attorney Conduct Codes and State and Federal Law.
35. With State and Federal ongoing criminal investigations into these matters perhaps the Court should take the requested stay time to begin to ferret out the fraud and report the parties involved instead of trying to speed things up and dumping a rash of stressful appeals, hearings and responses to pleadings on Eliot while knowing Eliot is seeking medical assistance for a medical malady that is caused in large part by stress.
36. The Court’s demanding that like 5 or 6 briefs and replies be due today October 11, 2016 before treatments are had and despite knowing of my condition and the fact that stress can cause further fainting that can be fatal is outrageous and further harassment, abuse of legal process, denial of my due process rights and an attempt to cause serious bodily harm to me with scienter and thus the Court should reconsider its denial of the stay filed or issue and extension that fits into the medical timeline herein to protect Eliot.
37. While Eliot understands this Court’s attempt to sweep all this fraud on, by and in the courts under the rug without following any protocol for fraud, Eliot will be reporting these abuses of process as felony criminal acts to state and federal authorities and as further proof that this Court needs Federal Oversight of these cases.
38. Where Eliot’s cases are primarily against the courts of Florida’s officers (judges), court appointed officers (lawyers, guardians and fiduciaries) and others plugged into the legal system, Eliot feels he cannot get a fair hearing in the State of Florida and these cases and all the frauds and cover ups of the frauds prove it.
39. Eliot will not be forced into a life endangering position by this Court to appease a timeframe that appears to be in efforts to rush the cases through before the retirement of Judge Phillips, who has already been reported to state and federal, civil and criminal authorities by Eliot for CRIMINAL MISCONDUCT far outside the color of law. Therefore, if the Court demands responses prior to the time Eliot is cleared by doctors to resume stressful activities and has healed properly and free of medications, then the Court may rule now against Eliot as he will not be forced, browbeaten or bullied into danger to appease the Court’s effort to shut down his whistleblowing efforts to expose the corruption deep inside the Florida courts.

Wherefore Eliot prays for a 6 week stay and extension to any filings due in this court and the lower court in order to seek proper and necessary medical treatments and appropriate time to get medical results back as defined herein. Eliot has been on pain medication for several weeks already and unable to prepare any briefs or other major filing and have hardly been able to review or respond to the rash of Orders and pleadings filed during this time by this court, the lower court and the attorneys involved, since I notified the court of my medical condition, If the court would like to review medical records they are available on request from any or all of the doctors involved.

Eliot also prays for a stay to have a Federal Monitor put in place to oversight these cases due to the conflicts of interest and adverse interests that plague the cases since the onset and due to the proven frauds on, in and by the court in these matters that have gone unregulated and unreported as required by law. Where self regulation of the legal system by members of the Florida legal system has proved a complete failure, as the system appears rigged and gamed and attempts to turn victims into the parties who have done wrong. Eliot DEMANDS that this Court and those reviewing these matters for this Court report to all state and federal authorities the already proven and admitted criminal misconduct in these matters, including Fraud on, by and in the Florida courts by Officers of the Court and Court Appointed Officers as the records in the Simon and Shirley Bernstein estate and trust cases clearly reflect.

1. <https://en.wikipedia.org/wiki/Vasovagal_response> [↑](#footnote-ref-1)
2. Florida Statewide Court Policy

   chrome-extension://oemmndcbldboiebfnladdacbdfmadadm/<http://www.floridasupremecourt.org/oig/SCS_Fraud_Policy.pdf> [↑](#footnote-ref-2)