

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,
RESPONSE TO APPELLANT'S LATEST MOTION FOR
EXTENSION OF TIME AND TO STAY PROCEEDINGS**

Appellee, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust ("Trustee"), submits his opposition to the latest Motion for Extension of Time and To Stay Proceedings filed by Appellant, Eliot Bernstein ("Eliot").

1. Eliot's latest Motion for Extension or Stay was filed on October 12, 2016 – the last day of the 20 day period set by this Court's Order on September 22, 2016, which denied his last such motion and ordered that the Reply Brief be filed within 20 days. Indeed, in its September 22nd Order, this Court stated:

No motions or other filings shall toll the time to file the reply brief, and no further extensions shall be granted absent a showing of extraordinary circumstances where, if a further extension is not granted, irreparable and material harm will result to the litigant.

2. The latest Motion is a repeat of the prior Motion, which was denied by this Court, and further evidences a pattern of delay which has been ongoing in this Court (as demonstrated by even a cursory glance at the court's online docket) and in the trial court.

3. There is one overarching defect in the latest filing. There is no showing of extraordinary circumstances or irreparable and material harm will result *to Eliot*. His children are beneficiaries of the trusts at issue in Case No. 4D16-222 and in the consolidated appeals, Cases No. 4D16-1449, -1476, -1478. Eliot is not a beneficiary of any of the trusts at issue.

4. It also is clear from Eliot's filings, including the latest Motion, that Eliot is in no position to adequately represent the beneficial interests of his children in the trusts, nor to act in the best interests of his children. The trial court has addressed his destructive behavior by appointing a former probate judge as a Guardian ad Litem to protect the interests of his children.

5. These continued delays by Eliot prevent the Trustee and the trial court from administering the trusts and making distributions to beneficiaries, including into the trusts for each of Eliot's children. It is the true beneficiaries of these trusts, including Eliot's children, who are suffering irreparable and material harm by the continued delay in these proceedings.

6. The Initial Brief has been filed, albeit 173 days after the Notice of Appeal, and the Answer Brief has been filed. As Eliot has not filed a Reply Brief and has not complied with this Court's September 22nd Order, Appellee requests that the Court deny the pending Motion, and either (A) resolve the appeal based upon the Initial and Answer Brief, or (B) require that any Reply Brief be filed within 5 days.

WHEREFORE, the Trustee respectfully requests the Court deny the pending Motion.

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 14th day of October, 2016.

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