

RECEIVED, 10/24/2016 3:39 PM, Clerk, Fourth District Court of Appeal

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

CASE NO.: 4D16-1449  
Consolidated with Case Nos. 4D16-1476 and  
4D16-1478

L.T. CASE NO. 2014CP002815XXXXNB  
2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN,

Appellant,

vs.

OPPENHEIMER TRUST COMPANY OF  
DELAWARE, in its capacity as Resigned  
Trustee of the Simon Bernstein Irrevocable  
Trusts created for the benefit of Joshua, Jake  
and Daniel Bernstein,

Appellee.

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**RESPONSE TO APPELLANT'S MOTION FOR EXTENSION OF  
TIME AND TO STAY PROCEEDINGS AND GRANT AN EXTENSION**

Appellee, Oppenheimer Trust Company of Delaware, in its capacity as resigned Trustee of the Simon Bernstein Irrevocable Trusts created for the benefit of Joshua, Jake and Daniel Bernstein ("Oppenheimer"), responds to Appellant's Motion for Extension of Time and to Stay Proceedings and Grant an Extension, and states as follows:

**Background**

1. Appellant filed the notice of appeal in the consolidated appeals (Nos. 4D16-1449, 4D16-1476, and 4D16-1478) on March 29, 2016, May 2, 2016, and May 5, 2016 respectively. Appellant neither filed an initial brief nor requested an extension of time before the deadline in 4D16-1449, and this Court issued an order to show cause based upon lack of prosecution on June 15, 2016.

2. Appellant responded to the show cause order (one day late), claiming that production of certain records and indexes on appeal were necessary for him to file his initial brief. However, as Oppenheimer pointed out in its subsequent motion to dismiss, Appellant's claim did not constitute good cause for failing to file his initial brief because the same request had been previously and repeatedly denied by this Court in connection with the allegedly "related cases" to which Appellant referred. (See Motion to Dismiss filed in this Court on June 30, 2016).

3. This Court accepted Appellant's response and permitted Appellant fifteen days to file the initial brief, stating that "no further extension will be granted absent a detailed explanation for why the initial brief has not yet been filed and a showing of extraordinary circumstances..." (See this Court's Order of July 8, 2016).

4. Appellant then missed the deadline set forth in this Court's July 8 order, filing a motion for extension of time and to accept late filing of the motion on July 26, 2016. That issue was essentially mooted by the intervening motion to consolidate the three appeals.

5. Appellant objected to the motion to consolidate, but this Court granted consolidation and ordered Appellant to file a single initial brief by September 6, 2016. (See this Court's Order of August 25, 2016).

6. Rather than file an initial brief, on September 6, 2016, Appellant filed a motion for stay, relying upon alleged medical issues that he has been asserting in the present appeal and all of his related appeals, without any support of a medical practitioner.

7. On September 22, 2016, this Court entered an order denying a stay but granting Appellant an additional twenty days to file the initial brief (necessarily considering the unsupported assertion of medical unavailability). This Court stated that "*no motions or other*

*filings shall toll the time to file the initial brief, and no other extension shall be granted absent a showing of extraordinary circumstances where, if a further extension is not granted, irreparable or material harm will result to the litigant.”* (See this Court’s September 22, 2016 Order) (emphasis supplied).

8. Appellant did not file an initial brief by the extended deadline, October 12, 2016. Instead, Appellant filed another Motion For An Extension Of Time And To Stay Proceedings And Grant An Extension, to which Oppenheimer now responds.

### **Argument**

Appellant’s initial brief is now overdue pursuant to this Court’s September 22, 2016 Order. Thus, the issue is whether Appellant has shown “extraordinary circumstances where, if a further extension is not granted, irreparable and material harm will result to the litigant,” as this Court stated in the September 22 Order.

Appellant’s main argument is grounded in the same unsupported medical assertions, plus additional assertions about alleged medical issues from Appellant’s adolescence. In addition, Appellant points to the few days that the Court was closed for Hurricane Matthew and two intervening Jewish holidays.

Appellant’s motion represents the continuation of a pattern of delay that has been occurring in this Court in this and the related appeals brought by Appellant. Applying the standard set by this Court, Appellant has not shown extraordinary circumstances or that irreparable or material harm will occur to Appellant.

First, Appellant has not *shown* extraordinary circumstances. All he has done is *allege* that certain things are true and that the alleged truth constitutes extraordinary circumstances. There has been no “showing” of any kind.

Second, Appellant has not shown (or even alleged) that irreparable and material harm will result to the real parties in interest, Appellant's children, if the extension is not granted. It is important to remember that these related appeals concern trusts of which Appellant's *children* are the beneficiaries. Appellant is not himself a beneficiary of any of the trusts at issue. Appellant appeals from orders appointing a guardian *ad litem* for his children due to his abuse and delay of the judicial process.

Appellant's children (and the other parties involved in the case who have a legally cognizable interest in the trusts) will not be irreparably and materially harmed by denying Appellant's extension. To the contrary, the interested parties have an interest in completing the administration of the trusts and making distributions to the beneficiaries. Appellant is hindering that effort and causing harm to his children by the delay (which is the reason the trial court appointed a guardian *ad litem* for the children in the first instance).

### **Conclusion**

It has now been well over half a year since the first of these consolidated appeals was filed by Appellant, and nearly half a year with respect to the other two consolidated cases. No briefs have been filed after multiple extensions and warnings. Harm to the interested parties continues while Appellant, on thin, repetitive, unsupported allegations, continues to delay the proceedings. Appellant has not satisfied the standard for a further extension set by this Court on September 22, and after several missed deadlines and dilatory responses, this Court should now deny Appellant's latest request and enter the order appropriate when an initial brief has not been filed and may no longer be filed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to all parties on the attached Service List this 24th day of October, 2016.

/s/ Steven A. Lessne  
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