

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

ELIOT IVAN BERNSTEIN

Appellant,

L.T. CASE NOS. 2014CP003698 XXXX NB
 2014CP002815 XXXX NB
 2011CP000653 XXXX NB

v.

TED S. BERNSTEIN, AS TRUSTEE, et al.

Appellee.

**APPELLEE'S, TED S. BERNSTEIN, AS TRUSTEE, RESPONSE TO
APPELLANT'S *FOURTH SUCCESSIVE* MOTION
FOR EXTENSION OF TIME AND TO STAY PROCEEDINGS**

Appellee, Ted S. Bernstein, as successor Trustee of the Shirley Bernstein Trust ("Trustee"), responds in opposition to the latest and *fourth successive* Motion for Extension of Time and To Stay Proceedings filed by Appellant, Eliot Bernstein ("Eliot").

1. Eliot Bernstein once again has refused to file an initial brief and again has defied an order of this Court. The Order dated November 3, 2016, states:

Appellant shall file the initial brief within ten (10) days from the date of this order. Failure to comply with this order WILL result in dismissal of this appeal for lack of prosecution without further notice.

As a result of his noncompliance, these appeals should be dismissed.

2. Moreover, there is a certain tragic irony in Eliot's position. On the one hand, he claims it is too stressful for him to represent the interests of his children, and as demonstrated by his filings, he appears to lack the legal competence to handle that role. Also, his interests admittedly are adverse to his children's interests, as demonstrated by his appeal in Case No. 4D16-222.¹ Yet at the same time, he continues to rail against the system which has appointed a former probate judge to represent his children's interests. The trial court trusted the guardian *ad litem* to sift through Eliot's conspiracy theories to determine whether they are delusional or real, and take appropriate action. These continued delays do nothing but interfere with the guardian's ability to do her job.

WHEREFORE, the latest Motion for Extension should be denied and this appeal should be dismissed for lack of prosecution.

¹ Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the child's interest. *Mistretta v. Mistretta*, 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990)(best interests of a minor are *not* fully protected when adverse to the parent's interests); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999)(GAL should be appointed when parents' interests are adverse to the minor's); §731.303(4), Fla. Stat. (2016).

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 16th day of November, 2016.

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