

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

CASE NO. 4D16-4120
L.T. CASE NO. 502012CA013933MBAN

ELIOT IVAN BERNSTEIN,

Appellant,

v.

WILLIAM E. STANSBURY,
ESTATE OF SIMON L. BERNSTEIN and
BERNSTEIN FAMILY REALTY, LLC,

Appellees.

**APPELLEE'S, ESTATE OF SIMON L. BERNSTEIN,
RESPONSE TO APPELLANT'S STATEMENT OF JURISDICTION;
AND REQUEST THAT THIS APPEAL BE DISMISSED
FOR LACK OF JURISDICTION AND STANDING**

Appellee, Estate of Simon L. Bernstein (the "Estate"), responds to the Statement of Jurisdiction filed by Appellant, Eliot Ivan Bernstein ("Eliot"), in response to this Court's December 7th Order. For the reasons set forth herein, this frivolous appeal by Eliot should be dismissed for a clear lack of appellate jurisdiction and also a clear lack of standing. Moreover, due to the persistent unwarranted appellate filings by Eliot, Appellee requests that this Court prohibit any further appeals filed by Eliot Bernstein *pro se*, in any case, unless a licensed attorney signs his or her name, and states:

1. The underlying civil action was initially brought by Plaintiff, William E. Stansbury ("Stansbury"), against six defendants. [The docket is included in App. 1 for the Court's convenience.] Eliot Ivan Bernstein is *not* one of those defendants.

2. In the summer of 2014, Stansbury settled his claims with four of the defendants. As part of the settlement, which was of no concern to non-party Eliot, Stansbury filed a Notice of Dropping Parties [App. 2; DE 212] and a Stipulation for Dismissal with Prejudice. [App. 3; DE 213] The trial court entered an "Order of Dismissal with Prejudice of Certain Parties and Claims," rendered on June 23, 2014 [App. 4; DE 213], dismissing with prejudice all claims against those four defendants. The Order of Dismissal was never appealed by anyone, nor could it have been.

3. After the dismissal, the sole remaining defendants are (i) the Estate of Simon L. Bernstein ("Estate") and Bernstein Family Realty, LLC ("BFR"). Thereafter, the underlying action lay dormant for nearly two years with little happening, because there were issues with appointing a replacement personal representative for the Estate. In fact, the then-serving Curator moved for a stay. [App. 5; DE 215] In addition, BFR's manager was in the process of or had resigned. The trial court docket sheet [App. 1] reflects virtually no activity for more than two years after the dismissal of the four defendants.

4. Eventually, the personal representative retained counsel to defend the Estate, and the parties resumed activity in the case. Because numerous dismissed parties and counsel still were listed on the case style and in the certificate of service, the Estate filed a perfunctory Motion to Alter or Amend the Style of the Case [App. 6; DE 285] to reflect the dismissal of the four parties, and to clarify that papers need only be served on the remaining parties, none of the dismissed parties. This was a matter purely of judicial economy and convenience of the parties, and to avoid unnecessary cost and expense. At a case management conference held on November 7, 2016, the trial court entered an Agreed Order [App. 7; DE 288] granting the motion to reflect that the only defendants were the Estate and BFR.

5. Now, Eliot has launched his next epic struggle in his continuing efforts to derail these proceedings, over what started as a simple exercise in judicial economy. This appeal is patently frivolous and vexatious. The Statement on Jurisdiction is nonsensical and ignores the Court's inquiry requiring him to explain how there is appellate jurisdiction. There is none. It also is misguided because the plaintiff filed a lawsuit and the plaintiff (Stansbury) has chosen to dismiss certain defendants. Eliot merely is a stranger to the case, who is not a plaintiff or defendant. Certainly, the plaintiff (Stansbury) could not possibly seek review of a dismissal he sought as part of a settlement reached 30 months ago.

6. Eliot's appeal of the agreed order is presumably on behalf of BFR, because that is the only other party to the action below. Yet in his Notice of Appeal Eliot states "Eliot and Candice Bernstein has accepted no fiducial or corporate or any capacity for such entity." Thus, Eliot is a stranger to BFR as well, at least in his own words. Accordingly, because Eliot Bernstein is not a party and stated he is not acting on behalf of BFR, this appeal should be dismissed for lack of standing. (Eliot cannot represent BFR because it is an entity and he is not a lawyer; BFR would need to be represented by counsel in any event.)

7. Moreover, this Court lacks jurisdiction to consider this appeal. To the extent there could have been appeal of the order dismissing four defendants from this case, the appeal now would be untimely. To the extent this seeks to be a non-final appeal, an order altering the style of the case to reflect the remaining parties is not appealable under Rule 9.130(3); caused no harm to anyone; and certainly caused no harm which could not be remedied on plenary appeal.

8. Finally, the undersigned notes that this is the 10th appellate proceeding commenced by Eliot Bernstein in this Court in connection to the same set of circumstances, not including at least two petitions to the Supreme Court.¹ Eliot

¹ Florida Supreme Court: SC15-1077; SC16-29

This Court: 4D15-3849; 4D16-64; 4D16-222; 4D16-1449; 4D16-1476;

Bernstein seemingly appeals every order entered in any of the related cases. He claims to be immune from filing fees as a result of his claim of indigency status, so his shenanigans do not cost him anything.² But his consistent and persistent filing of appellate proceedings is a substantial drain on the limited assets of the Estate and continues to cause substantial waste of time and delay in these proceedings. Indeed, this is the second appeal filed by Eliot Ivan Bernstein in this action, in his individual capacity, despite the fact that he is not a party to this case. (See, e.g., Case 4D16 - 3162, dismissed for lack of jurisdiction on October 17, 2016.)

9. According, the Estate respectfully requests that this Court enter an order prohibiting Eliot Bernstein from filing any additional appeals in this case, and further to consider whether it now is appropriate to prohibit Eliot Bernstein from filing in this Court any further *pro se* appeals in any of related matters, absent the signature of a member of the Florida Bar and/or the payment of the appropriate filing fees.

WHEREFORE, the Estate respectfully requests the Court dismiss this appeal and enter an appropriate order restraining further appeals by Eliot Ivan Bernstein.

4D16-1478; 4D16-2249; 4D16-3162; 4D16-3314; 4D16-4120.

² We recognize that the court system allows access to indigent parties, but Eliot is carrying that to the extreme. There should be, but seemingly are, no consequences for him.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been served by email on all parties listed on the attached service list, this 20th day of December, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone/(561) 655-5537 Facsimile
email: arose@mrachek-law.com
Attorneys for Estate of Simon L. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST

Bernstein Family Realty, LLC
c/o Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
Email: Eliot I. Bernstein
(iviewit@iviewit.tv)

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Email: service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com