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

CASE NO. 4D16-222

ELIOT BERNSTEIN

Appellant,

v.

TED S. BERNSTEIN, AS TRUSTEE, et al.

Appellee.
_____/

L.T. CASE NOS. 2014CP003698XXXXNB
2011CP000653XXXXNB

APPELLEE'S, TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE, RESPONSE TO APPELLANT'S MOTION FOR REHEARING

Appellee, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust ("Trustee"), submits his opposition to the motion for rehearing filed by Appellant, Eliot Bernstein ("Eliot"). The Trustee requests rehearing be denied and the court consider an appropriates non-monetary sanction.

The 13-page Motion for Rehearing was not only 53 minutes late,[1] it contains nothing but improper reargument. It is textbook abuse of the rehearing process, particularly as the ruling was an unelaborated PCA. This Court, in noting it was

[1] The Trustee and his counsel are no longer surprised, even if we are dismayed, by the filings either just before or just after midnight. The Trustee takes no position on this Appellant's most recent Motion to Accept Motion for Rehearing and Other Relief Filed less than One Hour Late, served at 1:12 a.m. on May 27, 2017.

"suffering from acute motion sickness," stated the following in *Dubowitz v. Century Village, East, Inc.*, 381 So. 2d 252, 253 (Fla. 4th DCA 1979):

> The purpose of a motion for rehearing is to direct the court to points of law or fact that, in the opinion of the movant, the court overlooked or misapprehended in its opinion. It is not a vehicle through which "an unhappy litigant or attorney [may] reargue the same points previously presented, or [ ] discuss the bottomless depth of the displeasure that one might feel toward this judicial body as a result of having unsuccessfully sought appellate relief."

In the directly applicable (and in this case ironically named) *Elliott v. Elliot*, 645 So. 2d 135 (Fla. 4th DCA 1994), this Court further explained this problem:

> We are unable to reconcile the motion with Fla.R.App.P. 9.330 and the legion of cases which have interpreted the rule with respect to its proper as well as improper application. The instant motion does violence to rule 9.330 by rearguing the merits of the case in an effort to persuade the court to change its mind; in addition, it expresses displeasure with and chastises the lower court, the appellee and this court.

Elliott, 645 So. 2d at 135-36.

Eliot's rehearing motion is a "flagrant violation of the rule," *id.*, and is the personification of an abusive rehearing motion directed to an unelaborated PCA. *McDonnell v. Sanford Airport Auth.*, 200 So. 3d 83 (Fla. 5th DCA 2015)(rehearing of a PCA is "rare and are most often limited to occasions when a relevant decision of the Supreme Court or another District Court of Appeal is rendered after briefing and oral argument and not considered by the court."); *Marion v. Orlando Pain & Med.*

Rehab., 67 So. 3d 264, 265 (Fla. 5th DCA 2011) (motions for rehearing are "rarely, if ever, warranted when the decision is without opinion").

REQUEST TO IMPOSE NON-MONETARY SANCTIONS

In *Lawyer's Title Ins. Corp. v. Reitzes*, 631 So. 2d 1100 (Fla. 4th DCA 1993), this Court stated: "motions for rehearing continue 'to occupy a singular status of abuse' in our court system. An inordinately high number of motions for rehearing are filed in this court and the great majority violate Rule 9.330(a)." *Id*. at 1100-01. The Court further entered an order to show cause "why monetary or other sanctions should not be imposed." *Id*. at 1101.

Here, monetary sanctions would merely serve to cause more appellate filings by this insatiable *pro se* litigant, and further drain the limited resources of the Trust. And, Eliot claims to be indigent so such sanctions would be irrelevant to him. Were Eliot a lawyer – or were he being assisted by a Florida licensed lawyer – ***monetary sanctions would be far more than appropriate***.

But in this case, the more appropriate and effective deterrent would be an order prohibiting any further *pro se* filings in any case before this Court by Eliot Bernstein not signed by an attorney licensed to practice in Florida; and/or requiring Eliot Bernstein to pay filing fees to dissuade him from continuing to file meritless and

frivolous appeals which are draining the trusts and estates of substantial sums of money.[2]

In Case 4D16-3314,[3] the Trustee already twice has requested non-monetary sanctions for violations of the Rules. Eliot's refusal to follow the rules and comply with court orders causes inordinate delay and expense. Those requests for sanctions were denied, and the conduct continues in this and other pending cases.

The Trustee is Eliot's brother. He is serving in this role because his mother trusted him to handle not only financial matters, but also to protect her family from the actions of her troubled son Eliot. The continuing misuse of the appellate court is causing real harm – not only delay and expense, but preventing the Trustee from delivering the Shirley Trust's assets to her ten grandchildren, including Eliot's kids.

The Trustee respectfully requests the Court deny the pending Motion and issue the Mandate forthwith, and consider an appropriate non-monetary sanction.

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[2] This appellant already has filed numerous *pro se* indigent appeals in this Court and in the Supreme Court. In the Trustee's opinion, Eliot is doing nothing but stringing out this process by causing delay and expense. For lack of a better analogy, because he was disinherited from the Shirley Bernstein Trust, he would rather burn all of the money than see it go to others. That is particularly sad as three of the ten grandchildren are Eliot's own children.

[3] Case No. 4D16-3314 involves a tiny issue no one challenged before the probate court – a $12,394 settlement between Shirley's Trust and Simon Bernstein's Estate over furniture included in the sale of a condominium.

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 30th day of May, 2017.

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