

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

CASE NO. 4D17-1607

ELIOT IVAN BERNSTEIN

L.T. CASE NOS. 2012CP004391XXXXNB

Appellant,

v.

ESTATE OF SIMON L. BERNSTEIN, et al.

Appellee.

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**APPELLEE'S, TED S. BERNSTEIN, TRUSTEE,  
MOTION TO DISMISS APPEAL**

Appellee, Ted S. Bernstein, as successor Trustee of the Simon L. Bernstein Trust ("Trustee"), moves to dismiss this appeal for lack of appellate court jurisdiction.

1. The order appealed from is not a final order, nor does it meet any of the requirements for an appealable non-final order. There is no appellate jurisdiction.

2. The Order allegedly under review denied two forms of relief:  
(i) disqualification of the Mrachek law firm as counsel to the Estate in an independent action filed by William Stansbury, along with a related request to vacate the prior unopposed order approving that firm's retention based on the disqualification; and  
(ii) appointment of an administrator ads litem to represent the Estate's interests in the same independent action.

3. As to the first relief sought, Stansbury moved the probate court to disqualify Mrachek as the estate's counsel in the independent action. (Mrachek does not serve as the Estate's counsel in the probate administration; only in the independent action.) Appellant did not make the motion to disqualify or formally join in it. The effect of the Order under review is the denial of the disqualification motion for *lack of probate jurisdiction*, with the suggestion the trial court overseeing the independent action decide the disqualification issue. The motion to disqualify has since been withdrawn in the trial court. Therefore, there is nothing to appeal.

4. The second aspect of the order under review is the denial of a request by the Estate to appoint an administrator ad litem. Appellant opposed the motion and requested that it be denied, which is what the probate court did. Thus, because the result is the one sought by Appellant, Eliot Bernstein, there is nothing for him to appeal within that aspect of the Order.

WHEREFORE, because this is not an appealable non-final order, nor is it a final order, nor is it otherwise appealable, the appeal in this case should be dismissed.

## **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 9th day of June, 2017.

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](mailto:arose@mrachek-law.com)  
Attorneys for Ted S. Bernstein

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

## **SERVICE LIST**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: [ivewit@ivewit.tv](mailto:ivewit@ivewit.tv)

Peter M. Feaman, Esq.  
Peter M. Feaman, P.A.  
3695 W. Boynton Beach Blvd., Suite 9  
Boynton Beach, FL 33436  
(561) 734-5552 - Telephone  
(561) 734-5554 - Facsimile  
Email: [service@feamanlaw.com](mailto:service@feamanlaw.com);  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)  
Counsel for William Stansbury

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0766 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra  
Bernstein, Eric Bernstein, Michael  
Bernstein

Lisa Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
[lisa@friedsteins.com](mailto:lisa@friedsteins.com)  
Individually and as trustee for her  
children, and as natural guardian for  
M.F. and C.F., Minors

Diana Lewis, Esq.  
ADA & Mediations Services, LLC  
2765 Tecumseh Drive  
West Palm Beach, FL 33409  
(561) 758-3017 - Telephone  
Email: [dzlewis@aol.com](mailto:dzlewis@aol.com)  
Guardian *Ad Litem* for  
Eliot Bernstein's minor children,  
Jo.B., Ja.B., and D.B.

Pam Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
[psimon@stpcorp.com](mailto:psimon@stpcorp.com)

Gary R. Shendell, Esq.  
Kenneth S. Pollock, Esq.  
Matthew A. Tornincasa, Esq.  
Shendell & Pollock, P.L.  
2700 N. Military Trail, Suite 150  
Boca Raton, FL 33431  
(561) 241-2323 - Telephone  
(561) 241-2330 - Facsimile  
Email: [gary@shendellpollock.com](mailto:gary@shendellpollock.com)  
[ken@shendellpollock.com](mailto:ken@shendellpollock.com)  
[matt@shendellpollock.com](mailto:matt@shendellpollock.com)  
[estella@shendellpollock.com](mailto:estella@shendellpollock.com)  
[britt@shendellpollock.com](mailto:britt@shendellpollock.com)  
[grs@shendellpollock.com](mailto:grs@shendellpollock.com)  
[robyne@shendellpollock.com](mailto:robyne@shendellpollock.com)

Jill Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)  
Individually and as trustee for her  
children, and as natural guardian for  
J.I. a minor

Steven A. Lessne, Esq.  
GUNSTER, YOAKLEY &  
STEWART, P.A.  
*Counsel for Oppenheimer Trust  
Company of Delaware*  
4855 Technology Way, Suite 630  
Boca Raton, FL 33431  
Telephone: (561) 961-8085  
Email: [slessne@gunster.com](mailto:slessne@gunster.com)

Brian M. O'Connell, Esq.  
Joielle A. Foglietta, Esq.  
Ciklin Lubitz Martens & 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](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)