

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2014-CP-003698-XXXX-NB
PROBATE DIVISION: IH

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Plaintiff / Petitioner,

and

ALEXANDRA BERNSTEIN; et. al,
Defendants / Respondent.

_____/

**ORDER TO SHOW CAUSE WHY ELIOT BERNSTEIN SHOULD NOT BE HELD IN
CONTEMPT OF COURT AND ORDER SETTING HEARING**

THIS CAUSE came before the Court on Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust Motion to Hold Eliot Bernstein in Contempt of Court or Issue Order to Show Cause Against Eliot Bernstein, and for Sanctions (“Motion”) for Eliot’s Bernstein’s violation of Order on Successor Trustee’s Motion to Appoint a Guardian ad Litem; for a Gag Order to Protect the Guardian and Others; and to Strike Eliot Bernstein’s Filings dated March 1, 2016 (the “Order” D.E. 161).

The Court, having reviewed the Motion, the court file, and having been otherwise fully advised in the premises, finds as follows:

1. On March 1, 2017, this Court entered an Order on Successor Trustee’s Motion to Appoint a Guardian ad Litem; for a Gag Order to Protect the Guardian and Others; and to Strike Eliot Bernstein’s Filings dated March 1, 2016 (the “Order” D.E. 161).

2. The Court's Order stated as follows:

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost ^{to} the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein, on behalf of his children, ^{are} ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

3. Plaintiff / Petitioner's Motion proffers emails sent directly to Diana Lewis, the guardian ad litem, in direct violation of the Order. The Court concludes the Petitioner's / Plaintiff's Motion for Contempt for refusal to obey this Court's Order is well taken. It is therefore

ORDERED AND ADJUDGED, as follows:

1. ELIOT BERNSTEIN is ordered to personally appear before this Court on **Thursday, March 22, 2018 at 1:30 p.m.** in Courtroom 4 of the North County Courthouse, 3188 PGA Blvd., Palm Beach Gardens, Florida 33410, and show cause why she should not be held in contempt of this Court for willful refusal to obey its Order, attached hereto. One hour shall be reserved.

2. FAILURE OF ELIOT BERNSTEIN TO PERSONALLY APPEAR MAY RESULT IN A FINDING OF CONTEMPT OF COURT, AN AWARD OF ATTORNEY'S FEES AND COSTS AGAINST ELIOT BERNSTEIN, THE ISSUANCE OF AN ORDER STRIKING ANY AND ALL FUTURE PARTICIPATION IN THIS CASE AND/OR ANY OTHER SANCTIONS THE COURT DEEMS FIT.

3. Petitioner/Plaintiff's counsel, at his own cost, shall cause a copy of this Order to Show Cause and Order Setting Hearing to be personally served VIA SHERIFF OR PRIVATE PROCESS SERVER upon ELIOT BERNSTEIN and file proof of personal service upon receipt. The Court will reserve to award these fees against ELIOT BERNSTEIN.

4. This Court reserves jurisdiction to award such fees and costs as may be proper to Petitioner/Plaintiff.

DONE AND ORDERED in Chambers at Palm Beach Gardens, Palm Beach County, Florida, this 15th day of September, 2017.


ROSEMARIE SCHER
Circuit Judge

Copies furnished to:

SEE ATTACHED SERVICE LIST

This notice is provided pursuant to Administrative Order No. 2.207-1/15

“If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Tammy Anton, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.”

“Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Tammy Anton, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacidad del oído o de la voz, llame al 711.”

“Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Tammy Anton, kòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711.”

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN,
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of his minor children D.B., Ja. B. and Jo.
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as
Trustee f/b/o Max Friedstein and C.F., under the
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf
of her minor child, C.F.,

Defendants.

**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO
APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**

THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on
Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of
Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard
argument of counsel and being otherwise fully advised in the premises hereby

ORDERS AND ADJUDGES:

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
2016 MAR -2 PM 1:08

FILED


SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
NORTH COUNTY BRANCH

MAR 2 PM 1:09

FILED

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ ^{The} Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children. 

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued^d advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *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 interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed ^{when} ~~then~~ the parents' interests were adverse to the minor child).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." ¹ Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is ^{in fact, his actions are adverse & destructive to the children's interest.} apparent Eliot Bernstein is not an adequate representative of the best interests of his children. ^{JB}

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost ^{to} the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

¹ In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, ^{are} ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may

participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to agree on a guardian ad litem, upon notice from the Trustee's counsel the Court shall randomly

*each of the parties shall submit a list of three names of potential Guardian Ad Litem's, each of whom has agreed to accept the appointment if selected. These lists shall be filed with the Clerk with courtesy copy to the undersigned, no later than 10 days from this date.**


9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall ^{not} ~~make no effort to~~ contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall ~~make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and (c) shall not in any way threaten or harass the guardian.~~ This Court alone shall supervise the guardian, and ~~all information concerning this guardianship shall be treated as private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

** Parties shall furnish a ^{proposed} Order appointing GAL with the lists. The Court will act without further hearing on the appointment, if possible.*

11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.


HONORABLE JOHN L. PHILLIPS

cc: Attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

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