NO. 412,249-401

CARL HENRY BRUNSTING, § IN PROBATE COURT

INDIVIDUALLY AND AS §

INDEPENDENT EXECUTOR OF THE §

ESTATES OF ELMER H. BRUNSTING §

AND NELVA E. BRUNSTING § NUMBER FOUR (4)

 §

vs. §

§

ANITA KAY BRUNSTING f/k/a § HARRIS COUNTY, TEXAS

ANITA KAY RILEY, individually, §

as attorney-in-fact for Nelva E. Brunsting, §

and as Successor Trustee of the Brunsting §

Family Living Trust, the Elmer H. §

Brunsting Decedent's Trust, the §

Nelva E. Brunsting Survivor's Trust, §

the Carl Henry Brunsting Personal §

Asset Trust, and the Anita Kay Brunsting §

Personal Asset Trust; §

AMY RUTH BRUNSTING f/k/a §

AMY RUTH TSCHIRHART, §

individually and as Successor Trustee §

of the Brunsting Family Living Trust, §

the Elmer H. Brunsting Decedent’s Trust, §

the Nelva E. Brunsting Survivor's Trust, §

the Carl Henry Brunsting Personal §

Asset Trust, and the Amy Ruth Tschirhart §

Personal Asset Trust; §

CAROLE ANN BRUNSTING, §

Individually and as Trustee of the §

Carole Ann Brunsting Personal Asset Trust; §

and as a nominal defendant only, §

CANDACE LOUISE CURTIS §

## Notice of Special Appearance; Motion to Dismiss for want of Jurisdiction

1. Pro se Andrew Curtis, appearing specially and not generally, herein challenges personam and subject matter jurisdiction of this court to hear or determine any matter related to the Brunsting Family Living Trust.

# STANDING

1. Movant is an “interested person” within the meaning of Texas Property Code Section 111.004(7). Family Living Trust settlors Elmer H. Brunsting and Nelva E. Brunsting were Movant’s grandparents and his interests as a successor beneficiary are protected under the terms of the unsoiled Brunsting Family Living Trust which includes only the **2005 Restatement as amended in 2007**. Movant’s mother, Candace Curtis, is the lawful trustee.

# Relevant Facts

1. Please take judicial notice of the record in the Estate of Elmer H. Brunsting No. 412,248. Please also take judicial notice of the record in the Estate of Nelva E. Brunsting No. 412,249.
2. Elmer H. Brunsting and Nelva E. Brunsting’s estate plan is comprised of wills directing **independent administration** that were to pour-over into the sole devisee, inter vivos trust, at their passing. Elmer H. Brunsting passed on April 1, 2009 and Nelva E. Brunsting passed November 11, 2011.
3. The record will show that the wills of Elmer H. Brunsting [No. 412248] and Nelva E. Brunsting [No. 412249] were both admitted to probate August 12, 2012 and that letters testamentary for the Independent Administration of both pour-over estates were issued to Carl Henry Brunsting on August 28, 2012.
4. [**Verified inventories, appraisements, and lists of claims**](http://www.probatemafia.com/Brunsting/Tab%2015%20Inventory%20and%20Order%20Approving%20Inventory%20Case%20412248_Certified.pdf) were filed in both estates by the independent executor on March 26, 2013 and [**approved by the probate court**](http://www.probatemafia.com/Brunsting/Tab%2022%20%202013-04-04%20Order%20Approving%20Inventory%20412249%20Certified.pdf) April 5, 2013. Drop Orders were issued on April 4, 2013 removing both estates from the active docket.
5. As of April 5, 2013 there is no independent administration of the estate of Elmer H. Brunsting and there is no independent administration of the estate of Nelva E. Brunsting pending in the statutory probate court.

# STATUTORY PROBATE JURISDICTION OVER INDEPENDENT ADMINISTRATIONS

1. Independent administration is exclusively governed under Texas Estates Code Title II Subtitle I Sections 401.001 through 405.012.

[Tex. Est. Code § 402.001](http://www.probatemafia.com/Brunsting/Tab%20L%20TEXAS%20ESTATES%20CODE%20402.001%20No%20further%20action%20of%20any%20nature%20after%20approval%20of%20the%20inventory.pdf) - General Scope and Exercise of Powers

“When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisement, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed by the independent executor, as long as the estate is represented by an independent executor, further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court.”

1. Four days after the verified inventory had been approved; Carl Henry Brunsting filed a declaratory judgment action, in his individual capacity and as Independent Executor, under Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code related only to the sole devisee trust. [No. 412,249-401] Carl Henry Brunsting’s April 9, 2013 declaratory judgment action fails to even mention the estates code as required by Tex. Est. Code § 402.001 and clearly fails to invoke the subject matter jurisdiction of a statutory probate court.
2. While probate is an exception to the one final judgment rule, the 412249-401 action is not a probate case, probate matter or probate proceeding as Texas Estates Code Section 22.029 defines those terms.

“Sec. 22.029. PROBATE MATTER; PROBATE PROCEEDINGS; PROCEEDING IN PROBATE; PROCEEDINGS FOR PROBATE. The terms "probate matter," "probate proceedings," "proceeding in probate," and "proceedings for probate" are synonymous and include a matter or proceeding relating to a decedent's estate. Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.”

1. Further, the action numbered 412249-401 is currently in Houston’s 1st District Court of Appeals on the question of this Court’s jurisdiction [No. 01-23-00362-CV] and not in this court at all.
2. Despite the fact that the 412249-401 action is in the Court of Appeals and not pending in the probate court and that trusts are not subject to continuing judicial supervision, (Tex. Prop. Code § 115001(c)(10)), Attorney Stephen Mendel continues to file motions in this court theater seeking a plausible excuse for violating an injunction issued by a United States District Court Judge which this court has neither the authority to enforce nor to ignore.
3. By way of example: On October 22, 2024 Attorney Stephen Mendel filed a motion for an interim distribution to “the remaining beneficiaries” to pay Attorney fees allegedly incurred by “the trust”, which of course is not “the estate”. The Attorneys and their clients are restrained by the federal injunction [Exhibit x] from conducting new business without prior court approval and had no judicial permission to incur debts against the trust corpus. Property code statutes render the attorney’s fee claims invalid as a matter of law.

Sec.A101.002.AALIABILITY OF TRUST PROPERTY. Although trust property is held by the trustee without identifying the trust or its beneficiaries, the trust property is not liable to satisfy the personal obligations of the trustee.

Acts 1983, 68th Leg., p. 3654, ch. 576, Sec. 1, eff. Jan. 1, 1984. Renumbered from Sec. 101.001(b) by Acts 1987, 70th Leg., ch. 683,Sec. 3, eff. Aug. 31, 1987.

# JURISDICTION RELATING TO INTER VIVOS TRUSTS

1. Jurisdiction over trusts is governed under Property Code Title 9, Subtitle B Chapter 115 subchapter A.

Sec. 115.001. JURISDICTION. (a) Except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trust…

Subsection (d): The jurisdiction of the district court is exclusive except for jurisdiction conferred by law on: (1) a statutory probate court

1. As to any notion that the statutory probate court has subject matter jurisdiction over living trusts whether or not there is a pending probate, the legislature made it clear that was not the case in 2017 when they repealed Texas Government Code §1034(a) and amended Government Code Section 25.0021 confining statutory probate court subject matter jurisdiction to probate, guardianship, eminent domain proceedings and certain specific mental health issues. [exhibit x] [see Local Rules of the Probate Courts of Harris County, Texas, Rule 2.2]
2. Despite Government Code §1034(a)’s grant of authority at the time the 412249-401 action was filed, Estates Code §402.001’s limitation governing “independent administration” is controlling. This issue is currently pending before Houston’s 1st District Court of Appeal in cause No 01-23-00362-CV.
3. Please take judicial notice that Andrew Curtis is not now and has never been party to any proceeding or claim filed in this court and that no judgment entered in this court can prejudice his rights as a successor beneficiary to his mother’s trust interests.
4. If Candace Curtis has in any way violated an interrorem clause and whether or not Defendants can produce their heinous Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement, allegedly signed by Nelva Brunsting on August 25, 2010, that portends to have amended a trust that became irrevocable more than two years earlier, Movant would be the lawful successor in interest and an interested person within the meaning of Texas Property Code Section 111.004(7).

# NOTICE

1. Trust issues mentioned herein are not being raised by this motion in this court but are mentioned merely for the purpose of putting the colluding Attorneys on notice that their conduct and their actions are unconscionable and that this court is in want of any authority over this trust controversy.
2. The only jurisdiction this court has ever had over the Brunsting Family Living Trust is the administrative jurisdiction to dismiss Carl Brunsting’s declaratory judgment action for want of subject matter jurisdiction. All third parties receiving trust distributions authorized by this court are void ab initio, invalid, in violation of a federal injunction and are to be disgorged and returned to the trust.
3. This court does have the inherent authority to sanction the participating attorneys for their fraudulent actions before this court.

# RELIEF REQUESTED

1. Living trust successor beneficiary Andrew Curtis, appearing specially and not generally, herein moves this court to dismiss all matters filed as ancillary to the Estate of Nelva Brunsting No 412249 and to vacate and set aside all orders entered after April 5, 2013, in all matters, for want of any jurisdiction to act as a court.
2. Further, Movant, appearing specially and not generally sayeth naught.

Respectfully submitted,

Andrew Curtis

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**CERTIFICATE OF SERVICE**

I Andrew Curtis hereby certify that the foregoing document was served on all counsel of record on Saturday, January 04, 2025 through the state electronic filing system with the exception of the estates independent executor as there is no administrator for the Estate of Elmer H. Brunsting [No. 412248] or the Estate of Nelva E. Brunsting [No. 412249].