No. 01-23-00362-CV

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IN THE COURT OF APPEALS

FOR THE FIRST DISTRICT OF TEXAS

HOUSTON, TEXAS

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Candace Louise Curtis v. Carl Henry Brunsting, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting

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Original Proceeding from Harris County Probate Court No. 4

Cause No. 412,249-401

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# MOTION FOR SANCTIONS PURSUANT TO RULE 52.11 (a) and (c) TEXAS RULES OF APPELLATE PROCEDURE

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Candice Schwager

Texas State Bar No. 240056

Schwager Law Firm

16807 Pinemoor Way

Houston, Texas 77058

832.857.7173

candiceschwager@outlook.com

FOR APPELLANT CANDACE CURTIS

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Appellant’s Motion for Sanctions Pursuant To Rule 52.11 Texas Rules of Appellate Procedure

Rule 52.11. Groundless Petition or Misleading Statement or Record

On motion of any party or on its own initiative, the court may — after notice and a reasonable opportunity to respond — impose just sanctions on a party or attorney who is not acting in good faith as indicated by any of the following:

(a) filing a petition that is clearly groundless;

(c) grossly misstating or omitting an obviously important and material fact in the petition or response;

Respectfully submitted,

On February 22, 2024, this Court issued a Notice of Intent to Dismiss for Want of Appellate Jurisdiction, granting Appellant fourteen days in which to provide the court with a brief demonstrating that the appeals court does have jurisdiction in this matter. Appellants brief on Appellate Jurisdiction was filed on March 7, 2024.

On June 6, 2024, this Court issued a sua sponte order directing the Appellees to reply to appellant’s response within fourteen days. Appellees reply was due on June 20, 2024. Appellees reply to Appellants brief on Appellate Jurisdiction was filed June 28, 2024. On page 11, Appellees allege that Appellants reply contains citations to authority that are fictitious and cannot be relied upon:

“The analysis and citations presented by Curtis cannot be relied upon. Frankly, it is not possible to address both the substance of the appellate jurisdiction issue, and all of Curtis’ incorrect citations and confusing discussions of even her correct citations in the 2,500 word limitation required by the Court. But by way of example, and not as a limitation, some examples of the authoritative problems with Curtis’ Response are as follow:

1. A case called Pappas v. Shamoun & Norman LLP is cited for the proposition that an appellate court has jurisdiction to vacate a void judgment and dismiss the trial court proceeding.18F19 If such a case exists and so holds, it would no doubt have been decided in the context of a timely appeal and, thus, distinguishable from the case before this Court. Nevertheless, the citation presented is incorrect and cannot be used to locate such a case. Nor can a different citation be found in Curtis’ Table of Authorities because the case is not listed. Appellees were also unable to find such a case when searching by name.”

The case of Pappas v. Shamoun & Norman, LLP, No. 05-16-01405-CV (Tex. App. May 31, 2018)[[1]](#footnote-1) is cited in Appellants brief on Appellate Jurisdiction at page 1 but apparently, due to mistake, inadvertence, or excusable neglect, Appellants failed to mark the citation and thus, it failed to list in Appellants Table of Authorities.

The claim that Appellants citations are disingenuous and cannot be relied upon and, that “*all of Curtis’ incorrect citations and confusing discussions of even her correct citations*”, makes it impossible for Appellees to answer, is grossly misstating an obviously important and material fact. Appellant’s citations to authority are true and correct, are taken directly from the case context and not from head notes. In support of their egregious claim that Appellant has perpetrated fraud upon this court, Appellees cite to a mere clerical error as depriving them of the ability to answer the relevant question with only 2500 words. They fail to answer the relevant question, which is whether limitations apply to void judgments in courts of appeal.

A judgment void upon its face is subject to an attack at any time, regardless of the statute of limitation. Appellees fail to identify an exception that would apply statutes of limitations in courts of appeal when the trial court lacked subject matter jurisdiction. Void judgment can be attacked at any time in any court and courts of appeal are no exception.

“Our cases recognize two exceptions to the general rule, which exceptions we shall call (1) the "void judgment" exception, and (2) the "habeas corpus" exception. The void judgment exception recognizes that there are some rare situations in which a trial court's judgment is accorded no respect due to a complete lack of power to render the judgment in question. A void judgment is a "nullity" and can be attacked at any time. If the original judgment imposing probation was void, then the trial court would have no authority to revoke probations, since, with no judgment imposing probation (because it is a nullity), there is nothing to revoke. In past cases involving regular probation, we have recognized that a defendant can raise on appeal from a revocation proceeding an error in the original plea hearing if the error would render the original judgment void. In accordance with the reasoning of these precedents, we hold that the void judgment exception also applies in the deferred adjudication context. Ex Parte Patterson, [969 S.W.2d 16, 19](https://casetext.com/case/ex-parte-patterson-5#p19) (Tex.Crim.App. 1998). Corley v. State, [782 S.W.2d 859, 860](https://casetext.com/case/corley-v-state-14#p860) n. 2 (Tex.Crim.App. 1989); Gonzales v. State, [723 S.W.2d 746, 747](https://casetext.com/case/gonzales-v-state-198#p747) n. 3 (Tex.Crim.App. 1987).” Nix v. State, 65 S.W.3d 664 (Tex. Crim. App. 2001)

# REMEDY

 Appellant moves this Honorable Court to enter an order for Appellees to answer with a complete and detailed list of all of Appellants “incorrect citations” with an explanation describing their disingenuousity with a particularity. After Appellees are given a reasonable opportunity to respond, Appellants ask this Honorable Court to determine whether to impose just sanctions on Appellant for presenting disingenuous citations to authority or impose just sanctions on Appellees Attorneys for failure to act in good faith.

# CERTIFICATE OF SERVICE

I, Candice Schwager, hereby certify that the foregoing documents were served on all counsel of record through the state electronic filing system and via email on the \_\_\_\_\_ day of July 2024

# CERTIFICATE OF COMPLIANCE

I, Candice Schwager, hereby certify that this document was generated by a computer using Microsoft Word which indicates that the total word count of this document is 1,183 words in total, including footnotes, and is thus in compliance with TEX. R. APP. P. 9.4(i)(2)(B).

Respectfully submitted,

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1. attached to this motion as an exhibit [↑](#footnote-ref-1)