We note that [section 607 of the Probate Code](https://casetext.com/statute/texas-codes/probate-code/chapter-xiii-guardianship/part-2-guardianship-proceedings-and-matters/subpart-a-jurisdiction/section-607-repealed) also provides that a statutory probate court has concurrent jurisdiction with a district court in all actions by or against a person in the person's capacity as a guardian, "whether or not the matter is appertaining to or incident to a guardianship estate. TEX.PROB. CODE ANN [§ 607 (c)](https://casetext.com/statute/texas-codes/probate-code/chapter-xiii-guardianship/part-2-guardianship-proceedings-and-matters/subpart-a-jurisdiction/section-607-repealed), (e) (Vernon Supp. 1998). Likewise, [section 25.1034 (a) of the Government Code](https://casetext.com/statute/texas-codes/government-code/title-2-judicial-branch/subtitle-a-courts/chapter-25-statutory-county-courts/subchapter-c-provisions-relating-to-particular-counties/section-251034-harris-county-probate-court-provisions) provides that the statutory probate courts of Harris County have concurrent jurisdiction with the district courts in all actions by or against a personal representative, whether or not the matter is appertaining to or incident to an estate. *See*[TEX. GOV'T CODE ANN. § 25.1034 (a)](https://casetext.com/statute/texas-codes/government-code/title-2-judicial-branch/subtitle-a-courts/chapter-25-statutory-county-courts/subchapter-c-provisions-relating-to-particular-counties/section-251034-harris-county-probate-court-provisions) (Vernon Supp. 1998).

*In re J7S Inc.*, 979 S.W.2d 374, 377 n.2 (Tex. App. 1998)

The Lee case is distinguishable from the present case as Lee involved a testamentary trust under dependent administration and not an intervivos trust under independent administration. Local Rule 2.6.4 grants the statutory probate court subject matter jurisdiction over testamentary trusts (except for construction) but Local rule 2.6.5 clearly requires a “pending” probate administration.

## Void for vagueness

Doesn’t Defendant Appellees Summary Judgment Motion place Carl under threat of forfeiture of trust property if he objects to Defendant appellees failure to honor their fiduciary duties? [ROA 31-34]

Testators have the right to determine the manner in which their legacy will be distributed at their passing.

## Failure to State a Claim

Carl Brunsting’s April 9, 2013 probate court filing was filed as ancillary to a pour-over estate that had been under independent administration. The independent administration closed after the verified inventory had been submitted and accepted the month prior to when Carl filed his tort action.[[1]](#footnote-1)

## Section 32.006 concerns a statutory probate court's independent jurisdiction

[Section 32.006](https://casetext.com/statute/texas-codes/estates-code/title-2-estates-of-decedents-durable-powers-of-attorney/subtitle-a-scope-jurisdiction-venue-and-courts/chapter-32-jurisdiction/section-32006-jurisdiction-of-statutory-probate-court-with-respect-to-trusts-and-powers-of-attorney) concerns a statutory probate court's independent jurisdiction, not its jurisdiction over causes related to the probate proceeding

[Estate of Campbell v. Campbell](https://casetext.com/case/estate-of-campbell-v-campbell?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) No. 07-22-00179-CV (Tex. App. May. 11, 2023)

[Harlow v. Harlow](https://casetext.com/case/harlow-v-harlow-6?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) No. 05-22-00585-CV (Tex. App. May. 3, 2023)

[Goepp v. Comerica Bank & Trust, N.A.](https://casetext.com/case/goepp-v-comerica-bank-trust-na?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) No. 03-19-00485-CV (Tex. App. Jul. 9, 2021)

[Pense v. Bennett](https://casetext.com/case/pense-v-bennett?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) No. 06-20-00030-CV (Tex. App. Oct. 8, 2020)

[In re Estate of Nicholas](https://casetext.com/case/in-re-estate-of-nicholas?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) NO. 14-19-00716-CV (Tex. App. Mar. 26, 2020)

[Johnson v. Johnson](https://casetext.com/case/johnson-v-johnson-51278?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) No. 04-19-00500-CV (Tex. App. Jan. 15, 2020)

[In re Estate of Stegall](https://casetext.com/case/in-re-estate-of-stegall?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) No. 02-17-00410-CV (Tex. App. Nov. 21, 2019)

[Narvaez v. Powell](https://casetext.com/case/narvaez-v-darron-powell-darron-powell-pllc?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 564 S.W.3d 49 (Tex. App. 2018)

[**Lee v. Ronald E. Lee Jr., Katherine Lee Stacy, & Legacy Trust Co.**](https://casetext.com/case/lee-v-ronald-e-lee-jr-katherine-lee-stacy-legacy-trust-co-1?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=)528 S.W.3d 201 (Tex. App. 2017) This case involved a testamentary trust (see L.R. 2.6.4)

[King v. Deutsche Bank Nat'l Trust Co.](https://casetext.com/case/king-v-deutsche-bank-natl-trust-co-2?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 472 S.W.3d 848 (Tex. App. 2015)

[Bloom v. Swango](https://casetext.com/case/bloom-v-swango-3?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) No. 05-14-01237-CV (Tex. App. Oct. 5, 2015)

[**Davis v. Merriman**](https://casetext.com/case/davis-v-merriman-9?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=)No. 04-13-00518-CV (Tex. App. Mar. 4, 2015)

[Warren v. Weiner](https://casetext.com/case/warren-v-weiner-2?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 462 S.W.3d 140 (Tex. App. 2015)

[Reliant Energy v. Gonzalez](https://casetext.com/case/reliant-energy-v-gonzalez?jxs=txrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&q=Section+32.006+concerns+a+statutory+probate+court%27s+independent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true&find=) No. 01-02-00679-CV (Tex. App. Sep. 6, 2002)

## Reviewing the entire record

### B.C. v. Steak N Shake Operations, Inc., 613 S.W.3d 338 (Tex. App. 2020)

“My colleague, Justice Schenck, writes separately to explain why he considers it within our discretion as part of our appellate review of summary judgments to review entire records to find supporting evidence for the issues raised by the parties. That is more expansive review than I understand we conduct on appellate review of a summary judgment. But see Tex. Dep't of Parks & Wildlife v. Miranda , [133 S.W.3d 217, 228, 232](https://casetext.com/case/texas-dept-parks-wildlife-v-miranda#p228) (Tex. 2004) (review of plea to jurisdiction "generally mirrors that of a summary judgment" and "We search the record for evidence [supporting appellants' contention]. The [appellants] fail to point to any evidence, and the record contains no evidence ...."). I agree that under some circumstances, we undertake such a record review to evaluate a legal sufficiency challenge to a jury verdict. See City of Arlington v. State Farm Lloyds , [145 S.W.3d 165, 167–68](https://casetext.com/case/city-of-arlington-v-state-farm-lloyds#p167) (Tex. 2004) (when challenging the strength of evidence supporting a verdict as no more than surmise or suspicion, party must "detail the relevant parts of the record," but "[w]hen a complete absence of evidence is alleged, the reviewing court must include the entire record within its scope of review."). B.C. v. Steak N Shake Operations, Inc., 613 S.W.3d 338, 348 (Tex. App. 2020)

The estates code is a topic-by-topic revision of the state's general and permanent statute law without substantive change. [Tex. Est. Code § 21.001]. It thus seems rather odd that the Lee court could find an independent jurisdiction over trust disputes in the Estates Code that no court ever found in the Probate Code. This would appear to be the product of taking Tex. Est. Code § 32.006 out of the context of Title II of the estates code. As to Tex. Est. Code § 32.007 concurrent does not mean equal. If it did it would render the original and exclusive jurisdiction provisions of Property Code § 115 meaningless and would open the door to matters involving social security trust funds, construction trust funds, and all sorts of other trust matters having no relation to the administration of a decedents estate, which is what Title II of the Estates Code governs. No court has held that section 32.006 of the estates code applies to independent administration

## Subject Matter Jurisdiction, Dominant jurisdiction and Standing

The only issue before this court is jurisdiction and whether the challenged judgments were issued in want or excess of jurisdiction. Statements or arguments not going to jurisdiction are irrelevant and appellant objects to all such statements or arguments.

[Goepp v. Comerica Bank & Trust, N.A.](https://casetext.com/case/goepp-v-comerica-bank-trust-na?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) No. 03-19-00485-CV (Tex. App. Jul. 9, 2021)

[Baker v. Baker](https://casetext.com/case/baker-v-baker-62008?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) NO. 02-18-00051-CV (Tex. App. Sep. 6, 2018)

[Lawton v. Lawton](https://casetext.com/case/lawton-v-lawton-13?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) NO. 01-12-00932-CV (Tex. App. Jul. 10, 2014)

[In re Stark](https://casetext.com/case/in-re-stark-6?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 126 S.W.3d 635 (Tex. App. 2004) whether or not the matter is appertaining to or incident to an estate

[Schuld v. Dembrinski](https://casetext.com/case/schuld-v-dembrinski?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 12 S.W.3d 485 (Tex. App. 2000)

[Herring v. Welborn](https://casetext.com/case/herring-v-welborn?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 27 S.W.3d 132 (Tex. App. 2000)

[In re Living Centers of America, Inc.](https://casetext.com/case/in-re-living-centers-of-am?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 10 S.W.3d 1 (Tex. App. 1999) whether or not the matter is appertaining to or incident to an estate

[Wallace v. Collins](https://casetext.com/case/wallace-v-collins?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 988 S.W.2d 258 (Tex. App. 1998)

In re J7S Inc 979 S.W.2d 374 (Tex. App. 1998)

[Estate of Hanau, in re](https://casetext.com/case/estate-of-hanau-in-re?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 806 S.W.2d 900 (Tex. App. 1991

[Carlisle v. Bennett](https://casetext.com/case/carlisle-v-bennett-2?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 801 S.W.2d 589 (Tex. App. 1990)

[Interfirst Bank-Houston, N.A. v. Quintana Petroleum Corp.](https://casetext.com/case/interfirst-bk-v-quintana-pet?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 699 S.W.2d 864 (Tex. App. 1985)

[Pullen v. Swanson](https://casetext.com/case/pullen-v-swanson?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 667 S.W.2d 359 (Tex. App. 1984

[Seay v. Hall](https://casetext.com/case/seay-v-hall?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 663 S.W.2d 468 (Tex. App. 1983)

[Wolford v. Wolford](https://casetext.com/case/wolford-v-wolford-1?jxs=5cir%2Ctx&p=1&q=The+exception+to+the+exclusive+jurisdiction+of+the+District+Court+provided+by+subsection+%C2%A7+115.001+%28d%29+is+limited+to+matters+%E2%80%9Cincident+to+an+estate%E2%80%9D+and+apply+only+when+a+probate+proceeding+relating+to+such+estate+is+actually+%E2%80%9Cpending%E2%80%9D+in+the+probate+court.&sort=relevance&type=case&ssr=false&scrollTo=true&find=) 590 S.W.2d 769 (Tex. Civ. App. 1979)

[In re Rushing](https://casetext.com/case/in-re-rushing-20?jxs=txcode%2Ctxregs%2Ctxrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=2&publishedCasesOnly=true&q=pendent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true) 644 S.W.3d 383 (Tex. App. 2022)

[Jurgens v. Martin](https://casetext.com/case/jurgens-v-martin?jxs=txcode%2Ctxregs%2Ctxrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=4&publishedCasesOnly=true&q=pendent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true) 631 S.W.3d 385 (Tex. App. 2021)

[In re Stavron](https://casetext.com/case/in-re-stavron?jxs=txcode%2Ctxregs%2Ctxrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=3&publishedCasesOnly=true&q=pendent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true) No. 02-20-00404-CV (Tex. App. Nov. 10, 2021)

[In re Estate of Hallmark](https://casetext.com/case/in-re-estate-of-hallmark?jxs=txcode%2Ctxregs%2Ctxrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&publishedCasesOnly=true&q=pendent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true) 629 S.W.3d 433 (Tex. App. 2020)

[Narvaez v. Powell](https://casetext.com/case/narvaez-v-darron-powell-darron-powell-pllc?jxs=txcode%2Ctxregs%2Ctxrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&publishedCasesOnly=true&q=pendent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true) 564 S.W.3d 49 (Tex. App. 2018)

[Shell Cortez Pipeline v. Shores](https://casetext.com/case/shell-cortez-pipeline-v-shores?jxs=txcode%2Ctxregs%2Ctxrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&publishedCasesOnly=true&q=pendent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true) 127 S.W.3d 286 (Tex. App. 2004)

[Patel v. City of Everman](https://casetext.com/case/patel-v-city-of-everman-1?jxs=txcode%2Ctxregs%2Ctxrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=3&publishedCasesOnly=true&q=pendent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true) 179 S.W.3d 1 (Tex. App. 2004)

[Sabine Gas Transmission Co. v. Winnie Pipeline Co.](https://casetext.com/case/sabine-gas-trans-v-winnie-pl?jxs=txcode%2Ctxregs%2Ctxrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&publishedCasesOnly=true&q=pendent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true) 15 S.W.3d 199 (Tex. App. 2000)

[Vale v. Ryan](https://casetext.com/case/vale-v-ryan?jxs=txcode%2Ctxregs%2Ctxrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=2&publishedCasesOnly=true&q=pendent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true) 809 S.W.2d 324 (Tex. App. 1991)

[Mohamed v. Exxon Corp.](https://casetext.com/case/mohamed-v-exxon-corp?jxs=txcode%2Ctxregs%2Ctxrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&publishedCasesOnly=true&q=pendent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true) 796 S.W.2d 751 (Tex. App. 1990)

[Goodman v. Summit at West Rim, Ltd.](https://casetext.com/case/goodman-v-summit-at-west-rim-ltd?jxs=txcode%2Ctxregs%2Ctxrules%2Ctxsct%2Ctxapp%2Ctxappciv%2Ctxsecsrcs&p=1&publishedCasesOnly=true&q=pendent+jurisdiction&sort=relevance&type=case&ssr=false&scrollTo=true) 952 S.W.2d 930 (Tex. App. 1997)

Appellees continuously use the term “estate” and “estate-related” [p.3] however, there is no estate, only a trust corpus.

These terms are used in order to distinguish one from the other. One is probate and the other is in contract.

Being forced to defend oneself in a court that has no jurisdiction is not to be considered active participation in litigation. Where there is no jurisdiction, there is no court and there is no litigation possible.

District Court can act in equity.

Probate acts in rem. Equity, as used in the estates code, is directly related to real property, equity loans and equitable interests in real property owned by the decedent.

Must search the entire record!

[T]he Trust Code does not contemplate that an accounting will settle the trustee’s tort liability. As noted, section 113.152 establishes the contents of an accounting and requires the trustee to list trust property, transactions, property, cash, and all known liabilities owed by the trust. It simply does not reach the trustee’s tort liability. This conclusion is supported by the Trust Code’s structure, which includes Subchapter E “Accounting by Trustee” within Chapter 113, entitled “Administration.” In contrast, Chapter 114 concerns “liabilities, rights, and remedies of trustees,   beneficiaries, and third persons.”

Appellants’ previously filed Petition for Writ of Mandamus [FDCA No. 10-22-00513-CV] is hereby adopted and incorporated by reference as if fully set forth herein and Appellant asks the court to take judicial notice under Texas Rules Of Evidence § 201.1.

Tab 11: Docket in 412248 estate of Elmer H. Brunsting p.231

Tab 12: the will of Elmer H. Brunsting p.236

Tab 13: Statement of death and other facts 412,248 p.250

Tab 14: order admitting the will of Elmer H. Brunsting [No. 412,248] and issuing Letters Testamentary p.254

Tab 15: Inventory and Order Approving Inventory Case 412248 p.258

Tab 16: Drop Order 412248 Estate of Elmer Brunsting p.269

Tab 17: Docket sheet 412249 p.272

Tab 18: the will of Nelva E. Brunsting p.287

Tab 19: Statement of death and other facts 412249 p.300

Tab 20: order admitting the will of Nelva E. Brunsting and issuing Letters Testamentary p.303

Tab 21: inventory, appraisement and list of claims 412249 p.306

Tab 22: Order Approving Inventory 412249 p.315

Tab 23: Drop Order in 412249 p.317

Tab 27: Order approving Carl's Resignation p.372

The clerk will not include certain indispensable records, including those from the base probate case showing that a probate proceeding is pending in that court. [ROA 1][[2]](#footnote-2)

They

Let’s assume for the sake of argument that there is a related probate proceeding pending in the probate court in this case. What interest does the pour-over estate have in a lawsuit embroiling the sole devisee and its beneficiaries in the probate court? What benefit could the pour-over estate possibly obtain from the lawsuit among the beneficiaries of the sole devisee?

At a hearing on a Rule 60 Motion in the Southern District of Texas Stephen Mendel, attorney for Co-Trustee Defendant Appellee Anita Brunsting admitted to United States District Court Judge Kenneth Hoyt Jr. that the probate case was “administratively closed”.[[3]](#footnote-3) Appellant interprets that as an admission.

Appellant requests the court take judicial notice of a document filed in the Southern District of Texas on April 8, 2022 by Appellee Anita Brunsting, in effort to deceive the court into believing that Carl Brunstings’ 412249-401 action in the probate court[[4]](#footnote-4) was filed by Appellant. The Mendel law firm also has an entry[[5]](#footnote-5) dated January 9, 2015 observing problems with the remand of the federal case that had not been removed and that attorney J. Ostrom apparently intended to undermine his client’s case even further by nonsuit of the federal injunction issued to protect the trust and its beneficiaries from the conduct described by United States District Judge Kenneth Hoyt at the injunction hearing April 9, 2013, the same day Carl Brunsting filed the action under review.[[6]](#footnote-6)

Fortunately Appellant Terminated Ostrom as counsel before he could cause any more harm to his client’s case and appellant’s injunction remains in force [Reporters Record Vol 3 of 3, p.16-17] and is the only thing protecting this family and their trust from the egregious financial misconduct Appellees argue will be wiped away by a proper determination from this court.

Either the statutory probate court had subject matter jurisdiction over Carl Brunstings Original Petition or it did not. Either the statutory probate court had subject matter jurisdiction over Defendant Co-Trustees Original Counter Claims or it did not. Either the statutory probate court rendered summary judgment or it did not. If the trial court never had jurisdiction over the subject matter of the plaintiff’s original petition the voidable nature of the summary judgment order need not be addressed at all.

## Absence of Statutory Probate Court Jurisdiction

Was the Settlor a Decedent in a probate matter pending[[7]](#footnote-7) in the probate court at the time the independent executor filed his trust related tort suit in the probate court?[[8]](#footnote-8) [Local Rule 2.6.5 and Property Code § 115] Independent administration ends when the debts are paid and the assets have been distributed. Independent administration means independent of probate court jurisdiction.

## Judicial Economy and Efficiency

Silence that after ten years in probate court there is a complete absence of anything remotely resembling litigation. One cannot even find a declaratory judgment determining the instruments that contain the rights of the beneficiary and the obligations of the trustee. [ROA]

## Judicial Admissions

See TX Far W., Ltd. v. Tex. Invs. Mgmt., Inc.,[127 S.W.3d 295, 307](https://casetext.com/case/tx-far-west-v-texas-inv" \l "p307) (Tex. App.-Austin 2004, no pet.) ("It is well established that 'assertions of fact . . . in the live pleadings of a party are regarded as formal judicial admissions.'" (quoting Holy Cross Church of God in Christ v. Wolf,[44 S.W.3d 562, 568](https://casetext.com/case/holy-cross-church-of-god-in-christ-v-wolf" \l "p568) (Tex. 2001))). Bookout v. Shelley, No. 02-22-00055-CV, at \*24 n.13 (Tex. App. Nov. 23, 2022)

## Preliminary Injunction

According to the honorable Judge Stone, the preliminary injunction issued in response to federal Plaintiff Candace Curtis remains in full force and effect. **To what Court would the Defendant Co-Trustee Appellees turn for permission to perform acts prohibited by the federal court without court approval?**

## FACTS:

Independent Administration – pour-over will – Executor authority comes from the will.

The Verified Inventory was filed and the independent administration was closed prior to Carl’s ancillary tort action [ROA] and either Carl’s original Petition [ROA] invoked the jurisdiction of a statutory probate court or it did not.

Either Carl had standing to bring these claim in the probate court as an independent executor after the independent administration closed or he did not. The wills say he did not [ROA].

Appellees claim the matter was not filed as ancillary but the record states otherwise. Either the 412,249-401 case was filed as ancillary to 412,249 or it was not. 412249-401 is an ancillary case number. [ROA Exhibit x LR 2.4]

Either there was a probate matter pending in the probate court on April 9, 2013 when Carl’s petition was filed in the probate court or there was nothing for these claims to be filed as ancillary to.

Either Carl had individual standing or he did not. Carl’s resignation left the “estate” without a representative and either Drina Brunsting has a power of attorney for Carl and has standing to act as attorney in fact for Carl individually or she does not.

Either there was a valid remand or transfer or there was not. Candace wanted does not provide the lawful authority to issue a void order. The record is silent on this issue.

Carl’s resignation left the “estate” without a representative.

Either the Defendant Appellees Original counter claims were compulsory counter claims waived under rule 97(a) TRCP or they were not

Either the Defendant Appellees Original counter claims affirmatively plead statutory probate court jurisdiction or they did not.

Either Curtis federal lawsuit was lawfully remanded to the probate court or it was not. It was not and “Candace wanted” does not provide a court with authority to act contrary to law.

Either there is a controversy between appellee Plaintiff and appellee Defendants or there is not.

Either the Original counter claims filed by Defendant appellees on November 9, 2019 were timely or they were waived.

Either the Original counter claims filed by Defendant appellees affirmatively stated the jurisdiction of the statutory probate court to hear the matter or it did not.

LR 2.5 Core Matters that belong in the principal file. Those matters that are principally concerned with the administration of the estate are "core matters" and should be filed under the main cause number.

LR 2.6 Ancillary Matters that belong in a different file with on ancillary or related case designation. Those contested matters that bear no direct relationship to the administration of the estate and that would have the possibility of becoming an independently-tried lawsuit (each potentially with its own docket control and discovery schedules, etc.):

2.6.4 Testamentary Trust Actions (other than construction issues);

2.6.5 lntervivos Trust Actions (settlor is decedent in probate **pending** in subject court);

2.6.6 Declaratory judgments (after the will is admitted to probate);

ALL OF THE ASSETS REMAINING IN “THE TRUST” ARE IN ELMER BRUNSTINGS SHARE.

ID Page

Tab 1 19

Tab 3 26

Tab 6 26

Tab 7 26

Tab 10 26

Tab 11 3

Tab 12 3

Tab 13 22

Tab 14 3

Tab 18 3

Tab 20 3

Tab 23 18

Tab 25 19

Tab 26 26

Tab 27 24

1. [FDCA No. 10-22-00513-CV- Tab 15 p.258; Tab 16 p.269; Tab 19 p.300; Tab 21 p.306-307] [↑](#footnote-ref-1)
2. Comment: Please be advised the following documents listed in the designation will not be reflected in the clerks record because; “3*. b. Resignation of Independent Executor was filed in cause #412,249*” [↑](#footnote-ref-2)
3. [Exhibit 1 attached] Rule 60 hearing transcript p.33 ln. 15-17. Appellant asks the court to take judicial notice of this proceeding and incorporates by reference all statements contained in Appellants opening brief as if fully set forth herein. [↑](#footnote-ref-3)
4. [Exhibit 2 Case 4:22-cv-01129 Document 2-12 Filed on 04/08/22 in TXSD Page 2 of 56 [↑](#footnote-ref-4)
5. [Exhibit 2 Case 4:22-cv-01129 Document 2-12 Filed on 04/08/22 in TXSD Page 10 of 56 [↑](#footnote-ref-5)
6. [FDCA No. 10-22-00513-CV- Tab 03: Injunction Hearing p.77 ln. 13-21 [↑](#footnote-ref-6)
7. [FDCA No. 10-22-00513-CV-Tab 23: Drop Order in 412249 p.317 and Local Rule 2.6.5 [↑](#footnote-ref-7)
8. [FDCA No. 10-22-00513-CV-Tab 16: Drop Order 412248 Estate of Elmer Brunsting p.269 [↑](#footnote-ref-8)