

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTER'S RECORD

VOLUME 1 OF 3

TRIAL COURT CAUSE NO. 41224  
FILED IN  
1st COURT OF APPEALS  
HOUSTON, TEXAS

APPELLATE COURT NO. 01-23-00362-02  
5/25/2023 4:07:40 PM

THE ESTATE OF: )  
NELVA E. BRUNSTING, ) IN THE PROBATE COURT  
DECEASED ) NUMBER 4 (FOUR) OF  
HARRIS COUNTY, TEXAS  
DEBORAH M. YOUNG  
Clerk of The Court

\* \* \* \* \*  
CAROLE A. BRUNSTING'S EMERGENCY MOTION  
FOR A TRUST DISTRIBUTION  
\* \* \* \* \*

On the 6th day of January, 2022, the following  
proceedings came to be heard in the above-entitled and  
numbered cause before the Honorable James Horwitz,  
Judge of Probate Court No. 4, held in Houston, Harris  
County, Texas:

Proceedings reported by Machine Shorthand

## A-P-P-E-A-R-A-N-C-E-S:

## ATTORNEY FOR CARL BRUNSTING:

Ms. Bobbie G. Bayless  
BAYLESS & STOKES  
Attorney at Law  
SBN 01940600  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
bayless@baylessstokes.com

## ATTORNEY FOR DEFENDANT AMY BRUNSTING:

Mr. Neal E. Spielman  
GRIFFIN & MATTHEWS  
Attorney at Law  
SBN 00794678  
1155 Dairy Ashford  
Suite 300  
Houston, Texas 77079  
281.870.1124  
nspielman@grifmatlaw.com

## ATTORNEY FOR DEFENDANT ANITA BRUNSTING:

Mr. Stephen A. Mendel  
Attorney at Law  
THE MENDEL LAW FIRM, L.P.  
SBN 13930650  
1155 Dairy Ashford  
Suite 104  
Houston, Texas 77079  
281.759.3213  
steve@mendellawfirm.com

## ATTORNEY REPRESENTING VACEK &amp; FREED ET AL:

Mr. Cory S. Reed  
Attorney at Law  
THOMPSON, COE, COUSINS, & IRONS, LLP  
SBN 24076640  
One Riverway  
Suite 1400  
Houston, Texas 77056  
713.403.8213

1 ATTORNEY FOR CANDACE LOUISE CURTIS:  
2 Ms. Candice L. Schwager  
3 SCHWAGER LAW FIRM  
4 Attorney at Law  
5 SBN 24005603  
6 P.O. Box 580008  
7 Houston, Texas 77258  
8 832.315.8489  
9 candiceschwager@icloud.com

6 ALSO PRESENT:  
7 Ms. Carole Ann Brunsting  
8 5822 Jason  
9 Houston, Texas  
10 cbrunsting@sbcglobal.net  
11 713.560.6381

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (Carole A. Brunsting's Emergency Motion For A Trust  
Distribution)

2 January 6, 2022 Page

3 PROCEEDINGS.....5

4 CAROLE A. BRUNSTING'S EMERGENCY MOTION FOR A TRUST  
5 DISTRIBUTION

6 STATEMENTS BY:

7 Mr. Mendel.....6,26

8 Ms. Carole Brunsting.....9

9 Ms. Schwager.....22

10 Ms. Bayless.....25

11 The Court's Ruling.....27

12 COURT REPORTER'S CERTIFICATE.....32

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

25 January 6, 2022 (WHEREUPON the following proceedings

1 January 6, 2022 (WHEREUPON the following proceedings  
2 were conducted via Zoom and YouTube:)

3 PROCEEDINGS:

4 THE COURT: All right. Good afternoon,  
5 counsel. Can everybody hear me? I guess if you  
6 couldn't hear me, you're not going to respond.

7 Happy New Year to each of you.

8 What I show on my docket today is an  
9 Emergency Motion For Trust Distribution, and this is  
10 filed by Carole Brunsting, pro se.

11 For the record, let's have each attorney  
12 make an appearance and tell the Court who you represent.

13 MS. BAYLESS: Bobbie Bayless, Your Honor,  
14 on behalf of Carl Brunsting.

15 MR. MENDEL: Steve Mendel on behalf of  
16 Anita Brunsting, a Defendant and Co-Trustee.

17 MS. SCHWAGER: Candice Schwager on behalf  
18 of Candace Curtis.

19 MR. SPIELMAN: Neal Spielman on behalf of  
20 Amy Brunsting.

21 MR. REED: Cory Reed on behalf of Candace  
22 Kunz-Freed and her law firm.

23 MS. CAROLE BRUNSTING: And this is Carole  
24 Brunsting, pro se.

25 THE COURT: Okay. Now Ms. Brunsting, I've

1 read your emergency motion - it states that you were  
2 diagnosed with cancer on December 22nd, 2021, and  
3 treatment will begin at M.D. Anderson on January 3rd,  
4 2022; is that still a correct --

5 MS. CAROLE BRUNSTING: Yes.

6 THE COURT: Okay.

7 MS. CAROLE BRUNSTING: That is a correct  
8 statement.

9 THE COURT: And you are seeking to receive  
10 an emergency distribution in the amount of a hundred  
11 thousand dollars.

12 MS. CAROLE BRUNSTING: That's correct.

13 THE COURT: Okay. And let me ask the  
14 counsel for the current trustees - and any of the other  
15 attorneys - if you can tell me about the status of the  
16 assets of the Trust or the various Trusts at this time.

17 MR. MENDEL: Your Honor, this is Steve  
18 Mendel; I can do that.

19 THE COURT: All right. Go ahead.

20 STATEMENTS BY MR. MENDEL:

21 MR. MENDEL: I can give you a general  
22 idea. There is a Decedent's Trust and a Survivor's  
23 Trust, and the Decedent's Trust has a little over  
24 \$900,000 of liquid assets. The -- of that sum, about  
25 \$200,000 is sitting in a bank account, so that's the

1 most liquid.

2 With regard to the Survivor's Trust, there  
3 are two accounts - there's a checking and a savings -  
4 which total about \$432,000, and then there are assets  
5 that are in stocks, bonds, mutual funds and things like  
6 that.

7 The biggest asset - which is a non-liquid  
8 asset - is real estate which is valued at \$2.1 million.

9 THE COURT: And you can imagine how many  
10 cases I hear, but was there talk about selling a piece  
11 of property?

12 MR. MENDEL: "Yes" is the answer. The  
13 preliminary indication - unless it's changed - is that  
14 four or five people were on board with the sale of the  
15 real estate. And the one individual that wanted to hang  
16 onto the property was Carole Brun -- hang on to a share  
17 was Carole Brunsting.

18 THE COURT: So, in other words, the sale  
19 didn't happen?

20 MR. MENDEL: Sale has not happened; it has  
21 to proceed in a very cautious manner in order to  
22 mitigate against taxes.

23 THE COURT: So, not saying that Carole  
24 Brunsting would change her mind, but if she did, would  
25 there still be a willing buyer?

1 MR. MENDEL: At this time, the last time  
2 we checked - and it's been a few months - but it's  
3 currently being farmed, and the farmer that is farming  
4 the property has expressed an interest in acquiring it.  
5 So, yes, there appears to be a willing buyer.

6 THE COURT: And that would be an  
7 arm's-length transaction; it's not an insider or a party  
8 in this litigation?

9 MR. MENDEL: That's correct, arm's-length.

10 THE COURT: Okay. Now, the Survivor's  
11 Trust was, I assume, the money set aside for the  
12 surviving spouse?

13 MR. MENDEL: Well, the Decedent's Trust  
14 would also be taking care of the surviving spouse, and  
15 then the Survivor's Trust had assets to, yes, take care  
16 of the surviving spouse. The surviving spouse had  
17 access to - what I'll call - both sides of the entire  
18 trust transaction.

19 THE COURT: So, the successor  
20 beneficiaries on both those Trusts remain the children;  
21 is that correct?

22 MR. MENDEL: Remain? Subject to the  
23 forfeiture provisions as set forth in the Trust and the  
24 QBD, the Trust beneficiaries are the five kids.

25 THE COURT: On both of those Trusts?

1 MR. MENDEL: Yes, Your Honor.

2 THE COURT: Okay.

3 MS. SCHWAGER: Your Honor, may I --

4 THE COURT: Hold on just a moment.

5 MS. SCHWAGER: Sure.

6 THE COURT: Ms. Carole Brunsting, can you  
7 hear me okay?

8 MS. CAROLE BRUNSTING: Yes, I can.

9 THE COURT: First of all, let me tell you  
10 I'm sorry to hear your diagnosis. My wife is also going  
11 through breast cancer treatment at M.D. Anderson and has  
12 been doing so for four years. She gets chemo every  
13 three weeks; just had it yesterday. So, I'm intimately  
14 involved with it and I am aware of it and I empathize  
15 with your situation. The mental aspect is the most  
16 difficult at this point.

17 STATEMENTS BY MS. CAROLE BRUNSTING:

18 MS. CAROLE BRUNSTING: It is... I'm  
19 sorry. I guess you don't realize what it's really like  
20 until you're given the diagnosis.

21 THE COURT: I understand. And your  
22 diagnosis is like only two-weeks old. So, you know,  
23 it's still pretty fresh, and it's going to take a while  
24 for you to assimilate it and --

25 MS. CAROLE BRUNSTING: And that's part of

1 the problem is because there still -- they don't have  
2 the full diagnosis of everything because they make  
3 updates to my chart every night; and so, I keep getting  
4 more and more information. But I have to say that the  
5 doctors and the people that work at M.D. Anderson are  
6 some of the kindest people I've ever met in my life, and  
7 they go out of their way to understand every aspect of  
8 everything you're going through and make accommodations  
9 because right now, I talked to my anesthesiologist  
10 yesterday, and she said my stress level was too high;  
11 and so, they're not really comfortable scheduling the  
12 surgeries until I meet with their psychologist, and they  
13 want me to try acupuncture to see if that is helpful as  
14 well. So, they're trying to schedule -- they're trying  
15 to rearrange their schedule so they can try and get me  
16 in as soon as possible --

17 THE COURT: Is there any effort to do  
18 chemotherapy before surgery?

19 MS. CAROLE BRUNSTING: Right now what  
20 they're trying to do is -- my surgeon is trying to see  
21 if I could qualify for a clinical trial, and that would  
22 prevent surgery right away. But I haven't heard back  
23 yet; but otherwise, it's going to be -- because I have  
24 to wait for the biopsy to come back after the surgery.  
25 So, there's going to be surgery, radiation, and then I

1 have to be on some medication for five years or --

2 THE COURT: Hold on. Hold on just a  
3 second.

4 MS. CAROLE BRUNSTING: Okay.

5 THE COURT: The Court on its own motion  
6 finds that the information in this matter is so  
7 sensitive that it outweighs the public's need to hear  
8 this, and I am ordering us to take this off of YouTube;  
9 will you do that, Judge Comstock?

10 JUDGE COMSTOCK: It's done.

11 (WHEREUPON the following remaining  
12 proceedings were via Zoom only)

13 THE COURT: Okay.

14 MS. CAROLE BRUNSTING: Thank you.

15 But as it was, it's going to be surgery.  
16 And then the chemo oncologist said it could be surgery  
17 and then I have to go through chemo first and then  
18 radiation and then I still have to be on the medication  
19 for five years. But the only thing is last night when  
20 they update your My Chart, they -- and they did the  
21 chest X-rays so I can get prior to the surgery, now  
22 they've discovered that I have emphysema, and so I have  
23 to get that addressed now. So, I'm waiting for the  
24 appointment for that which I'm assuming is going to be  
25 with Pulmonary. And so -- so, I don't know -- I mean,

1 it's just -- I mean, since your wife has been through  
2 this, I'm sure you understand that it's just a process  
3 that you go through and it's right now, I'm still kind  
4 of in this -- I know some information, but I don't know  
5 it all yet. I mean, nobody knows it all yet because I  
6 still have to wait for biopsies to come back. They did  
7 one biopsy on the 17th, and that's when they discovered  
8 there was cancer, and they gave it a stage -- no. No, I  
9 found out the stage on the 3rd, and that's when I met  
10 with the surgeon, the radiologist oncologist and the  
11 chemo oncologist, and they told me that in their  
12 opinion - with what they knew right now - this is what  
13 would happen and the time line of when it would happen.  
14 And then that's when I found out that I may qualify for  
15 this one clinical trial that's specifically for women  
16 60-and-older. But my surgeon -- and my surgeon  
17 participated in it before, but they're trying to --  
18 based on the type of cancer I have, they're trying to  
19 see if their response to that type of -- it's where they  
20 freeze the cancer, and they're trying to see if my  
21 particular kind responds to that before they're going to  
22 tell me I can participate in it. So, right now, I  
23 really don't know. So, otherwise --

24 THE COURT: Have they told you the  
25 particular kind you have?

1 MS. CAROLE BRUNSTING: Yes. And so, I  
2 really would like to --

3 THE COURT: Do you know the name of that  
4 particular kind?

5 MS. CAROLE BRUNSTING: I don't know, like,  
6 the exact --

7 THE COURT: Is it HER-negative?  
8 HER-positive --

9 MS. CAROLE BRUNSTING: That's it. I think  
10 that's it. I think that was it, what you just said.

11 THE COURT: HER-positive?

12 MS. CAROLE BRUNSTING: Yes, estrogen --  
13 for estrogen. And so, I talked -- the nutritionist --  
14 the doctor that's in charge in Nutrition called me  
15 yesterday and told me everything being as my diet, take  
16 out of my diet. And then -- I mean, I spent three hours  
17 on the phone yesterday with M.D. Anderson. They just  
18 call you. I mean, but you probably know all of this,  
19 that they just -- they're constantly working on your  
20 case and making updates and making appointments for you,  
21 but I didn't realize that they really do take your --  
22 they take into consideration everything, and they just  
23 said that -- they asked me a whole bunch of questions  
24 about between 0 and 10, and they just determined that my  
25 stress level would just rise. So, that's where I have

1 to talk to the psychologist and --

2 THE COURT: Do you have anything to  
3 help -- do you have anything that helps you sleep at  
4 night?

5 MS. CAROLE BRUNSTING: Well, they gave me  
6 a prescription for Xanax, and they're telling me to take  
7 it.

8 THE COURT: It's an anti-anxiety  
9 medication.

10 MS. CAROLE BRUNSTING: Yes.

11 THE COURT: I don't know that it  
12 particularly helps you sleep; it could in the evening if  
13 you're tired. But just let me tell you this:

14 Every cancer patient - and I'm a cancer  
15 survivor and will probably be back at M.D. Anderson one  
16 day myself - but you hear something, let's call that  
17 "Part A," and you don't know anything more, and you put  
18 your head -- you put your head down at night, and you  
19 say - okay, that's going to lead to "Part B" which will  
20 lead to "Part C" which will lead to "Part D" which will  
21 lead to "Part E," and you wake up at 3 in the morning  
22 sweating about "Part E," and --

23 MS. CAROLE BRUNSTING: Exactly --

24 THE COURT: -- "B" hasn't even happened  
25 yet, and that's what your mind does. Your mind

1 absolutely cannot stand uncertainty. Lawyers are  
2 somewhat trained to live with ambiguity, but when it  
3 comes to their own personal life - I can testify,  
4 myself - that legal training is of probably zero value.  
5 And that - I call it the "what ifs." The "what ifs" at  
6 nighttime are so strong that they keep you from  
7 sleeping. And lack of sleep increases your fatigue; it  
8 weakens your immune system. You have to sleep. And  
9 whatever it takes for you to sleep - if it's Ambien or  
10 Zoloft or whatever your doctor recommends - you have to  
11 get some sleep every night.

12 Now --

13 MS. CAROLE BRUNSTING: I got an  
14 appointment tomorrow to talk to somebody about some of  
15 this.

16 THE COURT: Now, let me ask you this  
17 question:

18 You have -- you -- do you have health  
19 insurance? Are you 65? Do you have Medicare?

20 MS. CAROLE BRUNSTING: Well, I had  
21 insurance through my --

22 THE COURT: Through Schlumberger?

23 MS. CAROLE BRUNSTING: -- yes. But my job  
24 is going away.

25 THE COURT: But are you still employed

1 with Schlumberger?

2 MS. CAROLE BRUNSTING: Yes, 'til the end  
3 of this month.

4 THE COURT: 'Til the end of this month?

5 MS. CAROLE BRUNSTING: Yes.

6 THE COURT: And will there be an  
7 opportunity for you to obtain COBRA Insurance for, I  
8 think it's, 18 months?

9 MS. CAROLE BRUNSTING: I'm assuming so,  
10 but I'm not sure.

11 THE COURT: Okay. It gets expensive --

12 MS. CAROLE BRUNSTING: Yes, I know.

13 THE COURT: And your request for a hundred  
14 thousand dollars is to cover a variety of what you  
15 believe to be cost of treatment, ongoing care, and  
16 maintenance.

17 MS. CAROLE BRUNSTING: Right. It's  
18 hard -- I'm sorry, I didn't mean to interrupt. It's  
19 hard for me to be able to say - I need exactly this -  
20 because I simply don't know everything yet. I don't  
21 know the type of surgery yet. I don't know if I'm  
22 having a complete mastectomy. I don't know if it's just  
23 a lumpectomy. I don't know some of this stuff yet; so,  
24 the recovery time can be much different. If I do end up  
25 having to have -- if I do end up having to have chemo, I

1 know I'm going to get pretty sick from that. And so,  
2 I'm going to need to have caregivers here; and so, it's  
3 really hard to know exactly how much I'm going to need.  
4 And because I wasn't able to get the money from my Trust  
5 to finish my house, there's work at my house that still  
6 needs to be completed so that I can convalesce here  
7 comfortably and expect for someone else to be able to,  
8 you know, stay here as well. I've got to have  
9 accommodations for someone else to be here. And so, I  
10 did my best -- and then also, too, the bills are  
11 starting to add up fairly quickly which I had no idea.  
12 I get an update about every other day with new charges,  
13 and that's where we haven't gotten to the surgery part  
14 yet or the radiation or any of that. And so, I'm  
15 thinking, okay, yeah, this is going to -- this is --  
16 even my portion is probably going to get very expensive  
17 at some point. But I did my best to try and allow  
18 myself enough money, enough funds, so that I didn't  
19 have -- because when they asked me, they said, "On a  
20 scale of 1 to 10, what is your anxiety when it comes to  
21 the finance?" And that was one of my key points is - I  
22 don't want to have to go through this and have to worry  
23 about - can I pay this? Can I pay this? Because this  
24 is my Trust. This is my Trust money. It's my Trust  
25 money. It's been my Trust money all along, you know,

1 for 11 years, and I've had to go without the benefit of  
2 having it, and I need it. I need it. And it's going to  
3 make a massive difference to me going through this and  
4 coming out the other side because also, too, I signed up  
5 with the American Cancer Society where they try and pair  
6 you with someone who has been through the same situation  
7 that you have, and I was able to speak with her last  
8 night for almost two hours, and that helped quite a bit,  
9 to be able to talk to somebody who's been through it,  
10 and I learned a lot of information from her. And  
11 there's no guarantee that it's not going to come back.  
12 And so, we kind of talked about living with that, and  
13 she just kind of told me what she does or how she kind  
14 of gets through the day. And also, too, with this  
15 medication I'm going to have to take, what it kind of --  
16 what it's done to her and what she does to overcome the  
17 side effects of it. And so, she's very positive. We're  
18 about the same age, and she has no children. And so,  
19 that was very helpful.

20 THE COURT: Do you know the name of the  
21 medication?

22 MS. CAROLE BRUNSTING: It starts with an  
23 "L." It's not Tamoxifen. It's not that. She said I'm  
24 going to be taking one of -- it's one of three, and  
25 apparently, this medication is really hard on your bones

1 and can make them kind of brittle; and unfortunately, I  
2 have osteoporosis in my lower vertebrae, and so she  
3 didn't like that. But she said that they have three  
4 and that I may also have to be on some kind of a  
5 poksamack [sic] or something like that. But the biggest  
6 side effect that Brenda, that I talked to last night,  
7 had is she said is joint pain.

8 THE COURT: That's a drug -- there's a  
9 drug called Xgeva that gives a shot to strengthen the  
10 bones, and you get that once a -- you get that once a  
11 month.

12 MS. CAROLE BRUNSTING: For somebody like  
13 me, I just try to take care of myself my whole life and  
14 I eat healthy and I exercise and I do all the right  
15 things and, you know, I'm kind of proud of myself for  
16 not having ever had to take medication for diabetes or  
17 high blood pressure or any of those things; but now, you  
18 know, I have no choice but to have to take something. I  
19 know I'm going to have to take something, and it's going  
20 to be for a period of five years. I know that. I know  
21 that. And then you have to go in for blood work and  
22 your exam, I think it's every six months and but then  
23 now --

24 THE COURT: Are you in Houston now?

25 MS. CAROLE BRUNSTING: Yes. I only live

1 about, oh, I don't know, maybe five miles from M.D.  
2 Anderson. I live straight down Braeswood and turn on  
3 Bertner --

4 THE COURT: I, for some reason, thought  
5 you lived in California - maybe that's Ms. Schwager's  
6 client.

7 MS. CAROLE BRUNSTING: Oh, no, no; I live  
8 in Houston. Like I said, I'm five miles from M.D.  
9 Anderson.

10 THE COURT: Okay. I got it. And, you  
11 know, let me say this about the billing that you're  
12 getting.

13 You know, I've practiced law for over 40  
14 years. I did complex litigation involving a lot of real  
15 estate, a lot of corporate mergers, and a lot of  
16 high-end divorces; and the billing from M.D. Anderson  
17 and its complexity and inability to be understood  
18 surpasses everything I ever did as a lawyer. So, when  
19 you get overwhelmed by your statement from M.D.  
20 Anderson, you're in great company.

21 One of the first things I would have you  
22 do is go over to the billing office and set up a payment  
23 plan. And when they tell you that, okay, they want \$900  
24 a month, you tell them, "I can only afford 250 a month"  
25 or whatever. They'll work with you.

1 MS. CAROLE BRUNSTING: I want to be able  
2 to pay them in full because I have the money.

3 THE COURT: Well, you don't need to and  
4 they don't charge interest. So, you can, you know, you  
5 have a payment plan that you can get.

6 Now, and of course, we started a new year,  
7 so you have a new deductible that you'll incur. So,  
8 there will be up-front costs that will come out now that  
9 you'll probably reach your deductible rather quickly.

10 I've seen a proposed order signed by Mr.  
11 Mendel regarding the distribution. And if you're on My  
12 Chart with M.D. Anderson, and you have a section in that  
13 called, "Test Results", am I correct?

14 MS. CAROLE BRUNSTING: Yes.

15 THE COURT: And in those test results,  
16 there should be something that evidences the diagnosis  
17 of a malignant tumor. I would assume that there would  
18 be something to that effect.

19 MS. CAROLE BRUNSTING: There is.

20 THE COURT: Okay. Do you have the ability  
21 to send that to Mr. Spielman or Mr. Mendel or any of  
22 these attorneys? You know --

23 MS. CAROLE BRUNSTING: I don't know if I  
24 have -- yeah -- I don't understand why I have to prove I  
25 have cancer. I mean, do you really think I would make

1 this up?

2 THE COURT: I don't. But I don't think  
3 it's much of a burden also to just print that out. And  
4 I wouldn't put much of an imposition on you given the  
5 fragile state that you are experiencing now which, by  
6 the way, is totally appropriate. I would say at this  
7 moment, you're probably still under some PTSD shock from  
8 the diagnosis. But I think that if you would, if you  
9 would simply print that out and send that to these  
10 lawyers, I will sign this proposed order, but first I  
11 want to hear from Ms. Schwager and Mr. Reed and Ms.  
12 Bayless if they have anything they wish to say.

13 So, I'm going to start with Ms. Schwager

14 STATEMENTS BY MS. SCHWAGER:

15 MS. SCHWAGER: Thank you.

16 Your Honor, first of all, my heart goes  
17 out to Carole, and I want to let her know that my  
18 prayers are with her, and we support her request. And  
19 we feel that if [inaudible] her house was hit by a  
20 hurricane - that wasn't sufficient; and now cancer is  
21 not sufficient either for a distribution according to  
22 the Trustees.

23 I just want to -- I took a few notes that  
24 I just wanted to add - if you don't mind - it's rather  
25 short.

1                   But first of all, the Trust -- Amy  
2 Brunsting testified, by affidavit in the Southern  
3 District of Texas, that the Trust was distributed into  
4 five separate Trusts as the QBD that they're relying on  
5 requires. They were Personal Asset Trusts. So, they  
6 told you today that the Trust is still in two separate  
7 Trusts and checking accounts; and so, that was perjury  
8 and it's a lie, and it was a breach of their duties.

9                   According to the QBD they rely upon,  
10 Carole is the sole trustee for her share. And under  
11 that instrument, the Defendants have been in the  
12 wrongful possession of her personal property for more  
13 than 10 years. And their demand is \$537,000 in  
14 attorneys' fees; that's why they're holding us all  
15 hostage. After 10 years, they've made no effort to  
16 divide these assets; but instead, chosen to invoke this  
17 in terrorem clause simply based on the fact that the  
18 beneficiaries - including my client - are exercising  
19 their right to demand accountings and hold the trustees  
20 liable for the breach of the duties that they have to  
21 Beneficiaries. They have no basis to continue to hold  
22 this money in the first place.

23                   And my thought is - the severance motion  
24 that was just filed is just another attempt to snuff out  
25 my client by depleting the Trust assets to this point

1 where there is nothing left. So, I would add that.

2 And, no, we're not considering that today.

3 But at any rate, I just -- there's been no  
4 attorney fee bills or retainer contracts, things that  
5 would even justify this extraordinary fee request. And  
6 you wonder how 537,000 in fees is incurred when nothing  
7 has happened in this case, in 10 years essentially.

8 So, I would only add that when my son was  
9 in ICU, the bills were over a million dollars. My  
10 portion was a hundred thousand; it was over a four-month  
11 period. So, as you know, insurance doesn't cover  
12 everything; and without a job, she's going to have  
13 expenses. So, we completely support her.

14 And again, I'm very sorry that you're  
15 going through this, Carole.

16 MS. CAROLE BRUNSTING: Thank you.

17 MS. SCHWAGER: I appreciate you letting me  
18 speak.

19 THE COURT: Sure thing, Ms. Schwager.

20 Ms. Bayless, you wish to make any comment?

21 MR. MENDEL: Bobbie, you're on mute.

22 Bobbie, you're on mute.

23 MS. BAYLESS: I'm trying. Okay.

24 THE COURT: You're there.

25 MS. BAYLESS: Sorry, Judge.

1 THE COURT: Okay.

2 STATEMENTS BY MY BAYLESS:

3 MS. BAYLESS: Yes. You know, nobody can  
4 relate to severe medical issues better than my client  
5 so, and being separated from the Trust funds and trying  
6 to deal with it. So we, you know, we don't oppose the  
7 request by Carole, and we also are sorry about her  
8 diagnosis. I think everyone's stress levels would be  
9 greatly reduced by resolving this matter, and that's  
10 where we're focusing our efforts - on trying to resolve  
11 it. We can only do what we can do and we can't make  
12 everyone want to resolve it. But that's our goal, and  
13 that's where we're going to be spending our focus, and  
14 that's why some of these filings have been made and that  
15 Ms. Schwager referred to.

16 But as far as what we're here about today,  
17 other than sympathy and support and acknowledging that  
18 we can certainly relate to the stress levels and the  
19 problems caused by having an asset that you can't access  
20 when you need to very badly for medical issues, you  
21 know, we don't oppose the distribution.

22 THE COURT: All right. Mr. Reed, I assume  
23 you don't -- you represent an attorney.

24 MR. REED: Yes, Judge.

25 THE COURT: And the fact that -- you don't

1 feel the need to weigh in on this, do you?

2 MR. REED: That's correct; I don't even  
3 think I have a right to speak on the issue, Judge,  
4 outside of expressing sympathy.

5 THE COURT: All right. In the proposed  
6 order regarding distribution - once the Defendant  
7 Co-Trustees to have sole discretion to determine from  
8 which account or accounts to make the distribution; what  
9 are the various accounts that are possible in which to  
10 make a distribution?

11 STATEMENTS BY MR. MENDEL:

12 MR. MENDEL: Well, Your Honor, with regard  
13 to the Survivor's Trust, there is a Bank of America  
14 checking, Bank of America savings. There's a Decedent's  
15 checking account. So, in terms of very prompt  
16 liquidity, those bank accounts are available. There is  
17 an Edward Jones account that has liquidity, stocks,  
18 bonds, mutual funds, and there are computer share  
19 accounts. And so, there are several sources from  
20 which - subject to what the Court decides is the  
21 appropriate number - there are several sources in order  
22 to make the payment.

23 THE COURT: What Trust was that?

24 MR. MENDEL: The decedent -- well, the  
25 Decedent's Trust has one checking account, and the

1 Survivor's Trust has two checking accounts.

2 THE COURT: And they're all at Bank of  
3 America?

4 MR. MENDEL: And they're at Bank of  
5 America.

6 THE COURT'S RULING:

7 THE COURT: Okay. I got the -- that's the  
8 information I wanted.

9 So, I'm going to order that she receive a  
10 distribution of a hundred thousand dollars, and I want  
11 that done within 36 hours after she provides written  
12 confirmation of her test results to either you, Mr.  
13 Mendel, or you, Mr. Spielman; and that money is to come  
14 from a Bank of America checking account. I don't want  
15 any of the mutual funds or the stocks, at this time,  
16 sold. You know, you have a taxable problem,  
17 potentially, with that. Also stock market's high and  
18 may go higher. So, you're probably not earning much  
19 interest on those liquid funds at Bank of America. So,  
20 if --

21 MR. MENDEL: And, Your Honor, for  
22 clarification, may the Trustees have the discretion to  
23 pick which accounts it comes from? As long as she gets  
24 a hundred grand out of Bank of America funds?

25 THE COURT: I don't -- I haven't heard

1 anything that would lead me to believe that I should  
2 limit it to one particular account or another; so, I'm  
3 going to allow that to happen.

4 If you can redraft your order --

5 MR. MENDEL: Yes, sir.

6 THE COURT: -- you should be able to make  
7 that change pretty quickly.

8 I want Ms. Brunsting to get her money as  
9 fast as possible to help reduce her stress level which  
10 I'm a little sensitized to the subject, but I think it's  
11 appropriate, and I'll sign this order when I get it.

12 MR. MENDEL: So, I'll modify it and send  
13 it to you in a few minutes, Your Honor.

14 THE COURT: That's fine; I'll sign it as  
15 soon as I get it.

16 MR. MENDEL: Should we --

17 THE COURT: If you'll -- Judge Comstock,  
18 how do you want -- want him to file it or send it to you  
19 by email or both?

20 JUDGE COMSTOCK: He can send it by email;  
21 I'll upload it.

22 THE COURT: Okay. So, send it by email to  
23 Judge Comstock.

24 MR. MENDEL: Yes, Your Honor. And then  
25 for purposes of the distribution, the check? Wire?

1 Does the Court have a preference? If she wants a wire,  
2 we need wiring instructions.

3 THE COURT: Let me ask Ms. Brunsting.

4 Do you have a bank account?

5 MS. CAROLE BRUNSTING: I have an account  
6 with Bank of America.

7 THE COURT: Did you use the past sentence,  
8 "had"?

9 MS. CAROLE BRUNSTING: I still have. I  
10 have. I have -- my main checking account is with Bank  
11 of America, but I did set up -- I mean, I don't -- if  
12 this is considered --

13 THE COURT: Let me ask you a question.

14 In the email, in the email that you send  
15 to Mr. Mendel with the test results showing that you  
16 have a cancer diagnosis, okay, can you provide Mr.  
17 Mendel with your account number? Is that something you  
18 could be comfortable with? He can do an in-bank  
19 transfer that goes from one Bank of America account to  
20 another, and it can happen almost immediately.

21 MS. CAROLE BRUNSTING: Okay. I can do  
22 that.

23 THE COURT: All right. So, you'll put  
24 that in the email to Mr. Mendel as well, your account  
25 number at Bank of America.

1 MS. CAROLE BRUNSTING: I will. Yes.

2 THE COURT: All right. Now, I think that  
3 takes care of the matter that is before us. I know  
4 there's been another motion filed, but that's not before  
5 me right now. I'll take it up when somebody sets it for  
6 a hearing. Right now, I want to close this hearing.  
7 I've got other cases lined up like airplanes at La  
8 Guardia Airport ready to take off. If there is nothing  
9 further, I'm going to excuse -- yes, sir, Mr. Mendel?

10 MR. MENDEL: We -- since that motion is  
11 now on file, can we go ahead and get a hearing date for  
12 that motion to sever?

13 THE COURT: Well, I'm going to let you  
14 talk to Judge Comstock about that.

15 MR. MENDEL: Okay. Yes, sir.

16 JUDGE COMSTOCK: Please reach out to Ana  
17 Vaso - she sets the hearings.

18 MR. MENDEL: Okay. All right.

19 THE COURT: All right. If there's nothing  
20 further, then I'm going to excuse all of you.

21 Ms. Brunsting, I wish you well. You are  
22 in the best hands in the world at M.D. Anderson.

23 MS. CAROLE BRUNSTING: Yes, I'm starting  
24 to realize that, and I really want to thank you so very  
25 much. This really means a lot to me.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: All right. Good luck to  
you-all. Everyone is excused.

\* \* \* \* \*

1 The State of Texas )

2 County of Harris )

3

4 I, Hipolita Lopez, Official Court Reporter in and  
 5 for the Probate Court Number Four of Harris County,  
 6 State of Texas, do hereby certify that the above and  
 7 foregoing contains a true and correct transcription of  
 8 all portions of evidence and other proceedings requested  
 9 in writing by counsel for the parties to be included in  
 10 this volume of the Reporter's Record, in the  
 11 above-styled and numbered cause, all of which occurred  
 12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record  
 14 truly and correctly reflects the exhibits, if any,  
 15 admitted by the respective parties.

16 I further certify that the total cost for the  
 17 preparation of this Reporter's Record is \$217.00.  
 18 and was paid by MS. CANDACE CURTIS.

19 WITNESS MY OFFICIAL HAND this the 20th day of  
 20 January, 2022.

21 /s/ Hipolita G. Lopez  
 22 HIPOLITA G. LOPEZ, Texas CSR #6298  
 23 Expiration Date: 10-31-23  
 24 Official Court Reporter  
 25 Probate Court Number Four  
 Harris County, Texas  
 201 Caroline, 7th Fl.  
 Houston, Texas 77002