## Objection to Irrelevant Arguments

The period to file a notice of appeal is within the rules of appellate procedure. A notice of appeal must be filed within 30 days after the challenged judgment is signed [TEX. R. APP. P. 26.1](https://casetext.com/rule/texas-court-rules/texas-rules-of-appellate-procedure/section-two-appeals-from-trial-court-judgments-and-orders/rule-26-time-to-perfect-appeal/rule-261-civil-cases). The only issues not time barred by the rules of appellate procedure are orders issued in want or excess of jurisdiction. The only question before the court is Jurisdiction and whether orders entered in the court below are void for want of personam or subject matter jurisdiction or merely voidable on substantive or procedural due process ground.

An appellate court has no jurisdiction to consider the merits of an appeal of a void order or judgment. See id. Catapult Realty Capital, L.L.C. v. Johnson (In re Catapult Realty Capital, L.L.C.), No. 05-19-01056-CV, at \*9 (Tex. App. Feb. 20, 2020) and authorities cited therein.

## Dominant Jurisdiction

Southern District of Texas

Harris County District Court 164

Harris County Probate Court No. 4

### Independent Administration; Pour-over into inter vivos trust

Once the estate pours over, all right title and interest vests in the sole devisee and become trust business. An “estate” is a legal fiction defined as personal property. Property is governed under the property code. If we use Estates Code Section 32.006 to establish subject matter jurisdiction over an inter vivos trust in a statutory probate court without a pending estate administration to be ancillary to, what other estates codes would apply to this controversy?

Was there ever a -401?

## Absence of Statutory Probate Court Jurisdiction

Was the Settlor a Decedent in a probate matter pending in the probate court at the time the independent executor filed his trust related tort suit in the probate court? [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.

Was the independent executor foreclosed from filing his trust related tort suit in the probate court by the Decedents Will? See Tex. Est. Code § 402.001 and dominant case law? Did Trust beneficiary Carl Brunsting ever have individual standing in the administration of the Settlors estates when the only Devisee was the trust?

Was Carl ever competent to occupy the office of Independent Executor?

STANDING

1. Carl is not a devisee and never had individual standing in the probate of the estate of Nelva Brunsting.
2. After the recording of the Decedents Will and the filing of the verified inventory the Decedents Will foreclosed the independent executor from taking any further action in the probate court.
3. After the probate court approved the verified inventory the independent executor was foreclosed by statute from taking any further action in the probate court. **Tex. Est. Code § 402.001**

## Was there ever a Remand?

There was never a removal and there could be no return.

## Was there ever a transfer?

There is no authority for a state court to transfer a federal case to itself

## Carl files Resignation and there is no Plaintiff with Standing in 412,249-401

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal. Allstate Ins. Co. v. Hallman, 159 S.W.3d 640, 642 (Tex. 2005); Bd. of Adjustment of San Antonio v. Wende, 92 S.W.3d 424, 427 (Tex. 2002); Williams v. Lara, 52 S.W.3d 171, 184 (Tex. 2001).

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings. See In re Kellogg Brown & Root, Inc., 166 S.W.3d 732, 737 (Tex. 2005). Appellate courts lack jurisdiction over moot controversies. See Olley v. HCM, LLC, 449 S.W.3d 572, 575 (Tex. App.-Houston [14th Dist.] 2014, pet. denied).

## Could there be a consolidation?

Can you create a lawsuit in a court with no subject matter jurisdiction by combining two cases that are not really there?

[2014-05-09 Case 4-12-cv-592 [Doc 109] Ostrom Motion to Remand.pdf](http://probatemafia.com/brunsting/2014-05-09%20%20Case%204-12-cv-592%20%5bDoc%20109%5d%20Ostrom%20Motion%20to%20Remand.pdf)

[2014-05-15 Case 4-12-cv-592 Doc 112 Order granting Motion to Remand.pdf](http://probatemafia.com/brunsting/2014-05-15%20Case%204-12-cv-592%20Doc%20112%20Order%20granting%20Motion%20to%20Remand.pdf)

[2014-05-28 Case 412249 402 MOTION TO ENTER TRANSFER ORDER signed by Butts PBT 2014 184792.pdf](http://probatemafia.com/brunsting/2014-05-28%20%20Case%20412249%20402%20MOTION%20TO%20ENTER%20TRANSFER%20ORDER%20signed%20by%20Butts%20PBT%202014%20184792.pdf)

[2014-11-17 Mendel Notice of Appearance for Anita Kay Brunsting.pdf](http://probatemafia.com/brunsting/2014-11-17%20Mendel%20Notice%20of%20Appearance%20for%20Anita%20Kay%20Brunsting.pdf)

[2014-12-08 412249-401 Spielman Notice of APPEARANCE.pdf](http://probatemafia.com/brunsting/2014-12-08%20412249-401%20Spielman%20Notice%20of%20APPEARANCE.pdf)

[2015-02-19 Case 412249-401 PBT-2015-57597 Carl Resignation.pdf](http://probatemafia.com/brunsting/%5b13%5d%202015-02-19%20Case%20412249-401%20PBT-2015-57597%20Carl%20Resignation.pdf)

2015-03-16 [Tab 46](http://www.probatemafia.com/Brunsting/TAB%2046%20%202015-02-09%20Docket%20sheet%20412249-402%20Certified%202019-08-22.pdf) Docket -402 Certified “Order to Consolidate” ordering that all pleadings filed under 412,249-402 be moved into 412,249-401 and that -402 be closed to further filing (There is no evidence that anything was actually moved or copied into -401.)

There ceased to be a controversy in the -401 when there was no plaintiff with standing. The federal lawsuit was never really in the probate court and there was no executor or personal representative for estate of Nelva Brunsting on March 16, 2015 when this “Agreed Order” was signed. Drina could not legitimately stand in for Carl in either capacity and there is no Plaintiff with Standing in 412,249-401 and thus the proceedings became moot at that juncture if ever valid at all.

The federal case, “*Candace Louise Curtis vs Anita Brunsting et al. No. 4:12-cv-592*” is not the *estate of Nelva Brunsting*. There was never an “estate of Nelva Brunsting -402”.

## CONSOLIDATION

*HONG KONG DEV v. NGUYEN*, No. 01-04-00586-CV, at \*1 (Tex. App. Nov. 9, 2006) (“Two types of consolidation exist: true consolidation and consolidation for trial. McDonald Carlson, *supra,* at 775; *see also* 7 Dorsaneo, *supra,* at § 112.01[1][a]. True consolidation, as occurred here, involves merging separate suits into a single proceeding under one docket number. McDonald Carlson, *supra,* at 775. "`When actions are properly consolidated they become merged and are thereafter treated as one suit. . . .'" *Perry v. Del Rio,* [53 S.W.3d 818, 825](https://casetext.com/case/perry-v-del-rio#p825) n. 6 (Tex.App.-Austin 2001) (quoting 1 Tex. Jur. 3d *Actions* § 77 (1993)), *pet. dism'd,* [66 S.W.3d 239](https://casetext.com/case/perry-v-del-rio-2) (Tex. 2001); *see Rust v. Tex. Pac. Ry. Co.,* [107 Tex. 385, 387](https://casetext.com/case/rust-v-texas-pacific-railway-company#p387), [180 S.W. 95, 95](https://casetext.com/case/rust-v-texas-pacific-railway-company#p95) (1915) ("In the present case, the order of consolidation having been properly made, there remained no separable cause of action. It became but one suit. . . ."). Therefore, when a court orders true consolidation of two or more cases, the actions are merged and thereafter proceed as a single action, as though they had been filed initially as a single suit. *See Perry,* [53 S.W.3d at 825](https://casetext.com/case/perry-v-del-rio#p825) n. 6; *Rust,* [107 Tex. at 387](https://casetext.com/case/rust-v-texas-pacific-railway-company#p387), [180 S.W. at 95](https://casetext.com/case/rust-v-texas-pacific-railway-company#p95); McDonald Carlson, *supra,* at 775. ”)

## SEVERANCE

Rule 41 of the Texas Rules of Civil Procedure states that “[a]ny claim against a party may be severed and proceeded with separately.” [Tex.R. Civ. P. 41](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-3-parties-to-suits/rule-41-misjoinder-or-non-joinder-of-parties). **The effect of a severance is to divide a lawsuit into two or more independent suits that will be adjudicated by distinct and separate judgments.** *See Van Dyke v. Boswell, O'Toole, Davis & Pickering,* [697 S.W.2d 381, 383](https://casetext.com/case/van-dyke-v-boswell-otoole-davis-pickering#p383) (Tex.1985); *see also Beckham Grp., P.C. v. Snyder,* [315 S.W.3d 244, 245](https://casetext.com/case/beckham-group-v-snyder#p245) (Tex.App.-Dallas 2010, no pet.). The controlling reasons for a severance are to effect justice, avoid prejudice, and for convenience. *See F.F.P. Oper. Partners v. Duenez,* [237 S.W.3d 680, 693](https://casetext.com/case/ffp-operating-v-duenez#p693) (Tex.2007); *Guaranty Fed. Savs. Bank v. Horseshoe Operating Co.,* [793 S.W.2d 652, 658](https://casetext.com/case/guar-federal-sav-bank-v-horseshoe-operating-co#p658) (Tex.1990).

## Was the federal action ever refiled in the probate court?

It could never have been filed in the probate court without a pending estate administration to be ancillary to. [Local Rule 2.6.5]

Wasn’t the state District Court lawsuit one half of the same lawsuit filed later in the state probate court and wouldn’t both actions require determination as to what change instruments are valid after Elmer’s incapacity? Wasn’t the state District Court lawsuit filed in the court of dominant kurisdiction?

## Was there really a summary judgment?

There was never an evidentiary hearing.

The record is devoid of any findings of fact or conclusions of law

No documents were qualified by witness testimony

No declaratory judgments have ever been entered and thus, the issue identified by George Vie III at the preliminary injunction hearing April 9, 2013 (P. 38, ln.20-23) and all of the facts remain in dispute except the admissions filed with their original March 1, 2013 answer and the fiduciary disclosures received from Defendants in the SDTX that Defendant Appellees now call hearsay. (See [Transcript of Injunction hearing](http://www.probatemafia.com/Brunsting/Tab%203%202013-04-09%20Case%20%204-12-cv-592%20Injunction%20Hearing%20Transcript-Certified.pdf)) See [Defendants Original Answer](http://www.probatemafia.com/Brunsting/2013-03-01%20Case%204-12-cv-00592%20Doc%2029%20Anita%20and%20Amy%20Answr%20to%20federal%20Complaint.pdf) filed March 1, 2013 in which they admit to owing Appellant fiduciary obligations. They cannot show they ever performed any because they have not performed any.

## Failure to Render

Jurisdiction is something possessed by courts, not judges. Davis, [956 S.W.2d at 557](https://casetext.com/case/davis-v-state-627#p557). A judge is an officer of the court, not the court itself. Id. at 557-58. However, "[a]lthough a judge is not a court, and jurisdiction is ordinarily vested in the court and not in its judges, the act of a judge within his jurisdiction may constitute the act of the court." Davis, [956 S.W.2d at 557](https://casetext.com/case/davis-v-state-627#p557).

***A*. *Applicable Law***

The rules of practice and procedure in civil district court allow district judges to exchange courts and transfer cases from one court to another. See [Tex. R. Civ. P. 330(e)](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-11-trial-of-causes/certain-district-courts/rule-330-rules-of-practice-and-procedure-in-certain-district-courts); see also Tex. Const. art. V, § 11 ("And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient . . . ."); In re Catapult Realty Cap., L.L.C., No. 05-19-01056-CV, 2020 WL 831611, at \*5 (Tex. App.-Dallas Feb. 20, 2020, orig. proceeding) (mem. op.). Further, the rules allow district judges to "hear any part of any case or proceeding pending . . . and determine the same" and "to hear and determine any question in any case, and any other judge may complete the hearing and render judgment in the case." [Tex.R.Civ.P. 330(g)](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-11-trial-of-causes/certain-district-courts/rule-330-rules-of-practice-and-procedure-in-certain-district-courts); see also In re Catapult, 2020 WL 831611, at \*5. However, **the rules of civil procedure do not authorize a judge to render a decision following a hearing unless she personally heard the evidence on which the order or judgment is based**. In re Catapult, 2020 WL 831611, at \*5. Fischer v. Clifford Fischer & Co., No. 05-20-00196-CV, at \*6-7 (Tex. App. Aug. 16, 2022)

The rules of civil procedure do not authorize a judge to render a decision following a hearing unless she personally heard the evidence on which the order or judgment is based. See Masa Custom Homes, [547 S.W.3d at 335](https://casetext.com/case/masa-custom-homes-llc-v-shahin-2#p335); W.C. Bank, Inc. v. Team, Inc., [783 S.W.2d 783, 785](https://casetext.com/case/wc-banks-inc-v-team-inc#p785) (Tex. App.—Houston [1st Dist.] 1990, no writ).When a judge has no authority to render an order or judgment, that order or judgment is void. See Masa Custom Homes, [547 S.W.3d at 338](https://casetext.com/case/masa-custom-homes-llc-v-shahin-2#p338). An appellate court has no jurisdiction to consider the merits of an appeal of a void order or judgment. See id. Catapult Realty Capital, L.L.C. v. Johnson (In re Catapult Realty Capital, L.L.C.), No. 05-19-01056-CV, at \*9 (Tex. App. Feb. 20, 2020) and authorities cited therein.

## Were there really any counter claims?

Original Suit filed Feb. 27, 2012 – Defendants Original Answer filed March 1, 2013 – Defendant’s Original Counter Claims filed November 4, 2019

1. Counter claims are compulsory, Tex. R. Civ. P. 97(a), and waived when not brought with an original answer.
2. Defendant Appellee Anita Brunsting and Amy Brunsting filed their original answer in the SDTX on March 1, 2013.
3. Defendant Appellee’s Anita Brunsting and Amy Brunsting filed their “original counter claims” in Harris County Probate Court No. 4 on November 4, 2019. (6 yrs. 8 Mo’s) without bothering with the formality of a jurisdictional statement or a claim to counter.

## Failure to State a claim

Defendant/Appellees Original Counterclaims, filed November 4, 2019, fails to contain a jurisdictional statement affirmatively declaring the jurisdiction of the court in which the action was brought.

The general rule is that the allegations of the plaintiff's petition must state facts which affirmatively show the jurisdiction of the court in which the action is brought. Brown v. Peters, [127 Tex. 300](https://casetext.com/case/brown-v-peters), [94 S.W.2d 129](https://casetext.com/case/brown-v-peters) (1936); Smith v. Horton, [92 Tex. 21](https://casetext.com/case/smith-v-horton), [46 S.W. 627](https://casetext.com/case/smith-v-horton) (1898); Texas N.O.R.R. Co. v. Farrington (Tex.Com.App., 1905), [40 Tex. Civ. App. 205](https://casetext.com/case/t-n-o-ry-co-v-farrington), [88 S.W. 889](https://casetext.com/case/t-n-o-ry-co-v-farrington). Richardson v. First Nat. Life Ins. Co., 419 S.W.2d 836, 839 (Tex. 1967)

“The pleader is required to allege facts that affirmatively demonstrate the court's jurisdiction to hear a case. See Tex. Ass'n of Bus., [852 S.W.2d at 446](https://casetext.com/case/texas-assn-of-business-v-texas-air-control-bd#p446). ” **It was not Fidelity's burden to plead specific facts that would disprove subject matter jurisdiction**. James, as the plaintiff, had the initial burden of alleging facts and framing legal arguments that would affirmatively demonstrate the trial court's jurisdiction to hear her claims. Miranda, [133 S.W.3d at 225–26](https://casetext.com/case/texas-dept-parks-wildlife-v-miranda#p225) (citing Texas Ass'n of Bus., [852 S.W.2d at 446](https://casetext.com/case/texas-assn-of-business-v-texas-air-control-bd#p446)). Unsupported legal conclusions do not suffice. See Creedmoor–Maha Water Supply Corp. v. Tex. Comm'n on Envt'l Quality, [307 S.W.3d 505, 515–16](https://casetext.com/case/creedmoor-maha-water-supply-v-tceq#p515) & nn. 7 & 8 (Tex.App.-Austin 2010, no pet.). James v. Underwood, 438 S.W.3d 704, 716 (Tex. App. 2014)

## Must Plead Subject Matter Jurisdiction

"'Subject matter jurisdiction cannot be waived or conferred by agreement' and 'can be raised at any time,' including in an interlocutory appeal." Anderson v. Truelove, 446 S.W.3d 87, 91 (Tex App-Houston [1st Dist] 2014, no pet) (quoting Rusk State Hosp v. Black, [392 S.W.3d 88, 103](https://casetext.com/case/rusk-state-hosp-v-black#p103) (Tex 2012) (Lehrmann, J, concurring in part and dissenting in part)). We review the existence of subject matter jurisdiction de novo. State v. Holland, [221 S.W.3d 639, 642](https://casetext.com/case/state-v-holland-6#p642) (Tex. 2007); Tex. Dep't of Parks & Wildlife v. Miranda, [133 S.W.3d 217, 226](https://casetext.com/case/texas-dept-parks-wildlife-v-miranda#p226) (Tex. 2004). The pleader must allege facts that affirmatively demonstrate the trial court's jurisdiction to hear the cause. Dall. Cnty. Appraisal Dist. v. Funds Recovery, Inc., [887 S.W.2d 465, 469](https://casetext.com/case/dallas-cnty-appr-v-funds-recovery#p469) (Tex. App.-Dallas 1994, writ denied) (citing Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 446 (Tex. 1993)). When reviewing subject matter jurisdiction, we must construe the petition in favor of the pleader and, if necessary, review the entire record to determine if any evidence supports jurisdiction. Id. (citing Tex. Ass'n of Bus., 852 S.W.2d at 446); see Wise Reg'l Health Sys. v. Brittain, [268 S.W.3d 799, 804](https://casetext.com/case/wise-regional-v-brittain#p804) (Tex. App.-Fort Worth 2008, no pet.).

*Bookout v. Shelley*, No. 02-22-00055-CV, at \*8-9 (Tex. App. Nov. 23, 2022)

[The pleader is required to allege facts that affirmatively demonstrate the court's jurisdiction to hear a case. See Tex. Ass'n of Bus., 852 S.W.2d at 446.](https://casetext.com/case/james-v-honorable-olen-underwood-honorable-patrick-sebesta-fid-deposit-co-of-md?jxs=tx&p=1&q=a%20complaint%20must%20contain%20a%20statement%20of%20jurisdiction&sort=relevance&type=case#uh6509ce4e871e010028c55336)

*James v. Underwood*, 438 S.W.3d 704 (Tex. App. 2014)

[“As a general matter, the pleader must allege facts that affirmatively demonstrate the court's jurisdiction to hear the case. See Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 446 (Tex. 1…”](https://casetext.com/case/in-re-forlenza-1?jxs=tx&p=1&q=a%20complaint%20must%20contain%20a%20statement%20of%20jurisdiction&sort=relevance&type=case)

[In re Forlenza](https://casetext.com/case/in-re-forlenza-1?jxs=tx&p=1&q=a%20complaint%20must%20contain%20a%20statement%20of%20jurisdiction&sort=relevance&type=case) 140 S.W.3d 373

**Complete want of Subject Matter Jurisdiction**

**Ancillary to What?**

A court empowered with probate jurisdiction may only exercise its probate jurisdiction over matters incident to an estate when a probate matter proceeding related to such matter is already pending." *Bailey*, [862 S.W.2d at 585](https://casetext.com/case/bailey-v-cherokee-county-appraisal-dist#p585); *Estate of Hanau*, [806 S.W.2d 900, 904](https://casetext.com/case/estate-of-hanau-in-re#p904) (Tex.App.-Corpus Christi 1991, writ denied). Where the record does not reveal that a probate proceeding was taking place or was pending when suit was filed, section 5 of the probate code dealing with matters incident to an estate is not triggered. *Schuld v. Dembrinski,* [12 S.W.3d 485, 487](https://casetext.com/case/schuld-v-dembrinski#p487) (Tex.App.-Dallas 2000, no pet.); *Qualia v. Qualia*, [878 S.W.2d 339, 341](https://casetext.com/case/qualia-v-qualia-1#p341) (Tex.App.-San Antonio 1994, writ denied); *Sumaruk v. Todd*, [560 S.W.2d 141, 144](https://casetext.com/case/sumaruk-v-todd#p144) (Tex.Civ.App.-Tyler 1977, no writ). Hence, because no probate proceeding was ongoing or pending when TCB filed its foreclosure proceeding, the county court at law did not have exclusive jurisdiction over matters incident to Shwery's estate.

***B. Closing of the Independent Administration***

An independent executor may formally close an independent administration by filing a final account verified by affidavit. [Tex. Prob. Code Ann. § 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) (Vernon Supp. 1999); *Estate of McGarr,* [10 S.W.3d 373, 376](https://casetext.com/case/in-re-estate-of-mcgarr#p376) (Tex.App.-Corpus Christi 1999, no pet.). Section 151 of the probate code provides that:

When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, when there is no pending litigation, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court:

(1) a closing report verified by affidavit that shows:

(i) The property of the estate which came into the hands of the independent executor;

(ii) The debts that have been paid;

(iii) The debts, if any, still owing by the estate;

(iv) The property of the estate, if any, remaining on hand after payment of debts; and

(v) The names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

[Tex. Prob. Code Ann. § 151(a)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) (Vernon Supp. 2000).

The filing of such an affidavit and proof of its delivery terminates the independent administration and the power and authority of the independent executor. *Id*. at [§ 151(b)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed). At that point, persons dealing with properties of the estate or claims against the estate shall deal directly with the distributees of the estate. *Id*. The affidavit closing the independent administration gives the persons described in the will as entitled to receive particular assets the power to enforce their right to payment or transfer by suit. *Id*. at [§ 151(c)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed); *Hanau*, 800 S.W.2d at 373. It does not, however, relieve the executor of liability for any mismanagement of the estate or from liability for any false statements in the affidavit. [Tex. Prob. Code Ann. § 151(c)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed); *Hanau*, 800 S.W.2d at 373.

An independent administration also can be closed without filing an affidavit. Even in the absence of such an affidavit, an independent administration is considered closed when debts have been paid so far as the assets will permit and all property has been distributed. [Tex. Prob. Code Ann. § 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed); *Hanau,* [806 S.W.2d at 903](https://casetext.com/case/estate-of-hanau-in-re#p903). This court has explained:

An independent administration of an estate is considered closed when the debts have been paid and the property has been distributed and there is no more need for administration. The filing of a verified final account with the probate court pursuant to [section 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) merely formally closes an independent administration.

*Hanau*, [806 S.W.2d at 903](https://casetext.com/case/estate-of-hanau-in-re#p903); *see also McGarr,* [10 S.W.3d at 376](https://casetext.com/case/in-re-estate-of-mcgarr#p376).

This Court has noted that we must look beyond the title of the final accounting to its contents to determine if the document is in fact a [Section 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) affidavit. *Hanau*, [806 S.W.2d at 903](https://casetext.com/case/estate-of-hanau-in-re#p903). "If the instrument before the court is filed as the final accounting but is in reality only a presentation of the status of the estate and if it is apparent from the instrument that the estate is not ready to be closed, then, to close the estate would ignore the purpose of the statute." *Id*.; *accord Estate of Canales*, [837 S.W.2d 662, 669](https://casetext.com/case/estate-of-canales-in-re#p669) (Tex.App.-San Antonio 1992, no writ). Still, where, as here, the affidavit generally comports with the requirements of [section 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed), the Estate appears to need no further administration, the probate court has both approved the affidavit and allowed resignation of the administrators without appointing successors, the verified account is sufficient to close the administration. Even the probate court has no power to "disapprove" a final account.

*Texas Comm. Bk. v. Correa*, 28 S.W.3d 723, 727-28 (Tex. App. 2000)

## 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#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#p568) (Tex. 2001))).

*Bookout v. Shelley*, No. 02-22-00055-CV, at \*24 n.13 (Tex. App. Nov. 23, 2022)

## Was there a Severance?

March 11, 2022 an Order Granting Motion to Sever Carl from Candace Curtis was entered, creating ancillary cause No. 412,249-405 as a place for Drina Brunsting and the Defendant Co-Trustees to move their no longer being prosecuted tort claims. ***[ROA 321-326]***

Whether or not the order to sever is valid is dependent upon the validity of the remand, transfer and consolidation orders. ***[ROA 327-329]***

## 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?

## What was the effect of Non-suit?

March 18, 2022, Drina filed a Notice of Nonsuit of Defendant Carole Brunsting. March 18, 2022, Drina also filed a Notice of Nonsuit of nominal Defendant Candace Curtis.

Assuming Carl had individual standing (or that Drina had standing at all), as of March 18, 2022 there is officially no dispute between Carl and Candace and no evidence that there ever was. Does Carl have Appellee standing?

## Is Carl’s Appellee Brief Moot?

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal. Allstate Ins. Co. v. Hallman, 159 S.W.3d 640, 642 (Tex. 2005); Bd. of Adjustment of San Antonio v. Wende, 92 S.W.3d 424, 427 (Tex. 2002); Williams v. Lara, 52 S.W.3d 171, 184 (Tex. 2001).

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings. See In re Kellogg Brown & Root, Inc., 166 S.W.3d 732, 737 (Tex. 2005). Appellate courts lack jurisdiction over moot controversies. See Olley v. HCM, LLC, 449 S.W.3d 572, 575 (Tex. App.-Houston [14th Dist.] 2014, pet. denied).

What is Carl’s legally cognizable interest in the outcome of this appeal if he has no controversy with his former Defendants?

8/31/2023 OPPOSED SECOND JOINT MOTION FOR EXTENSION OF TIME TO FILE THE APPELLEES BRIEF OF CO-TRUSTEE ANITA K. BRUNSTING, COTRUSTEE AMY R. BRUNSTING, & CARL H. BRUNSTING:

“Appellees’ counsels have been working diligently to prepare their response briefs, which require a coordinated effort due to the aligned and complementary interest among Appellees. Coordinating the schedules of multiple lawyers across the three law firms representing the three Appellees is also more art than science.”

## Absence of a controversy solidifies appeal is moot

Bayless (Carl) named California resident and federal plaintiff Candace Curtis a Nominal Defendant only. Following the severance of the alleged consolidation of Carl and Candace claims, Bayless (Carl) filed a nonsuit making it clear that Bayless (Carl) never had a claim against Candace Curtis. Any argument Bayless (Carl) may have regarding this appeal is rendered moot by the absence of a controversy.

## Local Rules

Cause No. 412,249 titled “Estate of Nelva Brunsting” is a container object. The only things in that container are the things that belong in that container. [Local Rule 2.2] listed in [Local Rule 2.5]

The Clerk shall maintain separate files for each sub-file number [Local Rule 2.4]

Cause No. 412,249-401 is a container object created to hold matters considered as ancillary to the base case [Local Rule 2.6] but do not belong in the base case. [Local Rule 2.5]

Ancillary Matters that belong in a different file with an ancillary or related case designation includes *“lntervivos Trust Actions (settlor is decedent in probate* ***pending*** *in subject court);”* [Local Rule 2.6.5]

Can you create a lawsuit in a court with no subject matter jurisdiction by combining two cases that are not really there?

[2014-05-09 Case 4-12-cv-592 [Doc 109] Ostrom Motion to Remand.pdf](http://probatemafia.com/brunsting/2014-05-09%20%20Case%204-12-cv-592%20%5bDoc%20109%5d%20Ostrom%20Motion%20to%20Remand.pdf)

[2014-05-15 Case 4-12-cv-592 Doc 112 Order granting Motion to Remand.pdf](http://probatemafia.com/brunsting/2014-05-15%20Case%204-12-cv-592%20Doc%20112%20Order%20granting%20Motion%20to%20Remand.pdf)

[2014-05-28 Case 412249 402 MOTION TO ENTER TRANSFER ORDER signed by Butts PBT 2014 184792.pdf](http://probatemafia.com/brunsting/2014-05-28%20%20Case%20412249%20402%20MOTION%20TO%20ENTER%20TRANSFER%20ORDER%20signed%20by%20Butts%20PBT%202014%20184792.pdf)

[2014-11-17 Mendel Notice of Appearance for Anita Kay Brunsting.pdf](http://probatemafia.com/brunsting/2014-11-17%20Mendel%20Notice%20of%20Appearance%20for%20Anita%20Kay%20Brunsting.pdf)

[2014-12-08 412249-401 Spielman Notice of APPEARANCE.pdf](http://probatemafia.com/brunsting/2014-12-08%20412249-401%20Spielman%20Notice%20of%20APPEARANCE.pdf)

[2015-02-19 Case 412249-401 PBT-2015-57597 Carl Resignation.pdf](http://probatemafia.com/brunsting/%5b13%5d%202015-02-19%20Case%20412249-401%20PBT-2015-57597%20Carl%20Resignation.pdf)

There ceased to be a controversy in the -401 when there was no plaintiff with standing.

[2015-03-09 Agreed Order to Consolidate cases.pdf](http://probatemafia.com/brunsting/%5b15%5d%202015-03-09%20Agreed%20Order%20to%20Consolidate%20cases.pdf)

## Rule 13 Sanctions

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal. In re Kellogg Brown &Root, Inc., [166 S.W.3d 732, 737](https://casetext.com/case/in-re-kellogg-brown-root-inc-1#p737) (Tex. 2005). [Rule 13](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-i-general-rules/rule-13-effect-of-signing-pleadings-motions-and-other-papers-sanctions) sanctions serve both deterrent and compensatory purposes. Scott &White Mem'l Hosp. v. Schexnider, 940 S.W.2d 594, 596 (Tex. 1996). Courts impose sanctions against parties filing frivolous claims to deter similar conduct in the future and to compensate the aggrieved party by reimbursing the costs incurred in responding to baseless pleadings. Id. at 59697. As a result, the Texas Supreme Court has held that [Rule 13](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-i-general-rules/rule-13-effect-of-signing-pleadings-motions-and-other-papers-sanctions) sanctions can survive a nonsuit. Id. at 597. The Texas Supreme Court reasoned that it would frustrate the purpose of [Rule 13](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-i-general-rules/rule-13-effect-of-signing-pleadings-motions-and-other-papers-sanctions) to allow a party to escape sanctions by nonsuiting his case. Id. In re Marriage of Pratz, No. 12-20-00187-CV, at \*5 (Tex. App. Dec. 21, 2021)

 [Hemphill v. Hummell](https://casetext.com/case/hemphill-v-hummell?jxs=5cir,tx&p=1&publishedCasesOnly=true&q=%E2%80%9CA%20case%20becomes%20moot%20if%20a%20controversy%20ceases%20to%20exist%20between%20the%20parties%20at%20any%20stage%20of%20the%20legal%20proceedings,%20including%20the%20appeal.%E2%80%9D&sort=relevance&tab=ps&type=case&ssr=false&scrollTo=true&find=&resultsNav=false#p6)

No. 13-05-00515-CV (Tex. App. Jul. 31, 2008)[Cited 1 time](https://casetext.com/case/hemphill-v-hummell/how-cited?jxs=5cir,tx&p=1&publishedCasesOnly=true&q=%E2%80%9CA%20case%20becomes%20moot%20if%20a%20controversy%20ceases%20to%20exist%20between%20the%20parties%20at%20any%20stage%20of%20the%20legal%20proceedings,%20including%20the%20appeal.%E2%80%9D&sort=relevance&tab=ps&type=case&ssr=false&scrollTo=true&find=&resultsNav=false)

Under rule 13, "the signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment." TEX. R. CIV. P. 13. Courts may, under rule 13, "impose sanctions against parties filing frivolous claims to deter similar conduct in the future and to compensate the aggrieved party by reimbursing the costs incurred in responding to baseless pleadings." Scott White Mem'l Hosp. v. Schexnider, 940 S.W.2d 594, 596-97 (Tex. 1996).

# Pattern showing Collusion

## 2015-01-09 the Mendel Law Firm makes note of Problems with the Remand

02-12 Exhibit q Anita’s (Mendel) attorney Fee Disclosure

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“1/9/2015 BEF Reviewed correspondence re proposed deposition dates; reviewed file re injunction and problems with the federal court remand or case that was never removed, J. Ostrom nonsuit of injunctive relief, and trust barriers to such injunction.”

## 2015-02-17 Carl submits resignation

Carl resigned the office of independent executor in February 2015, leaving the office vacant. Carl substituted his wife Drina but Carl is not a devisee of the estate and has no individual standing in probate. Carl is a beneficiary of the sole devisee but what is the standing of an interested person.

## 2013-02-20 Agreed Docket control Order

Summary Judgment August 3, 2015 and Trial in September 2015

Who was representing the estate when this agreed order was signed?

## 2015-03-16 Agreed Order to Consolidate

Who was representing the estate when this agreed order was signed?

## Stephen Mendel: Anita threatens Carl with IME & Guardianship

May 19, 2015 there is a note in Neal Spielman’s billing records (counsel for Amy Brunsting) regarding Defendant Anita Brunsting threatening Carl with a motion to compel IME to determine whether an action for guardianship against Carl would be necessary.

02-15 Exhibit R Amy’s (Spielman) attorney fee disclosures

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“5/19/2015 NES Follow-up telephone conference(s) with Anita's counsel regarding counsel's recent discussion with Anita, discussing plan to proceed with

IME for Carl to assist in determination of whether guardian is needed for

Carl, discuss pursuing summary judgment on "undue influence" issue, discuss status of proceedings for appointment of independent successor executor.”

## 2015-05-29 Bayless agrees not to prosecute Carl’s claims in exchange for no IME or Guardianship action against Carl!

“5/29/2015 NES Review draft of proposed Motion for No Evidence Summary Judgment and prepare memorandum to Anita's counsel regarding possible edits to same; review memorandum from counsel regarding possible agreement from Carl's attorney regarding IME in lieu of Motion and hearing”

On June 26, 2015 Defendants' new attorneys in Probate Court No.4 filed a No-Evidence Motion for Partial Summary Judgment claiming that there is no evidence that their alleged 8/25/2010 QBD is invalid.

2015-07-13 Case 412249-401 PBT-2015-226432 Defendants counsel and Bayless file Notice of hearing on No Evidence Motion 2015-07-13 and motions for summary judgment for August 3, 2015

## 2015-07-13 Case 412249-401 Curtis Response to No-evidence motion PBT-2015-227757

Curtis answers, objecting to assuming facts, and demanding production and witness testimony qualifying three alleged originals as evidence.

On or about July 1, 2015 Defendants disseminated a CD containing illegally obtained wiretap recordings which were received by Plaintiff Curtis via certified mail with signature required.

July 7, 2015 Carl Brunsting (Drina) filed a Motion for Protective Order regarding the illegally obtained wiretap recordings.

July 9, 2015 Carl Brunsting (Drina) filed a motion for partial summary judgment focusing on improper financial transactions, but did not respond to Defendants' no-evidence motion.

Unsworn testimony of an attorney is not evidence

## 2021-12-06 Rule 11 Agreement

There have been no evidentiary hearings and no declaratory judgment entered. After four and one half years Bayless, Mendel and Spielman disclose their 2015 agreement not to prosecute their claims against one another.

“1. Plaintiff Carl Brunsting requests that the Court **not** rule on the portion of his July 9, 2015 motion for partial summary judgment, which relates to the issue of:

Carl also seeks a determination, as a matter of law, that disbursements in 2011 of Exxon Mobil stock and Chevron stock were improper distributions for which Anita, as the trustee making the disbursements is liable, and for which the beneficiaries who received benefits from those distributions are also liable pursuant to TEX. PROP. CODE §114.031, including through an offset of the applicable beneficiary’s liability against that beneficiary’s remaining interest in the trust estate.

2. Defendant & Co-Trustee Anita Brunsting and Defendant & Co-Trustee Amy Brunsting request that the Court **not** rule on any portion of the Co-Trustees Motion for Summary Judgment, filed on November 5, 2021, to the extent that the motion relates in whole or in part to Plaintiff Carl Brunsting. Rather, the Court should construe the motion for summary judgment as filed solely against Candace Louise Curtis.”

## Is Appellee Bayless Answer Moot?

In general a case becomes moot "`when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" United States Parole Comm'n v. Geraghty, [445 U.S. 388, 396](https://casetext.com/case/united-states-parole-commission-v-geraghty#p396) (1980), quoting Powell v. McCormack, [395 U.S. 486, 496](https://casetext.com/case/powell-v-cormack#p496) (1969). It would seem clear that under this general rule Hunt's claim to pretrial bail was moot once he was convicted. The question was no longer live because even a favorable decision on it would not have entitled Hunt to bail. For the same reason, Hunt no longer had a legally cognizable interest in the result in this case. He had not prayed for damages nor had he sought to represent a class of pretrial detainees.

For a plaintiff to have standing, a controversy must exist between the parties at every stage of the legal proceedings, including the appeal. See United States v. Munsingwear, Inc., [340 U.S. 36, 39](https://casetext.com/case/united-states-v-munsingwear-2#p39) (1950). If a controversy ceases to exist — "the issues presented are no longer `live' or the parties lack a legally cognizable interest in the outcome" — the case becomes moot. Murphy v. Hunt, [455 U.S. 478, 481](https://casetext.com/case/murphy-v-hunt#p481) (1982); see also O'Shea v. Littleton, [414 U.S. 488, 495-96](https://casetext.com/case/oshea-v-littleton#p495) (1974)

Under the principles of res judicata, an issue/claim which has already been litigated on the merits is a bar on future lawsuits; the party is collaterally estopped from raising it again. As a result, a party wishing to re-litigate an issue/claim which has already been decided on the merits must show that the initial judgment was invalid by way of a collateral attack.

Common grounds for a collateral attack include a lack of personal jurisdiction, a lack of subject matter jurisdiction, and a failure of due process in the first case. For a collateral attack, the failure of due process is generally an inability for the party being barred to argue their side in court.

The full faith and credit clause, seems to forbid collateral attack in civil cases

Civil litigants do not lose their separate identity when their case is consolidated with another.

*Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100* is not *ESTATE OF NELVA BRUNSTING*

*Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100 (Curtis v Brunsting)* is an action in personam relating exclusively to the administration of an “A/B inter vivos trust” (The family Trust hereinafter “the trust”).

*ESTATE OF NELVA BRUNSTING* is an action in rem, in which the decedent was one of two Settlors that created the family trust which, is the sole devisee of both decedents’ wills.

Both Decedents wills required independent administration. Independent administration is considered closed when all of the debts are paid and the estate has been distributed.

There was no inventory of any substantial worth and independent administration is considered closed when the verified inventory has been filed with and approved by the probate court. In the instant in which the estate closed, all right title and interest vested in the sole devisee including the right of claims.

## DUE PROCESS

A trust is defined by an indenture. The indenture defines a relationship between a trustee (a fiduciary) and a beneficiary (cestui que) in regard to the property (Corpus) held in trust. After ten years, Appellee’s cannot produce a declaratory judgment or even a transcript of a substantive hearing in which a discussion was had and determinations were made regarding which instruments are being referred to when we say “The Trust”.

After ten years Appellee’s cannot produce, for the court’s review, even one substantive hearing in which sworn testimony was taken in evidence.

After ten years Appellee’s cannot describe even one benefit enjoyed by the beneficiaries of this trust including their own clients but Appellant can provide evidence that the attorneys expect hundreds of thousands of dollars and that hundreds of thousands of dollars in losses have occurred in the ten years this trust has been held hostage.

## Substantive issues not before the Appeals court

## What Instruments?

[2005 Restatement as amended in 2007] Carl and Candace are the lawful Co-Trustees

*In all of the thousands of pleadings and years of “litigation” Appellee’s refer to as problematic in preparing their answer they will not be able to produce a declaratory judgment defining what instruments we are referring to when we say “the trust”. This is the first step towards problem resolution because the instruments that compose the trust indenture contain the obligations of the trustees and the rights of the beneficiary*.

1st QBD valid but must be severed from Testamentary Power. fails on substantive ground and fails procedurally due to absence of two independent witness signatures. The QBD only applies to Nelva’s trust. The Testamentary Power fails on substantive ground and fails procedurally due to the absence of two independent witness signatures

2nd QBD Not valid on substantive ground, Instrument objected to as not in evidence and they have not produced three originals to match their three signature page versions. They have not attempted to introduce these three signature page versions and qualify them as evidence by witness testimony because they cannot. 2nd QBD does not rescind the 1st QBD but afforms it. QBD only applies to the Settlor that exercised the power (only applies to Nelva’s trust) Testamentary Power fails on substantive ground and fails procedurally due to absence of two independent witness signatures. Substantively it seeks to amend an irrevocable trust, is self-contradictory and the corruption of blood provisions offend public policy. It was a greedy beneficiary that colluded with the estate planning attorneys to create a series of illicit change instruments after the trust could no longer be altered or amended.

It may be hearsay that Nelva, when asked about the 2nd QBD, said she did no such thing! Three different signature pages have arisen as one version was filed into the record by Carole’s counsel, one version was filed by Anita and one by Amy. The Notary log shows 3 COT’s signed on August 25, 2010 but only 1 QBD. There is more but why beat a dead horse?

Changes made by the Vacek Law Firm working in concert with Anita Brunsting are what gave Anita Control over the trust. Anita’s intentional failure to account and failure to disclose is what compelled litigation and as alleged from the o0nset (In SDTX 2/27/2012 Doc 1 pg 20 para 4) Anita plannded to steal the trust in such a way that if anyone complained, she’d get to keep it.

Anita intentionally caused litigation to be brought in order to advance her 2nd QBD/TPA in Terrorem clause with corruption of blood argument, a theory that, if true, would enlarge her share. That is exactly what the Co-Trustee defendants conduct has since proven.

Co-Trustee Anita Brunsting had no standing to file counter claims against beneficiary Candace Curtis or beneficiary Carl Brunsting (Art. XII Section B 2005 Restatement) [Tab 4]. Neither beneficiary Anita Brunsting nor beneficiary Anita Brunsting had ground to sue against beneficiary Candace Curtis or beneficiary Carl Brunsting as all of the beneficiaries have the same rights. The trustees have obligations of a fiduciary nature. It is Co-Trustee Anita Brunsting that failed in her duty to account, (Art. XII Section E 2005 Restatement) [Tab 4]

The Report of Special Master and the hearing that followed showed that Anita failed to establish books and records of accounts, self-dealt and co-mingled assets and made unequal distributions and that none of these dealings were disclosed to Carl or Candace.

## Res Judicata

Under the principles of res judicata, an issue/claim which has already been litigated on the merits is a bar on future lawsuits; the party is collaterally estopped from raising it again. As a result, a party wishing to re-litigate an issue/claim which has already been decided on the merits must show that the initial judgment was invalid by way of a collateral attack.

Common grounds for a collateral attack include a lack of personal jurisdiction, a lack of subject matter jurisdiction, and a failure of due process in the first case. For a collateral attack, the failure of due process is generally an inability for the party being barred to argue their side in court.

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*Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100 (Curtis v Brunsting)* is an action in personam relating exclusively to the administration of an “A/B inter vivos trust” (The family Trust hereinafter “the trust”).

*ESTATE OF NELVA BRUNSTING* is an action in rem, in which the decedent was one of two Settlors that created the family trust which, is the sole devisee of both decedents’ wills.

Both Decedents wills required independent administration. Independent administration is considered closed when all of the debts are paid and the estate has been distributed.

There was no inventory of any substantial worth and independent administration is considered closed when the verified inventory has been filed with and approved by the probate court. In the instant in which the estate closed, all right title and interest vested in the sole devisee including the right of claims.

## Boundaries of Order

Litigants do not lose their separate identity when their case is consolidated.

## Admissions

"Assertions of fact, not plead in the alternative, in the live pleadings of a party are regarded as formal judicial admissions." *Houston First Am. Sav. v. Musick*, [650 S.W.2d 764, 767](https://casetext.com/case/houston-first-american-sav-v-musick#p767) (Tex. 1983). A judicial admission that is clear and unequivocal has conclusive effect and bars the admitting party from later disputing the admitted fact. *Gevinson v. Manhattan Constr. Co*., [449 S.W.2d 458, 467](https://casetext.com/case/gevinson-v-manhattan-construction-co-of-okl#p467) (Tex. 1969). Here, Wolf's summary-judgment response and counter-motion for summary judgment states: "Defendant accepts Plaintiff's argument that the note was accelerated by the [sic] MITC on August 15, 1994, and that the statute of limitations began to run on that date." And at the summary-judgment hearing and in his court of appeals' brief Wolf consistently agreed that MITC accelerated the Church's note on August 15, 1994. Wolf's agreement amounted to a judicial admission of the acceleration date. Once Wolf's judicial admission established the acceleration date, the trial court could apply the law to conclude as a matter of law that accrual occurred upon this acceleration and that limitations then began running. *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 568 (Tex. 2001)

The Supreme Court of Texas has defined a judicial admission as "[a]ssertions of fact, not plead in the alternative, in the live pleadings of a party." *Holy Cross Church of God in Christ v*. *Wolf*, 44 S.W.3d 562, 568 (Tex. 2001) (citing *Houston First Am*. *Sav*. *v*. *Musick*, 650 S.W.2d 764, 767 (Tex. 1983)). "A judicial admission that is clear and unequivocal has conclusive effect and bars the admitting party from later disputing the admitted fact." *Id*.; *In re Spooner*, 333 S.W.3d 759, 764 (Tex. App.—Houston [1st Dist.] 2010, orig. proceeding) ("A judicially admitted fact is established as a matter of law, and the admitting party may not dispute it or introduce evidence contrary to it."). *MMR Constructors, Inc. v. Dow Chem. Co.*, No. 01-19-00039-CV, at \*24 (Tex. App. Dec. 3, 2020)

1. A federal lawsuit relating to a family trust filed by a trust beneficiary is dismissed under the probate exception and goes on appeal. In the interim the trust settlor’s wills are recorded in Harris County Probate Court No.4 with application for letters soon to follow. Letters for independent administration are granted and Depositions before suit are soon conducted in the 180th District Court in Houston by the independent executor.
2. A unanimous Fifth Circuit Opinion reverses dismissal of the federal case as outside the probate exception January 9, 2013.
3. January 29, 2013 the independent executor files professional negligence claims against the estate planning attorneys in Harris County’s 164th District Court.
4. **A preliminary injunction** was entered April 9, 2013 against the Co-Trustee defendant/Appellees in the Southern District of Texas.
5. On the same day a preliminary injunction was entered against the Co-Trustee defendants in the Southern District of Texas a competing action was filed by the independent executor against the Co-Trustee defendants in Harris County Statutory Probate Court No. 4.
6. The “probate case” involved a **pour-over will**, with a sole devise to a living trust. The Will was admitted without challenge, Letters for independent administration were issued, and a verified inventory was submitted and approved without challenge. At this point the probate is closed as all right, title and interest in the estate officially became part of the corpus of the sole devisee “Trust”.
7. The will foreclosed the authority of the independent executor from further filing in the probate court after the inventory was approved. The independent executor in his individual capacity was not a devisee and had no individual standing in the administration of the estate in any event. Statute recognizes the right of the Testator to direct independent administration [Tex. Est. Code § 402.001] and Local Rule 2.6.5 regarding ancillary matters that belong in a different file with an ancillary or related case designation includes Intervivos Trust Actions where the settlor is the decedent in probate proceeding actually pending in the subject court.

“However, we hold that the Estate's administration was closed when the foreclosure suit was filed." A court empowered with probate jurisdiction may only exercise its probate jurisdiction over matters incident to an estate when a probate matter proceeding related to such matter is already pending." Bailey, [862 S.W.2d at 585](https://casetext.com/case/bailey-v-cherokee-county-appraisal-dist#p585); Estate of Hanau, [806 S.W.2d 900, 904](https://casetext.com/case/estate-of-hanau-in-re#p904) (Tex.App.-Corpus Christi 1991, writ denied). Texas Comm. Bk. v. Correa, 28 S.W.3d 723, 727 (Tex. App. 2000)”

1. An independent administration does not require formal closing procedures. see [Texas Comm. Bk. v. Correa, 28 S.W.3d 723](https://casetext.com/case/texas-comm-bk-v-correa?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&ssr=false&scrollTo=true) (Tex. App. 2000)

“an independent administration is considered closed when debts have been paid so far as the assets will permit and all property has been distributed. Tex. Prob. Code Ann. § 151; Hanau, 806 S.W.2d at 903. ” Texas Comm. Bk. v. Correa, 28 S.W.3d 723, 728 (Tex. App. 2000)”

1. The federal pro se Plaintiff was ordered to retain counsel, did so and later discovered the non-probate case was remanded to the probate court from whence it had not been removed.
2. The remand Order was not the return of a removed case and is admittedly void as stated by the Honorable Kenneth Hoyt Jr., United States District Judge [[Tab 112](http://www.probatemafia.com/Brunsting/Tab%20112%2020-20566%202020-09-10%20Rule%2060%20Hearing%20Transcript.pdf)] Federal Rule 60 Hearing Transcript.
3. The Order accepting transfer from federal to state court is equally void for want of authority.
4. A (complete) consolidation of the federal case with an estate that has no representative and no interest in the outcome is not logistically possible and it would follow that such a merger would not be legally plausible. Can there be a probate case in which the estate has no tangible interest in the outcome?
5. Summary Judgment motion based on the false thesis that the beneficiary suing the trustee to compel specific performance triggers the forfeiture provisions in instruments that are not in evidence.
6. Summary Judgment entered without a hearing, not rendered but signed on Judicial hearsay in a probate case where there is no estate, no executor, and no declaratory judgment defining what instruments we are talking about when we say “the trust”. (A fact issue in dispute)
7. According to the [summary judgment order](http://www.probatemafia.com/Brunsting/Tab%2042%20February%2025,%202022%20Order%20for%20Summary%20Judgment.pdf) the federal preliminary injunction remains in full force and effect.

What court has the jurisdiction to authorize the Co-Trustee Defendant/Appellees to perform any of the acts enjoined?

1. Co-Trustee Counter claims filed more than six years after a Defendants original answer when Rule 7.1 of the [local rules](http://www.probatemafia.com/Brunsting/2019%20Local%20Rules%20of%20Harris%20Co%20Probate%20Court%20I0207.pdf) for the probate court requires resolution within three years of commencement of an action. Counter claims filed more than six years after a Defendants original answer are barred by Rule 97(a) Texas Rules of Civil Procedure, the Compulsory Counter Claim Rule.
2. Co-Trustee Counter claims were inconsistent with the right of the beneficiary to the enjoyment of her beneficial interests [Art XII B] and thus exceeded the authority granted to trustees by the trust instrument.

## Active or Passive?

1. Either the obligations of the trustee are affirmative and active or the trust is passive. The alleged co-trustee conspirators are either in breach of the affirmative duties prescribed by an active trust or they are in wrongful possession of the assets of a dry trust but in either instance they have misapplied fiduciary property held in trust for the benefit of elderly and disabled beneficiaries and that is a felony under both Tex. Penal Code §§ 32.45 & 32.53. There are no accessories in Texas. Everyone that participated in perpetrating this fraud is a principal.
2. A Severance of the cases never actually consolidated but given the appearance of a complete consolidation when a complete consolidation, as opposed to a consolidation for trial, cannot be severed on the basis of alleged conflicts of interest that were never delineated and what has changed since the consolidation?
3. Carl’s (Drina’s) Non-suit of the severed plaintiff terminated any controversy or conflict between Carl and Candace, if there ever actually was any.
4. According to the Appellee’s [SECOND JOINT MOTION FOR EXTENSION OF TIME TO FILE THE APPELLEES BRIEF](http://www.probatemafia.com/Brunsting/2023-08-31%20Mtn%20re%20Ext%20Appllee%20Brf%20DL.pdf)

“This litigation has a decade-long, complex procedural history in federal district and appellate courts, and in state district, probate, and appellate courts.”

One would think that after a decade-long procedural history Appellee’s would be able to point to the record where findings of fact and conclusions of law answering the first question necessary to resolving the controversy among the real parties in interest: **What instruments we are referring to when we say “THE TRUST?**



## SUMMARY

1. An estate planning attorney bait and switch guaranteeing the controversy necessary to the 3rd party interception of family generational asset transfers. (Facilitator for the probate mafia) This malpractice/professional negligence case has never been to trial
2. The bait and switch estate planning grifters are sued by an independent executor (a trust beneficiary) in the District Court and then the independent executor/trust beneficiary sued all of his trust co-beneficiary siblings in the state probate court, in an (1) independent administration of an estate, (2) with no tangible assets, (3) after the inventory, appraisement and list of claims had been approved and (4) the probate of the pour-over estate was removed from the active docket (closed)
3. This sequestered the estate planning bait and switch grifters in one court and trapping the entire family of victims in the probate court. This all occurred after an integrally related lawsuit for breach of fiduciary was pending in the SDTX, and after dismissal of the federal case under the **probate exception** had been reversed and remanded by the 5th Circuit.

What screams loudest in this record is the sound of silence.

When the Appellee’s file their brief’s the first question we ask in regard to each issue raised is: **Does this go to jurisdiction or the merits? If it goes to anything but jurisdiction it can be discounted as irrelevant and ignored.**

Bayless client Carl Brunsting failed to invoke the jurisdiction of the probate court and, Mendel and Spielman’s clients Anita and Amy Brunstings’ original counter claims failed to invoke the jurisdiction of any court as it is completely devoid of any jurisdictional statement.

There was never a hearing on any substantive matter. Defendant Appellees Summary Judgment was not rendered and is thus invalid on that issue alone.

We will still need to see three original, wet signed QBD/TPA instruments, to match the three different signature page versions filed into the record by three different parties.

## Breach of the Fiduciary Duty to Account and Disclose

On February 27, 2012 Appellant filed a breach of fiduciary action in the SDTX seeking an accounting and fiduciary disclosures. In that petition Candace alleged that Anita had exercised all the powers of trustee while p[performing none of the obligations. That was true then and remains the case today. In that petition Candace also alleged that Anita had implemented a plan to steal the family trust in such a way that if Carl or Candace complained, she would get to keep their share.[[1]](#footnote-1)

The difficulty for all of us was coming to grips with the notion that, apparently, behind our backs, Anita had made a concentrated effort to take control of the entire trust, and our individual inheritances, in such a manner that if Carl and l complain about it, she gets to keep it, all the while asserting to others that our Mother made this decision ON HER OWN. I know she did not, because she said so to me on the phone. She took my concern to heart and subsequently sent me a handwritten note saying, again, that it was not true.(P-16, 2 pgs.)

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# Fast Forward to Harris County Probate Court No. 4

## Carl Henry Brunsting, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting

### Notice of Removal

After a series of non-suits and Defendants proposed Summary Judgment Order was signed, Appellant was left appearing to be the only alleged plaintiff remaining in Carl Brunstings’ probate court lawsuit. After having her alleged complaint dismissed and leaving the appearance of being subject to Defendant’s alleged counter claims, Candace filed a Notice of Removal to the SDTX where Defendants would have to argue that their demand for their attorney fees to be paid from the trust does not violate a court order or the preliminary injunction. In reply to that Notice, Defendant’s attorneys filed copies of their fee statements in the SDTX.

[Mr. Mendel’s April 8, 2022 statement](file:///C:\Users\Rik\Desktop\1st%20Dist%20Appeal\2022-04-08%2002-12%20Exhibit%20q%20Anita’s%20(Mendel)%20attorney%20Fee%20Disclosure.highlight.pdf) has a cover page that indicates Candace Curtis was the Plaintiff that filed the probate court lawsuit styled: *Carl Henry Brunsting, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting* when in fact the case was filed on the same day Candace Curtis was attending a hearing on her application for preliminary injunction in the SDTX.[[3]](#footnote-3) [Mr. Mendel’s statement](2022-04-08%2002-12%20Exhibit%20q%20Anita’s%20(Mendel)%20attorney%20Fee%20Disclosure.highlight.pdf), on the bottom of page 10, also has the following entry containing an admission of knowledge that the federal case was not properly before the probate court!

* Mendel Law Firm [Case 4:22-cv-01129 Document 2-12](http://www.probatemafia.com/Brunsting/2022-04-08%2002-12%20Exhibit%20q%20Anita%E2%80%99s%20(Mendel)%20attorney%20Fee%20Disclosure.pdf) Filed on 04/08/22 in TXSD Page 10 of 56

“1/9/2015 BEF Reviewed correspondence re proposed deposition dates; reviewed file re injunction and problems with the federal court remand or case that was never removed, J. Ostrom nonsuit of injunctive relief, and trust barriers to such injunction.”

In [Mr. Spielmans fee statement](http://www.probatemafia.com/Brunsting/2022-04-08%2002-15%20Exhibit%20R%20Amy%E2%80%99s%20(Spielman)%20attorney%20fee%20disclosures.pdf) an agreement between Bayless, Mendel and Spielman to Avoid IME and Guardianship proceedings against Carl was apparently formed as can be gleaned from the following entry and verified by the subsequent probate court record.

* Spielman Case 4:22-cv-01129 Document 2-15 Filed on 04/08/22 in TXSD Page 17 of 52

5/19/2015 NES Follow-up telephone conference(s) with Anita's counsel regarding counsel's recent discussion with Anita, discussing plan to proceed with IME for Carl to assist in determination of whether guardian is needed for Carl, discuss pursuing summary judgment on "undue influence" issue, discuss status of proceedings for appointment of independent successor executor

5/29/2015 NES Review draft of proposed Motion for No Evidence Summary Judgment and prepare memorandum to Anita's counsel regarding possible edits to same; review memorandum from counsel regarding possible agreement from Carl's attorney regarding IME in lieu of Motion and hearing

## Honest Services Fraud

In July of 2016 Candace and her domestic partner Rik Munson accused all of the attorneys of honest services fraud under the authority of the racketeer influenced corrupt organization statutes. We did not have evidence of the facts at that juncture but could clearly see collusion among the attorneys that were supposed to be representing adverse clients and did not want to wait until they arrived at their desired destination without having forced them to assume a position they would then have to defend. One example is how they keep their extortion threats secret using mediation where the interactions are confidential. Their answer to the honest services fraud allegation was [probate case, probate matter, probate proceeding](http://www.probatemafia.com/Brunsting/Probate%20case%20matter%20proceeding.pdf) and various theories of immunity. They also said it was zanyism when in fact it was caused by the very conduct Judge Hoyt described at the injunction hearing when he suggested this didn’t become one of those cases.

## Second Motion for Extension

Appellee’s, in asking for a second extension of time to file their answer, raise a decade -long and complex litigation history generating thousands of pages of motions in federal district and appellate courts, and in state district, probate, and appellate courts and arguing that “*identifying and ensuring the necessary documents are included in the appellate record from the entire world of documents is a herculean task*.”

They further state that “*Appellees’ counsels have been working diligently to prepare their response briefs, which require a coordinated effort due to the aligned and complementary interest among Appellees.”*

While the request specifically names Co-Trustee Anita K. Brunsting, Co-Trustee Amy R. Brunsting, and Carl H. Brunsting, Individually it does not include a request from Anita Brunsting in her individual capacity as a trust beneficiary, Amy R. Brunsting in her individual capacity as a trust beneficiary or beneficiary Carl H. Brunsting in his former capacity as independent executor. Neither request includes trust beneficiary Carole Anne Brunsting who has apparently chosen to not participate. The question of Carl’s standing whether individually or as independent executor does not require resort to the “*entire world of documents”* for resolution.

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal.

The Rule 11 agreement between Carl, Anita and Amy renders their standing moot as to Carl’s original petition and reinforces the honest services fraud allegation !

## Tab 30 2015-06-26 Co-Trustees No-evidence Motion for Summary Judgment.pdf

This motion attempts to shift the burden of bringing forth evidence. The instrument to which the Co-Trustee/beneficiaries refer is titled *Qualified Beneficiary Designation and testamentary Power of Appointment under Living Trust Agreement*. This instrument is not in evidence and there is no declaratory judgment to suggest it exists and that it is part of “the trust”. All of defendant/Appellee’s motions relying on this instrument assume a fact not in evidence and Appellant continues to object. Defendant/Appelle’s have not produced this instrument in attempt to qualify it as evidence because they cannot.

THEY WILL NOT BECAUSE THEY CANNOT 2017-08-13 Appellants Opening Brief on Appeal in the Honest Services fraud case 5th Cir. No.17-20360 pg. 20

[TAB 53 2019-03-01 Order to transfer District court case to Probate\_Certified.pdf](http://www.probatemafia.com/Brunsting/TAB%2053%20%202019-03-01%20Order%20to%20transfer%20District%20court%20case%20to%20Probate_Certified.pdf)

This order is void as the transfer statute itself [Tex. Est. Code § 34.001(a)] requires a pending estate administration to be ancillary or incident to.

CHAPTER 34. MATTERS RELATING TO CERTAIN OTHER TYPES OF PROCEEDINGS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

## Sec. 34.001. TRANSFER TO STATUTORY PROBATE COURT OF PROCEEDING

RELATED TO PROBATE PROCEEDING. (a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to the judge's court from a district, county, or statutory court a cause of action related to a probate proceeding pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

Tab 76 2021-11-05 Co-Trustees' Motion for Summary Judgment exceeds the authority granted to Trustees by the trust instrument Article XII Section B

*“Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.”*

[Brunsting trust Article XII Section B](http://www.probatemafia.com/Brunsting/2005%20Restatement%20Living%20Trust%202005_from%20AnitaOct%2023_2010.pdf) (copy of Restatement received from Anita Brunsting October 23, 2010) [Tab 62i Article VII Defendant Co-trustees Exhibit A to Nov. 5, 2021 Motion for Summary Judgment]

[Tab 40 2022-02-01 Application to Sever](http://www.probatemafia.com/Brunsting/TAB%2040%20Certified%2018292335-%20C%23%204%20Application%20to%20Sever.pdf)

[Tab 41 2022-02-11 Hearing Transcript Severance motion 412249-401.pdf](http://www.probatemafia.com/Brunsting/Tab%2041%202022-02-11%20Hearing%20Transcript%20Severance%20motion%20412249-401.pdf)

Tab 42 February 25, 2022 Order for Summary Judgment.pdf

[2022-03-18 Carl & Carole non-suit.pdf](http://www.probatemafia.com/Brunsting/2022-03-18%20Carl%20&%20carole%20non-suit.pdf)

[Tab 44 2022-03-18 Carl's Notice of non-suit of relator\_\_Certified.pdf](http://www.probatemafia.com/Brunsting/Tab%2044%20Carl's%20Notice%20of%20non-suit%20of%20relator__Certified.pdf)

What tangible Interest Do we Have in this controversy?

## Trust Beneficiary Carl Brunsting in his Individual capacity

Trust Beneficiary Carl Brunsting has a 1/5 interest in the trust corpus and has suffered the injury of not being able to enjoy his beneficial interest. Carl has also suffered the injury of paying an attorney more than $225,000.00 (as per his February 3, 2015 deposition testimony) in return for which he has received nothing. In fact, after paying all that money in fees Trust Beneficiary Carl Brunsting does not even have a lawsuit.

Disabled Trust Beneficiary Carl Brunsting has an interest is in receiving his full 1/5th of the trust corpus, undiminished by the Co-Trustees failure to administer the trust according to its terms. Trust Beneficiary Carl Brunsting also has an interest in being compensated for his attorney fees and any damages flowing from the series of events that followed his mother’s passing.

## Independent executor Carl Brunsting

Independent executor Carl Brunsting is a fiduciary. His only interest in the estates of Elmer and Nelva Brunsting is to see that the testator’s directives are carried out. His function in the probate court as independent executor ended with the filing of a verified inventory as all right title and interest to the “$3.00” in the estate and the negligence claims against 3rd parties, vested in “the trust” with the approval of the inventory, at which time the estate ceased to exist as a matter of law.

If Carl’s attorney [Bobbie G. Bayless] was seeking a remedy for her client, why did she divide the participants and file the same lawsuit in two separate courts with the estate planning Grifters in one court (State District) and their familial victims in another (state probate)? Why did she then file a motion to transfer the 1st filed lawsuit from the court of competent and dominant jurisdiction to a probate court that cannot compose a court of competent jurisdiction?

If Bayless intended to obtain the Declaratory Judgment she sued for… why has there been no hearing and no ruling on **the questions still at large?** What instruments are we referring to when we say “the trust”?

## What is Co-Trustee Defendant Anita Brunsting’s legally tangible interest in this controvery?

Anita is attempting to steal it all. She has performed no fiduciary duties and is thus challenging the trust by causing litigation to be brought for the purpose of advancing a theory that, if true, would enlarge her share. Anita has forfeited her interest in the trust corpus. Anita has also engaged in the misapplication of fiduciary assets held in trust for the benefit of elderly and disabled beneficiaries and that is a felony under Texas Penal Codes Sections § 32.45 & § 32.53.

## Trust Beneficiary Anita Brunsting in her individual capacity

## Co-Trustee Defendant Amy Brunsting

## Trust Beneficiary Amy Brunsting in her individual capacity

## Settlors Intentions

What is the purpose for an estate plan composed of a (1) pour-over will (2) directing independent administration of a (3) devise to living trust?

The Grift of the Brunstings is a story that begins with an estate planning bait and switch.

Having identified Anita Brunsting as the weak link in the family moral fabric estate planning attorney Candace Freed began grooming Anita on how to steal her family trust and followed each family crisis with illicit changes in long standing estate plan instruments. The first implementation of illicit changes followed the medical declaration of incapacity

## Testators Intentions

The purpose for a pour-over will (Devise to Living Trust) and “independent administration” is to free the Independent Executor from probate court supervision. In other words, the purpose for a Devise to Living Trust and “independent administration” is elimination of probate court jurisdiction.

The probate court did not acquire jurisdiction over the tort claims brought by the Independent Executor as those claims, filed “after” the Independent Executor had submitted his verified inventory, appraisement and list of claims, impermissibly ask the probate court to interfere in the independent administration. This is a direct challenge to the Settlors Intent.

At Carl’s February 3rd 2015 Deposition he testified that he had already paid his attorney $225,00.00 but was unable to state how much was spent on which of the two integrally related law suits filed by his attorney.

When the independent executor resigned due to want to capacity he left his counsel without a client.

## Nolo Prosequi

### Local Rules = 3 Years = Nolo Prosequi

This matter has been before the probate court for 10 years without going to trial. The first DCO was rendered nugatory by the dissemination of telephone wiretap recordings via certified mail, followed by an emergency motion for a protective order. We did not see another DCO for 6 ½ years (June 2021).

Property Code 115.001 (d) and Probate Code §

Dominant Jurisdiction

## Independent Administration

Verified Inventory = Pour-Over = No Pending Estate to Administer,

Resignation of independent executor = no representative & nothing to represent

Filed in probate for an improper purpose. There was no pending estate administration to be ancillary to and this converts the independent administration into a dependent administration.

## Dominant Jurisdiction

## Standing:

## Individual vs independent executor

## Beneficiary vs Co-Trustee

The probate court acquired jurisdiction over the claims against the Executors under § 5A(c) of the Probate Code which states "[a] statutory probate court has concurrent jurisdiction with the district court in all actions by or against a person in the person's capacity as a personal representative." Tex. Prob. Code Ann. § 5A(c)(1)

[a] Statutory probate court may exercise the pendent and ancillary jurisdiction necessary to promote judicial efficiency and economy [Probate Code § 5A(d)]

## Tex. Prop. Code § 115.001

**(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 trusts, including proceedings to: **(1)** construe a trust instrument;**(2)** determine the law applicable to a trust instrument;**(3)** appoint or remove a trustee;**(4)** determine the powers, responsibilities, duties, and liability of a trustee;**(5)** ascertain beneficiaries;**(6)** make determinations of fact affecting the administration, distribution, or duration of a trust;**(7)** determine a question arising in the administration or distribution of a trust;**(8)** relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;**(9)** require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and**(10)** surcharge a trustee.**(a-1)** The list of proceedings described by Subsection (a) over which a district court has exclusive and original jurisdiction is not exhaustive. A district court has exclusive and original jurisdiction over a proceeding by or against a trustee or a proceeding concerning a trust under Subsection (a) whether or not the proceeding is listed in Subsection (a).**(b)** The district court may exercise the powers of a court of equity in matters pertaining to trusts.**(c)** The court may intervene in the administration of a trust to the extent that the court's jurisdiction is invoked by an interested person or as otherwise provided by law. A trust is not subject to continuing judicial supervision unless the court orders continuing judicial supervision.**(d)** The jurisdiction of the district court is exclusive except for jurisdiction conferred by law on:**(1)** a statutory probate court;**(2)** a court that creates a trust under Subchapter B, Chapter 1301, Estates Code;**(3)** a court that creates a trust under Section 142.005;**(4)** a justice court under Chapter 27, Government Code; or**(5)** a county court at law.

Tex. Prop. Code § 115.001

With the legal and factual dispute over what instruments qualify as trust instruments pending and no declaratory judgment as to what instruments constitute “the trust” there can be no summary judgment

Appellees (Plaintiff and defendants in the trial court) have filed a joint answer and in their second request for extension they make their solidarity clear as does their rule 11 motion.

They never mention vacancy in the office of executor.

They never mention standing.

They never mention the closed probate.

## Breach of the Fiduciary Duty to Account and Disclose

On February 27, 2012 Appellant filed a breach of fiduciary action in the SDTX seeking an accounting and fiduciary disclosures. In that petition Candace alleged that Anita had exercised all the powers of trustee while p[performing none of the obligations. That was true then and remains the case today. In that petition Candace also alleged that Anita had implemented a plan to steal the family trust in such a way that if Carl or Candace complained, she would get to keep their share.[[4]](#footnote-4)

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After a series of maneuvers that included a Rule 11 agreement, motions to sever, non-suits and Defendants proposed Summary Judgment Order was signed, Appellant was left appearing to be the only plaintiff remaining in Carl Brunstings’ probate court lawsuit. After having her alleged complaint dismissed and leaving the appearance of being subject to Defendant’s alleged counter claims, Candace filed a Notice of Removal to the SDTX where Defendants would have to argue that their demand for their attorney fees to be paid from the trust does not violate a court order or the preliminary injunction. In reply to that Notice, Defendant’s attorneys filed copies of their fee statements in the SDTX.

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The Rule 11 agreement between Carl, Anita and Amy renders their standing moot as to Carl’s original petition and reinforces the honest services fraud allegation! It is also a breach of fiduciary to treat the beneficiaries unequally.

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RELATED TO PROBATE PROCEEDING. (a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to the judge's court from a district, county, or statutory court a cause of action related to a probate proceeding pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

Tab 76 2021-11-05 Co-Trustees' Motion for Summary Judgment exceeds the authority granted to Trustees by the trust instrument

“Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.” [Brunsting trust Article XII Section B](http://www.probatemafia.com/Brunsting/2005%20Restatement%20Living%20Trust%202005_from%20AnitaOct%2023_2010.pdf) (copy of Restatement received from Anita Brunsting October 23, 2010) [Tab 62i Article VII Defendant Co-trustees Exhibit A to Nov. 5, 2021 Motion for Summary Judgment]

[Tab 40 2022-02-01 Application to Sever](http://www.probatemafia.com/Brunsting/TAB%2040%20Certified%2018292335-%20C%23%204%20Application%20to%20Sever.pdf)

[Tab 41 2022-02-11 Hearing Transcript Severance motion 412249-401.pdf](http://www.probatemafia.com/Brunsting/Tab%2041%202022-02-11%20Hearing%20Transcript%20Severance%20motion%20412249-401.pdf)

Tab 42 February 25, 2022 Order for Summary Judgment.pdf

[2022-03-18 Carl & Carole non-suit.pdf](http://www.probatemafia.com/Brunsting/2022-03-18%20Carl%20&%20carole%20non-suit.pdf)

[Tab 44 2022-03-18 Carl's Notice of non-suit of relator\_\_Certified.pdf](http://www.probatemafia.com/Brunsting/Tab%2044%20Carl's%20Notice%20of%20non-suit%20of%20relator__Certified.pdf)

What tangible Interest Do we Have in this controversy?

## Trust Beneficiary Carl Brunsting in his Individual capacity

Trust Beneficiary Carl Brunsting has a 1/5 interest in the trust corpus and has suffered the injury of not being able to enjoy his beneficial interest. Carl has also suffered the injury of paying an attorney more than $225,000.00 (as per his February 3, 2015 deposition testimony) in return for which he has received nothing. In fact, after paying all that money in fees Trust Beneficiary Carl Brunsting does not even have a lawsuit.

Disabled Trust Beneficiary Carl Brunsting has an interest is in receiving his full 1/5th of the trust corpus, undiminished by the Co-Trustees failure to administer the trust according to its terms. Trust Beneficiary Carl Brunsting also has an interest in being compensated for his attorney fees and any damages flowing from the series of events that followed his mother’s passing.

## Independent executor Carl Brunsting

Independent executor Carl Brunsting is a fiduciary. His only interest in the estates of Elmer and Nelva Brunsting is to see that the testator’s directives are carried out. His function in the probate court as independent executor ended with the filing of a verified inventory as all right title and interest to the “$3.00” in the estate and the negligence claims against 3rd parties, vested in “the trust” with the approval of the inventory, at which time the estate ceased to exist as a matter of law.

If Carl’s attorney [Bobbie G. Bayless] was seeking a remedy for her client, why did she divide the participants and file the same lawsuit in two separate courts with the estate planning Grifters in one court (State District) and their familial victims in another (state probate)? Why did she then file a motion to transfer the 1st filed lawsuit from the court of competent and dominant jurisdiction to a probate court that cannot compose a court of competent jurisdiction?

If Bayless intended to obtain the Declaratory Judgment she sued for… why has there been no hearing and no ruling on **the questions still at large?** What instruments are we referring to when we say “the trust”?

## What is Co-Trustee Defendant Anita Brunsting’s legally tangible interest in this controvery?

Anita is attempting to steal it all. She has performed no fiduciary duties and is thus challenging the trust by causing litigation to be brought for the purpose of advancing a theory that, if true, would enlarge her share. Anita has forfeited her interest in the trust corpus. Anita has also engaged in the misapplication of fiduciary assets held in trust for the benefit of elderly and disabled beneficiaries and that is a felony under Texas Penal Codes Sections § 32.45 & § 32.53.

## Trust Beneficiary Anita Brunsting in her individual capacity

## Co-Trustee Defendant Amy Brunsting

## Trust Beneficiary Amy Brunsting in her individual capacity

## Settlors Intentions

What is the purpose for an estate plan composed of a (1) pour-over will (2) directing independent administration of a (3) devise to living trust?

The Grift of the Brunstings is a story that begins with an estate planning bait and switch.

Having identified Anita Brunsting as the weak link in the family moral fabric estate planning attorney Candace Freed began grooming Anita on how to steal her family trust and followed each family crisis with illicit changes in long standing estate plan instruments. The first implementation of illicit changes followed the medical declaration of incapacity

## Testators Intentions

The purpose for a pour-over will (Devise to Living Trust) and “independent administration” is to free the Independent Executor from probate court supervision. In other words, the purpose for a Devise to Living Trust and “independent administration” is elimination of probate court jurisdiction.

The probate court did not acquire jurisdiction over the tort claims brought by the Independent Executor as those claims, filed “after” the Independent Executor had submitted his verified inventory, appraisement and list of claims, impermissibly ask the probate court to interfere in the independent administration. This is a direct challenge to the Settlors Intent.

At Carl’s February 3rd 2015 Deposition he testified that he had already paid his attorney $225,00.00 but was unable to state how much was spent on which of the two integrally related law suits filed by his attorney.

When the independent executor resigned due to want to capacity he left his counsel without a client.

## Nolo Prosequi

### Local Rules = 3 Years = Nolo Prosequi

This matter has been before the probate court for 10 years without going to trial. The first DCO was rendered nugatory by the dissemination of telephone wiretap recordings via certified mail, followed by an emergency motion for a protective order. We did not see another DCO for 6 ½ years (June 2021)

Property Code 115.001 (d) and Probate Code §

Dominant Jurisdiction

## Independent Administration

Verified Inventory = Pour-Over = No Pending Estate to Administer,

Resignation of independent executor = no representative & nothing to represent

Filed in probate for an improper purpose. There was no pending estate administration to be ancillary to and this converts the independent administration into a dependent administration.

## Dominant Jurisdiction

## Standing:

## Individual vs independent executor

## Beneficiary vs Co-Trustee

The probate court acquired jurisdiction over the claims against the Executors under § 5A(c) of the Probate Code which states "[a] statutory probate court has concurrent jurisdiction with the district court in all actions by or against a person in the person's capacity as a personal representative." Tex. Prob. Code Ann. § 5A(c)(1)

[a] Statutory probate court may exercise the pendent and ancillary jurisdiction necessary to promote judicial efficiency and economy [Probate Code § 5A(d)]

## Tex. Prop. Code § 115.001

**(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 trusts, including proceedings to: **(1)** construe a trust instrument;**(2)** determine the law applicable to a trust instrument;**(3)** appoint or remove a trustee;**(4)** determine the powers, responsibilities, duties, and liability of a trustee;**(5)** ascertain beneficiaries;**(6)** make determinations of fact affecting the administration, distribution, or duration of a trust;**(7)** determine a question arising in the administration or distribution of a trust;**(8)** relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;**(9)** require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and**(10)** surcharge a trustee.**(a-1)** The list of proceedings described by Subsection (a) over which a district court has exclusive and original jurisdiction is not exhaustive. A district court has exclusive and original jurisdiction over a proceeding by or against a trustee or a proceeding concerning a trust under Subsection (a) whether or not the proceeding is listed in Subsection (a).**(b)** The district court may exercise the powers of a court of equity in matters pertaining to trusts.**(c)** The court may intervene in the administration of a trust to the extent that the court's jurisdiction is invoked by an interested person or as otherwise provided by law. A trust is not subject to continuing judicial supervision unless the court orders continuing judicial supervision.**(d)** The jurisdiction of the district court is exclusive except for jurisdiction conferred by law on:**(1)** a statutory probate court;**(2)** a court that creates a trust under Subchapter B, Chapter 1301, Estates Code;**(3)** a court that creates a trust under Section 142.005;**(4)** a justice court under Chapter 27, Government Code; or**(5)** a county court at law.

Tex. Prop. Code § 115.001

With the legal and factual dispute over what instruments qualify as trust instruments pending and no declaratory judgment as to what instruments constitute “the trust” there can be no summary judgment

One will notice no discussion of the intentions of the Settlors of this trust or the Settlor Wills directing INDEPENDENT ADMINISTRATION nor the pour-over designation of the trust as the sole devisee. What was the purpose for this estate plan?

1. [Mandamus Tab 1] Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 20 of 28 para 4 [↑](#footnote-ref-1)
2. [Mandamus Tab 1] Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 19 of 28 Para 4 [↑](#footnote-ref-2)
3. [Mandamus Tab 3] [↑](#footnote-ref-3)
4. [Mandamus Tab 1] Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 20 of 28 para 4 [↑](#footnote-ref-4)
5. [Mandamus Tab 1] Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 19 of 28 Para 4 [↑](#footnote-ref-5)
6. [FDCA No. 10-22-00513-CV- Tab 3, P.43-96] Appellant is requesting the Court take judicial notice of the cited Petition for Writ of Mandamus [↑](#footnote-ref-6)