

1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF TEXAS
 3 HOUSTON DIVISION

3 CANDACE LOUIS CURTIS, et al . C.A. NO. H-12-592
 4 VS. . HOUSTON, TEXAS
 5 ANITA KAY BRUNSTING, et al . SEPTEMBER 10, 2020
 . 9:00 A.M. to 10:10 A.M.

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 7 TRANSCRIPT of TELEPHONE CONFERENCE
 8 BEFORE THE HONORABLE KENNETH M. HOYT
 9 UNITED STATES DISTRICT JUDGE

10 APPEARANCES: (All participants appearing by phone.)

11 FOR PLAINTIFF CANDACE LOUISE
 12 CURTIS:

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 15 FOR DEFENDANT ANITA KAY
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 24 Proceedings recorded by mechanical stenography, transcript
 25 produced by computer-aided transcription.

APPEARANCES CONTINUED

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ALSO PRESENT:

CANDACE LOUISE CURTIS
ANITA KAY BRUNSTING
AMY RUTH BRUNSTING
CAROLE ANN BRUNSTING
JASON B. OSTROM

OFFICIAL COURT REPORTER:

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1 PROCEEDINGS

2 THE COURT: Good morning. This is Judge Ken Hoyt. Do
3 I have parties on the line at this time?

4 UNIDENTIFIED SPEAKER: Yes. Good morning.

09:01:01 5 MR. MENDEL: Yes. Steve Mendel for Anita Brunsting.

6 THE COURT: Hold on just one second. Let me do -- let
7 me start it this way: Who's on the line for the plaintiff?

8 MS. CURTIS: Candace Curtis.

9 THE COURT: All right. And just yourself, Ms. Curtis,
09:01:21 10 for the plaintiff?

11 MS. CURTIS: No. My attorney is going to be calling
12 in just any second now.

13 THE COURT: Who's your -- who is your attorney?

14 MS. CURTIS: Candice Schwager.

09:01:38 15 THE COURT: Well, I've got Candace Louise Curtis, the
16 plaintiff, right?

17 MS. CURTIS: Yes, sir. That's me.

18 THE COURT: And then you've got a lawyer, I believe,
19 in Houston, Candice Lee Schwager. Is that the person you're
09:01:50 20 talking about?

21 MS. CURTIS: Yes, sir.

22 THE COURT: Okay. Let's see, that might be her
23 joining us now. Is that Ms. Schwager joining us?

24 MS. SCHWAGER: Yes, sir.

09:02:01 25 THE COURT: Okay. You're representing Ms. Curtis in

09:02:05 1 this call; is that correct?


2 *MS. SCHWAGER:* Yes, Your Honor.

3 *THE COURT:* Okay. Very good. And I gather it's just
4 the two of you on the line for the plaintiff, Ms. Curtis and
09:02:15 5 then yourself as her attorney?

6 *MS. SCHWAGER:* I believe so. I believe she's on the
7 line.

8 *THE COURT:* Yes, she's on the line.

9 *MS. CURTIS:* Yes, I'm here.


09:02:24 10 *THE COURT:* On representing the Brunsting -- which of
11 the Brunstings -- is Anita Brunsting on the line or her counsel
12 on the line? 

13 *MR. MENDEL:* Counsel is on the line. My name is Steve
14 Mendel, Your Honor. And Anita Brunsting might be dialing in.

09:02:45 15 *THE COURT:* Who else is on the line with you then,
16 Mr. Mendel, if anyone?

17 *MR. MENDEL:* No one else is on the line with me.

18 *THE COURT:* Are you representing both Amy and Anita --
19 *(Simultaneous speaking, indiscernible.)*

09:02:59 20 *MR. MENDEL:* Mr. Neal Spielman -- Mr. Neal Spielman is
21 on the line representing Amy Brunsting. 

22 *MR. SPIELMAN:* That's correct, Judge. Good morning.

23 *THE COURT:* Yes. Let me make sure I've got -- let's
24 see, what's your last name, sir?

09:03:14 25 *MR. SPIELMAN:* Spielman, S-p-i-e-l-m-a-n.

09:03:21 1 *THE COURT:* All right. Just yourself on the line for
2 Ms. Amy Brunsting?

3 *MR. SPIELMAN:* Yes, sir.

4 *THE COURT:* Okay. Let's see. Let me just make sure,
09:03:29 5 because I've got to get my docket sheet straightened out here.
6 I apologize. It is Stephen A. Mendel, is it, right?

7 *MR. MENDEL:* Yes, sir.

8 *THE COURT:* Okay. Very good. All right.
9 Let's see. Do we have others joining this call
09:03:50 10 or someone else just join us?

11 *MS. CAROLE BRUNSTING:* Yes. Yes. This is Carole
12 Brunsting, pro se. I'm one of the beneficiaries.

13 *THE COURT:* Well, let's see. Ms. Brunsting, hold on
14 just one second. You were sued, I gather, by the plaintiff in
09:04:15 15 this case? Is that your relationship to the case?

16 *MS. CAROLE BRUNSTING:* Correct.

17 *MS. SCHWAGER:* Your Honor, this is Candice Schwager.
18 In this case Ms. Carole Brunsting is not yet a party. If we
19 were to add a declaratory judgment, she would be brought in.

09:04:33 20 *THE COURT:* Well, I'm checking all the persons who are
21 participating and trying to make sure their opposition is
22 stated in the record. So I show her as a defendant. She may
23 not have been served, but I show --

24 *MS. SCHWAGER:* Oh, okay.

09:04:43 25 *THE COURT:* -- her as a defendant along with a number

09:04:45 1 of other -- excuse me -- along with a number of other persons.
2 But I want to make sure everyone who's on the line is accounted
3 for. So, do we have others other than Ms. Carole Brunsting?

4 *UNIDENTIFIED SPEAKER:* Yes, sir. This --

09:04:58 5 *UNIDENTIFIED SPEAKER:* Your Honor --

6 *THE COURT REPORTER:* Judge, this is the court --

7 *THE COURT:* One at a time, please. I'm sorry. One at
8 a time. I heard the voice of -- I thought it was Ms. Schwager
9 speaking. Was that correct?

09:05:14 10 *MS. SCHWAGER:* No. No, sir.

11 *THE COURT:* Okay. Was Ms. Carole speaking?

12 *MS. CAROLE BRUNSTING:* No, it was not me.

13 *MS. ANITA BRUNSTING:* This is Anita Brunsting.

14 *THE COURT:* I'm hearing --

09:05:29 15 *UNIDENTIFIED SPEAKER:* Your Honor, Ms. Brunsting is on
16 the line.

17 *THE COURT:* Ms. Brunsting -- Ms. Brunsting, I'm going
18 to ask that any individual who joins certainly announce
19 themselves as joining, but you will not be speaking if you have
09:05:39 20 counsel on the line. And I believe Ms. Anita -- I'm just going
21 to call it that way, Ms. Anita, I believe your counsel is on
22 the line, but I'm showing you as announcing present also.
23 Okay?

24 *MS. ANITA BRUNSTING:* Okay. Thank you.

09:05:53 25 *THE COURT:* All right. Who else do we have on the

09:05:55 1 line? So far the parties, I show Ms. Curtis, Ms. Anita
2 Brunsting. I show Ms. Carole Brunsting. And I show counsel,
3 that is, Ms. Schwager for Ms. Curtis. I show Mr. Mendel,
4 counsel for Ms. Anita. And I show Mr. Spielman for Ms. Amy.
09:06:22 5 Do we have other attorneys on the line?

6 *MR. OSTROM:* Your Honor, this is Jason Ostrom. I am
7 no longer representing Ms. Curtis, but I received your e-mail
8 notice and I felt it prudent to call in. I don't know if the
9 Court needs me or wants me, but I -- since I got the notice, I
09:06:42 10 called in.

11 *THE COURT:* Spell your last name, please, sir.

12 *MR. OSTROM:* Ostrom, O-s-t-r-o-m.

13 *THE COURT:* All right. Very good.

14 Let me ask you, Ms. Schwager, is there any basis
09:07:02 15 for Mr. Ostrom to remain on the line as far as you're
16 concerned?

17 *MS. SCHWAGER:* I don't believe so.

18 *THE COURT:* And does counsel for either of the
19 Brunstings believe that he's necessary for this call?

09:07:15 20 *MR. SPIELMAN:* Judge, this is Neal Spielman. And it
21 sort of depends, Your Honor, on what -- how you're going to
22 conduct this call. **Mr. Ostrom was Ms. Curtis's attorney at the**
23 **time of the events that are being complained about and will be**
24 **discussed in this hearing.** So I guess if the Court might want
09:07:36 25 Mr. Ostrom's perspective, then he's necessary. If the Court

09:07:40 1 does not want him to participate, that, of course, is then your
2 decision.

3 *THE COURT:* All right. I leave it to you to,
4 Mr. Ostrom, whether or not you want to stay on, but I will not
09:07:53 5 permit you to participate in any debate or discussion that's
6 going on unless there's a specific question that I might have.
7 And the reason is that this is not a time for exchanges between
8 client and a former attorney or between a current attorney and
9 a former attorney representing the client. I'm speaking about
09:08:17 10 Ms. Curtis's situation. So if you choose to remain, I have no
11 problem with that.

12 *MR. OSTROM:* I'll stay on for the Court's convenience,
13 but I will remain silent unless the Court addresses
14 anything towards me.

09:08:33 15 *THE COURT:* All right. Anyone else?

16 *(No response.)*

17 *THE COURT:* All right. Let me proceed in this manner,
18 because I think for purposes -- because of the length of time
19 that this matter has been in whatever state it's in, let's just
09:08:52 20 leave it at that, there have been a number of things that have
21 happened that might bring all of us to a point that -- that the
22 record needs to reflect it, I say, to some extent, how we got
23 to this point.

24 My recollection is there was a suit filed by
09:09:10 25 Ms. Curtis wherein she sought injunctive relief. That relief

09:09:16 1 was granted in part; and at some point along the way, in May,
2 let's say, of 2013, the Court appointed William G. West as
3 master to perform an accounting. That was part of the relief
4 that Ms. Curtis sought. Mr. West apparently performed that
09:09:39 5 accounting and made a report to the Court at some point in 2013
6 at a particular hearing.

7 There were objections to his report, but
8 eventually that report, I believe, was adopted by the Court and
9 we moved forward from that to disbursements along the way for
09:10:03 10 attorney's fees that were made to attorneys who were handling
11 the probate matter or the matter in probate court.

12 Various miscellaneous hearings were involved, and
13 I believe at one point Ms. Curtis filed a motion for attorney's
14 fees herself and that matter was eventually granted in some
09:10:27 15 respect and I believe that was resolved.

16 There was an order granting approval of
17 disbursements in May of 2013. There was an order granting
18 renewal of the farm lease in 2013. All this happened in
19 September of 2013. And then there was a motion to show cause
09:10:50 20 and an application for judgment of civil contempt filed by the
21 parties -- or by one of -- by the plaintiff, and the Court --
22 and the Court denied that order in October of 2013 and granted
23 the approval of other disbursements in November of 2013.

24 In 2013, in December there was a hearing where
09:11:12 25 Ms. Curtis and Mr. Ostrom and I believe there was a George Vie

09:11:19 1 involved in that time -- involved in a phone conference that --
2 where the Court was attempting to accommodate the parties at
3 their request for disbursement of attorney's fees and all were
4 involved. An agreed proposed order was approved for
09:11:39 5 disbursement of attorney's fee retainer, I believe that was
6 for Mr. Ostrom, and that was in December of 2013.

7 Moving forward and then skipping along, in March
8 of 2014 the Court entered an order granting the defendants'
9 motion for approval of disbursements and these were
09:11:57 10 disbursements of funds that had been for services that had been
11 rendered apparently.

12 In April of 2014 there was another order granting
13 a quarterly estimate of income taxes due and that order
14 granting that approval and the disbursement of payment of those
09:12:16 15 taxes was done in April of 2014.

16 So as this case has been moving -- or was moving
17 along on the docket, it got to a point where in May of 2014
18 there was a motion to remand by Candace Curtis that was filed
19 apparently by Mr. Ostrom as her attorney. The Court in May
09:12:41 20 granted that order to remand the case to probate court. Now,
21 that order of remand becomes part of the objection now or at
22 least renewed objection now raised by the plaintiff, by
23 Ms. Curtis.

24 In May -- in August, should I say, Ms. Curtis
09:13:03 25 filed her own motion for relief. And it's my belief, and if

09:13:08 1 I'm incorrect, I can be corrected later, but it's my belief
2 that it's somewhere between the May 2014 order -- motion and
3 order granting the motion for remand in May -- in August of
4 2016 --

09:13:23 5 *(The host is exiting the conference. This conference will*
6 *continue for 30 minutes.)*

7 *THE COURT:* -- 2014 to 2016, there was a release of --
8 I'm sorry. You're going to have to not talk.

9 And in 2015 there's an order granting this motion
09:13:38 10 to remand that I said that's in dispute. And, of course, a
11 little over a year later -- two years later, in 2016, in
12 August, the plaintiff sought relief on her own, I believe, not
13 having counsel, but filing the documentation and papers
14 herself.

09:13:58 15 From there the case simply languished, and the
16 Court denied Ms. Candace access to the Court's docket, not
17 because she couldn't get copies of things, but we denied you
18 electronic filing and of the sort.

19 And then we get to what I believe to be the focus
09:14:19 20 of the plaintiff's matter now. There is now pending an
21 emergency motion to reopen -- I'm sorry. Are we being joined
22 or parties leaving? I don't have a problem with people
23 leaving, but I want to know if someone else is joining the --
24 joining the discussion. I don't hear anyone.

09:15:01 25 *THE COURT REPORTER:* I'm sorry, Judge. This is the

09:15:01 1 court reporter. If people who aren't speaking, if they could
2 mute their mic on their phone, it would be helpful. Because I
3 heard it said the host was exiting the meeting, so.

4 *THE COURT:* Yeah. If you would mute your phone and
09:15:03 5 only unmute it when you're about to speak, that would keep the
6 noise and the background noise down. Appreciate it. Thank
7 you.

8 I think I was at the point where I was saying
9 that the -- there was a motion -- Ms. Candace's motion for an
09:15:29 10 order directing certain plaintiffs to show cause that was filed
11 back in May of 2019 and, of course, leading up to this
12 emergency motion for relief from judgment that was filed in
13 July of this year. And it's that motion for relief from
14 judgment, that judgment referring, I gather, to the remand
09:15:53 15 order that the Court signed earlier that is the object of the
16 plaintiff's motion at this time.

17 Before the Court then are not just the motion but
18 the responses and apparently some proposed orders that have
19 been filed and, of course, the question that the Court has at
09:16:15 20 this point and needs to have addressed without regard to
21 whether or not the Court had the authority to remand the case,
22 that issue is not, as far as I'm concerned, a viable issue,
23 because the -- whether the Court had the authority to remand
24 it, the parties -- the Court acted upon the plaintiff's motion
09:16:40 25 and if that had no effect, then the case has simply been in a

09:16:45 1 state of -- has been in a state of administrative closure all
2 of this time, because the case -- the case has actually -- this
3 case itself has actually been closed. And the point is that if
4 that is the case and the matter has been litigated -- matters
09:17:02 5 have been litigated or could have been litigated in state
6 court, the question is whether or not this Court should be
7 picking up on a lawsuit that seems to have some -- and may have
8 some impact on the probate court's proceeding.

9 So at this point let me ask -- let me ask
09:17:19 10 Ms. Schwager if she would tell me what it is that she thinks
11 this emergency motion can accomplish in light of the
12 proceedings, not just a closed case in federal court that
13 you've asked me to reopen, but also based on whatever might be
14 happening in probate court.


09:17:38 15 *MR. SPIELMAN:* Your Honor, this is Neal Spielman. Can
16 I ask a question just to clarify the record?

17 *THE COURT:* I'm sorry. I'm sorry. I'm sorry. I did
18 ask Ms. Schwager to speak to me.

19 *MR. SPIELMAN:* Okay.

09:17:51 20 *MS. SCHWAGER:* Thank you, Your Honor. What I would
21 have hoped to accomplish is the exact thing that you wanted to
22 accomplish when you issued the injunction. You stated that you
23 wanted this case resolved in 90 days. Since this case has left
24 your court, nothing has been resolved. There have been no
09:18:11 25 substantive rulings. We have not been given hearings on the


09:18:15 1 summary judgment.

2 Now the defendants are attempting to start
3 harassing discovery. They've just noticed the deposition of my
4 client, who is not a trustee, and there are no relevant facts
09:18:30 5 that I see that could be discovered. But I -- there is no
6 excuse for discovery starting seven years into a case. 

7 At the time of the injunction, Amy Brunsting
8 swore in an affidavit, in Document 10-1, that personal assets
9 trust had been set up for the five beneficiaries. That was not
09:18:54 10 true.

11 Also, you're directed that the income be -- the
12 income required be deposited into appropriate accounts for the
13 beneficiaries. That was not done. So \$180,000 was incurred in
14 federal income taxes.

09:19:14 15 We have tried everything possible to get
16 resolution. We even filed your injunction, which Mr. Spielman
17 referred to as questionably enforceable. So we filed it in the
18 state district court under the Foreign Judgment Registration
19 Act. And now he seeks to even have that transferred back to
09:19:36 20 the probate court so that we can be stalled out for several
21 more years. And the issue as to what --

22 *THE COURT:* Let me ask you -- let me interrupt you 
23 here and ask you, what is the status of the probate case?

24 *MS. SCHWAGER:* The status of the probate case is that
09:19:54 25 the discovery has just begun. There is some briefing on the

09:19:58 1 QBD document as to whether it is viable. It's a document
2 they're trying to use to disinherit my client. And that is the
3 discovery that they're just beginning seven years into this
4 case.

09:20:14 5 *THE COURT:* Isn't that a matter exclusively within the
6 province of the probate court --

7 *MS. SCHWAGER:* No.

8 *THE COURT:* -- determining heirship and ownership and
9 things of that sort? That's not a federal issue or matter, is
10 it?

11 *MS. SCHWAGER:* This is not a probate matter. The
12 federal court has already ruled that. The Candace Curtis case
13 is a trust case. It's a tort case. And it's been ruled by the
14 Fifth Circuit to be not subject to probate exception. The case
15 that's in the probate court requires an estate for a trust to
16 be in the probate court. The estate has been closed since
17 2015.

18 *THE COURT:* You mean the probate court has closed this
19 case and the matter -- and the --

09:21:04 20 *MS. SCHWAGER:* Yes.

21 *THE COURT:* -- estate has not been distributed?

22 *MS. SCHWAGER:* Nothing has been distributed. The
23 probate matter --

24 *THE COURT:* You said it was closed -- what's been --
09:21:12 25 what's been closed then?

09:21:14 1 *MS. SCHWAGER:* Okay. The probate matter was closed,
2 but the probate, this is a pour-over will. So everything
3 poured over into the trust. The court, they designated some
4 ancillary cause numbers to the estate in --

09:21:42 5 *THE COURT REPORTER:* Judge, this is the court
6 reporter. Excuse me. I'm having trouble understanding
7 Ms. Schwager. I don't know if she's on a speaker phone, but
8 it's difficult.

9 *MS. SCHWAGER:* No, I'm not. I'll speak slower.

09:21:42 10 *THE COURT REPORTER:* Thank you.

11 *MS. SCHWAGER:* Okay. There were ancillary dockets set
12 up being the cause number dash 401 and dash 402. Suddenly,
13 without my client's agreement, her case was consolidated into
14 this, quote, estate that was no longer open and her claim
09:22:08 15 virtually disappeared. She became a defendant instead of a
16 plaintiff.

17 *THE COURT:* When did this happen?

18 *MS. SCHWAGER:* This happened in 2015.

19 *THE COURT:* Okay.

09:22:22 20 *MS. SCHWAGER:* The reason this is --

21 *THE COURT:* All right. This was filed in 2015 -- I'm
22 sorry. Since 2015, what you're saying is the issues that were
23 raised in this court that I gather Mr. Ostrom wanted and the
24 parties -- and I gather the plaintiff agreed to have
09:22:40 25 transferred and litigated in the probate proceedings have not

09:22:45 1 been litigated, have not been resolved?

2 *MS. SCHWAGER:* They have not been resolved, that's
3 correct, Your Honor. And my -- if I can make a correction --

4 *THE COURT:* So let me -- let me just ask another
09:22:56 5 question. What is the status of the trust? In other words,
6 has Ms. Curtis received her trust fund -- the trust funds?

7 *MS. SCHWAGER:* No, trust funds at all.

8 *THE COURT:* Nobody has been -- none of this money has
9 been disbursed? It's just been legal fees?

09:23:13 10 *MS. SCHWAGER:* I don't know if the legal fees have
11 been paid out of it, because we don't have the most recent
12 accounting, but there's been no money released to any
13 beneficiary.

14 *THE COURT:* Well, there would be some documentation in
09:23:27 15 the probate court if some money had -- orders had been entered
16 approving payment of legal fees, wouldn't it?

17 *MS. SCHWAGER:* Yes, there would. So, Your Honor,
18 there's none that I'm aware of.

19 *THE COURT:* Okay. All right. So let me ask another
09:23:42 20 question. As it relates to the trust itself, what you're
21 saying is that the -- is that the probate of the will simply
22 poured the estate -- the proceeds of the estate into a trust,
23 that trust was to be -- was to be set up in a way that it would
24 disburse the moneys to the beneficiaries or the heirs and
09:24:06 25 that --

09:24:07 1 *MS. SCHWAGER:* Correct.

2 *THE COURT:* -- has not been done is what you're
3 saying?

4 *MS. SCHWAGER:* Correct.

09:24:12 5 *THE COURT:* How much money are we talking about,
6 Ms. Schwager?

7 *MS. SCHWAGER:* We're talking about, about \$3 million.

8 *THE COURT:* Okay. And why have you not been able to
9 get an accounting from the trustee -- who is the trustee?

09:24:32 10 *MS. SCHWAGER:* Let me correct -- I have a -- I don't
11 have a current accounting. I have some accounting from
12 Mr. Mendel, but I don't have a current account --

13 *THE COURT:* Who's the trustee?

14 *MS. SCHWAGER:* The trustee's Anita and --

09:24:42 15 *THE COURT:* Who's the trustee?

16 *MS. SCHWAGER:* Anita and Amy Brunsting.

17 *THE COURT:* So you have not gotten any accounting for
18 your client from these two, let's say, trustees since the trust
19 has been so-called set up, in other words?

09:24:59 20 *MS. SCHWAGER:* No, I received some quarterly
21 accountings here and there, but not a current accounting.

22 *THE COURT:* All right. So let me ask you, what is --
23 I don't show on my docket any -- an opinion from the Fifth
24 Circuit. I'm not sure what happened there. But I see that you
09:25:17 25 or Ms. -- let me see. No, I guess it's the response filed by

09:25:21 1 the trustee show a Fifth Circuit opinion as attached to their
2 documents, but I don't show the Fifth Circuit ever ruling --
3 let me go back. Oh, I see. It may have happened in the
4 earlier part of the case.

09:25:39 5 *MS. SCHWAGER:* Yes, 2013.

6 *THE COURT:* Yeah, apparently so. Document No. 11, I
7 gather, somewhere back in that space. So the Fifth Circuit has
8 said, and what you are arguing is, that this case should be
9 reopened so that that trust -- so that Ms. Curtis can proceed
10 with her claims against the -- against the trustees?

11 *MS. SCHWAGER:* Yes.

12 *THE COURT:* All right. Let me now hear then from
13 Mr. Mendel.

14 *MR. MENDEL:* Well, on some of these points,
15 Mr. Spielman, maybe you want to go first and then I can
16 supplement. Mr. Spielman prepared --

17 *THE COURT:* Well, here's what I'm asking. Let me ask
18 it this way and then you all can decide who's going to answer.
19 Who represents -- the two of you are representing the trustees
20 separately; is that right?

21 *MR. MENDEL:* Yes, sir.

22 *MR. SPIELMAN:* That's correct.

23 *THE COURT:* Why would you need two lawyers for one --
24 for a trust? So there are two trustees. Is there some
25 conflict between the two trustees?

09:26:50 1 *MR. SPIELMAN:* Your Honor, this Neal Spielman. You
2 mentioned when you were going through the record an attorney
3 named George Vie. George Vie represented the co-trustees
4 together when the case was before you prior to the remand
09:27:04 5 transfer in 2014. My understanding is that when -- when that
6 law firm, George Vie's law firm, I can't remember the name
7 specifically, when they -- when it was transferred to the
8 probate court, they advised Amy and Anita, that they had to
9 withdraw due to a potential conflict, and they recommended that
09:27:27 10 each of them get their own attorney. And, so, Anita found her
11 way to Mr. Mendel's office and Amy found her way to my office.
12 And so that's the best that I can do to explain why they each
13 have their own attorney, is that the prior counsel identified a
14 potential conflict, if that answers your question.

09:27:52 15 *THE COURT:* Well, that answers the question of what
16 the lawyers felt there was a conflict, but I'm not sure if he
17 was pointing out a conflict between the two trustees or whether
18 he was pointing to a conflict between his firm and the
19 trustees. Do you know which?

09:28:08 20 *MR. SPIELMAN:* I do not know specifically which issue
21 they gave --

22 *THE COURT:* Well, if there is -- yeah, if there's a
23 conflict between the two trustees, then a court would have to
24 remove the trustees and appoint someone who can go forward,
09:28:24 25 that would make sense. And I'm asking -- let me ask it this

09:28:28 1 way: Is it your view that there's any matter to be probated?

2 *MR. SPIELMAN:* Well, I think that's a bigger question,
3 Judge. So with respect, I wanted to ask one question real
4 quick. When you were going through the record and you said
09:28:44 5 that we're considering an emergency motion to reopen the docket
6 right now, that in the Court's file was just recently filed on
7 August the 28th. The hearing that we're here for references
8 the ex parte motion for relief under Rule 60, which is Document
9 128. And I suppose we're talking about both of them
09:29:09 10 simultaneously, it seems. But I just wanted to make the Court
11 aware that technically speaking our -- the co-trustees haven't
12 technically yet responded to Document No. 133. But then,
13 again, Document 133 to me at least reads mostly like a reply to
14 the response we filed to Document 128. So, I'm just trying to
09:29:37 15 make sure that the record is clear about which documents we're
16 talking about during this hearing, and so that was what I was
17 trying to address with the Court earlier.

18 *THE COURT:* Well --

19 *MR. SPIELMAN:* And I apologize for interrupting.

09:29:52 20 *THE COURT:* No, I don't have a problem with that
21 correction or acknowledgment of the record, but all the counsel
22 know that I couldn't take -- I would not be able to take up
23 that motion without reopening the case.

24 *MR. SPIELMAN:* Correct.

09:30:09 25 *THE COURT:* I would have to reopen the case in order

09:30:12 1 to address the motion and response that is before the Court,
2 and I'm not prepared to address that on the record as we're
3 going. I would address that on the papers. I was trying to
4 make sure that the parties understood -- and I'm now speaking
09:30:27 5 about my own mind, that the parties understood. And in order
6 for me to address the motion in response that is before me, I
7 would really be resolving to some extent the motion to reopen
8 the case, because I would have to reopen the case to do that.

9 And I wanted to know whether or not, secondly,
09:30:47 10 whether or not there is some basis in your response -- and I
11 think, I've read through it, it seemed to say that this matter
12 has long been over. It's long been transferred. But it does
13 not address the merits of the case that was in federal court.

14 It simply addresses what appears to be a matter that is closed
09:31:09 15 in the probate court, and that is, that the probate has
16 probated the will and transferred or permitted the trustees to
17 go forward with a trust, which no court, I don't believe, has
18 any jurisdiction or authority over, in terms of the
19 administration of it, except through the parties who are
09:31:29 20 litigants, and those are the parties that are before the Court.

21 So I'm trying to make sure that I understand or
22 you -- definitely need the lawyers to understand what we're
23 facing -- or what this Court is facing, and that is, apparently
24 agreeing to remand the matter based on counsel's requests in a
09:31:51 25 situation where no remand was appropriate. And I believe that

09:31:56 1 the parties were going to file and to proceed in the probate
2 court with their lawsuit and the probate court apparently felt
3 that it had no jurisdiction or authority and has done nothing
4 itself. I believe that's the status --

09:32:13 5 *MR. SPIELMAN:* Sorry, Judge, if I could --

6 *THE COURT:* Go ahead.

7 *MR. SPIELMAN:* -- jump in. That last part of what you
8 said is not correct.

9 *THE COURT:* Who's speaking?

09:32:20 10 *MR. SPIELMAN:* This Neal Spielman again. Sorry.

11 *THE COURT:* Okay.

12 *MR. SPIELMAN:* That very last tagline of your
13 sentence, that the probate court has said it doesn't have
14 jurisdiction and has done nothing, that part is incorrect. In
15 fact, the probate court has the -- okay. Sorry. **The probate**

16 **court has actually issued an order specifically saying that it**
17 **has jurisdiction over the trust and over the causes of action**
18 **that are pending between and among the different Brunsting**
19 **siblings. And that includes -- that includes one of the**

09:32:53 20 **siblings who's not present on this call, who is the brother,**
21 **Carl Brunsting. He has -- he has individual claims against all**
22 **four of his siblings. So that would be Ms. Curtis, Ms. Carole**
23 **Brunsting; Amy Brunsting, my client; and Anita Brunsting.**

24 Then Carole Brunsting in Probate Court 4 had
09:33:18 25 affirmative claims against some combination of the siblings,

09:33:22 1 but I don't recall off the top of my head.

2 The trust has claims against Ms. Curtis --
3 Ms. Curtis for sure and I believe, but cannot specifically
4 recall if those claims are also asserted against Carl
09:33:41 5 Brunsting.

6 And then the trust itself as well as for the time
7 being at least what's known as the estate of Nelva Brunsting
8 has claims against the law firm that originally drafted the
9 trust documents. That case has also been transferred into
09:33:59 10 Probate Court No. 4.

11 So, and I appreciate that I might be throwing a
12 lot of information out at you, Judge. When Ms. Schwager
13 mentioned that there were some ancillary matters open, there
14 are actually -- there have been a total of four ancillary
09:34:15 15 matters open. There are now three.

16 And so the way that worked is this, Judge: The
17 original probate court filing that was initiated by Carl
18 Brunsting, which was a suit against Amy and Anita as the
19 co-trustees, was initiated as -- with a 401 designation.

09:34:35 20 When Mr. Ostrom submitted to this Court, to this
21 Court the motion to remand and that remand was granted and
22 Ms. Curtis's case was transferred into the probate court, it
23 was given the designation of a 402. After some time the 402
24 was consolidated into the 401. So those -- so Ms. Curtis's
09:35:01 25 claims are absolutely live and pending in Probate Court 4.

09:35:08 1 There's no question about that, in my mind at least.


2 The 403 proceeding is actually also initiated by
3 Ms. Curtis through Ms. Schwager, I think, and it's a bill of
4 review, that, among other things, challenges Probate Court 4's
09:35:30 5 denial of various attacks on its jurisdiction and entered an
6 order saying that it has jurisdiction over claims against --
7 over the claims that are in the 401, which is -- which include
8 Ms. Curtis's claims. And now there is -- I may have gotten
9 that out of order actually.

09:35:52 10 The bill of review might be dash 404, because
11 there's another proceeding, which is 403. That's the claim
12 that every -- that certain parties have against the law firm
13 that drafted the probate court document. So I may have gotten
14 the designations wrong with respect to the 403 and the 404, but
09:36:17 15 either way I said them, those are two independent things that
16 are also still pending in the probate court.

17 Judge, Ms. Schwager has suggested that the
18 probate court has -- that they can't get any relief in the
19 probate court. And, Your Honor, I have to say with -- at least
09:36:39 20 with respect to what Ms. Schwager said to you on the phone just
21 today, which is that they have motions pending and are never
22 given hearings, one of the issues that that statement raises is
23 that in Probate Court No. 4, in probate court, you're not -- no
24 one is given a hearing. You have -- unlike other
09:37:00 25 jurisdictions, other courts, you have to ask the court. The

09:37:04 1 court has its own specific procedure. That you have to contact
2 the court to either ask for a submission or a hearing.

3 And to my knowledge at least, the reason the
4 court isn't giving hearings to Ms. Schwager on behalf of her
09:37:20 5 client or to Ms. Curtis when she was pro se is because it
6 doesn't appear that notices of hearings or notice of
7 submissions were ever asked for. It just looks like motions
8 were filed and left there to sit. So, and I'll say this,
9 Judge, every other party that has sought hearings from the
09:37:40 10 court or submissions from the court have gotten them.

11 So, I think that to the extent that Ms. Curtis
12 and Ms. Schwager think that the Court is ignoring them, I think
13 that's a problem of their own making. I know that's not the
14 most sensitive way to say it. But there are hearings that are
09:37:59 15 currently -- there are issues that are currently being 
16 determined by Probate Court 4. The lawsuit is moving forward.

17 One of the things that Ms. Schwager left out when
18 she talked about how long this case has been pending both in
19 this -- when it was pending in this court and then while it's
09:38:19 20 currently pending in the probate court, is one of the points
21 that we mentioned in our response, that we lost several
22 years --

23 *(You have five minutes remaining in this conference.)*

24 *MR. SPIELMAN:* Oh, okay.

09:38:30 25 *THE COURT:* Go ahead and proceed.

09:38:31 1 *MR. SPIELMAN:* We had several -- we lost several years
2 of case development while we were sent into Judge Bennett's
3 court and then the Fifth Circuit Court of Appeals on this idea
4 that there was a RICO conspiracy by a probate mafia. And all
09:38:50 5 of the judges in Probate Court 4 and the court reporter were
6 named as RICO defendants in that case. So the entire probate
7 court case was shut down while Ms. Curtis, as a pro se party,
8 pursued her RICO case with Judge Bennett and the Fifth Circuit.

9 So there's a lot more going on here than just
09:39:14 10 this case was initiated multiple years ago and nothing has
11 happened. I don't know how far afield I've gone of answering
12 your question. I know one of the things that the Court just
13 mentioned that had some confusion was the idea of there not
14 being accountings given, and Mr. Mendel can speak to that. But
09:39:36 15 there have been regular periodic accounting provided. I can
16 admit that sometimes a party will send an e-mail saying, What's
17 the status of the latest accounting, but to my knowledge,
18 Mr. Mendel has been providing those accountings regularly. And
19 he can speak to that better I can, if I've answered all of your
09:39:59 20 questions from me.

21 *THE COURT:* Thank you. Thank you very much.

22 Let me just interject a question here. Let me
23 ask, is my administrative assistant still on the line? Elaine,
24 are you still on the line? I'm concerned about the notice of a
09:40:21 25 five-minute shutoff, if this matter shuts off. Because the

09:40:25 1 Court has designated a period of time that these conferences
2 can occur, and we'll have to perhaps reboot.

3 But let me just say -- ask this: Ms. Schwager,
4 you are aware of these proceedings that have been reflected by
09:40:44 5 Mr. Spielman, correct?

6 *MS. SCHWAGER:* I'm aware of the proceedings. He has
7 not correctly stated them all, but I'm aware -- you asked him
8 whether there was an estate to be probated, and he bypassed
9 that question entirely.

09:41:00 10 *THE COURT:* Well, let me ask you this: What is that
11 this Court would be doing if it were to reopen the case for
12 purposes of some kind of hearing that is not already before the
13 probate court?

14 *MS. SCHWAGER:* What this Court would be doing is --

09:41:16 15 *THE COURT:* Everything --

16 *MS. SCHWAGER:* Okay. Your Honor, yes --

17 *THE COURT:* I'm sorry. Everything that you're
18 requesting me to do is also a request before the probate court,
19 is it not?

09:41:28 20 *MS. SCHWAGER:* No, it's not. The hearings that are --
21 have just occurred require briefing on a QBD document and allow
22 them to do a deposition. That is the only thing that has
23 occurred. This case has stalled out for seven years. The
24 beneficiaries have received nothing. In your opinion you
09:41:48 25 indicated it would be resolved -- or you wanted it to be

09:41:51 1 resolved in 90 days. You warned counsel that this wasn't going
2 to be a case where attorneys walk away with all the funds. We
3 have mediated recently. There was some misconduct in the
4 mediation, violating the one order that the judge gave. We
09:42:08 5 just cannot seem to get any traction.

6 We have called for hearings or sat on hearings.
7 When we even get that, it's a status hearing. Status hearing,
8 one more status hearing, where nothing happens. We want this
9 case resolved, and that's what this Court --

09:42:25 10 *(You have one minute remaining on this conference.)*

11 *MS. SCHWAGER:* -- for us. The case has not --

12 *THE COURT:* All right.

13 *MS. SCHWAGER:* -- moved forward. There's no
14 substantive rulings in the probate court.

09:42:36 15 *THE COURT:* All right. I think I've got a sense of
16 what I need to do. I'm going to go back and read the documents
17 on the motion that is pending and for purposes of reviewing and
18 making some kind of order, I'm going to declare that the case
19 has been reopened for purposes of review of that motion pending
09:42:55 20 and the response, and I will surely get something to you all
21 regarding that matter within the next 10 or 15 days.

22 *MS. SCHWAGER:* Thank you.

23 *MR. SPIELMAN:* Your Honor --

24 *THE COURT:* Yes.

09:43:11 25 *THE COURT REPORTER:* Judge, who's speaking?

09:43:11 1 *MR. SPIELMAN:* This is Neal Spielman again. Judge, we
2 have some issues that are pending with Probate Court No. 4,
3 including an ordered deposition in California that is at the
4 end of this month. Your --

09:43:25 5 *(The conference has ended. You will now be disconnected.*
6 *Goodbye.)*

7 *THE COURT:* Let me just reacquaint ourselves with -- I
8 apologize for that. I wasn't familiar with the shutoff. So I
9 think I have the attorneys on the line, Ms. Schwager,
09:59:25 10 Mr. Mendel, and Mr. Spielman; is that correct?

11 *MR. SPIELMAN:* Yes, Your Honor.

12 *MR. MENDEL:* Yes, sir.

13 *MS. SCHWAGER:* Yes, sir.

14 *THE COURT:* And I believe at the time -- the court
09:59:37 15 reporter is on the line. I believe at the time, Mr. Spielman,
16 you were making a statement regarding depositions and
17 proceedings in the state of California and I wanted to complete
18 that and try to round out this discussion so that I'm done with
19 it in terms of --

09:59:51 20 *MR. SPIELMAN:* Yes.

21 *THE COURT:* -- lawyer discussions. Go ahead, sir.

22 *MR. SPIELMAN:* Yes, Your Honor. I appreciate that
23 very much. The question that had immediately proceeded what I
24 was saying was the question you had asked Ms. Schwager and her
10:00:05 25 response about whether there was anything that if you reopened

10:00:09 1 this federal court case was there anything that was going to be
2 done that was different than what's currently pending in
3 Probate Court No. 4, and I believe Ms. Schwager suggested to
4 you that there was. And I wanted to make the record clear that
10:00:24 5 in my opinion, from my perspective, based on the record in
6 Probate Court 4, all of Ms. Curtis's claims and causes of
7 action are pending in Probate Court 4. The only thing you
8 would be doing, Judge, is litigating what is currently being
9 litigated in Probate Court 4.

10:00:41 10 Now, having said that, Your Honor, I heard that
11 you were saying that you wanted -- that you were going to
12 reopen the case for the limited purpose of considering the
13 ex parte motion for relief and the broader reopening of the
14 case and that you would have us an opinion in, I believe you
10:00:59 15 said, 10 to 14 days or something along those lines.

16 The issue that that raises, Judge, is that we
17 are -- we are -- that Probate Court 4 had ordered Ms. Curtis to
18 be deposed in her state of residence, California, and we have
19 that noticed for later this month, and I wanted to -- I wanted
10:01:20 20 to get some clarification from you as to whether or not your
21 limited reopening of the case is meant to forestall or in any
22 way delay the continued development of probate court -- of the
23 case in Probate Court No. 4.

24 *THE COURT:* No, that would not be my purpose,
10:01:41 25 obviously, and I don't intend to do that, because whatever that

10:01:45 1 deposition might reveal, that same testimony would be available
2 if this case were to proceed in federal court. So it's not an
3 issue of one or the other or interfering in a state order,
4 and -- I shouldn't say state order, but state proceeding, where
10:02:03 5 the depositions and notices have already gone out, and that
6 would not be my purpose. This is a very limited intervention,
7 but I need to administratively open the case and not
8 substantively. My administrative opening of the case is to
9 determine whether or not based on the papers that have been
10:02:24 10 filed there's anything substantive that the Court needs to deal
11 with that is not being dealt with in the probate court. And I
12 would have to review the documents to see if there's any reason
13 for the Court to intervene in the case or to -- because I think
14 what is pending is an ex parte motion for relief filed by
10:02:44 15 Ms. Curtis in her individual capacity, as I recollect. And if
16 that's the case --

17 *MS. SCHWAGER:* Yes.

18 *THE COURT:* -- then counsel has -- I gather -- I take
19 that back. Ms. Schwager signed off on those pleadings. But I
10:03:00 20 think that is a matter that is before the Court and I need to
21 consider that along with the response that is pending before
22 the Court. That to some extent renders moot the issue of
23 whether or not the matter should be -- whether or not there --
24 whether or not the Court should consider the ex parte or
10:03:19 25 emergency motion to reopen, not necessarily the substance of

10:03:23 1 that motion that's pending. So I wouldn't take up any matter
2 that would interfere with the state court proceedings.

3 *MR. SPIELMAN:* Okay. And my second point of
4 clarification or question, Judge, is that there were some
10:03:38 5 issues that were discussed during the earlier call that I think
6 Mr. Mendel and I might have a different take on, and so I know
7 that part of your rules, Your Honor, we would have needed the
8 Court's permission to file a surreply. And I don't know that
9 we're asking to file a surreply based off of the briefing
10:03:57 10 that's before the Court. But I'm wondering if the Court might
11 want to receive anything else from the attorneys based on
12 things that were discussed during the call.

13 *MR. MENDEL:* And, Judge, this is Mr. Mendel. I would
14 like to add, the trustees would very much like to file
10:04:15 15 something based on what was discussed in this call, because the
16 probate case is administratively closed but has -- but
17 continues to hear things as they are filed, an example being a
18 temporary administrator had his fee application approved and
19 paid. And this notion that there's no accounting is just
10:04:38 20 false. They have current accountings through May 31st of 2020.
21 It doesn't get any better than that. We typically update them
22 every six months.

23 And the other thing is neither Mr. Spielman nor
24 my firm have been paid a dime out of the trust, because it's
10:04:56 25 going to require a court order from Probate Court 4 -- Court 4

10:05:01 1 to get paid, and so there's -- we would like to have the
2 opportunity to get a copy of the record so we can clarify a lot
3 of false statements that were made here today.

4 *THE COURT:* Well, I'm not as concerned about the
10:05:15 5 statements as I am when I go back and review your response to
6 the ex parte motion for relief, and I believe that is a
7 substantial response. So, I listen to what lawyers have to
8 say, but I don't necessarily take up their arguments unless
9 it -- unless it has something to do with the motion pending.

10:05:40 10 And I think I was intending by my own movement here and
11 statements, intending to expand this so I would have a greater
12 and larger understanding of what the field looked like, and I
13 think I've got that. So I'm not inviting any additional
14 responses, because I think that once I go back and read the
10:06:02 15 documents, I can determine if I need some additional response
16 and I would request it at that time.

17 *MR. MENDEL:* Understood, Judge. Thank you.

18 *THE COURT:* So what has been said is certainly of
19 record -- what is being said is certainly of record, but it
10:06:15 20 does not control the documents as they've been signed -- in my
21 opinion, it does not -- they do not impact the documents that
22 have been -- that have been filed. All right?

23 *MR. MENDEL:* Okay. Thank you, Judge.

24 *THE COURT:* Finally, is there anything else,
10:06:31 25 Ms. Schwager, before we shut it down?

10:06:34 1 *MS. SCHWAGER:* I just thought I would mention the one
2 party that Mr. Spielman mentioned as having all of these
3 proceedings. Carl Brunsting has been incapacitated since 2015.
4 That was when he resigned as executor, and there's not been one
10:06:53 5 since. Because the law requires in Texas that the only thing
6 that has to happen in the probate court with a pour-over will
7 is the inventory has to be filed and approved, and that was
8 done in 2013. So the file's been closed for a substantial
9 amount of time and they keep appending claims to it as if it's
10:07:15 10 still there.

11 *MR. MENDEL:* It is still --

12 *THE COURT:* Well, I think --

13 *MR. MENDEL:* -- there, Your Honor. There's
14 activity -- there's activity in that probate court, and I have
10:07:28 15 it up on the screen right now.

16 *MS. SCHWAGER:* I believe the Judge is trying to speak,
17 Mr. Mendel.

18 *MR. MENDEL:* I'm sorry, Your Honor.

19 *THE COURT:* Well, I think that my thinking was just I
10:07:39 20 think that what you're complaining about, Ms. Schwager, is more
21 akin to lawyer conduct than whether or not the court is engaged
22 in some, let's say, sitting --

23 *MS. SCHWAGER:* Exactly.

24 *THE COURT:* -- and do nothing kind of thing. So I
10:07:56 25 don't know that that's an issue that this Court would even be

10:07:59 1 interested in addressing, because I think there are too many
2 ways to address what you might be claiming as improper lawyer
3 conduct or what you suggest it seems to me is some improper
4 lawyer conduct. And I gather from what you're saying -- I have
10:08:13 5 not seen that case involving Judge Bennett. I haven't read it.
6 I know that it's attached, but I have not read the Circuit
7 Court's opinion. But I relied upon the agreement of the
8 parties back in 2015, I believe it is, when the parties
9 agreed -- and when I say parties, I'm talking about Ms. Curtis
10:08:33 10 and her attorney, that the matter would be transferred. At
11 that time the appropriate proceeding would have been to
12 administratively close it and/or dismiss it without prejudice
13 so that the proceedings could be filed brand-new in the probate
14 court. And I don't know how that was handled, but I believe
10:08:52 15 that it's not in dispute that those proceedings -- the
16 proceedings that were here in federal court are being -- are
17 also filed in the state court pursuant to that order and the
18 lawyers filed it in that probate court. So that was the
19 purpose of my attempting to put these two matters in the same
10:09:19 20 venue, so that they could be addressed. And, of course,
21 whether that's right or wrong, the point is that that's where
22 it is at that time. So let me shut down the conference.

23 *MS. SCHWAGER:* All right.

24 *THE COURT:* And I'm not inviting or looking forward to
10:09:35 25 any additional papers on this regarding these issues. But if

10:09:38 1 there is a necessity, the Court will promptly notify you and be
 2 sure, I will state in my minutes and on the record now, that
 3 the proceeding that I am addressing is not intended to and
 4 cannot be used by any party as a basis to delay or defer
 10:09:56 5 depositions and other proceedings under these county probate
 6 court proceedings. All right. Ladies and gentlemen --

7 *MS. SCHWAGER:* Sure. Yes.

8 *MR. SPIELMAN:* Thank you, Your Honor. That was very
 9 helpful.

10:10:08 10 *THE COURT:* -- y'all have a good day.

11 *MS. SCHWAGER:* Thank you, Your Honor.

12 *(Concluded at 10:10 a.m.)*

13 * * *

14 I certify that the foregoing is a correct transcript from the
 15 record of proceedings in the above matter to the best
 16 of my ability and skill, and that any indiscernible
 17 designations are because of audio interference that precluded
 18 me from understanding the words spoken.

19
 20 /s/ Kathy L. Metzger
 Kathy L. Metzger
 21 Official Court Reporter

9-12-2020
 Date

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