

FILED IN
14th COURT OF APPEALS
HOUSTON, TX
February 11, 2014
CHRISTOPHER A. PRINE,
CLERK

14-14-00126-CV

No. _____

IN THE _____ COURT OF APPEALS
HOUSTON, TEXAS

IN RE JULIE HANNAH

RECORD RELATING TO PETITION FOR WRIT OF MANDAMUS

Bobbie G. Bayless
Bayless & Stokes
State Bar No. 01940600
2931 Ferndale
Houston, Texas 77098
Telephone: (713) 522-2224
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Attorneys for Relator

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

VERIFICATION

Before me, the undersigned notary, on this day personally appeared BOBBIE G. BAYLESS, the affiant, a person whose identity is known to me. After I administered an oath, affiant testified as follows:

“My name is Bobbie G. Bayless. I am over 18 years of age, of sound mind, and capable of making this verification. The facts in this verification are within my personal knowledge and are true and correct. I am the attorney for relator. All the documents included with the petition for writ of mandamus are true copies.”

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

SUBSCRIBED AND SWORN TO before me, on this 10th day of February, 2014, to certify which witness my hand and seal of office.

/s/ Shawn M. Teague
Notary Public, in and for the
State of TEXAS
Printed Name: Shawn M. Teague
My Commission Expires: April 3, 2015

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2014, a true and correct copy of the above and foregoing *Record Relating to Petition for Writ of Mandamus* together with a true and correct copy of the Appendix filed of even date herewith, has been forwarded to the parties as follows:

Honorable Kyle Carter
Harris County Civil Courthouse
201 Caroline, 10th Floor
Houston, Texas 77002

*Sent via Certified Mail
Return Receipt Requested*

Odean L. Volker
Haynes and Boone, LLP
One Houston Center
1221 McKinney, Suite 2100
Houston, Texas 77010

*Sent via Certified Mail
and Email*

Erika C. Anderson
The Stinemetz Law Firm PLLC
5120 Woodway Dr., Suite 6019
Houston, Texas 77056

*Sent via Certified Mail
and Email*

Robert Hatcher
822 W. San Antonio
Lockhart, Texas 78644

*Sent via Certified Mail
Return Receipt Requested*

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

INDEX TO RECORD

Exhibit No.

Date

Filings in Cause No. 2013-48071

1	Plaintiff's Original Petition with Exhibit A	8-15-2013
2	Defendant Robert Alan Hatcher's Special Appearance and Plea to the Jurisdiction; Special Exception; Affirmative Defenses; Specific Denials and General Denial	9-20-2013
3	Defendant Marjorie Cordes's Plea in Abatement; Motion to Stay; Motion to Transfer Venue; Original Answer; and Request for Disclosures with Exhibit A	10-11-2013
4	Defendant David Lee Hatcher's Plea to the Jurisdiction and, in the Alternative, Motion to Transfer Venue, Original Answer, and Special Exceptions with Exhibit A	10-17-2013
5	Response to David Lee Hatcher's Plea to the Jurisdiction, and, in the Alternative, Motion to Transfer Venue	11-1-2013
6	Response to Marjorie Cordes' Plea in Abatement, Motion to Stay, and Motion to Transfer Venue	11-1-2013

1

2013-48071 / Court: 125

NO. _____

JULIE HANNAH	§	IN THE DISTRICT COURT OF
	§	
vs.	§	
	§	HARRIS COUNTY, TEXAS
DAVID LEE HATCHER,	§	
ROBERT ALAN HATCHER, AND	§	
MARJORIE CORDES	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JULIE HANNAH ("Plaintiff"), and files her Original Petition complaining of DAVID LEE HATCHER ("David"), ROBERT ALAN HATCHER ("Robert"), and MARJORIE CORDES ("Marjorie"), and for cause of action respectfully shows as follows:

I.

Discovery Level

Discovery in this case will be conducted under Level Two, Tex. R. Civ. P. 190.3. Plaintiff affirmatively pleads that this suit does not fall under the expedited-actions process of Tex. R. Civ. P. 169 because Plaintiff seeks damages in excess of \$100,000.

II.

Relief Sought

Plaintiff seeks monetary relief over \$200,000, but not more than \$1,000,000.

III.

Parties

Plaintiff is a resident of Travis County, Texas.

David is a resident of Harris County, Texas who may be served at his residence at 11131 Meadowick Drive, Houston, Texas 77024.

Robert is a resident of Caldwell County, Texas who maintains an office in Bexar County, Texas. Robert may be served at his residence at 822 W. San Antonio Street, Lockhart, Texas 78644 or his office at 4531 Vance Jackson, Suite 101, San Antonio, Texas 78230.

Marjorie is a resident of Aransas County, Texas who may be served at her residence at 305 S. Kossuth St., Rockport, Texas 78382, or wherever she is currently located.

IV.

Pursuant to Tex. Civ. Prac. & Rem. Code §15.017, a suit for libel or slander must be filed in the county of Plaintiff's residence or the county where any of the defendants reside. One of the Defendants, David, resides in Harris County, Texas. Even though there is no mandatory venue provision which applies to the claim for tortious interference with inheritance rights, Tex. Civ. Prac. & Rem. Code §15.002(a)(2) which establishes general venue rights also supports venue in the county of the Defendant's residence. In a suit with multiple defendants, Tex. Civ. Prac. & Rem. Code §15.005 specifies that venue as to one defendant establishes venue as to all defendants if the claims arise from the same transaction, occurrence or series of transaction or occurrences as is the case here. Venue for this suit is, therefore, proper in Harris County.

V.

Facts

After both their previous partners died, the friendship between Plaintiff and David Burnell Hatcher ("Decedent") grew. In 2000, Decedent purchased a home at 37 Front Street, Rockport, Texas, and Plaintiff and Decedent moved from their respective residences at the time into that home. Plaintiff gave up business and social opportunities to care for the needs of Decedent. Plaintiff and

Decedent continued to cohabit the property at 37 Front Street until August, 2012, when Plaintiff was forced from her home of 12 years by the circumstances on which this cause of action is based.

VI.

In addition to support and gifts given to Plaintiff by Decedent during his lifetime, Decedent prepared valid and enforceable Wills which provided for testamentary bequests to Plaintiff. Those included a holographic Will dated November 11, 2009 which contained the following paragraphs concerning Plaintiff's rights to property:

5. I bequeath the property at 37 Front Street to my son David Jr. along with the furniture, art work and decorations therein. It should be noted that furniture, lamps, art work belonging to Julie Hannah are admired within this house at 37 Front Street and that she has the unchallenged right to specify what belongs to her.

6. I bequeath to Julie Hannah \$200,000 (two hundred thousand dollars), the choice of any vehicle that I own at the time of my and choice of any mementos, wherever located, that she may wish to retain. It is noted here that the travel trailer located (now) at 6774 N. Hwy. 35N belongs to Julie, although title is in my name to avoid insurance problems.

...

8. I depend upon the good will of my sons and Julie to divide matters up equitably. Where I mention division by value, appraised value for tax purposes shall be used. It is my desire to treat my sons equally and to provide for Julie, so that she can live well, as I do appreciate the company and her effort to make my life better in these later years—despite my stubborn efforts to avoid following her instructions!

VII.

Decedent included the same basic bequest to Plaintiff in a later valid and enforceable holographic Will dated May 16, 2010 which contained the following paragraph about Plaintiff's rights to property:

5. I bequeath prior to 4 above¹ to Julie Hannah, \$200,000 in cash, choice of any auto I own at time of death, the travel trailer currently parked at 6774 Hwy. 35N in Holiday Beach and the right to occupy 37 Front St., the house we live in, for 6 months after my death, taxes and insurance paid, or for 3 months after receipt of the money noted above, whichever is longer. This item will be in effect if Julie Hannah survives me by 90 days or more.

VIII.

In 2012, Robert, who is an attorney, found the 2010 Will in Decedent's desk drawer, removed it under the pretense of determining its validity, and then kept it under the pretense of having it typed and formalized. Initially, Robert told Decedent he was taking the Will to his office to have his business partner go over it and see that it was properly written and executed. A true and correct copy of Robert's June 21, 2012 letter to Decedent concerning his taking of the 2010 Will and its validity is attached hereto as Exhibit A.

IX.

Despite the supportive tone of Robert's June, 2012 letter, after finding the 2010 Will, a campaign was initiated by Defendants to interfere with the bequest established for Plaintiff, although Plaintiff was not aware of these efforts. The health crisis suffered by Decedent in 2012 and Decedent's resulting stay in medical facilities made it possible for inaccurate information to be spread to Decedent about Plaintiff without Plaintiff's knowledge and also allowed Plaintiff to be bullied from her home without Decedent knowing that was the cause for Plaintiff's move.

¹ Paragraph "4 above" to which Decedent was referring is the paragraph dividing the remaining assets of the estate equally between David and Robert.

X.

Marjorie, who did periodic work for Plaintiff and Decedent, also joined the efforts to remove Plaintiff from Decedent's life and Decedent's Will. The efforts to accomplish this goal even included the publication of defamatory statements claiming that Plaintiff had stolen from Decedent and that she was making plans to abandon Decedent. The statements about Plaintiff were false. Plaintiff had not stolen from Decedent, and it was the uninvited armed intrusions by Robert and Marjorie's boyfriend into Plaintiff's home which caused Plaintiff to leave the home she had shared with Decedent for 12 years because Plaintiff feared for her own safety.

XI.

After convincing Decedent that Plaintiff had been stealing from him and intimidating Plaintiff into leaving their home, Robert's law firm prepared a new will for Decedent in September, 2012 which removed all bequests to Plaintiff. Instead, the bequests which were to go to Plaintiff went to Defendants. Marjorie, who had not been included in any of Decedent's prior wills, actually received the vehicle Plaintiff was to have received. Even after Decedent's death, including at Decedent's memorial service, Defendants continued to publish false statements about Plaintiff.

XII.

Tortious Interference with Inheritance

Defendants' actions constitute tortious interference with Plaintiff's inheritance rights. Through duress, false statements, manipulation, and outright deception, Defendants turned Decedent against Plaintiff and caused Decedent to withdraw the bequest to Plaintiff which would have otherwise passed to Plaintiff by inheritance, thus preventing Plaintiff from receiving what she was to have received from Decedent's estate. Instead, when Decedent died on January 2, 2013,

Defendants received the property Plaintiff was to receive. David completed the process by thereafter making application to probate the September, 2012 Will even though he knew that Plaintiff's bequest had been excluded only because Decedent had been misled and manipulated into signing a new and changed Will. Thus, Plaintiff has been damaged in an amount within the jurisdictional limits of this court.

XIII.

Slander

Defendants have published statements involving private issues by oral communications referring to Plaintiff which were false and defamatory.

XIV.

Because the defamatory statements concerned Plaintiff's honesty and falsely accused Plaintiff of a crime, they were defamatory per se and Plaintiff is entitled to a presumption of general damages. Plaintiff seeks damages within the jurisdictional limits of this court because Defendants' false statements did result in damages to Plaintiff, including, but not limited to, the loss of the inheritance she was to receive from Decedent.

XV.

Conspiracy

Defendants combined for the unlawful purpose of defaming Plaintiff and interfering with Plaintiff's right to inherit from Decedent. Defendants had a meeting of the minds about their objectives and Plaintiff suffered damages as a result of their actions.

XVI.

Exemplary Damages

Defendants' actions were committed willfully, maliciously, and with the intent to deprive Plaintiff of her bequest so Defendants could receive the property instead. Accordingly, Plaintiff also requests that exemplary damages be awarded against Defendants.

XVII.

All conditions precedent to Plaintiff's recovery have occurred.

XVIII.

Request for Disclosures

Pursuant to Tex. R. Civ. P. 194, Plaintiff requests that Defendants disclose, within fifty (50) days of the service of this request, the information or material described in Rule 194.2 (a) through (i).

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that, on final hearing, Plaintiff be granted the relief she seeks, together with interest as allowed by law, all costs of Court, and such other and further relief to which Plaintiff may show herself entitled.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

Bobbie G. Bayless

State Bar No. 01940600

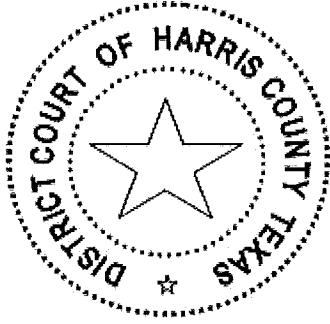
2931 Ferndale

Houston, Texas 77098

Telephone: (713) 522-2224

Telecopier: (713) 522-2218

Attorneys for Plaintiff



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this February 7, 2014

Certified Document Number: 56957400 Total Pages: 7

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

2013-48071 / Court: 125

Exhibit A

Hatcher & Associates
Attorneys and Counselors at Law
118 Broadway #221 San Antonio, Texas 78205
210-861-0347; 512-995-1059
fax: 866-860-4272

June 21, 2012

David B. Hatcher
37 Front Street
Rockport, Texas

Re: Last Will and Testament / David B Hatcher

Dear Dad:

I have not yet returned the items you provided me and I wanted to let you know why. First, the drafting is excellent. You have created an exquisite example of a holographic will which is fully enforceable. It supersedes all prior wills and will do exactly what it is you wish done.

That said, I have made a copy of it and provided that to Franz vonHoffmann, the individual I office with at this time for his evaluation and for him to formalize a "self proving" copy. Right now, we would need to prove up your signature since the proper witnessing and acknowledgement ate not attached. Franz is finishing his LLM in Tax Law with a specialization in Estate and Gift Taxation. He is the expert, not me and he needs to draft, as I cannot do so since I take under the will. The Bar says that would mbe a conflict of interest.

Until the self proving Will is executed, I would like your permission to keep this original in my safe, where it is now, to assure it cannot be destroyed prior to that execution. Of course, I will return it at any time you feel you want me to but we cannot get this finished prior to my leaving to see Dorian in Colorado on Friday and I really do not want to trust the original to the mails. If it is OK with you, I will hand carry this original and the self proving will to you as soon as I return, the first week of July.

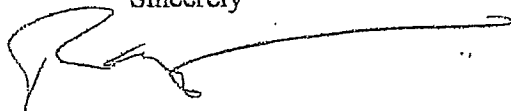
If this is not OK, just let me know. My personal phone numbers are:

Personal Cell: 512-995-1059

Office Cell: 210-861-0347

Fax (online): 866-860-4272

Sincerely





I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this February 7, 2014

Certified Document Number: 56957401 Total Pages: 2

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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NO. 2013-48071

FILED
Chris Daniel
District Clerk
SEP 20 2013
Time: _____
By: _____

**JULIE HANNAH,
PLAINTIFF**

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§

IN THE DISTRICT COURT

v.

125TH JUDICIAL DISTRICT

**DAVID LEE HATCHER
ROBERT ALAN HATCHER,
AND
MARJORIE CORDES**

HARRIS COUNTY, TEXAS

**DEFENDANT'S SPECIAL APPEARANCE and PLEA TO THE JURISDICTION;
SPECIAL EXCEPTION; AFFIRMATIVE DEFENSES;
SPECIFIC DENIALS AND GENERAL DENIAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW ROBERT ALAN HATCHER, Defendant in the above entitled cause of action files this Special Appearance and Plea to the Jurisdiction of this Court, Respondent's Special Exceptions to Plaintiffs Petition, Respondent's Affirmative Defenses plead; and subject to the forgoing, his Specific Denials and General Denial, and further shows this Honorable Court the following:

SPECIAL APPEARANCE and PLEA TO THE JURISDICTION

Defendant appears here only specially and only for the purpose of objecting to the jurisdiction of this Court. Defendant claims this Court is without authority to determine the subject in controversy because Plaintiff's Petition does not shows on its face that the Court has jurisdiction over this controversy. Plaintiff makes only conclusory claims for jurisdiction and venue with no legal or

FILED

Chris Daniel
District Clerk

SEP 20 2013

Time: _____
Harris County, Texas
By _____
Deputy

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

factual basis to support said claims being shown with such sufficiency as to confer jurisdiction on this court. Defendant should not have to assume fact and or law sufficient to confer jurisdiction both over the causes of action and each individual defendant. A blanket averment of "conspiracy" without further will not confer jurisdiction over multiple defendants merely because one may reside in Harris County, and if there is no jurisdiction, there certainly is no proper venue.

While Plaintiff's Original Petition claims to set out proper jurisdiction and venue by virtue Tex. Civ. Prac. & Rem. Code Sec. 15.007, which states a suit for damages for libel, slander, or invasion of privacy shall be brought and can only be maintained in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county in which any defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff, the Plaintiff's Petition also claims jurisdiction and venue under both the general venue statute, Tex. Civ. Prac. & Rem. Code Sec. 15.002(a)(2) and multiple defendant venue statute at Sec. 15.005. The problem being, the Plaintiff's pleadings do not set out any case in which this Defendant, Robert Hatcher, can be called into a Harris County Court for any alleged act that this Defendant, Robert Hatcher, either committed or conspired to commit in Harris County, Texas and, it fails on its face to do so for either of the other defendants alleged. It relies entirely on the group actions of these defendants without setting forth any specific act of concert in an area which allows this court to proceed.

Because the accusations are so generic and boilerplate and because Defendant Robert Hatcher did not and has not put himself under jurisdiction and venue of the Harris County District Courts, the case should be dismissed as regards this defendant, or at minimum plaintiff should be required to

replead with such sufficiency as to allow this defendant to know what specifically is being alleged against him and how HE conspired to do anything which should be heard in Harris County, actions that would allow this court to contend jurisdiction over the subject matter in controversy and this defendant in particular.

SPECIFIC EXCEPTIONS

Defendant submits the following exceptions to Plaintiff's Petition:

1. Plaintiff's allegations as to Tortuous Interference with an Inheritance Expectancy in Paragraph XII, Slander in paragraph XIII and XIV and Conspiracy in paragraph XV are so general that Defendant does not have fair notice of the claim;
2. Plaintiff petition does not plead elements of the causes of action cited. Plaintiff's petition does not plead factual contentions that relate to the causes of action cited sufficient to give notice of the claims made;
3. Plaintiff's pleadings generally state separate causes of action and no factual basis for those causes;
4. The Plaintiff's pleadings for Tortuous Interference with an Expectancy in Paragraph XII do not plead a cause of action for which the Plaintiff is entitled to relief because the Plaintiff did not take any action to contest the validity of the Will probated in Aransas County and as such is not entitled to relief here in this forum or under such a cause of action and the Plaintiff's pleading should therefore be dismissed as to this cause;

AFFIRMATIVE DEFENSES

Collateral Estoppel- The facts sought to be litigated in this case, at least as to the Tortious interference, undue influence, duress, manipulation and deception claimed by the Plaintiff against this Defendant were “fully and fairly litigated” in a prior action, namely Cause No. 5329 in the Aransas County Court at Law exercising powers as a probate court in admitting the Will of David Burnell Hatcher to Probate as a Muniment of Title;

- a. The court's determination of these facts was essential to the trial court's judgment in the prior action; and
- b. The parties would have been “cast as adversaries” in the prior action had Plaintiff filed a timely action.

Failure to satisfy condition precedent- A condition precedent is an event that must happen or be performed before a party's right can accrue to enforce an obligation. Failure to satisfy a condition precedent generally results in no liability, here, the Plaintiff failed to satisfy the condition precedent of filing a contest to the Probate action in Aransas County;

Laches- Plaintiff unreasonably delayed in exercising her legal or equitable rights in asserting them, namely the ability to contest the Aransas County probate proceeding; and the delay on the part of the Plaintiff caused a good faith change of position by the Defendant to his detriment because of the delay, namely the ability to utilize the probate court and the Aransas County venue as the Probate Code had intended.

Proportionate responsibility- Under the law of proportionate responsibility, a Plaintiff may not recover damages if its percentage of responsibility for causing the claimed damages is

greater than fifty percent. Tex. Civ. Prac. & Rem.Code Ann. § 33.001. Here, damages claimed by the Plaintiff are in excess of 50% because, had the Plaintiff properly contested the Will of David Burnell Hatcher for claims she is attempting to make here, the County Court in Aransas County could have altered the Will if it sustained the Contest and the Plaintiff would have been made whole. By not taking the action of filing a contest timely, the Plaintiff proportionately responsible for any damages she now claims.

Quasi-Estoppel- is a defense that precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken. The doctrine applies when it would be unconscionable to allow a person to maintain a position inconsistent with one to which he acquiesced. Because the Plaintiff acquiesced to the Probate of the Hatcher Will as a Muniment of Title and did not Contest the Will she should be foreclosed in taking a contrary position now to Robert Hatcher's disadvantage.

Ratification- Defendant Robert Hatcher claims the affirmative defense of ratification on the part of Plaintiff. Plaintiff approved by conduct the Probate of the Hatcher Will as Muniment of Title because she filed no contest to the Probate. Plaintiff had full knowledge of the facts of the earlier act and gave validity to the act of the Aransas County Courts by not contesting in that action.

Waiver. Waiver is the intentional relinquishment of a known right or intentional conduct inconsistent with claiming that right. Here, the Plaintiff relinquished the right to contest the contents of the Will of David Burnell Hatcher by failing to file a contest to the Probate of the Will. Waiver is ordinarily a question of fact, but when the surrounding facts and circumstances

are undisputed, as in this case, the question becomes one of law. No contest was filed so waiver applies.

SPECIFIC DENIALS

Defendant Robert Hatcher specifically denies that Defendant Hatcher ever interfered with any expectancy of inheritance that the Plaintiff might claim, and requires strict proof.

Defendant Robert Hatcher specifically denies that Defendant Robert Hatcher made any statements, either oral or written, about the Plaintiff that were slanderous or defamatory or untrue and requires strict proof

Defendant Robert Hatcher specifically denies that conspired with any one or more of the other Defendants in this case to commit any of the acts claimed in the Plaintiff's petition and requires strict proof.

GENERAL DENIAL

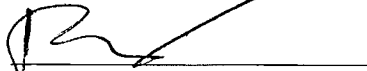
Subject to all pleadings set forth herein before and without waiving any in any regard, Defendant Robert Hatcher denies each and every allegation of Plaintiff's Original Petition, and demands strict proof thereof .

PRAYER

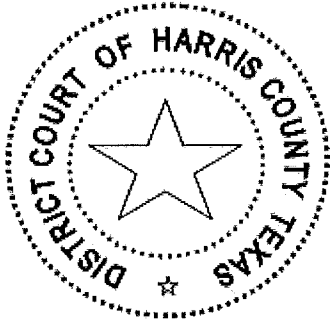
Defendant Robert Hatcher prays the Court set this matter for hearing and after hearing dismiss the Plaintiff's Petition; as regards this defendant, sustaining his plea to the jurisdiction of this court, finding this action improvidently taken in this jurisdiction and venue, or, failing such a ruling, the court should sustain the exceptions to the Plaintiff's Petition and order Plaintiff to replead, and specifically plead facts and elements of the causes of action claimed so

that Defendants may have notice of the claims and facts alleged. and failing to timely do so this matter be dismissed with prejudice to its refiling and absent either of these dismissals set this matter for trial, following discovery and thereafter enter judgment in favor of Defendant, awarding Defendant the costs of court, attorney's fees, and such other and further relief as Defendant may be entitled to in law or in equity.

Respectfully Submitted,



**Robert Hatcher, Pro Se
822 W. San Antonio
Lockhart, Texas 78644
512-995-1059
fax: 866-861-0347**



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this February 7, 2014

Certified Document Number: 57412830 Total Pages: 7

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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CAUSE NO. 2013-48071

JULIE HANNAH	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	HARRIS COUNTY, TEXAS
DAVID LEE HATCHER, ROBERT	§	
ALAN HATCHER, and MARJORIE	§	
CORDES	§	
Defendants	§	125th JUDICIAL DISTRICT

DEFENDANT MARJORIE CORDES'S PLEA IN ABATEMENT; MOTION TO STAY; MOTION TO TRANSFER VENUE; ORIGINAL ANSWER; and REQUEST FOR DISCLOSURES

Julie Hannah filed this lawsuit seeking payment of monies she believes she should have inherited from David Burnell Hatcher (the "Decedent"). The Decedent's will (the "Will") was probated in Aransas County prior to the filing of this lawsuit (Ex. A). Therefore Aransas County retains jurisdiction and venue over this dispute to the exclusion of all other courts; Harris County has no jurisdiction and is not a proper venue; and this case should be abated and transferred to Aransas County.

A. Arguments and Authorities

1. **This Lawsuit is a Probate Proceeding**

The Probate Code defines the term "probate proceeding" to "include":

(4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;

(5) a claim arising from an estate administration and any action brought on the claim;

TEX. PROB. CODE § 3(bb). Ms. Hannah seeks to receive what she believes is her "inheritance" and "what she was to have received from Decedent's estate." (Pl.'s

Petition, p. 5, emphasis added). Ms. Hannah's claims are "a claim for money owed by the decedent" within the meaning of Probate Code and this proceeding is a Probate Proceeding.

Alternatively, Ms. Hannah's claims arise from the administration of the Decedent's estate. Ms. Hannah's claims center around the validity of the terms of the Decedent's Will. Ms. Hannah's claims are therefore an "application ... regarding the probate of a will or an estate administration" within the meaning of the Probate Code. Therefore, this proceeding is a Probate Proceeding.

2. Aransas County has Jurisdiction and Venue Over Probate Proceedings Relating to the Decedent's Will and Estate

The application for probate of the Will was filed in the Aransas County Court at Law in an action styled Cause No. 5329, *In the Estate of David Burnell Hatcher, Deceased*, in the County Court at Law, Aransas County. An Order was entered in that case admitting the Will to probate as a muniment of title on February 5, 2013. (Ex. A). The present lawsuit was not filed until over six months later, August 15, 2013.

With respect to venue, the Texas Probate Code provides that:

(a) When two or more courts have concurrent venue of a probate proceeding, the court in which the application for the proceeding is first filed **shall have and retain jurisdiction** of the proceeding **to the exclusion of the other court or courts**.

(b) If probate proceedings involving the same estate are commenced in more than one county, each proceeding commenced in a county other than the county in which a proceeding was first commenced is stayed until final determination of venue by the court in the county where first commenced.

TEX. PROB. CODE § 8 (emphasis added). "In probate proceedings ... the court in

which suit is first filed acquires dominant jurisdiction to the exclusion of coordinate courts." See, *In the Estate of Gilbert*, 2012 Tex. App. LEXIS 828, at *7-8 (Tex. App.—Tyler 2012) (citing *Bailey v. Cherokee Cnty. Appraisal Dist.*, 862 S.W.2d 581, 586 (Tex. 1993)).

In this case, a Probate Proceeding relating to the Decedent's Will and estate was first filed in Aransas County. Aransas County therefore retains jurisdiction and venue over all Probate Proceedings relating to the Decedent's Will and estate, to the exclusion of all other courts under section 8(a) of the Probate Code.

As described above, this lawsuit is a Probate Proceeding within the meaning of the Probate Code. Accordingly, this proceeding "is stayed until final determination of venue by the court in the county where first commenced," which is Aransas County. TEX. PROB. CODE § 8(b).

3. Venue is Proper in Aransas County because the Dispute in Aransas County Shares Common Issues and Parties with the Current Dispute.

When the subject matter of the two suits is inherently interrelated, the court where the second suit was filed must grant a motion to abate. *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 247 (Tex. 1988); *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974). It is not necessary that the exact issues and all the parties be included in the first action before the second is filed, provided that the claim in the first suit may be amended to bring in all necessary and proper issues and parties. *Wyatt*, 760 S.W.2d at 247. To demonstrate it is entitled to an abatement, the party filing the motion must allege and prove the other suit (1) was commenced first and citation has been served, (2) was filed in a county of proper venue, (3) is still

pending, (4) involves the same parties, and (5) involves the same controversies. *See In re Sims*, 88 S.W.3d 297, 303 (Tex. App.—San Antonio 2002, orig. proceeding).

The Will was properly probated in Aransas County. (Ex. A). Ms. Hannah's claims arise from her belief that she should have inherited from the Decedent. Her claims therefor center around the administration of the Decedent's estate and the validity of the terms of the Decedent's Will. All three of the Defendant's were beneficiaries under that Will. The issues in this case are therefore inherently intertwined with the issues and controversies that the Aransas County Court at Law would have to decide in a will contest, over which it would have exclusive jurisdiction and venue, because it is "the court in which the application for the proceeding is first filed." TEX. PROB. CODE § 8(a). Any interested party can file a Bill of Review in the probate court within two years of the will being probated, and the probate court's entry of the will does not become final until the expiration of two years, so in effect the probate of the Will remains pending. TEX. PROB. CODE § 31. In short, this case is a classic example of a case subject to abatement and transfer of venue.

Because Aransas County has jurisdiction over this case, and venue is proper in Aransas County, in the interests of judicial economy, this case should be transferred to Aransas County. In these circumstances, abatement and transfer of venue is proper. *See, e.g., Cherukula v. Estate of Spradling*, 2006 Tex. App. LEXIS 3051, at *62006 (Tex. App. LEXIS 3051 (Tex. App.—Austin 2006, no pet.) (after a probate proceeding was filed, a probate proceeding was then filed in another

county's district court; the district court granted a motion to transfer venue to the probate court).

B. General Denial

Cordes generally denies each and every allegation in Hannah's Petition, denies that Hannah has suffered any damages, and demands strict proof thereof as required by the Constitution and laws of the State of Texas.

C. Affirmative Defenses

Cordes is not liable to Hannah for any slander because of the affirmative defense of truth.

D. Request for Disclosures

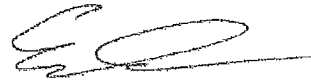
Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff is requested to disclose within thirty days of service of this request the information and material described in Rule 194.2(a) through (l).

WHEREFORE, PREMISES CONSIDERED, Defendant Marjorie Cordes respectfully requests that the Court grant her motion to stay and transfer this case to Aransas County, that all relief requested in Plaintiff's Original Petition be denied, that Plaintiff take nothing herein, and that Defendant have such other and further relief to which she may be justly entitled.

Dated October 11, 2013

Respectfully submitted,

THE STINEMETZ LAW FIRM PLLC




Erika C. Anderson
 State Bar No. 24078144
 5120 Woodway Drive, Suite 6019
 Houston, Texas 77056
 Telephone: 713-824-7392
 Fax: 713-456-2908
 E-mail: erika.anderson@tslfirm.com

ATTORNEYS FOR DEFENDANT
MARJORIE CORDES

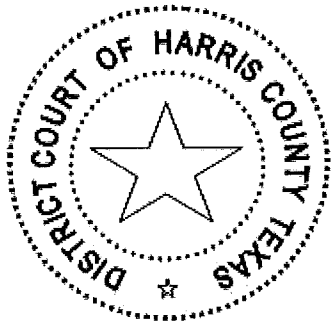
CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October 2013 a true and correct copy of the foregoing document has been served upon all parties and/or counsel of record in this proceeding in accordance with the Texas Rules of Civil Procedure, via facsimile and/or email to:

Bobbie G. Bayless Bayless & Stokes 2981 Ferndale Houston, Texas 77098 Fax: 713-522-2218	Robert Hatcher 822 W. San Antonio Lockhart, Texas 78644 Fax: 866-861-0347



Erika Anderson



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this February 7, 2014

Certified Document Number: 57754496 Total Pages: 6

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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Exhibit A

No. 5329

IN THE ESTATE OF

DAVID BURNELL HATCHER,

DECEASED

§
§
§
§
§

IN THE COUNTY COURT

AT LAW

ARANSAS COUNTY, TEXAS

ORDER ADMITTING WILL TO PROBATE
AS A MUNIMENT OF TITLE

On this day came on to be heard the Application to Probate Will of David Burnell Hatcher as Muniment of Title filed by David Lee Hatcher ("Applicant").

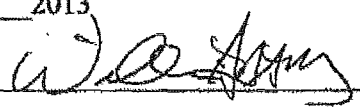
The Court heard the evidence and reviewed the Will and other documents filed or attached to said Will and finds that all the allegations and averments contained in the Application and other documents filed in this matter are true. That Notice and Citation has been given in the manner and for the length of time required under the Texas Probate Code. That the Decedent is dead; that the Court has Jurisdiction and Venue over the Estate; that the Decedent left a Will date and executed on SEPTEMBER 19, 2012 with the formalities and solemnities and under the circumstances required by Law to make it a valid Will; that on such date the Decedent had attained the age of at least 18 years and was of sound mind; that such Will was not revoked by the Decedent and that the Applicant has not presented the Will after the Four year period immediately following the Decedent's death; that no obligation to or contest of the Probate of such Will has been filed; that all the necessary proof required for probate of such Will has been made and that such Will is entitled to Probate and that there is no necessity of Administration of the Estate.

It is ORDERED that such Will is admitted to Probate as a Muniment of Title only, and the Clerk of this Court is ORDERED to record the Will, together with the Application and attachments,

in the minutes of the Court, This Order shall constitute sufficient legal authority to all persons purchasing from or otherwise dealing with the Decedent's Estate or to those persons owing money to, or having custody of any property, or acting as register or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the Decedent's Estate, for payment or transfer by them to the persons described in the Will or under this order.

The Court waives the filing of an affidavit of fulfillment in this Cause and it is ORDERED that on payment of taxes, if any are due, this Estate shall be dropped from the Docket of this Court.

Signed this 5th day of February 2013


Judge Presiding William Adams

Approved as to Form

By: 

F. Michael von Hoffmann

Attorney for Applicant

TBN. 24072516

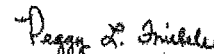
4631 Vance Jackson

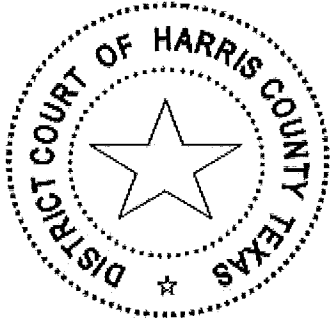
San Antonio, Texas 78230

210-270-9440(O) 866-669-8814(F)

**FILED FOR RECORD
AT 1:42 P.M.**

FEB 05 2013


PEGGY L. FRIEBELE
COUNTY CLERK, ARANSAS CO., TEXAS



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this February 7, 2014

Certified Document Number: 57754493 Total Pages: 3

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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4

CAUSE NO. 2013-48071

JULIE HANNAH, Plaintiff,	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
DAVID LEE HATCHER, ROBERT ALAN HATCHER, AND MARJORIE CORDES Defendants	§ § § § §	125 TH JUDICIAL DISTRICT

**DEFENDANT DAVID LEE HATCHER'S PLEA TO THE JURISDICTION AND,
IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE,
ORIGINAL ANSWER, AND SPECIAL EXCEPTIONS**

Defendant David Lee Hatcher ("Defendant") files his Plea to the Jurisdiction and, in the alternative, Motion to Transfer Venue, Original Answer, and Special Exceptions, and would respectfully show this Court as follows:

I. PLEA TO THE JURISDICTION AND, IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE

A. Summary of Plea to the Jurisdiction and Motion to Transfer Venue.

1. Plaintiff Julie Hannah's ("Plaintiff") lawsuit should be dismissed because the County Court at Law for Aransas County has jurisdiction over this dispute. The court in Aransas County has original jurisdiction over this matter because Plaintiff's claims are a probate proceeding and derivative to a probate matter already filed there. In the alternative, transfer of this case to Aransas County is appropriate out of concerns for judicial efficiency, comity and convenience.

B. Procedural History.

2. On January 2, 2013 David Burnell Hatcher ("Decedent") passed away. Pursuant to the mandatory venue provisions of the Texas Probate Code, Decedent's will was probated in Aransas County. *See* TEX. PROB. CODE § 6 (Vernon Supp. 2012). Further, the Aransas County

court has determined that it has jurisdiction and venue. See Order Admitting Will to Probate as a Muniment of Title, attached as Exhibit A and incorporated by reference. Plaintiff has not contested the venue or jurisdiction of the Aransas County court.

3. On August 12, 2013, Plaintiff filed her Original Petition in this Court (the "Petition"). In her Petition, Plaintiff purports to assert causes of action of tortious interference with inheritance, slander, and conspiracy, though the bases for her claims is unclear. Plaintiff alleges that, pursuant to a superseded will executed by Decedent, she would have been entitled to a distribution of certain property from the Decedent's estate. As such, this matter is a "probate proceeding" over which the Aransas County court has jurisdiction.

C. Plea to the Jurisdiction.

4. This case should be dismissed because the county court in Aransas County has original jurisdiction to hear Plaintiff's claims. Plaintiff's lawsuit is, in both form and substance, a probate proceeding. The Texas Probate Code broadly defines a "probate proceeding" as "a matter or proceeding related to the estate of a decedent" and includes:

an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent . . . a claim arising from an estate administration and any action brought on the claim . . . and *any other matter related to the settlement, partition, or distribution of an estate. . . .*"

TEX. PROB. CODE § 3 (bb)(4) (Vernon Supp. 2012) (emphasis added).

5. Given the allegations in the Petition, the substance of the Plaintiff's dispute with Defendant is Plaintiff's alleged interest in a distribution from Decedent's estate. Indeed, each of Plaintiff's causes of action specifically relates to and references the changes Decedent made to his will. Plaintiff's claim for tortious interference with inheritance revolves around the probate of a will that did not include Plaintiff. See Petition at 5-6. Similarly, Plaintiff's slander claims

seek damages based upon “the loss of the inheritance she was to receive from Decedent.” *Id.* at 6.

6. As “a matter or proceeding related to the estate of a decedent . . . and [a] matter related to the . . . distribution of an estate,” Plaintiff’s lawsuit belongs in the court where the probate proceeding was initially (and correctly) instituted—the county court in Aransas County. *See* TEX. PROB. CODE § 3 (bb) (Vernon Supp. 2012).

7. Even if this Court’s jurisdiction were considered concurrent with the Aransas County court, the case should be dismissed. The Texas Probate Code provides that

[w]hen two or more courts have concurrent venue of a probate proceeding, the court in which the application for the proceeding is first filed *shall have and retain jurisdiction of the proceeding to the exclusion of the other court or courts* . . .

TEX. PROB. CODE § 8 (Vernon Supp. 2012) (emphasis added).

8. Therefore, this case should be dismissed for lack of jurisdiction.¹

D. Motion to Transfer Venue.

9. In the alternative, Defendant respectfully requests that this case be transferred to the court in Aransas County as this Court does not have priority venue and for considerations of judicial comity, efficiency and convenience. *See* TEX. PROB. CODE § 8A (a) and (b) (Vernon Supp. 2012). As explained above, Plaintiff’s action is a probate proceeding over which the Aransas County court has priority venue, and is inextricably interrelated to the probate proceedings filed in Aransas County. Further, allowing all issues related to Decedent’s estate to be resolved by the court in Aransas County would promote judicial efficiency because multiple courts would not be forced to consider similar issues between similar parties, and would be in the

¹ Alternatively, this Court should stay the matter if a further venue determination by the Aransas County court is required. *See* TEX. PROB. CODE § 8(b) (Vernon Supp. 2012) (“If probate proceedings involving the same estate are commenced in more than one county, each proceeding commenced in a county other than the county in which a proceeding was first commenced is stayed until final determination of venue by the court in the county where first commenced.”)

best interest of the heirs or beneficiaries of the Decedent's will.

II. GENERAL DENIAL

10. Subject to and without waiving the foregoing Plea to the Jurisdiction and Motion to Transfer, Defendant, under Rule 92 of the Texas Rules of Civil Procedure, denies each and every allegation in the Petition, along with any subsequent amended or supplemental pleading, and says that the allegations contained therein are not true, either in whole or in part, and demands strict proof thereof as required by the law of the State of Texas. Defendant further reserves the right to answer in greater particularity in advance of the trial hereof.

III. AFFIRMATIVE DEFENSES

11. Subject to and without waiving the foregoing Plea to the Jurisdiction, Motion to Transfer, and General Denial, Defendant alleges, pursuant to Rule 94 of the Texas Rules of Civil Procedure, the following affirmative defenses:

- a. Plaintiff's claims and damages are barred, in whole or in part, because of the doctrine of estoppel and quasi-estoppel;
- b. Plaintiff's claims and damages are barred, in whole or in part, because of res judicata and collateral estoppel;
- c. Plaintiff's claims and damages are barred, in whole or in part, because Defendant's conduct, if any, was privileged; and
- d. Plaintiff's claims and damages are barred, in whole or in part, because Defendant's conduct, if any, was true and justified.

IV. SPECIAL EXCEPTIONS

12. Texas follows a "fair notice" standard for pleadings, which means that the pleader must plead sufficient facts to give adequate and fair notice to the opposing party. *Horizon v. Auld*, 34 S.W.3d 887, 896 (Tex. 2000). Subject to and without waiving the foregoing Plea to the

Jurisdiction, Motion to Transfer, General Denial, and Affirmative Defenses, Defendant asserts these special exceptions. Plaintiff's Petition is defective in that it:

- a. fails to provide fair notice because, in paragraphs IX, XI, XII, XIII, XIV, XV, and XVI, the Petition alleges tortious conduct by "the Defendants" generally without identifying what tortious conduct Defendant David Lee Hatcher is alleged to have committed;
- b. does not adequately plead, and fails to provide fair notice regarding, the cause of action for tortious interference with inheritance because, in paragraph XII, the Petition does not identify any independently tortious or unlawful act of interference by Defendant David Lee Hatcher;
- c. does not adequately plead, and fails to provide fair notice regarding, the cause of action of slander because, in paragraphs XIII and XIV, the Petition does not identify any false, published statement made by Defendant David Lee Hatcher, concerning Plaintiff.

V. PRAYER

For these reasons, Defendant David Lee Hatcher respectfully requests that this Court dismiss this case for want of jurisdiction or, in the alternative, transfer this case to Aransas County or stay the case pending a venue determination by the court in Aransas County. Should this case proceed to a determination of the merits in this Court, Defendant respectfully requests that this Court require Plaintiff to replead as requested herein, and ultimately enter judgment that Plaintiff takes nothing. Lastly, Defendant respectfully requests all other and further relief, at law and in equity, to which Defendant shows himself to be justly entitled.

Respectfully submitted,

HAYNES AND BOONE, L.L.P.

By: 

Odean L. Volker

State Bar No. 20607715

Wolf McGavran

State Bar No. 24074682

One Houston Center

1221 McKinney, Suite 2100

Houston, Texas 77010

Telephone: (713) 547-2036

Facsimile: (713) 547-2600

ATTORNEYS FOR DEFENDANT

DAVID LEE HATCHER

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record on this 17th day of October, 2013, as follows:

Counsel for Plaintiff

Bobbie G. Bayless
2931 Ferndale
Houston, TX 77098

- CM/RRR
- Hand-Delivery
- Over-Night Delivery
- Facsimile: (713) 522-2218
- Electronic E-Filing Service

Defendant Robert Hatcher, Pro Se

Robert Hatcher
822 W. San Antonio
Lockhart, Texas 78644

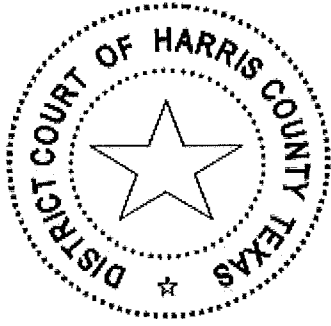
- CM/RRR
- Hand-Delivery
- Over-Night Delivery
- Facsimile: (866) 861-0347

Counsel for Defendant Marjorie Cordes

Erika C. Anderson
5120 Woodway Drive, Suite 6019
Houston, Texas 77056

- CM/RRR
- Hand-Delivery
- Over-Night Delivery
- Facsimile: (713) 456-2908
- Electronic E-Filing Service


Odean Volker



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this February 7, 2014

Certified Document Number: 57881097 Total Pages: 7

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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No. 5329

IN THE ESTATE OF	§	IN THE COUNTY COURT
	§	
DAVID BURNELL HATCHER,	§	AT LAW
	§	
DECEASED	§	ARANSAS COUNTY, TEXAS

ORDER ADMITTING WILL TO PROBATE
AS A MUNIMENT OF TITLE

On this day came on to be heard the Application to Probate Will of David Burnell Hatcher as Muniment of Title filed by David Lee Hatcher ("Applicant").

The Court heard the evidence and reviewed the Will and other documents filed or attached to said Will and finds that all the allegations and averments contained in the Application and other documents filed in this matter are true. That Notice and Citation has been given in the manner and for the length of time required under the Texas Probate Code. That the Decedent is dead; that the Court has Jurisdiction and Venue over the Estate; that the Decedent left a Will date and executed on SEPTEMBER 19, 2012 with the formalities and solemnities and under the circumstances required by Law to make it a valid Will; that on such date the Decedent had attained the age of at least 18 years and was of sound mind; that such Will was not revoked by the Decedent and that the Applicant has not presented the Will after the Four year period immediately following the Decedent's death; that no obligation to or contest of the Probate of such Will has been filed; that all the necessary proof required for probate of such Will has been made and that such Will is entitled to Probate and that there is no necessity of Administration of the Estate.


It is ORDERED that such Will is admitted to Probate as a Muniment of Title only, and the Clerk of this Court is ORDERED to record the Will, together with the Application and attachments,



in the minutes of the Court, This Order shall constitute sufficient legal authority to all persons purchasing from or otherwise dealing with the Decedent's Estate or to those persons owing money to, or having custody of any property, or acting as register or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the Decedent's Estate, for payment or transfer by them to the persons described in the Will or under this order.

The Court waives the filing of an affidavit of fulfillment in this Cause and it is ORDERED that on payment of taxes, if any are due, this Estate shall be dropped from the Docket of this Court.

Signed this 5th day of February 2013



Judge Presiding *William Adams*

Approved as to Form

By: 

F. Michael von Hoffmann

Attorney for Applicant

TBN. 24072516

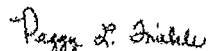
4631 Vance Jackson

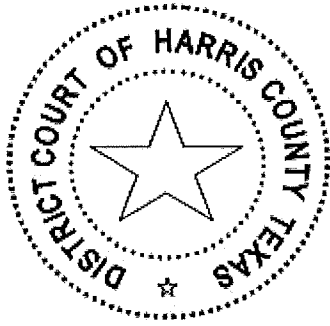
San Antonio, Texas 78230

210-270-9440(O) 866-669-8814(F)

**FILED FOR RECORD
AT 1:42 P.M.**

FEB 05 2013


PEGGY L. FRIEBELE
COUNTY CLERK, ARANSAS CO., TEXAS



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this February 7, 2014

Certified Document Number: 57881098 Total Pages: 2

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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5

NO. 2013-48071

JULIE HANNAH	§	IN THE DISTRICT COURT OF
	§	
vs.	§	
	§	HARRIS COUNTY, TEXAS
DAVID LEE HATCHER,	§	
ROBERT ALAN HATCHER, AND	§	
MARJORIE CORDES	§	125th JUDICIAL DISTRICT

**RESPONSE TO DAVID LEE HATCHER'S PLEA TO THE JURISDICTION, AND, IN
THE ALTERNATIVE, MOTION TO TRANSFER VENUE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Julie Hannah ("Plaintiff"), filing her Response to Defendant David Lee Hatcher's ("Defendant") Plea to the Jurisdiction, and, in the Alternative, Motion to Transfer Venue, and in opposition thereto would show as follows:

1. This Defendant advances the same theory relied on by another Defendant, Marjorie Cordes. Defendant also hopes to convince this Court that Plaintiff's claim for slander, tortious interference, and conspiracy is a probate proceeding. Defendant argues this Court should dismiss, or alternatively, transfer this case to Aransas County. The rationale for both requests is Defendant's erroneous assertion that this is a second probate proceeding which must defer to the Aransas County probate proceeding. That position is unsupportable.

2. Tex. R. Civ. P. 86(3) specifies that a motion requesting a transfer of venue must either provide a legal and factual basis for asserting that the county where the action is pending is not a proper county or must provide a legal and factual basis for asserting that mandatory venue, as established by one or more specifically and clearly designated statutory provisions, lies in a county other than the one in which the suit is pending. Defendant's motion does neither and, instead, relies entirely on Defendant's claim that this lawsuit is really an attempt at another probate proceeding.

By making that leap from reality, Defendant argues that because David Burnell Hatcher's (the "Decedent") estate was already probated in Aransas County, this case should be transferred there even though Decedent's estate is not a party to this case, this case has no impact on Decedent's estate, and there is no proceeding pending in Aransas County at this time. This is not a probate proceeding and Plaintiff's claims are not otherwise related to a probate proceeding, as those terms are defined by the Texas Probate Code and interpreted by related case law. Because Defendant's underlying premise is incorrect, as well as for other reasons set forth below, Defendant's motion fails.

3. It is unclear whether Defendant is even trying to argue that one of the provisions of Tex. R. Civ. P. 86(3) applies. That rule is never mentioned by Defendant, and the requirements for a successful motion to transfer venue under that rule are not met by Defendant. Regardless of whether Defendant wants his motion to be governed by that rule, however, it is. That means Defendant must defeat Plaintiff's choice of venue and prevail on his own based on the requirements of Tex. R. Civ. P. 86, using the procedures established by Tex. R. Civ. P. 87.

4. Apparently Defendant realizes he can not defeat Plaintiff's choice of venue because, he does not even address the provisions of Tex. R. Civ. P. 86 or 87. Defendant does not specifically deny or otherwise refute Plaintiff's venue facts which establish venue in Harris County. That would admittedly be an impossible task, because Plaintiff relies on both a mandatory venue provision (Tex. Civ. P. & Rem. Code §15.017) and the general venue provision (Tex. Civ. P. & Rem. Code §15.002), and under both, venue is established by the Harris County residence of Defendant. Tex. R. Civ. P. 87 provides that the party seeking to maintain venue has the burden to establish that venue can be maintained where the action is filed. Plaintiff does that through her venue facts in paragraphs

III and IV of Plaintiff's Original Petition. Tex. R. Civ. P. 87(3) provides that properly pleaded venue facts are taken as true unless specifically denied by the opposing party. Defendant did not specifically deny any of Plaintiff's venue facts, and therefore, Plaintiff has met her burden of showing that the case is maintainable in Harris County based upon the venue facts set forth in paragraphs III and IV of her petition. As a result, Tex. R. Civ. P. 87(3)(c) prevents this Court from transferring the case to Aransas County.

5. Defendant also fails to meet the other burdens placed on him by Tex. R. Civ. P. 87. Tex. R. Civ. P. 87 specifies that the party seeking to transfer venue has the burden to prove that venue is maintainable in the county to which the transfer is sought. Since Defendant has not complied with Tex. R. Civ. P. 87 by making the proof required by that rule, it is difficult for Plaintiff to identify what in Defendant's motion might be a venue fact. Most of Defendant's statements appear to be unsupported legal allegations, for which no facts are provided. But to make clear her specific denial of Defendant's contentions, to the extent they could be considered venue facts, Plaintiff specifically denies all of the following:

- (1) that Plaintiff's lawsuit is, either in form or substance, a probate proceeding;
- (2) that Plaintiff's lawsuit is derivative to a probate matter already filed;
- (3) that the substance of Plaintiff's claim is a right to receive a distribution from Decedent's estate;
- (4) that Plaintiff's claim is a matter or proceeding relating to the estate of Decedent;
- (5) that Plaintiff's claim is one related to the distribution of an estate;
- (6) that the Aransas County probate proceeding has priority venue over this case;

- (7) that this Court does not have priority venue over this case;
- (8) that the Aransas County probate proceeding and this action involve the same parties;
- (9) that the Aransas County probate proceeding in this case involve the similar issues between similar parties;
- (10) that the issues in this case are inextricably intertwined with the issues in the Aransas County probate proceeding;
- (11) that transferring the case would promote judicial efficiency; and
- (12) that the best interest of the heirs or beneficiaries of Decedent's will would be served by a dismissal or transfer even if such was a relevant inquiry when addressing the dismissal or transfer of this action.

6. Defendant does not assert this is an improper county or that mandatory venue exists in another county for any reason other than his erroneous claim that this is a second probate proceeding and Aransas County has priority because it was the first probate proceeding. The basis for that position is Tex. Prob. Code §8, and the rationale is necessarily premised entirely on the erroneous position that this lawsuit is a second probate proceeding. This is a proceeding for damages against the Defendants named in the case. It is not a proceeding seeking to probate a will of Decedent or to contest the probate of a will of Decedent. Likewise, no claim is made against the Decedent, and no claim is even made against anyone in their capacity as a personal representative for Decedent's estate. It would be error to transfer the action to the Aransas County probate proceeding, even if that case was still pending, because the estate is not a party to this action. *In re Swept*, 85 S.W.3d 800 (Tex. 2002, original proceeding). This is a claim for damages against the

Defendants named in Plaintiff's suit. The venue statutes mandate the proceeding be filed either in the county of Plaintiff's residence or the county of one of the Defendants' residence. Plaintiff has complied with those venue requirements and Defendant has not denied or otherwise refuted the fact establishing that venue.

7. Of course, Tex. Prob. Code §8 only deals with venue. Defendant never addresses the jurisdictional provisions of the Probate Code which are equally unsupportive of Defendant's position. Tex. Prob. Code §4B addresses jurisdiction for matters relating to probate proceedings as follows:

- (a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:
 - (1) an action against a personal representative or former personal representative arising out of the representative's performance of the duties of a personal representative;
 - (2) an action against a surety of a personal representative or former personal representative;
 - (3) a claim brought by a personal representative on behalf of an estate;
 - (4) an action brought against a personal representative in the representative's capacity as personal representative;
 - (5) an action for trial of title to real property that is estate property, including the enforcement of a lien against the property; and
 - (6) an action for trial of the right of property that is estate property.

- (b) For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:
 - (1) all matters and actions described in Subsection (a) of this section;
 - (2) the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court; and
 - (3) the interpretation and administration of a n inter vivos trust created by a decedent whose will has been admitted to probate in the court.

- (c) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a probate proceeding includes:
 - (1) all matters and actions described in Subsections (a) and (b) of this section; and
 - (2) any cause of action in which a personal representative of an estate pending in the statutory probate court is a party in the representative's capacity as personal representative.

This case does not fall within any of the categories specified as matters related to a probate proceeding.

8. In his futile attempts to approach it some way other than by complying with Tex. R. Civ. P. 86 and 87, Defendant relies on Tex. Prob. Code §3(bb), to support his request. In doing so, he necessarily ignores the fact that this case does not fit the definitions upon which Defendant relies. Defendant necessarily ignores the fact that this case does not fit the definitions provided in that section. Defendant claims the Probate Code defines a probate proceeding broadly and even relies

on language taken out of context such as “any other matter related to the settlement, partition, or distribution of an estate.” Even then, Defendant can not provide merit for his position.

9. This case does not fall within even that so-called “broad language.” Neither the estate nor a personal representative of the estate in his representative capacity is a party to this case. As previously stated, it is not a proceeding to probate a will of Decedent or attack the probate of a will of Decedent, nor is it an action to recover anything from the Decedent or his estate. Plaintiff’s claims arise from the false statements Defendants made and the resulting interference with Plaintiff’s rights. Any suggestion that this is a claim for money owed by the Decedent is simply incorrect. This is a claim of damages against Defendants because Defendants cause Decedent to change his will to eliminate the bequest to Plaintiff. In other words, the intended interference was successful. That interference by Defendants resulted from Defendants’ wrongful actions. Those wrongful acts by Defendants are the subject of this case.

10. Defendant makes no plausible argument for avoiding the venue of this Court in this case seeking the damages caused by Defendants’ slander and tortious interference. The mere mention of Decedent’s name in Plaintiff’s Original Petition does not make this an action incident to Decedent’s estate. Plaintiff discusses her right to bequests under prior wills of Decedent because it relates to one of the elements of her claims. That does not make Plaintiff’s filing a contest of the will in existence at the time of Decedent’s death. This is a case involving slander, the consequence of which was to interfere with the bequest Plaintiff was to have received from Decedent under prior wills. Both Plaintiff and Defendants have to deal with the reality that the interference was successful and the change was made. Because that change resulted from wrongful acts of Defendants, the damage done should be borne by the Defendants who caused it. This is not a probate proceeding, nor is it so intertwined with a probate proceeding to require transfer to Aransas County.

11. Likewise, this is not a claim arising from the administration of an estate. In fact, there does not appear to have even been an administration of decedent's estate. While Plaintiff does not disagree that an order probating Decedent's will as a muniment of title was signed in Aransas County,¹ that does not impair this Court's jurisdiction or make venue improper in Harris County in this slander and tortious interference action.

12. Even under the probate code provisions Defendant cites, there are at least two impediments to Defendant's motion. In order to establish jurisdiction over matters incident to an estate, the matters must actually be incident to an estate and a probate estate must actually be pending at the time Plaintiff's suit was filed. The exhibit attached to Defendant's motion clearly shows Decedent's will was probated as a muniment of title. The order even specifies that there will be no administration of Decedent's estate (See Exhibit A to Defendant's motion). Even if the order itself did not indicate there was to be no administration of Decedent's estate, a Texas court has already spoken on this issue and nullified Defendant's position that there is still a pending action. The court in *Chamberlain v. Witts*, 696 S.W.2d 204, 206 (Tex. App.—Dallas, 1985) held that, to be incident to an estate, the case must be one in which the outcome will have direct bearing on assimilating, collecting, or distributing decedent's estate. This case does not have the necessary impact on the outcome of the probate proceeding because that is not what it is about.

13. Also, just as in the *Chamberlain* case, there is no estate pending that needs to be assimilated, collected, or distributed. Even though the *Chamberlain* case did actually involve two probate proceedings and what is before this Court does not, the *Chamberlain* case does have a similarity to this case. The probate proceeding in the *Chamberlain* case also involved a will

¹ Since Defendants did not bother to notify Plaintiff of either the existence of Decedent's new will or the fact that it was being probated, it is particularly ironic that they now claim she is somehow bound by what occurred in that proceeding or either should have somehow been a party to the proceeding.

probated as a muniment of title. The *Chamberlain* court held that because the probate was filed as a muniment of title, there was no estate pending and the case filed in connection with the probate proceeding, as if incident thereto, had to be dismissed for lack of jurisdiction. So, there is no proceeding incident to the Aransas County probate and there is no “estate” in Aransas County. Thus, this suit could not be moved to that court on the theory that it is incident to the estate, even if it was necessary to the resolution of Decedent’s estate, which it clearly is not.

14. These same problems prevent Defendant from prevailing on his requests that the proceeding be dismissed or stayed. Defendant also seeks the dismissal of this case because Defendant claims that since the Aransas County probate proceeding and this case are so related as to involve similar issues between similar parties, this case must be dismissed to allow the Aransas County case to exercise some type of dominant jurisdiction. As stated, there is no case in which these issues could be addressed even if they had something in common with the probate issues—which they don’t. Defendant presents no authority for the position that a case in which the Decedent’s estate is not even a party should somehow be dismissed in deference to a now-closed probate proceeding on which the case has no impact.

15. This theory is also without merit for the same reasons previously discussed in this response. This case does not have common parties or issues, but there is no estate pending the Aransas County in which to insert it even if it did. In making his argument, Defendant simply ignores the fact that the Aransas County muniment of title proceeding is over; that Plaintiff was not a party to that proceeding, and in fact, was not even informed of its existence; and that the Aransas County probate proceeding and Plaintiff’s tort claims are not intertwined.

16. Defendant also argues that Tex. Prob. Code §8 required subsequent probate proceedings filed in other counties to be stayed in favor of venue determinations in the probate

proceeding first commenced. That provision is not helpful to Defendant's position, however, because this is not a subsequent probate proceeding. Defendant's plea to the jurisdiction should also be denied, as should Defendant's request that this proceeding be stayed which necessarily flows from the argument that this was a second probate proceeding should also be denied.

WHEREFORE, PREMISES CONSIDERED, Plaintiff asks that Defendant's Plea to the Jurisdiction, and, in the Alternative, Motion to Transfer Venue be denied, and for such other and further relief to which she may show herself entitled.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

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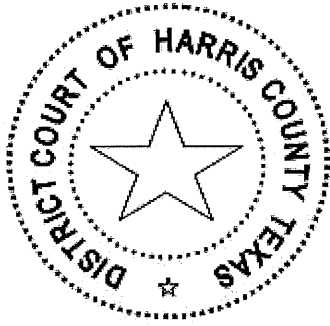
I hereby certify that a true and correct copy of the foregoing has been forwarded to all counsel of record via Telecopier on this 1st day of November, 2013.

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BOBBIE G. BAYLESS



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this February 7, 2014

Certified Document Number: 58112859 Total Pages: 11

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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6

NO. 2013-48071

JULIE HANNAH	§	IN THE DISTRICT COURT OF
	§	
vs.	§	
	§	HARRIS COUNTY, TEXAS
DAVID LEE HATCHER,	§	
ROBERT ALAN HATCHER, AND	§	
MARJORIE CORDES	§	125 th JUDICIAL DISTRICT

**RESPONSE TO MARJORIE CORDES' PLEA IN ABATEMENT, MOTION TO STAY,
AND MOTION TO TRANSFER VENUE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Julie Hannah ("Plaintiff"), filing her Response to Defendant Marjorie Cordes' ("Defendant") Plea in Abatement, Motion to Stay,¹ and Motion to Transfer Venue, and in opposition thereto would show as follows:

1. Tex. R. Civ. P. 86(3) specifies that a motion requesting a transfer of venue must either provide a legal and factual basis for asserting that the county where the action is pending is not a proper county or must provide a legal and factual basis for asserting that mandatory venue, as established by one or more specifically and clearly designated statutory provisions, lies in a county other than the one in which the suit is pending. Defendant's motion does neither and, instead, relies entirely on Defendant's claim that this lawsuit is really a probate proceeding. By making that leap from reality, Defendant argues that because David Burnell Hatcher's (the "Decedent") estate was already probated in Aransas County, this case should be transferred there even though Decedent's estate is not a party to this case, this case has no impact on Decedent's estate, and there is no proceeding pending in Aransas County at this time. This is not a probate proceeding and Plaintiff's

¹ While Defendant's Second Amended Notice of Hearing does not mention the Motion to Stay being set for hearing, because the three motions all seem interrelated, the Motion to Stay will also be addressed in this response out of any abundance of caution.

claims do not otherwise relate to Decedent's estate, as that term is defined by the Texas Probate Code and related case law. Because Defendant's underlying premise is incorrect, as well as for other reasons set forth below, Defendant's motion fails.

2. It is unclear whether Defendant is even trying to argue that one of the provisions of Tex. R. Civ. P. 86(3) applies. That rule is never mentioned by Defendant, and the requirements for a successful motion to transfer venue under that rule are not met by Defendant. Regardless of whether Defendant wants her motion to be governed by that rule, however, it is. That means Defendant must defeat Plaintiff's choice of venue and prevail on her own based on the requirements of Tex. R. Civ. P. 86, using the procedures established by Tex. R. Civ. P. 87.

3. Tex. R. Civ. P. 87 provides that the party seeking to maintain venue has the burden to establish that venue can be maintained where the action is filed. Plaintiff does that through her venue facts in paragraphs III and IV of Plaintiff's Original Petition. Tex. R. Civ. P. 87(3) provides that properly pleaded venue facts are taken as true unless specifically denied by the opposing party. Defendant did not specifically deny any of Plaintiff's venue facts, and therefore, Plaintiff has met her burden of showing that the case is maintainable in Harris County based upon the venue facts set forth in paragraphs III and IV of her petition.

4. Apparently Defendant realizes she can not defeat Plaintiff's choice of venue because, as stated, she does not even address the provisions of Tex. R. Civ. P. 86 or 87. Defendant does not specifically deny or otherwise refute Plaintiff's venue facts which establish venue in Harris County. That would admittedly be an impossible task, because Plaintiff relies on both a mandatory venue provision (Tex. Civ. P. & Rem. Code §15.017) and the general venue provision (Tex. Civ. P. & Rem. Code §15.002), and under both, venue is established by the Harris County residence of

Defendant, David Lee Hatcher.² As a result, Tex. R. Civ. P. 87(3)(c) prevents this Court from transferring the case to Aransas County.

5. Defendant also fails to meet the other burdens placed on her by Tex. R. Civ. P. 87. Tex. R. Civ. P. 87 specifies that the party seeking to transfer venue has the burden to prove that venue is maintainable in the county to which the transfer is sought. Since Defendant has not complied with Tex. R. Civ. P. 87 by making the proof required by that rule, it is difficult for Plaintiff to identify what in Defendant's motion could possibly be construed to be a venue fact. Most of Defendant's statements appear to be unsupported legal allegations, for which no facts are provided. But to make clear her specific denial of Defendant's contentions, to the extent they could be considered venue facts, Plaintiff specifically denies all of the following:

- (1) that the Aransas County court retains jurisdiction and venue over this dispute to the exclusion of all other courts;
- (2) that Plaintiff filed this lawsuit seeking payment of monies from Decedent's estate;
- (3) that Plaintiff's lawsuit is a probate proceeding;
- (4) that Plaintiff's lawsuit seeks to receive an inheritance from Decedent's estate;
- (5) that Plaintiff's claim is a claim for money owed by the Decedent;
- (6) that Plaintiff's claims arise from the administration of Decedent's estate;
- (7) that Plaintiff's claims center around the validity of the terms of Decedent's will;

² Defendant, David Lee Hatcher, also filed a motion seeking to transfer venue but in doing so he did not deny that his residence is in Harris County.

- (8) that Plaintiff's claims are an application regarding the probate of a will or an estate administration;
- (9) that the Aransas County probate proceeding, to the extent it ever was pending, is still pending;
- (10) that the probate proceeding in Aransas County can be amended to somehow include the issues and parties in this case;
- (11) that citation was ever issued on Plaintiff in the Aransas County proceeding;
- (12) that the Aransas County probate proceeding and this action involve the same parties;
- (13) that the Aransas County probate proceeding and this case involve the same controversies;
- (14) that the issues in this case are inherently intertwined with the issues in the Aransas County probate proceeding;
- (15) that the probate of Decedent's will in Aransas County will not be final for two years and thus the proceeding in Aransas County which is no longer pending is somehow really still pending; and
- (16) that judicial economy will be served by transferring this case to Aransas County.

6. In fact, Defendant does not assert this is an improper county or that mandatory venue exists in another county. Instead Defendant seems to treat this as a case in which two different counties, i.e., Harris County and Aransas County have concurrent jurisdiction. Defendant then claims the case should be moved to Aransas County because of a probate proceeding filed there

before this case was filed. The basis for that position is Tex. Prob. Code §8, and the rationale is again premised entirely on the erroneous position that this lawsuit is a second probate proceeding. This is a proceeding for damages against the Defendants named in the case. It is not a proceeding seeking to probate a will of Decedent or to contest the probate of a will of Decedent. Likewise, no claim is made against the Decedent, and no claim is even made against anyone in their capacity as a personal representative for Decedent's estate. It would be error to transfer the action to the Aransas County probate proceeding, even if that case was still pending, because the estate is not a party to this action. *In re Swepi*, 85 S.W.3d 800 (Tex. 2002, original proceeding). This is a claim for damages against the Defendants named in Plaintiff's suit for the actions complained about in Plaintiff's petition. The venue statutes mandate the proceeding be filed either in the county of Plaintiff's residence or the county of one of the Defendants' residence. Plaintiff has complied with those venue requirements and Defendant has not denied or otherwise refuted the fact establishing that venue.

7. Of course, Tex. Prob. Code §8 only deals with venue. Defendant never addresses the jurisdictional provisions of the Probate Code which are equally unsupportive of Defendant's position. Tex. Prob. Code §4B addresses jurisdiction for matters relating to probate proceedings as follows:

- (a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:
 - (1) an action against a personal representative or former personal representative arising out of the representative's performance of the duties of a personal representative;

- (2) an action against a surety of a personal representative or former personal representative;
 - (3) a claim brought by a personal representative on behalf of an estate;
 - (4) an action brought against a personal representative in the representative's capacity as personal representative;
 - (5) an action for trial of title to real property that is estate property, including the enforcement of a lien against the property; and
 - (6) an action for trial of the right of property that is estate property.
- (b) For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:
- (1) all matters and actions described in Subsection (a) of this section;
 - (2) the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court; and
 - (3) the interpretation and administration of a n inter vivos trust created by a decedent whose will has been admitted to probate in the court.
- (c) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a probate proceeding includes:
- (1) all matters and actions described in Subsections (a) and (b) of this section; and
 - (2) any cause of action in which a personal representative of an estate pending in the statutory probate court is a

party in the representative's capacity as personal representative.

This case does not fall within any of the categories specified as matters related to a probate proceeding.

8. Nevertheless, in her attempts to approach this problem some way other than by complying with Tex. R. Civ. P. 86 and 87, Defendant relies on paragraphs (4) and (5) of Tex. Prob. Code §3(bb), to support her request. Even if those provisions determined these issues, Defendant necessarily ignores the fact that this case does not fit either of those provisions. Defendant asserts that this a "probate proceeding" because it is either:

(4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent; or

(5) a claim arising from an estate administration and any action brought on the claim.

9. This case does not fall under either provision. Neither the estate nor a personal representative of the estate in his representative capacity is a party to this case. As previously stated, it is not a proceeding to probate a will of Decedent or attack the probate of a will of Decedent, nor is it an action to recover anything from the Decedent or his estate. Plaintiff's claims arise from the false statements Defendants made and the interference with Plaintiff's then-existing rights. The suggestion that this is a claim for money owed by the Decedent is simply incorrect. This is a claim of damages against Defendants because Defendants cause Decedent to change his will to eliminate the bequest to Plaintiff. In other words, the intended interference by Defendants was successful. That interference resulted from Defendants' wrongful actions. Those wrongful acts by Defendants are the subject of this case.

10. Plaintiff does not contest the validity of the will as Defendant tries desperately to argue, nor does the mere mention of Decedent's name in Plaintiff's Original Petition make this action one related to Decedent's estate. Defendant makes no plausible argument for avoiding the venue³ of this Court in this case seeking the damages caused by Defendants' slander, tortious interference, and conspiracy. Plaintiff discusses her right to bequests under prior wills of Decedent because it relates to one of the elements of her claims. That does not make Plaintiff's filing a contest of the will in existence at the time of Decedent's death. Both Plaintiff and Defendants have to deal with the reality that Defendants' interference with Plaintiff's rights was successful and that changes were made to Decedent's will as a result of that successful interference. Because that change resulted from wrongful acts of Defendants, the damage done should be borne by the Defendants who caused it. This is not a probate proceeding, nor is it so intertwined with a probate proceeding to require transfer to Aransas County.

11. Likewise, this is not a claim arising from the administration of an estate. In fact, there does not appear to have even been an administration of decedent's estate. While Plaintiff does not disagree that an order probating Decedent's will as a muniment of title was signed in Aransas County,⁴ that does not impair this Court's jurisdiction or make venue improper in Harris County in this slander and tortious interference action.

³ Defendant also alludes to some lack of jurisdiction over Plaintiff's claims but does not develop it as anything other than a contest to venue. It appears to also be based on Defendant's argument that because Decedent's will was probated in Aransas County before this action was filed, Aransas County has acquired dominant jurisdiction over this unrelated case thus requiring Plaintiff to pursue her claims in the Aransas County probate proceeding which is no longer even pending. That position is obviously fatally flawed.

⁴ Since Defendants did not bother to notify Plaintiff of either the existence of Decedent's new will or the fact that it was being probated, it is particularly ironic that they now claim she is either somehow bound by what occurred in that proceeding or should have somehow been a party to the proceeding.

12. Even under the probate code provisions Defendant cites, there are at least two impediments to Defendant's motion. In order to establish jurisdiction over matters incident to an estate, the matters must actually be incident to an estate and a probate estate must actually be pending at the time Plaintiff's suit was filed. The exhibit attached to Defendant's motion clearly shows Decedent's will was probated as a muniment of title. The order even specifies that there will be no administration of Decedent's estate (See Exhibit A to Defendant's motion). Even if the order itself did not indicate there was to be no administration of Decedent's estate, a Texas court has already spoken on this issue and nullified Defendant's position that there is still a pending action.⁵ The court in *Chamberlain v. Witts*, 696 S.W.2d 204, 206 (Tex. App.—Dallas, 1985) held that, to be incident to an estate, the case must be one in which the outcome will have direct bearing on assimilating, collecting, or distributing decedent's estate. This case does not have the necessary impact on the outcome of the probate proceeding because that is not what it is about.

13. Also, just as in the *Chamberlain* case, there is no estate pending that needs to be assimilated, collected, or distributed. Even though the *Chamberlain* case did actually involve two probate proceedings and what is before this Court does not, the *Chamberlain* case does have a similarity to this case. The probate proceeding in the *Chamberlain* case also involved a will probated as a muniment of title. The *Chamberlain* court held that because the probate was filed as a muniment of title, there was no estate pending and the case filed in connection with the probate proceeding, as if incident thereto, had to be dismissed for lack of jurisdiction. So, there is no proceeding incident to the Aransas County probate and there is no "estate" in Aransas County. Thus,

⁵ There is likewise absolutely no authority for the suggestion by Defendant that because a bill of review could still be filed the action is still pending. Indeed, there is authority to the contrary. The holding in the case of *In re John G. Kenedy Mem'l Foundation*, 159 S.W.3d 133 (Tex. App.—Corpus Christi 2004, no writ) was that filing a bill of review does not open a closed estate proceeding.

this suit could not be moved to that court on the theory that it is incident to the estate, even if it was necessary to the resolution of Decedent's estate, which it clearly is not.

14. These same problems prevent Defendant from prevailing on her requests that the proceeding be stayed or abated. What Defendant appears to really seek is the abatement of this case because Defendant claims that since the Aransas County probate proceeding and this case are "inherently interrelated" and this case must be abated to allow the Aransas County case to exercise some type of dominant jurisdiction. As stated, there is no case in which these issues could be addressed even if they had something in common with the probate issues—which they don't. Defendant relies on cases with facts so dissimilar to those involved before this Court as to present no authority for her position.

15. This theory is also without merit for the same reasons previously discussed in this response. This case does not have common parties or issues, but there is no estate pending in Aransas County in which to insert it even if it did. In making her argument, Defendant simply ignores the fact that the Aransas County muniment of title proceeding is over; that Plaintiff was not a party to that proceeding, and in fact, was not even informed of its existence; and that the Aransas County probate proceeding and Plaintiff's tort claims are not intertwined.

16. Defendant also argues that Tex. Prob. Code §8 required subsequent probate proceedings filed in other counties to be stayed in favor of venue determinations in the probate proceeding first commenced. That provision is not helpful to Defendant's position in her motion, however, because this is not a subsequent probate proceeding. Defendant's motions to abate should also be denied and Defendant's request that this proceeding be stayed which necessarily flows from the argument that this was a second probate proceeding should also be denied.

WHEREFORE, PREMISES CONSIDERED, Plaintiff asks that Defendant's Plea in Abatement, Motion to Stay, and Motion to Transfer Venue be denied, and for such other and further relief to which she may show herself entitled.

Respectfully submitted,

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I hereby certify that a true and correct copy of the foregoing has been forwarded to all counsel of record via Telecopier on this 1st day of November, 2013.

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/s/ Bobbie G. Bayless

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I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this February 7, 2014

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Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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