

CARL H. BRUNSTING

124

1 CAUSE NO. 2013-05455
2 CARL HENRY BRUNSTING,) IN THE DISTRICT COURT OF
INDEPENDENT EXECUTOR OF)
3 THE ESTATES OF ELMER H.)
BRUNSTING AND NELVA E.)
4 BRUNSTING,)
))
5 Plaintiffs,)
))
6 V.) HARRIS COUNTY, TEXAS
))
7 CANDACE L. KUNZ-FREED)
AND VACEK & FREED, PLLC)
8 F/K/A THE VACEK LAW)
FIRM, PLLC,)
9)
Defendants.) 164TH JUDICIAL DISTRICT

10
11 REPORTER'S CERTIFICATION
ORAL AND VIDEOTAPE DEPOSITION OF CARL H. BRUNSTING
12 FEBRUARY 3, 2015
13

14 I, Stephanie M. Harper, a Certified Shorthand
15 Reporter in and for the State of Texas, hereby certify
16 to the following:

17 That the witness, CARL H. BRUNSTING, was duly sworn
18 by the officer and that the transcript of the oral
19 deposition is a true record of the testimony given by
20 the witness;

21 That the deposition transcript was submitted on
22 2.13, 2015, to the witness, or to the attorney
23 for the witness, for examination, signature, and return
24 to U.S. Legal Support, Inc., by 3.8, 2015;

25 That the amount of time used by each party at the

177755

1 deposition is as follows:

2 MS. ZANDRA E. FOLEY - 02:22

3 MS. BOBBIE G. BAYLESS - 00:00

4 That pursuant to information given to the
5 deposition officer at the time said testimony was
6 taken, the following includes counsel for all parties
7 of record:

8 MS. BOBBIE G. BAYLESS,
ATTORNEY FOR PLAINTIFFS.

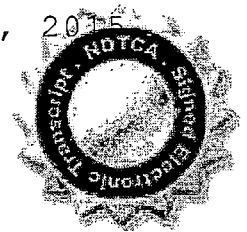
9 MS. ZANDRA E. FOLEY,
ATTORNEY FOR DEFENDANTS.

10 I further certify that I am neither counsel for,
11 related to, nor employed by any of the parties or
12 attorneys in the action in which this proceeding was
13 taken, and further that I am not financially or
14 otherwise interested in the outcome of the action.

15 Further certification requirements pursuant to Rule
16 203 of TRCP will be certified to after they have
17 occurred.

18 Certified to by me this 13 of FEBRUARY, 2015.

19
20
21
22 



23 STEPHANIE M. HARPER

TEXAS CSR NO. 7433

Expiration Date: 12-31-16

24
25 JOB NO. 177755

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

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was X was not returned to U.S. Legal Support, Inc., on March 5th, 2015.

If returned, the attached Corrections and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. ZANDRA E. FOLEY, Custodial Attorney;

That \$ 794.15 is the deposition officer's charges to the Attorney for Defendants, MR. ZANDRA E. FOLEY, Texas Bar No. 24032085, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on 3/20/15 and filed with the Clerk.

Certified to by me this 19th day of March, 2015.

Stephanie M. Harper *BSA*
STEPHANIE M. HARPER
TEXAS CSR NO. 7433
Expiration Date: 12-31-16

U.S. Legal Support, Inc.
Firm Registration No. 122
363 North Sam Houston Parkway East,
Suite 1200
Houston, Texas 77060
(713) 653-7100

JOB NO. 177755

CARL H. BRUNSTING

2/3/2015

122

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

WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

PAGE/LINE	CORRECTION	REASON FOR CHANGE
5	SEE ATTACHED STATEMENT.	
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Unofficial Copy Office of Chris Daniel District Clerk

CARL H. BRUNSTING

CARL H. BRUNSTING

2/3/2015

123

1 I, CARL H. BRUNSTING, solemnly swear or affirm
 2 under the pains and penalties of perjury that the
 3 foregoing pages contain a true and correct transcript
 4 of the testimony given by me at the time and place
 5 stated herein, except as noted on the previous
 6 correction page(s), and that I am signing this before a
 7 Notary Public.

SEE ATTACHED STATEMENT

CARL H. BRUNSTING

8
 9 STATE OF T E X A S *
 10 COUNTY OF _____ *

11
 12 Before me, _____,
 13 on this day personally appeared CARL H. BRUNSTING,
 14 known to me, or proved to me under oath, to be the
 15 person whose name is subscribed to the foregoing
 16 instrument and acknowledged to me that they executed
 17 the same for the purposes and consideration therein
 18 expressed.

19
 20 Given under my hand and seal of office on
 21 this, the _____ day of _____, 2015.

22
 23 _____
 24 NOTARY PUBLIC IN AND FOR THE
 25 STATE OF TEXAS

My Commission Expires: _____

JOB NO. 177755

**STATEMENT CONCERNING WITNESS CORRECTIONS AND SIGNATURE
FOR DEPOSITION OF CARL H. BRUNSTING DATED FEBRUARY 3, 2015**

Although it had not been apparent through other phases of the litigation, under the stress of giving his deposition, the effects remaining from Carl Brunsting's encephalitis in 2010 surfaced and tainted his entire deposition. The memory problems resulting from encephalitis are apparently exacerbated in stressful and demanding setting such as Mr. Brunsting's deposition. Attached as Exhibit 1 is an explanation of the memory problems associated with Mr. Brunsting's condition as a survivor of encephalitis.

The memory issues experienced by Mr. Brunsting at the deposition resulted in inaccurate answers about himself and his own medical treatments, as well as about issues involved in the litigation. It would be impossible to correct the deposition in any way which would allow it to remain meaningful testimony. By way of example, at several points in the deposition Mr. Brunsting was asked about Doctors he has seen since his illness and said there were none or that he could not remember any. In fact, Mr. Brunsting had at least 83 appointments with doctors, physical therapists or other healthcare providers in 2011 alone, as well as 9 days as an inpatient at the St. Luke's Hospital ICU unit and 4 days of inpatient care on the St. Luke's Hospital rehabilitation floor in 2011. He also had 5 days of inpatient rehabilitation at Mentis in 2011. Although he has not been hospitalized since 2011, Mr. Brunsting has had almost 70 medical appointments in the years after 2011.

After the deposition, Mr. Brunsting was evaluated by Dr. C. George Kevorkian. His letter dated February 12, 2015 concerning that evaluation is attached as Exhibit 2. Based on that evaluation, Mr. Brunsting has filed an application to resign as executor of the estates of his parents. Mr. Brunsting was excluded from the actions on which this case is based so he had no personal knowledge of what occurred anyway. Mr. Brunsting is the Plaintiff in this case only in his capacity as executor and the new executor will be substituted as the Plaintiff in the case once appointed. For that additional reason, it appears that the relevance of Mr. Brunsting's deposition to this action, even if it contained accurate testimony, is further diminished. Mr. Brunsting will not be providing the vast number of corrections needed to make the testimony accurate. Indeed such an exercise, even if it could be done, would result in virtually a completely new deposition. Mr. Brunsting will also be unable to provide a signature verifying the accuracy of the very inaccurate deposition. Instead, this statement with its attachments is being provided to be attached to the deposition.

Exhibit 1

Unofficial Copy Office of Chris Daniel District Clerk

March 4, 2015

To whom it may concern:

Re: Encephalitis -- an acquired brain injury

My name is Wendy Station. I am President of Encephalitis Global, Inc., a U.S.A. 501(c)(3) non-profit organization formed in 2005. I am not a medical professional. I am an encephalitis survivor, sharing information, support and research internationally for 15 years. In 2004 I was invited (escorted by my husband, all expenses paid) by the Committee on Government Reform House of Representatives to testify at a Hearing in Washington DC on the impact and current challenges of encephalitis. (<http://www.gpo.gov/fdsys/pkg/CHRG-108hhrg98485/html/CHRG-108hhrg98485.htm>)

Memory issues post-encephalitis can be a challenge. The survivor of an acquired brain injury can struggle with this invisible disability as society tells them that "they look okay... they must be okay." Studies show that if the situation arises where a survivor must interact in a situation away from their comfortable home, her/his response may be very different to the response she or he submits in a calm and familiar setting. The swiftest agreeable answer may not be accurate... but it's the easiest one to deliver. The following resources may help to further understand the impact of an acquired brain injury.

The Alberta Health Services "Coping With Brain Injury" research confirms that,

- "Loss of the ability to make new memories can be the most disabling deficit. **The person may make up convincing stories to fill memory gaps; this is not intentional lying.**"
- The injured person may have difficulty sizing up a situation and figuring out what response is appropriate and relevant. He may be unable to delay his first impulses. His thinking style may be inflexible. Once he has an idea or solution, it may be hard for him to consider alternatives. Because of poor judgement, a frequent outcome of brain injury, he may not make decisions in his best interest.
- As a result of the brain injury, self-awareness may be impaired. The person may lack awareness of deficits and limitations. This is not typically intentional, rather, it is a common phenomenon following traumatic brain injury in particular. He may have an inaccurate self-image or self-perception, which may lead him to overestimate his abilities and underestimate his problems.
- To help communicate, **"Establish an easy, non-demanding atmosphere, where the injured person feels free to communicate without feeling he is under pressure to perform."**

(From THE BRAIN INJURY BOOK - A GUIDE FOR PATIENTS AND THEIR FAMILIES

Created by the Patient and Family Education Working Group, Calgary

Brain Injury Strategy, 2012

Glenrose Rehabilitation Hospital in Edmonton, Alberta

<http://www.albertahealthservices.ca/hp/if-hp-cbi-pf-coping-brain-injury-booklet.pdf>

The Powell River Brain Injury Society confirms that the brain injury survivor **"May make up stories and information to fill in gaps."**

<http://braininjuriesociety.com/information/acquired-brain-injury/help-family-or-friend-with-abi/>

Speaking of brain injury survivors, the Model Systems Knowledge Translation Center (MSKTC) --states, "They may have problems remembering entire events or conversations. Therefore, the mind tries to "fill in the gaps" of missing information and recalls things that did not actually happen. Sometimes bits and pieces from several situations are

remembered as one event. These false memories are not lies. - See more at: <http://www.msctc.org/tbi/factsheets/Cognitive-Problems-After-Traumatic-Brain-Injury#sthash.FedDuIXZ.dpuF>

In psychiatry, confabulation is defined as, "the replacement of a gap in a person's memory by a falsification that he or she believes to be true."

Thomas Novack, Ph.D. writes, "Confabulation is often associated with an injury to the frontal area of the brain. This area focuses attention, directs and organizes thoughts and behaviors, and controls impulsiveness. Confabulation occurs when the frontal areas do not provide direction and organization to the memory system. Too often, confabulation is mistakenly perceived as the person lying or having delusional thoughts. By better understanding how information is stored in memory and later retrieved, users gain an understanding of what happens when this system breaks down. As a consequence, a person who is confabulating will recall events out of sequence, mismatch people and events, and give too much information." <http://www.lapublishing.com/brain-injury-confabulation/>.

In closing I wish to confirm that stress in an unfamiliar environment can create havoc on the normally mellow personality of a brain injury survivor. Dealing with strangers who appear to be authority figures demanding answers would be very, very upsetting. It would be very typical for the survivor to choose the simplest actions... actions which meet with the approval of the people around them.

Please do not hesitate to contact me if I may be of further assistance.

Sincerely,
Wendy Station, survivor, HSE 1999
Founder and President of
Encephalitis Global, Inc.
www.encephalitisglobal.org
admin@encephalitisglobal.org



Encephalitis Global, Inc. aims to share information and support between survivors, caregivers, loved ones, and people who seek to understand, to raise awareness among relevant professionals and the wider public about the condition and subsequent problems and to promote research into encephalitis. Encephalitis Global, Inc. is a 501(c)(3) public charity, USA Tax Exempt ID # 75-3173679

ENCEPHALITIS GLOBAL INC.

encephalitisglobal.org
encephalitis.ca

Website administrators
Ingrid Guerel - New York, USA
Wendy Station - Vancouver Canada

Exhibit 2

Unofficial Copy Office of Chris Daniel District Clerk

BOBBIE GRACE BAYLESS
BOARD CERTIFIED CIVIL TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
NATIONAL BOARD OF TRIAL ADVOCACY
bayless@baylessstokes.com

BAYLESS & STOKES
ATTORNEYS AT LAW
2831 FERNDALE
HOUSTON, TEXAS 77098
Telephone: (713) 522-2224
Telecopier: (713) 522-2218

DALIA BROWNING STOKES
BOARD CERTIFIED ESTATE PLANNING & PROBATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
stokes@baylessstokes.com

March 5, 2015

Sent via Email and Telecopier

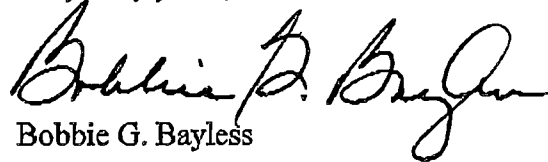
Ms. Alicia Cordova
U.S. Legal Support
363 N. Sam Houston Parkway East, Suite 1200
Houston, Texas 77060

Re: Cause No. 2013-05455; *Carl H. Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC, f/k/a The Vacek Law Firm, PLLC*; In the 164th Judicial District Court of Harris County, Texas

Dear Ms. Cordova:

Enclosed please find a Statement Concerning Witness Corrections and Signature for Deposition of Carl H. Brunsting Dated February 3, 2015 in lieu of the original errata sheet and signature page for Mr. Brunsting's deposition in the above-referenced case.

Very truly yours,


Bobbie G. Bayless

cc: Ms. Zandra Foley

Unofficial Copy Office of Chief Daniel District Clerk

C. George Kevorkian, M.D.



Chief, Physical Medicine and Rehabilitation

6624 Fannin, Suite 2330
O'Quinn Medical Tower
Houston, Texas 77030
Tel (713) 798-4061
Fax (713) 796-0978

Associate Professor
Department of
Physical Medicine
and Rehabilitation

February 12, 2015

RE: Carl Brunsting/ DOB: 07-13-1957

To Whom It May Concern,

Mr. Carl Brunsting is a patient of mine. Mr. Brunsting has memory and cognition problems as a result of contracting encephalitis in July of 2010.

These issues make it difficult for him to sue and defend a lawsuit. However, he understands the purpose of a Power of Attorney and understands that this document allows another person to act on his behalf.

He is aware of his situation & he trusts his wife, Drina, to make decisions on his behalf. He is capable of making a decision to sign a Power of Attorney, both for financial matters and medical issues.

Thank you for your interest in this matter.

Please call my office if you have any questions or concerns.

Sincerely,

C. George Kevorkian, M.D
Physical Medicine and Rehabilitation

District Clerk